



## Analysis of SEBI Regulations for Delisting of Equity Shares

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### I. INTRODUCTION

Before understanding the meaning of delisting it is important to know the meaning of the term listing. Listing means formal admission of a security into a public trading system, usually a stock exchange, often evidenced by a listing agreement between the issuer (company) of the security and the stock exchange. It provides liquidity to the issuer of security for capital and ensures effective monitoring of conduct of issuer and of the trading of the securities in the interest of investors. The issuer wishing to have trading privileges for the securities on a stock exchange satisfies listing requirements prescribed in the relevant statutes and in the listing regulations of the concerned stock exchange. Stock exchange is a place where the buyers and sellers of securities meet. The advantage of listing securities in a stock exchange is that it provides a platform to the company for trading its shares. Other advantages of listing the shares are that it provides liquidity to shares provides protection to investors and increases marketability of company.

'Delisting' denotes removal of the listing of the securities of a listed company from the Stock Exchange. Delisting differs from suspension or withdrawal of admission to dealing of listed securities, which is for a limited period. Delisting is said to be compulsory delisting of securities when it is done by the stock exchange. Another way of Delisting of securities is voluntary delisting by company.

Every company that issues shares to the public is required to have its shares listed on a recognised stock exchange. Initially The Controller of Capital Issues (CCI) fixed the price of shares issued by any company. In 1992 the CCI guidelines were abolished and SEBI was constituted. SEBI opened up the market to the Issuers and regulated the issue process by providing for full safeguards and transparency through disclosure of all relevant information by the issuers so that the investor can make an informed decision. Companies issuing shares became free to fix the premium provided adequate disclosure is made in the offer documents. This resulted in many IPOs and a huge number of companies got listed on stock exchanges. Later it became necessary for many companies to delist their shares due to reasons like hitting the delisting limits.

In the year 2000-2002, at least 26 companies, mainly multinational companies have delisted themselves from the stock exchanges; while another 90 other firms propose to do the same in coming years.<sup>1</sup> Shareholders and investors interest should also be considered while delisting the shares of a company. SEBI in order to deal with the problems arising due to unregulated delisting appointed a committee which came up with certain recommendations.

As observed by the Sebi-appointed committee, delisting of shares has created uneasiness amongst investors. Further the report stated that there is a growing trend of delisting of shares from the Indian stock exchanges. The Multi National Companies (MNCs) have also been seeking delisting from the stock exchanges for a variety of reasons and according to the statistics and indications available with the Committee, the number of such companies has been on the increase in the last two years and this trend is likely to continue. The trend has engaged the attention of the public, media and investor associations and has caused uneasiness and anxiety among investors. In several quarters, a view has also been expressed that delisting should not be resorted to. The Ministry of Finance (MOF) have also written to SEBI on the increasing instances of MNCs delisting from the Indian stock exchanges and the possible negative impact on the securities market, as also about the non compliance by MNCs of the compulsory dilution of equity norms under FDI policy. As indicated by the MOF, these issues were also discussed in the Parliamentary Standing Committee on Finance and in the Parliament.<sup>2</sup> The main concern does not appear to be so much against delisting per se, as against the inadequacy of investor protection through the prevailing exit price mechanism.

There was a perception within the financial markets that investors were not being adequately compensated for the permanent withdrawal of a good investment opportunity. But it must be noted that companies have resorted to delisting due to depressed market conditions and subsequent acquisition of the remaining securities from the shareholders. The committee has broadly stated that while there would be no restrictions on delisting per se, the monitoring of events leading to delisting (to safeguard investor interests) should be stringent and improved upon. The committee has discussed issues like an exit price for delisting, adopting a reverse book-building process to determine this and taking steps to ensure that there is no scrip price manipulation while the process is on.

<sup>1</sup> rediff.com: What is delisting of shares? Why do cos delist? 2015. *rediff.com: What is delisting of shares? Why do cos delist?*. [ONLINE] Available at: <http://www.rediff.com/money/2002/sep/17tut.htm>. [Accessed 03 May 2015].

<sup>2</sup> 2015. . [ONLINE] Available at: <http://www.sebi.gov.in/commreport/delistes.pdf>. [Accessed 03 May 2015].



Section 21A of the Security Contract Regulation Act, 1956 provides for compulsory delisting of equity shares done by a stock exchange however the Act does not provide the detailed procedure for delisting. Companies desiring to delist the securities should also consider the guidelines and regulations introduced by SEBI. In 2003 SEBI introduced Delisting of Securities Guidelines which laid down the procedure for delisting of securities it provided for reverse book building process for the determination of exit price. Further in SEBI introduced Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009.

The regulation for the delisting of equity shares is not to be studied in isolation it has to be read keeping in mind the SEBI Act, 1992 as well as Security contract Regulation Act, 1956. SEBI by virtue of the powers conferred by section 31 read with section 21A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), section 30, sub-section (1) of section 11 and sub-section (2) of section 11A of the Securities and Exchange Board of India Act, 1992 (15 of 1992), introduced the regulation for delisting of equity shares.

The regulation defines two modes of delisting which are: 1) Voluntary Delisting and 2) Compulsory delisting. Chapter 3 and 4 of the regulation deals with the voluntary delisting whereas chapter 5 of the regulation deals with compulsory delisting. For voluntary delisting there are two kinds of procedure laid down in the regulation which are : procedure for voluntary delisting in case when exit opportunity is provided to shareholders and procedure voluntary delisting in case when exit opportunity is not provided to shareholders.

## II. OVERVIEW

The new norms for delisting provide that the delisting would be effective only if promoters hike their stake to 90% or purchase 50% through purchase offer. Further it provides for reverse book building process. Besides, the Securities and Exchange Board of India (SEBI) has framed conditions for stock exchanges in the cases of compulsory delisting, and has made special provisions for cases related to delisting of small companies and those necessitated due to factors like winding up and de recognition.

The present research paper aims to explain the regulation for delisting of equity shares. It discusses the provisions pertaining to voluntary delisting, compulsory delisting, delisting for small companies and delisting by operation of law. Further the paper critically analysis that how far the new regulation has benefitted companies, small companies and investors.

### A. Scope and applicability

#### *Definitions:*

The first chapter of the regulation provides for definitions of terms which are important for understanding procedure for delisting. Some of the important extracts from the regulation are as under:

Regulation 2(ii) 'Board' means the Securities and Exchange Board of India established under section 3 of the Act;

(iii) 'company' means a company within the meaning of section 3 of the Companies Act, 1956 (1 of 1956) and includes a body corporate or corporation established under a central Act, state Act or provincial Act for the time being in force, whose equity shares are listed on a recognised stock exchange;

(iv) 'Compulsory delisting' means delisting of equity shares of a company by a recognised stock exchange under Chapter V of these regulations;

(v) 'Public shareholders' mean the holders of equity shares, other than the following:

(a) Promoters;

(b) Holders of depository receipts issued overseas against equity shares held with a custodian and such custodian;

(vi) 'Recognised stock exchange' means any stock exchange which has been granted recognition under section 4 of the Securities Contracts (Regulation) Act, 1956;

(viii) 'Voluntary delisting' means delisting of equity shares of a company voluntarily on application of the company under Chapter III of these regulations;

(3) Words and expressions not defined in these regulations, but defined in or under the Act or the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Companies Act, 1956(1 of 1956), or any statutory modification or re-enactment thereof, shall have the same meanings as in or under those enactments.

In other words, in order to know the meaning of the terms which are not defined in this particular regulation SCRA Act, 1956 or Companies Act, 2013 shall be referred. For instance the term Promoter is not defined in the regulation but it is defined in section 2(69) Companies Act, 2013 so the definition provided in companies act will be referred. According to section 2(69) "promoter" means a person—



(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

#### ***Applicability and scope of the regulation***

Second chapter of the regulation provides for the delisting of equity shares. Regulation 3 talks about the applicability and scope of the delisting provisions. It states that regulation shall apply to delisting of equity shares of a company from all or any of the recognised stock exchanges where such shares are listed. Further it talks about non applicability of this regulation in certain situations. The regulation will not be applicable in case where delisting has taken place due to the scheme sanctioned by the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or by the National Company Law Tribunal under section 424D of the Companies Act, 1956. Wherein, such a scheme has provided for any specific procedure to complete the delisting; or has provided an exit option to the existing public shareholders at a specified rate.

#### ***Circumstances in which delisting is not permissible.***

Regulation has laid down certain conditions in which delisting of the equity shares is not permissible. Extract from regulation 4 is as follows

(1) No company shall apply for and no recognised stock exchange shall permit delisting of equity shares of a company, (a) pursuant to a buyback of equity shares by the company; or (b) pursuant to a preferential allotment made by the company; or (c) unless a period of three years has elapsed since the listing of that class of equity shares on any recognised stock exchange; or (d) if any instruments issued by the company, which are convertible into the same class of equity shares that are sought to be delisted, are outstanding.

(2) For the removal of doubts, it is clarified that no company shall apply for and no recognised stock exchange shall permit delisting of convertible securities

#### **B. Voluntary Delisting**

Third Chapter of the regulation lays down the procedure for voluntary delisting of equity shares. Voluntary delisting as the name suggests means wherein the company on its own motion makes the decision to delist its shares. Conditions for voluntary delisting are: 1) Listing for minimum period of 3 years at any stock exchange. In other words the company should have had its shares listed for at least 3 years at any recognized stock exchange. 2) An exit opportunity has been given to the investors for the purpose of which an exit price shall be determined in accordance with the "book building process". However, an exit opportunity need not be given in cases where securities continue to be listed in a stock exchange having nationwide trading terminals. (Stock exchange having nationwide trading terminals means the Bombay Stock Exchange, the National Stock Exchange and any other stock exchange, which may be specified by the Board.)

Regulation 5 states that voluntary delisting can be done from all the stock exchanges however in such a case exit opportunity should be given to shareholders. Regulation 6 provides for the situation in which a company may delist its equity shares from one or more recognised stock exchanges where they are listed and continue their listing on one or more other recognised stock exchanges.

As a result there can be three situations:

1. A company delists its equity shares from all the stock exchanges. In such a case opportunity of exit is to be given to the shareholders<sup>3</sup>
2. A company delists its equity shares from few of the stock exchanges and continues to list its securities in some regional stock exchange which does not have a nationwide trading terminal. In such a case also opportunity of exit is to be given to the shareholders<sup>4</sup>
3. A company delists its equity shares from few of the stock exchanges and continues to list its securities in any stock exchange having nationwide trading terminal (Stock exchange having nationwide trading terminals means the Stock Exchange, Mumbai, the National Stock Exchange and any other stock exchange, which may be specified by the Board). In such a case opportunity of exit need not be given to the shareholders<sup>5</sup>

#### **Procedure for delisting where no exit opportunity is provided.**

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<sup>3</sup> Regulation 5

<sup>4</sup> Regulation 6(b)

<sup>5</sup> Regulation 6(a)



A company desirous of getting its shares delisted should firstly get the approval of the proposed delisting through a resolution of the board of directors of the company. Secondly the company is required to give a public notice of the proposed delisting. At least one such public notice should be in English national daily with wide circulation, one in Hindi national daily with wide circulation and one in regional language newspaper of the region where the concerned recognised stock exchanges are located.

Thirdly the company shall make an application to the concerned recognised stock exchange for delisting its equity shares. Such application shall contain details of BOD Promoters, shareholders, copy of the Resolution passed in the Board meeting etc Rule 19(2) of the SCRA Act lays down the detailed procedure for the application to any stock exchange for the listing of shares. Fourthly such an event of delisting shall be disclosed in the first annual report of the company prepared after the delisting. The contents of the public notice would include the name of the stock exchange from which the company intends to delist its shares, whether the recognised stock exchange is having nationwide trading terminals as well as the reasons for such delisting.<sup>6</sup> An application for delisting shall be disposed of by the recognised stock exchange within thirty working days from the date of receipt of such application complete in all respects.<sup>7</sup>

### **Procedure for delisting where exit opportunity is required**

As previously discussed exit opportunity is given to the shareholders in two situations : 1) when a company Delists its equity shares from all recognized stock exchanges.2) After delisting the shares does not continue to remain listed on any recognized stock exchange having nation-wide trading terminal.

A company desirous of getting its shares delisted should get the approval of the proposed delisting through a resolution of the board of directors of the company in its meeting.<sup>8</sup> However Board approval alone is not enough since interests of shareholders is also to be considered for providing them exit opportunity. Prior approval of shareholders of the company by special resolution passed through postal ballot is required. Such a special resolution should be passed after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution. It is important to note that in order to pass such a special resolution the number of votes cast by “public shareholders” in favour of delisting should be at least two times the number of votes against it.<sup>9</sup>

The company is required to make an application to the concerned recognised stock exchange for in-principle approval of the proposed delisting in the form specified by the recognised stock exchange; and within one year of passing the special resolution, make the final application to the concerned recognised stock exchange.<sup>10</sup> Application for In-principle approval to be disposed by Stock exchange within 30days from receipt of such application.<sup>11</sup> Application for in-principle approval to be supported by Auditors report as required under SEBI (Depositories and Participants) Regulations, 1996 in respect of delisted securities.<sup>12</sup> However stock exchange would not unfairly withhold such application unless it is satisfied that interest of investors is protected and all the compliance requirements are met by the company.<sup>13</sup> Final Application to Stock Exchange to be supported by proof of having given the Exit opportunity <sup>14</sup>

### **Exit Opportunity**

Chapter IV of the regulation deals with the exit opportunity. The provisions of these chapter will be applicable in such situations wherein the company is required to provide exit opportunities<sup>15</sup> The promoters shall open Escrow Account and deposit therein full estimated amount of consideration calculated on the basis of floor price. <sup>16</sup> Escrow account shall include either cash deposited with a scheduled commercial bank, or a bank guarantee in favour of the merchant banker, or a combination of both.<sup>17</sup> The promoter shall appoint Merchant Banker and such other intermediary as necessary<sup>18</sup>The amount in the escrow account or the bank guarantee shall not be released to the promoter unless all payments are made in respect of shares tendered.<sup>19</sup>

**Public Notice** - The promoter shall make public announcement which shall specify a date to be called ‘specified date’ which shall not be not later than 30 days of public announcement for determining the name of shareholders to whom letter of offer shall be sent. <sup>20</sup> The contents of such public notice would include The floor price and the offer price and how they were arrived at, The opening date and closing date of the offer, The name of the exchange from which the equity shares are sought to be delisted, The manner in which the offer can be accepted by the shareholders, disclosure regarding the minimum acceptance condition for

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<sup>6</sup> Regulation 7(2)

<sup>7</sup> Regulation 7(3)

<sup>8</sup> Regulation 8(a)

<sup>9</sup> Regulation 8(b)

<sup>10</sup> Regulation 8(c) and 8(d)

<sup>11</sup> Regulation 8(3)

<sup>12</sup> Regulation 8(2)

<sup>13</sup> Regulation 8(4)

<sup>14</sup> Regulation 8(5)

<sup>15</sup> Regulation 9

<sup>16</sup> Regulation 11(1)

<sup>17</sup> Regulation 11(3)

<sup>18</sup> Regulation 10(4)

<sup>19</sup> Regulation 21(3)

<sup>20</sup> Regulation 10(3)



success of the offer, The names of the merchant banker and other intermediaries together with the helpline number for the shareholders, object of the proposed delisting etc.<sup>21</sup> After payment in full to the shareholders, remaining balance in escrow account to be released to the promoters<sup>22</sup>

**Letter of offer** - is to be dispatched to the shareholders not later than 45 days from public announcement to reach shareholders at least 5 working days before opening of bidding process. <sup>23</sup> Letter of offer shall be sent to all public shareholders holding such equity shares whose names appear on the register of the company or depository.<sup>24</sup> Such letter shall contain all such disclosures made in public announcements and such other disclosures as may be considered necessary to inform.<sup>25</sup>

The date of opening of the offer shall not be later than fifty five working days from the date of the public announcement.<sup>26</sup> Such offer shall remain open for a minimum period of 3 working days and a maximum period of five working days. In other words the offer is open for public shareholders to tender their bids during the above mentioned period.<sup>27</sup> The offer price shall be determined through book building process <sup>28</sup> it shall be duty of the merchant banker to ensure that A promoter or a person acting in concert with any of the promoters shall not make a bid in the offer<sup>29</sup>

**Book building process-** The offer price shall be determined by book building process which shall made through an electronically linked transparent facility and the promoter shall enter into an agreement with a stock exchange for such purpose.<sup>30</sup> The shareholders holding dematerialised shares desirous of availing the exit opportunity may deposit the equity shares in respect of which bids are made, with the special depositories account opened by the merchant banker for the purpose prior to placement of orders.<sup>31</sup>

The floor price shall not be less than, in case where the equity shares are frequently traded in all the recognised stock exchanges, the average of the weekly high and low of the closing prices of the equity shares of the company during the twenty six weeks or two weeks preceding the date on which the recognised stock exchanges were notified about delisting proposal of the company.<sup>32</sup> In case wherein the shares are not traded frequently than floor price would be determined by promoters and Merchant Banker taking into account the following: Highest price paid by promoter twenty six weeks before it was notified of Board meeting upto the date of public announcement. Return on net worth, Book value of the shares of the company, Earning per share etc<sup>33</sup> However it is not mandatory for promoter to accept the equity shares at the offer price determined by the book building process<sup>34</sup> When the promoter decides not to accept the price determined in such a manner than in such a case he may close the escrow account.<sup>35</sup>

**Consequences of Success or failure of offer-** In case of Issue of shares the companies are required to comply with minimum subscription requirement. Failure to gather minimum subscription defeats the whole issue process and for this very reason underwriters are appointed by the companies. Similar kind of requirement is sought in case of delisting wherein failure in reaching minimum level of public shareholding required under the listing agreement<sup>36</sup> shall lead to failure of offer.<sup>37</sup> The promoter shall ensure that the public shareholding shall be brought up to such minimum level within a period of six months from the date of closure of the bidding<sup>38</sup> by way of issuing new shares in consonance with the Companies Act and SEBI guidelines pertaining to issue of securities and disclosures.<sup>39</sup> Promoter can also offer his own holdings for sale <sup>40</sup>

An offer is deemed to be successful if post offer, the shareholding of the promoter along with the shares accepted through eligible bids at the final price reaches higher than ninety per cent. of the total issued shares of that class. Offer is deemed to be successful in case it reaches higher than the aggregate percentage of pre offer promoter shareholding and fifty per cent of the offer size.<sup>41</sup>

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<sup>21</sup> Regulation 10(2)

<sup>22</sup> Regulation 10(4)

<sup>23</sup> Regulation 12(1)

<sup>24</sup> Regulation 12(2)

<sup>25</sup> Regulation 12(3)

<sup>26</sup> Regulation 13(1)

<sup>27</sup> Regulation 13(2)

<sup>28</sup> Regulation 15(1)

<sup>29</sup> Regulation 14(2)

<sup>30</sup> Regulation 15(1) Schedule 2

<sup>31</sup> ibid

<sup>32</sup> Regulation 15(2)

<sup>33</sup> Regulation 15(3)

<sup>34</sup> Regulation 16(1)

<sup>35</sup> Regulation 16[2(c)]

<sup>36</sup> Regulation 16[2(d)]

<sup>37</sup> Regulation 19

<sup>38</sup> Regulation 16[2(d)]

<sup>39</sup> Regulation 16[39(a)]

<sup>40</sup> Regulation 16[3(b)]

<sup>41</sup> Regulation 17



Failure in reaching such above mentioned levels can lead to failure of offer.<sup>42</sup> The consequences of failure of offer would be : closure of escrow account, the equity shares deposited or pledged by a shareholder shall be returned or released to him within ten working days from the end of the bidding period; no final application to be made to stock exchange for delisting<sup>43</sup>

On ascertaining success of the offer, the promoter shall immediately open a special account with a banker to and transfer the amount due and payable as consideration in respect of equity shares tendered in the offer, from the escrow account. The final price to the genuine shareholders shall be paid within 10 days of closure of offer.<sup>44</sup>

### C. Compulsory Delisting

Compulsory delisting means delisting of equity shares of a company by a recognised stock exchange under Chapter V of these regulations.<sup>45</sup> The reasons of such delisting could be non compliance of the listing agreement and such other non compliances which are to be determined by the stock exchanges on the biases of criteria provided in the schedule 2 of the regulation.<sup>46</sup> Securities Contracts (Regulation) Act, 1956 empowers stock exchange to delist the securities of a company however such power cannot be exercised arbitrarily and principles of natural justice are to be followed.<sup>47</sup>

Section 21 A of the SCRA, provides that a recognised stock exchange may delist the securities, after recording the reasons therefore, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act<sup>48</sup>. But the bare act barely speaks about the procedure to be followed in case of compulsory delisting. Therefore rules and regulations pertaining to the same assume significance in understanding the procedure of compulsory delisting in totality.

**Notice-** A recognised stock exchange may, by order, delist any equity shares of a company<sup>49</sup> but before going ahead with delisting a stock exchange is required to follow a process. The recognised stock exchange shall give a notice in one English national daily with wide circulation and one regional language newspaper of the region where the concerned recognised stock exchange is located, of the proposed delisting, giving a time period of not less than fifteen working days from the notice, within which representation may be made to the recognised stock exchange by any person who may be aggrieved by the proposed delisting and shall also display such notice on its trading systems and website.<sup>50</sup>

**Constitution of panel-**The procedure laid down in the regulation requires the stock exchange to form a panel which shall make decision with regards to compulsory delisting of a company. Such panel shall consist of : (a) two directors of the recognised stock exchange (one of whom shall be a public representative); (b) one representative of the investors; (c) one representative of the Ministry of Corporate Affairs or Registrar of Companies; and (d) the Executive Director or Secretary of the recognised stock exchange.<sup>51</sup> The stock exchange before making any such order for delisting will consider the responses and representations of the affected parties and it will also keep in mind the criteria laid down in Schedule III of the regulation.<sup>52</sup>

**Notice after the order is passed -** Where a stock exchange has made an order regarding delisting of the shares of a particular company in such a case it is required to give notice in the same manner as given prior to passing such order. The content of notice would include the name the company and details of its promoters, directors, the fair value of the delisted securities and etc. The stock exchanges are also required to inform all other stock exchange about such delisting and the surrounding circumstances.<sup>53</sup> This is done with a view to make other stock exchange alert regarding the conduct of any company.

**Appeal to the order of delisting-** Such delisting order of the stock exchange can be challenged at the Security Appellate Tribunal. A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals. The tribunal may extend the period to file appeal if it is satisfied that the aggrieved party had been prevented to file an appeal due to sufficient cause.<sup>54</sup> Appeal to the decision of the SAT can be made at Supreme Court. Before such an amendment of 2004 such appeal was to be made at High Court.

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<sup>42</sup> Regulation 19

<sup>43</sup> Regulation 19

<sup>44</sup> Regulation 20

<sup>45</sup> Regulation 2[1(iv)]

<sup>46</sup> Regulation 22(4)

<sup>47</sup> Regulation 22(1) and (2)

<sup>48</sup> Section 21A SCRA, Act 1956

<sup>49</sup> Regulation 22(1)

<sup>50</sup> Regulation 22(3)

<sup>51</sup> Regulation 22(2)

<sup>52</sup> Regulation 22(4)

<sup>53</sup> Regulation 22(a) and (b)

<sup>54</sup> Section 21A(2) of the SCRA, Act 1956



**Rights of the shareholders in case of compulsory delisting-** Stock exchange shall appoint an independent valuer who shall determine the fair value of the delisted equity shares. The promoter of the company shall acquire delisted equity shares from the public shareholders by paying them the value determined by the valuer, subject to their option of retaining their shares<sup>55</sup>

**Effect of Compulsory delisting-** The effect of compulsory delisting on company extends for a period of 10 years. The company, its whole time directors, its promoters and the companies which are promoted by any of them are not permitted directly or indirectly to access the securities market or seek listing for any equity shares for a period of ten years from the date of such delisting.<sup>56</sup>

#### **D. Delisting for Small Companies and Delisting by Operation of Law**

The regulation has introduced special provisions for delisting of small companies. A company which has paid up capital up to one core rupees and its equity shares were not traded in any recognized stock exchange in the one year immediately preceding the date of decision. a company which has three hundred or fewer public shareholders and where the paid up value of the shares held by such public shareholders in such company is not more than one crore rupees.<sup>57</sup>In the above cases equity shares may be delisted from all the recognised stock exchanges where they are listed without being required to comply with the requirement of making public announcement and book building process. The process to be followed by a small company in order to get its share delisted is as follows<sup>58</sup>:

The promoter appoints a merchant banker and decides an exit price in consultation with him. The exit price offered to the public shareholders shall not be less than the price arrived at in consultation with the merchant banker.

The promoter writes individually to all public shareholders in the company informing them of his intention to get the equity shares delisted, indicating the exit price together with the justification therefore and seeking their consent for the proposal for delisting. Such process of the promoter involving inviting the positive consent and finalisation of the proposal for delisting of equity shares to be completed within seventy five working days of the first communication. Over and above this the communication shall also contain justification for the offer price with particular reference to the applicable parameters and specifically mention that consent for the proposal would include consent for dispensing with the exit price discovery through book building method.

Payment to be made by promoters within 15 days from the date of expiry of 75 days. The Stock exchange after being satisfied with the compliance requirements made by the company may delist its shares.

In case where the Board withdraws recognition granted to a stock exchange or refuses renewal of recognition, it may pass appropriate order with respect to the status of equity shares in company keeping in mind the interest of the investors.<sup>59</sup>

### **III. ANALYSIS OF THE REGULATION**

The new regulation is more detailed and elaborate as compared to the guidelines. From point of view of a company there is too much of compliance requirements provided for voluntary delisting. The process for voluntary delisting is complex and expensive. It is prudent to allow delisting than make an investor face problems like a company's shares not being traded for years or a cornering of shares taking place.

Regulation has considered the interest of investors in case of delisting and therefore it has provided for exit opportunity to the shareholders. To ensure fairness and transparency in the process of delisting a company is required to inform the stock exchange about the resolutions of the Board meeting which are pertaining to the proposal of such delisting. The new regulation allows the participation of public shareholders in approving the special resolution required for delisting such a provision was not present in the guidelines. It also provides for book-building process would provide the transparent and fair mechanism to price shares and would ensure investors' participation in the whole delisting process. It is assumed that rational investors would quote the reasonable premium in the book-building. The requirement of two times the vote in favour of as against that cast against the resolution by the non-promoter shareholders enhances the strength of the minority shareholders and this would result in decrease unethical and unfair means adapted by the promoter shareholders.

A new development provided clearly in the regulations is complete ban on the use of company's funds, directly or indirectly, for the purpose of delisting. The earlier guidelines "SEBI (Delisting of securities) Guidelines 2003" was wide in its application including within its ambit delisting of all securities of a company. Securities, in itself, is a very wide terms and has been defined under the Securities Contracts (Regulations) Act, 1956 to include shares, stocks, bonds, debentures or other marketable security, derivative, units issued by CIS etc. In contrast, the new regulations known by "SEBI (Delisting of Equity Shares) Regulations,

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<sup>55</sup> Regulation 23

<sup>56</sup> Regulation 24

<sup>57</sup> Regulation 27(1) and (2)

<sup>58</sup> Regulation 27(3)

<sup>59</sup> Regulation 28



2009” only apply to delisting of equity shares of a company. Hence the scope of the new regulations is narrow compared to the guidelines.

The object of inclusion of special provisions for small companies is to provide relief to the small companies from following such a long procedure of the public announcement and the book building mechanism. But on the other hand there is requirement of obtaining positive consent from ninety percent of public shareholders is not feasible. Similarly requirement of appointing merchant bankers has made the process complicated and expensive for the small companies so the object of providing relief to small from expensive and lengthy procedure is defeated. Hence the net effect of the relief provided to the small companies by way of inserting special provisions for it is negligible. The regulation is not well balanced and is a relief just for the namesake. In short the regulation is more investor friendly and less business friendly at the same time.

#### IV. CONCLUSION

The regulation is an investor friendly regulation. It provides for exit opportunity, reverse book building process and participation of the shareholders in approval of delisting proposal through resolution. Such book-building process would provide the transparent and fair mechanism to price shares and would ensure investors' participation in the whole delisting process. It is assumed that rational investors would quote the reasonable premium in the book-building. The requirement of two times the vote in favour of as against that cast against the resolution by the non-promoter shareholders enhances the strength of the minority shareholders and this would result in decrease unethical and unfair means adapted by the promoter shareholders.

Other new attraction in the regulation is the special provisions that are added for the so-relief of the delisting of small companies. However on perusal of the provisions and from the analysis of the regulation made above one can understand that it is not actually a relief to small companies.

It is prudent to allow delisting than make an investor face problems like a company's shares not being traded for years or a cornering of shares taking place. From point of view of a company there is too much of compliance requirements provided for voluntary delisting. The process for voluntary delisting is complex and expensive.

To sum up the new regulation is more investor friendly and less business friendly. It addresses some core aspects such as pointed out in the SEBI Committee Report. It addresses the issue of inadequacy of investor protection through exit price mechanism. The regulation is an improvement to the earlier guidelines.

#### REFERENCES

1. Companies Act, 2013
2. SEBI Act, 1992
3. Security Contract Regulation Act, 1956
4. SEBI Guidelines for delisting of securities 2003
5. SEBI Regulations (Delisting of equity shares) 2009
6. Report of the SEBI Committee available at <http://www.sebi.gov.in/commreport/delistes.pdf>.
7. rediff.com: What is delisting of shares? Why do cos delist?. 2015. *rediff.com: What is delisting of shares? Why do cos delist?*. [ONLINE] Available at: <http://www.rediff.com/money/2002/sep/17tut.htm>. [Accessed 03 May 2015].