
[2016] 65 taxmann.com 168 (Article)/[2015] 131 SCL 31 (Article)

[2016] 65 taxmann.com 168 (Article)

SEBI'S NEW INITIATIVES: TIMELINE REDUCTION OF PUBLIC-ISSUE, START-UP LISTING, RECLASSIFICATION OF PROMOTERS

GAURAV PINGLE

Company Secretary

SEBI in its recent board meeting introduced some dynamic proposals in the securities market which will have an impact on the overall securities market and on the market participants over a period of time. Some key decisions of SEBI include: Timeline reduction of public issue process by mandating ASBA, introduction of platform for start-ups for raising capital on the Institutional Trading Platform, reclassification of 'promoters' to 'public', etc.

The article gives an analysis of SEBI's key decisions and summarizes their impact on the securities market.

Introduction

1. The market watchdog, SEBI, in its recent board meeting held on June 23, 2015 introduced some dynamic proposals in the securities market which will have an impact on the overall securities market and the market participants. Some key decisions include: Timeline reduction of public issue process by mandating ASBA, introduction of platform for start-ups for raising capital on the Institutional Trading Platform, reclassification of 'promoters' to 'public', etc. The article gives an analysis of SEBI's key decisions and summarizes their impact on the securities market.

2. Streamlining of public-issue process & reducing timeline for listing :

2.1 Summary of the decision - In an innovative and pro-active step taken by SEBI for improving the primary market participation and boosting the investor's confidence, it has reduced the post-issue timeline by various practical measures. Such measures by SEBI are based on thorough and in-depth analysis. SEBI has mandated Application Supported by Blocked Amount ('ASBA') facility for all investors for making applications to the public issues. Such step was taken as SEBI observed that more than 99.5% applications were received from centres where ASBA facility was available and the ASBA applications accounted for 99.90% of the total bid amount received from all investors.

ASBA facility enables investors to give payment mandate of share application money in the share application form itself without suffering loss of interest for the intervening period. Such facility also obviates the hassles of refund by the issuer company.

Further, with an intention of reaching out to maximum retail investors in public issues, SEBI has substantially enhanced the points for submission of applications. Registrar & Share Transfer Agents ('RTAs') and Depository Participants ('DPs') are now eligible to accept application forms (both physical as well as online) and make bids on the stock exchange platform, in addition to the stock-brokers and banks where such facilities are presently available.

SEBI proposes to introduce such step for public issues opening on or after January 1, 2016, whereby the R&TAs, DPs and Banks will be under an obligation to modify their existing systems and train their staff.

2.2 Its analysis & impact - SEBI has streamlined the public issue process, reduced the postissue timeline for listing on T+6 days [from existing T+12 days], increased the reach of retail investors and reduced the costs involved in public issue of equity shares. By mandating the ASBA process, SEBI has obviated the need to issue cheques at the time of applying for public issues. SEBI has also substantially enhanced the number of centers for submission of public issue share-applications forms, by including other primary market intermediaries. These initiatives will certainly help in reviving the primary market and assist the companies in tapping the market. The reduction of post-issue timeline for listing to T+6 days will definitely improve investor's participation and confidence, as there will be adequate liquidity with them due to hassle-free allotment and refund process.

3. Introduction of simplified framework for capital raising by start-ups :

3.1 Summary of the decision - SEBI Board has introduced the platform for start-ups for raising capital on the Institutional Trading Platform ('ITP') for certain companies which are intensive in their use of technology, information technology, intellectual property, data analytics, bio-technology, nano-technology (for providing products, services or business platforms with substantial value addition) and with at least 25% of the pre-issue capital being held by QIBs, or any other company in which at least 50% of pre-issue capital is held by QIBs.

SEBI has toned-down the disclosure requirements in the offer document, and one will be required to disclose only the broad objects of the issue. There is no monetary limit for raising money with an object of 'General Corporate Purposes' and the lock-in of the entire pre-issue capital shall be for 6-months from the date of allotment uniformly for all shareholders.

SEBI has also liberalized the valuation parameters and disclosure requirements, as the standard valuation parameters such as P/E, EPS, etc., are irrelevant for these types of companies. SEBI has limited the access of investors to the proposed ITP, permits only two categories of investors:

- (i) Institutional Investors, which include QIB, family trusts, RBI-registered systematically important NBFCs, SEBI-registered intermediaries, all with net-worth of more than Rs. 500 crore, and
- (ii) Non-Institutional Investors ('NIIs'), other than retail individual investors.

With respect to the allotment, SEBI clarified that allotment to Institutional Investors may be on discretionary basis, whereas allotment to NIIs shall be on proportionate basis. SEBI prescribes the minimum application size at Rs. 10 lakhs and minimum trading lot of Rs. 10 lakhs. The minimum number of allottees (in case of a public offer) shall be 200. The company has an option of migrating to the main board after 3-years, subject to compliance with eligibility requirements of the stock exchanges.

SEBI has rationalized the disclosure requirements for all issuers (whether intending to list on main-board or the proposed ITP). The disclosures in offer document with respect to group companies, litigations and creditors shall be in accordance with policy on materiality as defined by the issuer. However, all relevant disclosures shall be available on the issuer company's website.

3.2 Its analysis & impact - The SEBI's move is aimed at luring the start-ups that may have considered an overseas listing, given that India has stringent requirements for IPOs. This step by SEBI would benefit 'India-focused companies' and would propel start-up companies to consider India as an option for listing, which was ignored earlier. The move will also pave the way for the venture capitalists - which will provide

them with another exiting option from the investee company *via* an IPO. Reduction of the disclosure requirements by SEBI in the offer document, with respect to disclosure of only the broad objects of the issue is another welcome move. As decided by SEBI Board, there is no monetary limit on raising money with an object of 'General Corporate Purposes', which will assist companies in raising money for infrastructural development of the company.

4. FPOs & Rights Issue on fast-track mode :

4.1 Summary of the decision - With an intention of enabling more number of listed companies to raise further capital using fast-track route, SEBI Board approved of the proposal to reduce the minimum public holding requirement for Follow on Public Offerings ('FPOs') & Rights Issue. In case of FPOs, the minimum public holding limit is reduced to Rs. 1,000 crore (from Rs. 3,00 crore) and in case of Rights Issue, the limit is reduced to Rs. 250 crore.

For raising capital through fast-track mode, the listed companies will have to comply with certain riders as detailed below:

- (i) In case of rights issue promoters shall not renounce their rights, except to the extent of renunciations within the promoter group, or for the purposes of complying with minimum public shareholding norms;
- (ii) Annualized delivery based trading turnover requirement of 10% of the total paid-up capital;
- (iii) No conflict of interest between the lead manager and the issuer or its group or associate company in accordance with applicable SEBI Regulations;
- (iv) Shares of the company should not have been suspended from trading as a disciplinary measure in past 3-years;
- (v) Issuer, promoter group and directors of the issuer should not have settled any alleged violation of securities laws through the consent mechanism with SEBI in last 3-years. (This is in addition to the existing condition that no show-cause notices should have been issued/prosecution proceedings initiated by SEBI/pending against the issuer/its promoters/whole time directors).

4.2 Its analysis & impact - For facilitating more listed companies to tap the market for raising funds from Indian investors, SEBI Board has relaxed the minimum public holding limit for raising money through FPOs & Rights Issue on fast-track mode. However, such process is subject to riders. Under the fast-track route, the issuer company has to file an Offer Document with SEBI but doesn't have to wait for its observations or approval to access the market. Such relaxation will help more listed companies to raise capital with ease, which will boost the fund-flow in the primary market.

This is for the third time in 5 years that SEBI has brought down the fast-track route eligibility criteria for FPOs and rights issues. In 2012, SEBI reduced the free-float market capitalization threshold from Rs. 5,000 crore to Rs. 3,000 crore for companies to qualify under this route. Earlier, in 2009, the average free-float market capitalization requirement was halved to Rs. 5,000 crore from Rs. 10,000 crore. The free-float market capitalization for the rights issue has now been brought down substantially to only Rs. 250 crore.

5. Review of offer for sale through stock exchange mechanism :

5.1 Summary of the decision - SEBI had floated discussion paper for reviewing Offer for Sale of Shares ('OFS') through Stock Exchange mechanism and based on the comments received, SEBI has now approved changes in the extant OFS framework. As per the amendment, the OFS Notice shall be continued as per

present practice *i.e.* latest by T-2 days, however, SEBI has modified the date of reckoning and the same shall be reckoned from the banking day instead of trading day.

Further as per the amendment approved by the SEBI Board, it would be mandatory for the seller to provide the option to retail investors to place their bids at cut-off price ('default option') in addition to placing price bids.

5.2 *Its analysis & impact* - The change in the date of reckoning of the OFS Notice will ensure that there is increased retail participation in the OFS process. The process of mandating the seller for providing the option to retail investors to place their bids at cut-off price (*i.e.*, default option) in addition to placing price bids, will simplify the bidding process for retail investors.

The tweaking of OFS norms will help in reducing the gap between the disclosure of the OFS and the actual share sale in cases where the intermediate days include trading holidays when banks are open, such as Saturdays.

6. Reclassification of 'Promoters' as 'Public' :

6.1 *Summary of the Decision* - SEBI Board has approved of the policy framework for reclassification of 'promoters' in listed companies as 'public shareholders' under prescribed circumstances, subject to compliance of certain conditions. Following are the prescribed circumstances and conditions:

6.1-1 *Pursuant to change in 'Promoter'* - Subsequent to an open-offer or any other manner, when a new 'promoter' replaces the previous promoter, the reclassification is permitted subject to the compliance of the following conditions:

- (i) Shareholders of the listed entity approve of the re-classification in a general meeting;
- (ii) Shareholders need to specifically approve whether the outgoing promoter can hold any Key Management Personnel ('KMP') position in the company;
- (iii) Outgoing promoter cannot hold more than 10% shares of the listed entity.

6.1-2 *Inheritance* - In case of transmission/succession/inheritance, the inheritor shall be classified as a 'promoter'.

6.1-3 *Company not having any identifiable promoter* - The existing promoters of the listed entity may be re-classified as 'public', if the entity becomes professionally managed and does not have any identifiable promoter. SEBI has prescribed the following criteria for considering company as 'professionally managed':

- (i) No person or group along with Persons Acting in Concert (PACs) taken together hold more than 1% shares of the company,
- (ii) Mutual Funds/Banks/Insurance Companies/Financial Institutions/FPIs can each hold upto 10% shares of the company;
- (iii) Erstwhile promoters and their relatives may hold KMP position in company only subject to shareholders' approval and for period not exceeding 3-years from the date of shareholders' approval.

The SEBI Board has also prescribed the following conditions for the re-classification of the 'promoters' as 'public' shareholders:

- (i) Outgoing promoter shall not have any special rights through any formal or informal

arrangements;

- (ii) Outgoing promoter shall not exercise control (directly or indirectly) over the company affairs;
- (iii) Increase in public shareholding pursuant to re-classification of promoters may not be counted towards achieving compliance with minimum public shareholding (MPS) requirement under listing agreement & Securities Contracts (Regulations) Rules, 1957;
- (iv) If any public shareholder seeks to re-classify itself as promoter, it shall be required to make an open offer to the shareholders;
- (v) Re-classification of promoters-shareholding shall be disclosed as 'material' event in accordance with listing agreement/regulations.

6.2 Its analysis & impact - With an aim of strengthening the corporate governance for listed companies, SEBI Board has approved of new norms for re-classification of promoters, whereby an outgoing promoter would have to give up control and all special rights and dilute stake to 10% for becoming 'public investor'. However, with the approval of the board of directors and shareholders, the outgoing promoter can continue to hold CEO/MD/Whole-time Director/CFO, *i.e.*, Key Managerial Personnel position in the company upto 3-years.

SEBI Board has tightened the noose by restraining the outgoing promoters from exercising any special rights through any formal or informal arrangements or from exercising control (direct or indirect) over the company's affairs.

The framework for re-classification of promoters' shareholding will have significant impact on cases involving corporate restructuring that take place due to disputes among members of business families or after settlements between rival corporate's, etc. The aforementioned points shall be taken into consideration at the time of drafting and finalizing the settlement agreement between disputed parties.

SEBI in its draft paper on re-classification of promoters' shareholding had proposed 3-scenarios: (i) Open offer, (ii) Separation agreement, and (iii) Promoter group shareholding less than 5% in listed entity. SEBI had also prescribed that such outgoing promoters would not be allowed to hold any KMP position. In the approved norms, SEBI Board has relaxed the provision by allowing outgoing promoters to hold such KMP position.

7. Recommendations of the Depository System Review Committee (DSRC) :

7.1 Summary of the decision - SEBI Board reviewed the status of the implementation of recommendations of the Depository System Review Committee and has advised the Depositories for the implementation of the following points:

- (i) Developing mechanism for maintaining complete reconciled record of total issued and listed capital (both, physical and dematerialized shares);
- (ii) Risk Management Policy at the Depositories & Information Technology (IT) infrastructure of the DPs;
- (iii) Popularization of e-KYC among DPs;
- (iv) Putting in place systems for facilitating generation and dispatch of single Consolidated Account Statements for investors having investments in securities & Mutual Funds.

7.2 Its impact and analysis - The market watch-dog has taken adequate steps based on the recommendations of the Depository System Review Committee, and has advised the depositories for developing mechanism for maintaining complete reconciled record of total issued and listed capital (both,

physical and dematerialized shares) and setting-up Risk Management Policy at the Depositories & Information Technology (IT) infrastructure of the Depository Participants. Along with other initiatives, these initiatives will have a positive impact on the market participants and intermediaries.

8. Interim use of funds by issuer company :

8.1 Summary of the decision - SEBI Board has decided that net issue proceeds pending utilization of funds raised through public/rights issue (for the stated objects) shall be deposited only in the Scheduled Commercial Banks and in case of public/rights issue of Indian Depository Receipts, the issuer company shall keep such proceeds in bank having credit rating of 'A' or above by an international credit rating agency.

8.2 Its impact and analysis - SEBI Board has taken the much-desired steps for preventing the misuse of funds raised (for stated objects) through public/rights issue by allowing companies to deposit amount in credit-rated Bank during the interim period pending utilization by the issuer company. The SEBI initiative will prevent the companies from diverting public/rights issue proceeds for other purposes, including for making profits through mutual funds and other market instruments.

SEBI has taken such a step as it had observed that companies raised funds with a specific purpose mentioned in Red Herring Prospectus. However, companies were using these funds for other purposes in the interim period.

Conclusion

9. The above mentioned decisions of the SEBI will definitely have significant impact on the overall securities market. The initiative of timeline reduction of public issue process by mandating ASBA may revive the primary market. It will be interesting to see its impact on the issuer companies and investors. Start-up listing will also have a positive impact on the entrepreneurs and also venture capitalists for whom they could exit the company at the time of listing. It will be interesting to analyze the implementation of the proposed norms relating to the reclassification of 'promoters' to 'public', compliance of conditions for reclassification, etc.

■ ■