

Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003

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Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003

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1. . :-

These guidelines shall be called "Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003".

2. . :-

These guidelines are being issued under section 11(1) of SEBI Act, 1992, read with sub-section (2) of section 11A of SEBI Act, with

the objective to protect the interest of investors in the securities market.

3. Definitions :-

3.1 In these Guidelines, unless the context otherwise requires:

(a) 'Act' means the Securities and Exchange Board of India Act, 1992;

(b) 'Authority' means the Central Listing Authority established under the Securities and Exchange Board of India (Central Listing Authority) Regulations, 2003;

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

(d) 'compulsory delisting' means delisting of the securities of a company by an exchange;

(e) 'delisting exchange' means the exchange from which the securities of the company are proposed to be delisted in accordance with these Guidelines;

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

(g) 'promoter' means a promoter as defined in clause (h) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1997 and includes a person who is desirous of getting the securities of the company delisted under these Guidelines;

(h) 'public shareholding' means the shareholding in a company held by persons other than the promoter, the acquirer or the persons acting in concert with him as defined in regulation 2(1)(j) of the Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1997 and the term 'public holders of securities' shall be construed accordingly;

(i) 'schedule' means a Schedule appended to these Guidelines;

(j) 'voluntary delisting' means delisting of securities of a body corporate voluntarily by a promoter or an acquirer or any other person other than the stock exchange(s).

3.2 Words and expressions not defined in these Guidelines shall

have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956 or the Companies Act, 1956, or any statutory modification or re-enactment thereof, as the case may be.

4. Applicability :-

4.1 These guidelines shall be applicable to delisting of securities of companies and specifically shall apply to:

(a) Voluntary delisting being sought by the promoters of a company;

(b) any acquisition of shares of the company (either by a promoter or by any other person) or scheme or arrangement, by whatever name referred to, consequent to which the public shareholding falls below the minimum limit specified in the listing conditions or listing agreement that may result in delisting of securities;

(c) promoters of the companies who voluntarily seek to delist their securities from all or some of the stock exchanges;

(d) cases where a person in control of the management is seeking to consolidate his holdings in a company, in a manner which would result in the public shareholding in the company falling below the limit specified in the listing conditions or in the listing agreement that may have the effect of company being delisted;

(e) companies which may be compulsorily delisted by the stock exchanges:

4.2 Provided that company shall not be permitted to use the buy-back provision to delist its securities.

5. Delisting of Securities (Voluntary) of a listed company :-

5.1 A company may delist from stock exchange where its securities are listed: Provided that the securities of the company have been listed for a minimum period of 3 years on any stock exchange: Provided further that 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" described in clauses 7-10 and 13 and 14 of these guidelines.

5.2 An exit opportunity need not be given in cases where securities continue to be listed in a stock exchange having nationwide trading terminals.

Explanation. For the purposes of these guidelines, 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.

6. Procedure for voluntary delisting :-

6.1 Any promoter or acquirer desirous of delisting securities of the company under the provisions of these guidelines shall:

(a) obtain the prior approval of shareholders of the company by a special resolution passed at its general meeting;

(b) make a public announcement in the manner provided in these Guidelines;

(c) make an application to the delisting exchange in the form specified by the exchange, annexing therewith a copy of the special resolution passed under subclause (a); and

(d) comply with such other additional conditions as may be specified by the concerned stock exchanges from where securities are to be delisted.

7. Public announcement for voluntary delisting :-

7.1 Before making application for delisting, the promoters or the acquirers of the company shall make a public announcement.

7.2 The public announcement shall contain inter alia information specified in Schedule I.

7.3 Before making the public announcement, the promoter shall appoint a merchant banker registered with the Board, who is not an associate of the promoter.

8. Exit price for voluntary delisting of securities :-

8.1 Any promoter of a company which desires to delist from the stock exchange shall determine an exit price for delisting of securities in accordance with the book building process described in Schedule II of these guidelines.

8.2 The offer price shall have a floor price, which will be the average of 26 weeks traded price quoted on the stock exchange where the shares of the company are most frequently traded preceding 26 week from the date of the public announcement and without any ceiling of maximum price.

8.3 In the case of infrequently traded securities the offer price shall be as per regulation 20(5) of the SEBI (Substantial Acquisition and Takeover) Regulations, and the infrequently traded securities shall be determined in the manner explained under regulation 20(5) of the SEBI (Substantial Acquisition and Takeover) Regulations.

8.4 The stock exchange(s) shall provide the infrastructure facility for display of the price at the terminals of the trading members to enable the investors to access the price on the screen to bring transparency to the delisting process.

8.5 In the event of securities being delisted, the acquirer shall allow a further period of 6 months for any of the remaining shareholders to tender securities at the same price.

8.6 The stock exchanges shall monitor the possibility of price manipulation and keep under special watch the securities for which announcement for delisting has been made.

8.7 To ascertain the genuineness of physical securities if tendered and to avoid the bad delivery, Registrar and Transfer Agent shall co-operate with the Clearing House/Clearing Corporation to determine the quality of the papers upfront.

8.8 If the quantity eligible for acquiring securities at the final price offered does not result in public shareholding falling below required level of public holding for continuous listing, the company shall remain listed.

8.9 The paid up share capital shall not be extinguished as in the case of buy-back of securities.

8.10 In case of partly paid-up securities, the price determined by the book building process shall be applicable to the extent the call has been made and paid.

8.11 The amount of consideration for the tendered and accepted securities shall be settled in cash.

9. Right of promoter :-

9.1 The promoter may not accept the securities at the offer price determined by the book building process.

9.2 Where the promoter decides not to accept the offer price so determined:

(a) he shall not make an application to the exchange for delisting of the securities; and

(b) the promoter shall ensure that the public shareholding is brought up to the minimum limits specified under the listing conditions within a period of 6 months from the date of such decision, by any of the modes specified in sub- clause 9.3.

9.3 For the purposes of sub-clause 9.2(b), the public shareholding may be increased by any of the following means:

(a) by issue of new shares by the company in compliance with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000;

(b) by the promoter making an offer for sale of his holdings in compliance with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000;

(c) by the promoter making sale of his holdings through the secondary market in a transparent manner.

9.4 In the event of the promoter not being able to raise the public shareholding in accordance with sub-clause 9.3 within six months, he shall offer for sale to the public such portion of his holdings as would bring up the public shareholding to the minimum limits specified in the listing agreement or the listing conditions at the price determined by the Central Listing Authority.

10. Public announcement of final price :-

10.1 On determination of the final price pursuant to the book building, the promoter or the acquirer shall within a period of two working days from such determination:

(a) make a public announcement in the newspapers of the final price as discovered by the book building process and whether or not the promoter or the acquirer has accepted the price; and

(b) communicate to, exchange or exchanges from which delisting is sought to be made, the final price discovered and whether the promoter has accepted the price.

11. Delisting from one or more stock exchanges :-

11.1 When a company which is listed on any stock exchange or

stock exchanges other than the stock exchanges having nationwide trading terminals, seeks delisting, an exit offer shall be made to the shareholders in accordance with these guidelines.

11.2 There shall not be any compulsion for the existing company to remain listed on any stock exchange merely because it is a regional stock exchange.

12. Minimum number of shares to be acquired :-

12.1 Where the offer for delisting results in acceptance of a fewer number of shares than the total shares outstanding and as a consequence the public shareholding does not fall below the minimum limit specified by the listing conditions or the listing agreement, the offer shall be considered to have failed and no securities shall be acquired pursuant to such offer.

13. Payment of consideration :-

13.1 The payment of consideration for delisting of securities shall be paid in cash by the promoter or acquirer.

14. Delisting of one or all class of securities :-

14.1 A company may delist one or all of its class of securities subject to the provisions of this clause.

14.2 If the equity shares of a company are delisted, the fixed income securities may continue to remain listed on the stock exchange.

14.3 A company which has a convertible instrument outstanding, it shall not be permitted to delist its equity shares till the exercise of the conversion options.

15. Compulsory Delisting of companies by stock exchanges :-

15.1 The Stock Exchanges may delist companies which have been suspended for a minimum period of six months for non-compliance with the Listing Agreement.

15.2 The Stock Exchanges may also delist companies as per the norms provided in Schedule III.

15.3 The Stock Exchange shall give adequate and wide public notice through newspapers (including one English national daily of wide circulation) and through display of the notice on the notice

board/website/trading systems of the Exchange.

15.4 The stock exchange shall give a show cause notice to a company or adopt procedure provided under Part B of Schedule III for delisting under sub-clauses 15.1 and 15.2.

15.5 The exchange shall provide a time period of 15 days within which representation may be made to the exchange by any person who may be aggrieved by the proposed delisting.

15.6 The stock exchange shall ensure that adequate and wide public notice is given through newspapers and on the notice boards/ trading systems of the stock exchanges after the period of show cause is over.

15.7 The stock exchange shall display the name of such company on its website.

16. Rights of securities holders in case of compulsory delisting :-

16.1 Where the securities of the company are delisted by an exchange, the promoter of the company shall be liable to compensate the security-holders of the company by paying them the fair value of the securities held by them and acquiring their securities, subject to their option to remain security-holders with the company.

Explanation. For the purposes of this sub-clause fair value shall be determined by the arbitrator having regard to the factors mentioned in Regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 1997.

16.2 The security-holders may enforce their claim to compensation/fair value under this clause through the arbitration mechanism of the exchange in the manner laid down in its bye-laws.

17. Delisting pursuant to rights issue :-

17.1 In case of rights issue, allotment to the promoters or the persons in control of the management shall be allowed even if they subscribe to unsubscribed portion which may result in public shareholding falling below the permissible minimum level: Provided that the adequate disclosures have been made in the offer

document to that effect:

Provided further that they agree to buy out the remaining holders at the price of rights issue or make an offer for sale to bring the public shareholding at the level specified in the listing conditions or listing agreement to remain listed.

17.2 In case the rights issue is not fully subscribed, which may result in the public shareholding falling below the permissible minimum level as specified in the listing condition or listing agreement, the promoter(s) of the company shall be required to delist by providing an exit opportunity in the manner specified in clause 17.1 of these guidelines or may be required to make offer for sale of their holdings so that the public shareholding is raised to the minimum level specified in the listing agreement or in the listing conditions within a period of 3 months.

18. Reinstatement of delisted securities :-

Reinstatement of delisted securities should be permitted by the stock exchanges with a cooling period of 2 years. In other words, relisting of securities should be allowed only after 2 years of delisting of the securities. It would be based on the respective norms/criteria for listing at the time of making the application for listing and the application will be initially scrutinized by the Central Listing Authority.

SCHEDULE 1

Contents of the Public Announcement

<p>Schedule I [See Guideline 7.2] Contents of the Public Announcement</p>	
1.	The floor price and how it was reached
2.	The dates of opening and closing of the bidding
3.	The name of the exchange or exchanges from which the securities are sought to be delisted.
4.	The names and addresses of the trading members as well as the bidding terminals and centres through which bids can be placed.
5.	Description of the methodology to be adopted for determination of acceptable price
6.	Period for which the offer shall be valid

7. The necessity and the object of the delisting
8. A full and complete disclosure of all material facts.
9. The proposed time table from opening of the offer till the settlement of the transfers.
10. Details of the escrow account and the amount deposited therein.
11. Listing details and stock market data:
 - (a) high, low and average market prices of the securities of the company during the preceding three years;
 - (b) monthly high and low prices for the six months preceding the date of the public announcement; and
 - (c) the volume of securities traded in each month during the six months preceding the date of public announcement.
12. Present capital structure and shareholding pattern.
13. The likely post-delisting capital structure.
14. The aggregate shareholding of the promoter group and of the directors of the promoters, where the promoter is a company and of persons who are in control of the company.
15. Name of compliance officer of the company.
16. It should be signed and dated by the promoter.

SCHEDULE 2

The Book Building Process

Schedule II

[See Guideline 8.1]

The Book Building Process

1. The book building process shall be made through an electronically linked transparent facility.
2. The number of bidding centres shall not be less than thirty, including all stock exchange centres and there shall be at least one electronically linked computer

terminal at all bidding centres.

3. The promoter shall deposit in an escrow account, 100 per cent of the estimated amount of consideration calculated on the basis of the floor price indicated and the number of securities required to be acquired. The provisions of clause 10 of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 1998 shall be applicable *mutatis mutandis* to such escrow account.
4. The offer to buy shall remain open to the security-holders for a minimum period of three days. The security-holders shall have a right to revise their bids before the closing of the bidding.
5. The promoter or acquirer shall appoint 'trading members' for placing bids on the on-line electronic system.
6. Investors may approach trading members for placing offers on the on-line electronic system. The format of the offer form and the details that it must contain shall be specified.
7. The security holders desirous of availing the exit opportunity shall deposit the shares offered with the trading members prior to placement of orders. Alternately they may mark a pledge for the same to the trading member. The trading members in turn may place these securities as margin with the exchanges/clearing corporations.
8. The offers placed in the system shall have an audit trail in the form of confirmations which gives broker ID details with time stamp and unique order number.
9. The final offer price shall be determined as the price at which the maximum number of shares has been offered. The acquirer shall have the choice to accept the price. If the price is accepted then the acquirer shall be required to accept all offers upto and including the final price but may not have to accept higher priced offers, subject to clause 15. An illustration is given below:
Offer Quantity Offer Price Remarks
50 120 Floor price
82 125
108 130 Final price (as quantity offered is maximum).
27 135

10. If final price is accepted the acquirer shall have to accept offers up to and including the final price *i.e.* 240 shares at the final price of Rs. 130.
11. At the end of the book build period the merchant banker to the book building exercise shall announce in the press and to the concerned exchanges the final price and the acceptance (or not) of the price by the acquirer.
12. The acquirer shall make the requisite funds available with the exchange/clearing corporation on the final settlement day (which shall be three days from the end of the book build period). The trading members shall correspondingly make the shares available. On the settlement day the funds and securities shall be paid out in a process akin to secondary market settlements.
13. The entire exercise shall only be available for demat shares. For holders of physical certificates the acquirer shall keep the offer open for a period of 15 days from the final settlement day for the shareholders to lodge the certificates with custodian(s) specified by the merchant banker.

SCHEDULE 3

Norms and Procedure for Delisting of Securities by the Stock Exchanges

Schedule III

[Guideline 17.1]

Norms and Procedure for Delisting of Securities by the Stock Exchanges A. Norms

1. The percentage of equity capital (floating stock) in the hands of public investors.

This may be seen with reference to

Existing paid-up equity capital

Market lot

Share price very high, medium, low

Market Capitalisation

SEBI's Takeover Regulations Regulation 21 (3)

Clause 40A of the Listing Agreement

2. The minimum trading level of shares of a company on the exchanges.

There should be some liquidity in every trading cycle. There should be some volume of trading for price discovery on the market. The Company should appoint market makers. Criteria of no-trading may be considered.

3. Financial aspect/Business aspects

(a) The company should generate reasonable revenue/income/profits. It should be operational/working. It must demonstrate earning power through its financial results, profits, reserves, dividend payout for last 2/3 years.

(b) If there is hardly any public interest in the securities the company then it is for consideration whether its "listed company" label needs to be retained any more.

(c) The company should have some tangible asset. It is for consideration as to what value of assets the company should own in order to be listed continuously listed.

4. Track records of compliance of the Listing Agreement requirements for the past three years.

Submission of audited/unaudited results, annual report, other documents

required to be furnished to the Exchange,

Book closure Record date with due notice

Payment of listing fee

Service to investors especially with regard to timely return of shares duly

transferred, timely payment of dividend, communication of price sensitive information, etc.

Failure to observe good accounting practises in reporting earnings and financial position

Publishing half-yearly unaudited/audited results

Frequent changes in

Accounting year

Share transfer agent

Registered office

Name

5. Promoters' Directors' track record especially with regard to insider trading, manipulation of share prices, unfair market practises (*e.g.* returning of share transfer documents under objection on frivolous grounds with a view to creating scarcity of floating stock, in the market causing unjust aberrations in the share prices, auctions, close-out, etc. (Depending upon the trading position of directors or the firms).
6. If whereabouts of the company, its promoters directors are not available and even the letters sent by the Exchange return undelivered and the company fails to remain in touch with the Exchange.
7. The company has become sick and unable to meet current debt obligations or to adequately finance operations, or has not paid interest on debentures for the last 2-3 years, or has become defunct, or there are no employees, or liquidator appointed, etc.
8. On the basis of the above norms and other relevant information available about the company, its promoters/ directors, project, litigations, etc., a profile of the company should be prepared and then a decision on delisting should be taken by an Exchange.

B. Procedure

1. The decision on delisting should be taken by a panel to be constituted by the Exchange comprising the following:
 - (a) Two directors/officers of the Exchange (one director to be a public representative),
 - (b) One representative of the investors,
 - (c) One representative from the Central Government (Department of Company Affairs)/Regional Director/ Registrar of Companies,
 - (d) Executive Director/Secretary of the Exchange.
2. Due notice of delisting and intimation to the company as well as other Stock Exchanges where the company's securities are listed to be given.
3. Notice of termination of the Listing Agreement to be given.

4. An appeal against the order of compulsory delisting may be made to the SEBI.

I. SEBI (Delisting of Securities) Guidelines, 2003

SEBI had appointed a Committee on Delisting of Shares to *inter alia* examine and review the present conditions for delisting of securities of companies listed on the recognized stock exchanges and suggest norms and procedures in connection therewith. The Report of the Committee was considered and accepted by SEBI Board.

Pursuant to the above Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003, has been issued. These guidelines shall come into effect immediately.

With coming into effect of the above guidelines, the extant guidelines with regard to delisting issued by SEBI *vide* Circular No. SMD/POLICY/CIR-14/98, dated April 29, 1998 stands withdrawn.

Steps are being taken for withdrawal of the Government of India Circular F. No. 14(2)/SE/85, dated September 23, 1985 issued by Ministry of Finance, providing for listing at regional stock exchanges.