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## ANALYSIS & IMPACT OF RECENT AMENDMENTS IN SEBI REGULATIONS

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On January 15, 2015, SEBI issued a complete new set of Insider Trading Regulations that replaced the two-decade old Insider Trading Regulations. These Regulations are effective from May 15, 2015 (120-days from the date of issue of the Regulations). On March 24, 2015, SEBI notified numerous amendment Regulations, relating to buyback, delisting, issue of capital and disclosure requirements, public offer & listing of securitised debt instruments and issue & listing of debt securities.

The article is compilation of the amendments, analysis of the amendments and impact on the corporates / practising professionals.

### **Amendment to Insider Trading Regulations:**

SEBI notified the Prohibition of Insider Trading Regulations, 2015 to replace two-decade old Regulations. Definition of 'compliance officer' has been revamped, to mean any senior officer reporting to the board of directors, who is financially literate and capable of understanding legal / regulatory compliance. The definitions of 'connected person', 'insider', 'promoter' have been overhauled with a wider perspective. SEBI has introduced the 'trading plans' and modified the 'initial disclosures', 'continual disclosures' and also introduced new schedule 'principles of fair disclosure' for the purpose of code of practice and procedures for fair disclosure of UPSI. Very recently, SEBI has prescribed forms for reporting under Insider Trading Regulations.

### **Amendment to Takeover Regulations, 2011:**

In the amendment to Takeover Code, SEBI stated that where an acquirer makes public announcement of an open offer for acquiring shares, then he may also delist co. in accordance with SEBI Delisting Regulations, subject to condition that he has declared his delisting intention at time of making detailed public statement. Where the takeover offer is not successful for prescribed reasons, the acquirer shall make an announcement within 2-working days in all the newspapers in which the detailed public statement was made.

SEBI clarified that where the competing offer is made, the acquirer shall not be entitled to delist the company and that the acquirer shall not be liable to pay interest for such delay, acquirer shall comply within 2-working days from date of public announcement.

### **Amendment to ICDR Regulations:**

SEBI also amended the Issue of Capital and Disclosure Requirements, Regulations ('ICDR Regulations') whereby the tenure of warrants issued along with public issue / rights issue of specified securities shall not exceed 18-months (earlier 12-months) from their date of

allotment.

SEBI also included a condition that price / conversion formula of warrants should be determined upfront and at least 25% of consideration amount should also be received upfront. In case the warrant holder does not exercise option to take equity shares against any of the warrants held by him, then the consideration paid shall be forfeited by the issuer company.

**Amendment to Issue and Listing of Debt Securities Regulations:**

SEBI amended the Issue and Listing of Debt Securities Regulations, whereby 'Right to recall / redeem prior to maturity' has been introduced, i.e. the Issuer company may recall such securities prior to maturity date at option of the debt security holder to provide a right of redemption prior to maturity date to all the investors / only to retail investors, at their option.

**Amendment to Delisting Regulations:**

Delisting Regulations were amended, wherein SEBI redefined 'promoter group' and assigned the same meaning under ICDR Regulations. SEBI also introduced a condition that promoter / promoter group can propose delisting of equity shares, if any entity belonging to promoter / promoter group has sold not equity shares during 6-months prior to the board meeting date approving the delisting.

**BOARD APPROVAL:** Prior granting delisting approval, the board of directors of the company shall:

- 1) Make disclosure to stock exchanges that promoters/acquirers propose to delist;
- 2) Appoint Merchant Banker for carrying out due-diligence and disclosing the same to the stock exchanges;
- 3) Obtain details of trading in shares for 2 years prior to the board meeting date by top 25-shareholders as on board meeting date (convened for considering delisting proposal), from stock exchanges and details of off-market transactions of such shareholders for 2-years;
- 4) Furnish the said information to Merchant Banker for carrying out due-diligence.

**MERCHANT BANKER'S ROLE:** After Merchant Banker's due-diligence, the Merchant Banker is under obligation to report to the board of directors and shall certify:

- (i) Whether trading carried out by entities belonging to acquirer / promoter / promoter group / their related entities was in compliance or not, with the applicable provisions of the securities laws; and
- (ii) Whether entities belonging to Acquirer / Promoter / Promoter group / their related entities have carried out or not, any transaction to facilitate the success of the delisting offer which is not in compliance with delisting norms;

**DELISTING TIMELINES:** SEBI has reduced the timelines for opening of offer within 7-working days (earlier, 55 days) from the date of the public announcement, eliminated the minimum period (3 days) for opening of the offer, states that offer shall remain open for 5-working days for tendering bids.

**CRITERIAS FOR DELISTING:** In the amendment Regulation, SEBI has redefined the criterias for an offer to be successful, i.e. fulfillment of two conditions:

- (i) Post-offer promoter shareholding (along with the PAC) taken together with the shares accepted through eligible bids at the final price determined, reaches 90% of total issued shares of that class; and
- (ii) Atleast 25% of public shareholders holding shares in demat mode (as on board meeting) had participated in the Book Building process. However, this is not applicable to cases where acquirer and Merchant Banker demonstrate to stock exchanges that they have delivered letter of offer to all public shareholders in prescribed mode.

#### **Amendment to Securitised Debt Instruments Regulations:**

In the amendment to Public Offer and Listing of Securitised Debt Instruments Regulations, 2008, SEBI widened the scope of eligibility criteria for trustees, by permitting any Scheduled Commercial Bank (other than Regional Rural Bank) and Public Financial Institution to act as trustees. SEBI has also prescribed the networth criteria, minimum no. of employees & experience for an applicant to act as 'trustee'. It has also defined the role of the Trustees & their responsibility.

SEBI also amended the Schedule in the Public Offer and Listing of Securitised Debt Instruments Regulations, 2008 relating to 'Code of Conduct', stating that special purpose distinct entity and its trustee shall fulfill its obligations in a prompt, ethical and professional manner etc. With an intention to enhance the disclosure mechanism, SEBI has amended the Schedule relating to 'Disclosures to be made in the Offer Document' to include the summary of term pertaining to securitised debt instrument.

#### **Conclusion:**

There have been numerous amendments in the first quarter of this calendar year, which has a very impact on the working of the secretarial departments of the listed companies. There has been change in the checklist, timelines, authority and also responsibilities under the amended regulations. Company Secretaries (practice / employment) have a major role in implementing the aforementioned regulations for the listed companies.

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