

SEBI's new initiative eases exiting route for dissenting shareholders



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SEBI, in its Board Meeting held on January 11, 2016¹, approved certain new initiatives which includes providing of exit opportunity to dissenting shareholders under section 27 of Companies Act, 2013, disclosure requirements for issuance and listing of Green Bonds, introduction of "Primary Market Debt Offering through private placement on electronic book" and review of prudential limits on investments by Mutual Funds. The article provides analysis and impact of the key decisions taken by the SEBI Board.

Exit opportunity to dissenting shareholders under Companies Act, 2013

Summary of Decision: Section 27 of the Companies Act, 2013 relates to 'Variation in terms of contract or objects in prospectus'. It states that a company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution. Companies Act, 2013 provides that the dissenting shareholders shall be given an exit opportunity by promoters and shareholders having control over the company, in manner prescribed by SEBI.

In this Board Meeting, SEBI Board approved the proposal for amending SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009 ('ICDR Regulations') for laying down the framework. Following are the following salient features of the said framework:

- (i) Such provisions are applicable on prospective basis *i.e.* for issues which opened after the commencement of the related provisions in the Companies Act, 2013, *i.e.* April 1, 2014,

- (ii) It would be applicable in such cases where the proposal is dissented by at least 10% of the shareholders and if the amount to be utilized for the objects for which the prospectus was issued is less than 75% of the amount raised,
- (iii) Shareholders holding shares as on the date of the board meeting in which the proposal to change the objects is approved and those who cast their vote against the resolution shall be eligible to avail of the exit opportunity under this provision,
- (iv) Exit price shall be based on pricing parameters applicable in case of exit offer given to the existing shareholders in terms of SEBI Takeover Code, 2011, which is applicable for frequently and infrequently traded shares. The relevant date for pricing shall be the date of company's board meeting in which the proposal for change in objects is approved,
- (v) Companies with no identifiable promoters or shareholders having control would be exempted from such requirement.
- (vi) The acquisition under this framework by promoters and shareholders having control over the company shall be exempted from applicability of following mandatory open offer obligations stipulated and restriction on acquiring shares beyond 75% under SEBI Takeover Code, 2011, contra trade restrictions on promoters/controlling shareholders/dissenting shareholders, under the SEBI (Prohibition of Insider Trading) Regulations, 2015;
- (vii) Procedural details such as appointment of merchant banker, determination of price, tendering of shares, submission of compliance certificate etc. shall be specified in the amended ICDR Regulations.

Analysis of Decision: The decision taken by the SEBI Board is in accordance with and an

extension of section 27(2) of the Companies Act, 2013 which states that dissenting shareholders shall be given an exit offer by promoters or controlling shareholders at an exit price and in such manner and conditions as may be specified by SEBI. The Board has approved to amend the SEBI (ICDR) Regulations. Such amendment would be applicable on prospective basis. The Board has approved the proposal with respect to 'exit price' to be offered to existing shareholders. The exit price is linked to the 'exit price' under Takeover Code, 2011 for frequently and infrequently traded shares. It is also note worthy that the acquisition of shares by promoters or persons have control over the company are exempted from compliance of certain SEBI Regulations *i.e.* mandatory open offer obligation under Takeover Code, 2011 and execution of contra-trade restrictions under Insider Trading Regulations, 2015.

SEBI *vide* its Circular² dated December 31, 2015 detailed the procedure to deal with cases prior to April 1, 2014 involving offer/allotment of securities to more than 49 up to 200 investors in a financial year. SEBI noted that there is a higher cap for private placement provided in the Companies Act, 2013 (200 persons), and *vide* the Circular, SEBI has decided that in respect of earlier cases involving issuance of securities to more than 49 persons (threshold under Companies Act, 1956) but up to 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender securities and get refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to investors. SEBI *vide* the Circular has prescribed the refund procedure along with certification provisions.

Disclosure requirements for issuance and listing of Green Bonds

Summary of Decision: SEBI Board approved the proposal for disclosure requirements for

issuance and listing of Green Bonds. The salient features of requirements are as under:

- (i) Green Bonds' issuance and listing will be governed under SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and the issuer company shall have to make incremental disclosures/follow procedures,
- (ii) Definition of 'Green Bonds' may be as specified by SEBI from time to time. There may be a requirement of independent third party reviewer/certifier/validator, for reviewing/certifying/validating the pre-issuance and post-issuance process including project evaluation and selection criteria,
- (iii) Escrow account for Green Bonds issuance is not mandatory, however Issuer Company shall provide details of system/procedures to be employed for tracking issue proceeds including investments made and/or investments earmarked for eligible projects. However, it will be necessary that the same is verified by external Auditors,
- (iv) Issuer Company to make disclosures in Annual Report/periodical filings made to the Stock Exchanges, such disclosures include: use of proceeds, list of projects to which Green Bond proceeds have been allocated etc.

Analysis of Decision: Green Bond is just like any other debt instrument issued for raising funds from investors, however the proceeds from such issue are ear-marked for use towards financing 'green projects'. The key difference between Green Bond and regular bond is that the issuer company states it is raising capital to fund 'green' projects, assets or business activities with an environmental benefit, such as renewable energy, low carbon transport etc. SEBI noted and acknowledged the fact that financing needs of renewable energy space in the country requires new channels to be explored which can provide not only the requisite financing, but may also help

in reducing the capital cost. SEBI's decision of approving the proposal for disclosure requirements for issuance and listing of Green Bonds will facilitate in taking investment decisions by investors who have a mandate to focus on green investments and will also provide uniformity in disclosure standards. In alignment with the decision of the SEBI Board in its meeting held on November 30, 2015 and the Concept Paper floated thereafter, Green Bonds' issuance and listing will be governed under SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

Introduction of "Primary Market Debt offering through private placement on electronic book"

Summary of Decision: SEBI Board considered and approved the proposal for introduction of "Primary Market Debt Offering through private placement on electronic book" and the features of the proposed new system include:

- (i) Electronic book mechanism shall be mandatory for private placement of bonds above ₹ 500 crore,
- (ii) Mechanism shall be voluntary for private placement issues where there is a single investor,
- (iii) Requirement of minimum bid size for institutional investors is left at issuer's discretion,
- (iv) Issuer shall provide Draft Private Placement Memorandum to the bidders without incorporating coupon details,
- (v) Electronic Book Provider (EBP) shall provide all bids/application to the issuer after end of bidding and shall disclose aggregate volume data on anonymous basis to avoid any speculation.
- (vi) Recognized stock exchanges will be eligible to act as EBP.
- (vii) Any dispute between issuer and bidders or between EBP or bidders before listing

of privately placed bonds in RSE shall be settled as per their agreement.

Analysis of Decision: The key benefits of "Primary Market Debt Offering through private placement on electronic book" include improvement in efficiency and transparency of price discovery mechanism vis-à-vis over-the-telephone market and reduction of cost and time taken for such issuance. The same agenda item was discussed by SEBI in its Board Meeting held on November 30, 2015, after which consultation paper was floated for public comments.

Review of prudential limits on investments by Mutual Funds

Summary of Decision: The SEBI Board deliberated the proposals for reviewing the prudential limits at Issuer Company and sector level and the need for introducing such limits for group level exposure. Accordingly, the Board took the following decisions:

- (i) Amendment to Mutual Funds, Regulations to merge credit exposure limits for single issuer of money market instruments and non-money market instruments at the scheme-level.
- (ii) Amendment to Mutual Funds, Regulations so that single issuer limit is reduced to 10% of NAV, extendable to 12% of NAV after trustee approval.
- (iii) Reduction in the exposure limit to a single sector from the current 30% of NAV to 25% of NAV.
- (iv) Reduction in the additional exposure limit provided for Housing Finance Companies (HFCs) in finance sector from 10% of NAV to 5% of NAV.
- (v) Introduction of the group level limits for debt schemes through issuance of appropriate circular and the ceiling be fixed at 20% of NAV extendable to 25% of NAV after trustee approval. 'Group',

for this purpose, refers to group as defined u/s 2 (mm) of Mutual Funds, Regulations and includes an entity, its subsidiaries, fellow subsidiaries, its holding company and its associates. All Government owned PSU entities, PFI & PSU banks will be excluded from group level limits.

- (vi) Trustees to review exposure of a mutual fund, across all its schemes, towards individual issuers, group companies and sectors. Trustee should satisfy themselves on the levels of exposure and confirm the same to SEBI in the half-yearly trustee report.

SEBI has restricted the applicability of the aforesaid investment restriction to all fresh investments by a new scheme or an existing scheme and SEBI will provide an appropriate time shall for Asset Management Company ('AMC') to confirm that such mutual fund schemes comply to the aforesaid investment restrictions.

Analysis of Decision: SEBI Board considered that review of single issuer, sector level exposure limit and introduction of group level exposure limits for investment in debt instruments would mitigate risks arising on account of high levels of exposure, put mutual funds in a better position to handle adverse credit events and provide mutual fund investors with enhanced diversification benefits. SEBI was proposing review of the norms for such investments since August 2015, when JP Morgan AMC was forced to restrict redemptions in 2 of its schemes due to a downgrade of bonds issued by Amtek Auto Ltd³. While such restriction on redemptions was the most dramatic example, rating downgrades across debt instruments have been on the rise due to the deteriorating credit quality across some companies and industries. The intention of reviewing the debt scheme investment norms was to reduce risk while investing in corporate paper.

Conclusion

SEBI Board's decision of approving the initiative relating to exit opportunity to dissenting shareholders under Companies Act, 2013 will have an impact on the listed companies or companies proposing to list with respect to change the object clause in Prospectus, post-capital raising program. The listed company or companies proposing to list on stock exchanges are required to comply with the provisions of Companies Act, 2013 and ICDR Regulations amendment. However, it is noteworthy that SEBI is yet

to issue a Notification for amending the ICDR Regulations. The decision relating to approval of disclosure requirements for issuance and listing of Green Bonds will have an impact on the issue company engaged in a particular business and certain class of investors. The SEBI Board's decision of introducing "Primary Market Debt Offering through private placement on electronic book" will have a positive impact on the issuer company and investors, both. SEBI Board's decision for reviewing the prudential limits on investments by Mutual Funds is the interest of the industry and investors.



1. SEBI Press Release No. 10/2016 dated January 11, 2016.
2. SEBI Circular No.: CIR/CFD/DIL3/18/2015
3. Live Mint Article: SEBI tightens norms for mutual fund investment in corporate debt (<http://www.livemint.com/Money/tDNMb61EwohrjyJVOWiVMK/Sebi-tightens-norms-for-investment-in-debtoriented-mutual-f.html>).