

Delisting

Half a step

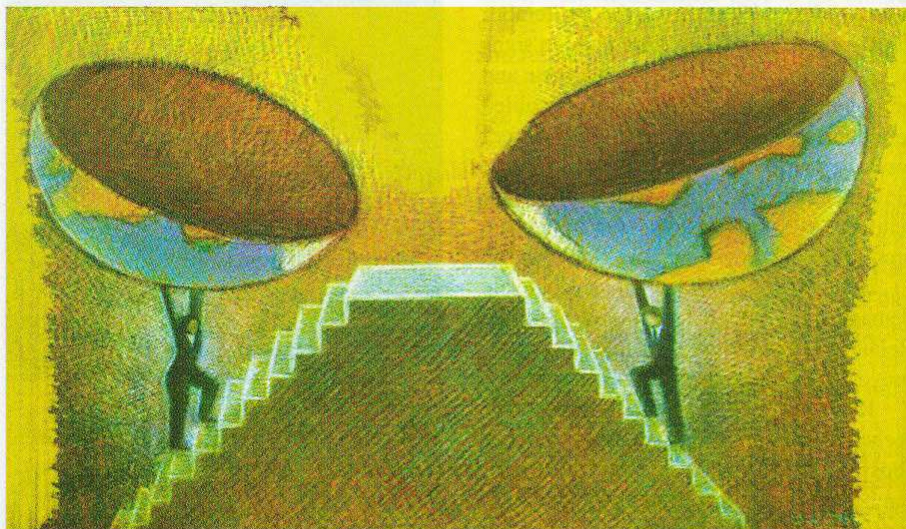
Sebi's new regulations have tightened loopholes for voluntary delisting. But what about compulsory delisting?

Over the past few years, well known companies such as Essar Steel, Matrix Laboratories, iGate Global Solutions, Jaypee Hotels, Madras Aluminium, Wartsila India, and Wimco have got their shares voluntarily delisted from the stock exchanges. No doubt such transactions were within the four corners of the law. But, in the process, their minority shareholders lost an opportunity to benefit from the subsequent run-up in share prices.

In delisting offers, public shareholders have only two options: to continue to hold the unlisted shares that are devoid of liquidity and transparency or to sell their shares to the promoters at the price fixed through reverse bookbuilding that is mostly lower than the intrinsic value of the shares. Under the reverse bookbuilding method, the price at which the maximum shares are tendered by the public shareholders for purchase by the promoters is fixed as the exit price. The higher of the average of the weekly high and low of the share's closing prices during the 26 weeks or two weeks before the date on which the stock exchanges are notified of the board's proposal to delist is taken as the floor price.

A shareholder might be in no mood to sell his shares at the prevailing price or at that point of time. Yet he is compelled by the promoters of the company who have launched the delisting drive. Most of the delisting proposals are mooted by promoters at a time when the company is on the threshold of rapid growth path or when the share price is depressed. The news of delisting further dampens the stock price as the supply far exceeds demand. All this prompted the Securities and Exchange Board of India (Sebi) to come out with Sebi (Delisting of Equity Shares) Regulations, 2009, which have replaced the Sebi (Delisting of Securities) Guidelines, 2003, from June 2009. The new regulations attempt to provide a level-playing field for investors by making the game fairly balanced because under the earlier delisting guidelines promoters had ample opportunity to make a killing.

Under the erstwhile Sebi guidelines, promoters had to provide an exit opportunity to



the shareholders after obtaining their approval through a special resolution passed at a general meeting. If the promoters have sufficient shareholding or voting power, it is easy to get a special resolution passed because only a handful of shareholders attend the general meeting. To remedy the situation, Sebi has mandated that the resolution for delisting of shares from all the stock exchanges has to be passed through postal ballot. The resolution is deemed to have been passed if the votes cast in favor of the resolution are at least twice the votes cast against it.

This is not the end of the story Sebi has gone a step further by debarring the promoters from voting on such resolutions. Thus, even if the promoters have substantial shareholding, say 80%, they still cannot influence the decision of the minority shareholders. The new regulations, thus, provide a meaningful say to the public shareholders in passing the requisite resolution.

Another safeguard introduced by the new regulations is that the company seeking delisting has to submit an application to the stock exchanges for their in-principle approval. Only after obtaining the in-principle approval of the stock exchanges can the promoters proceed with the exit offer to the public shareholders. No doubt the stock exchanges cannot unduly hold or refuse to give the in-principle approval. But still it

helps in ensuring that the promoters do not resort to foul play. Another important clause is that the promoters cannot use the company's funds to finance the exit of public shareholders since the regulations clearly provide that delisting cannot be done through buyback of shares by the company.

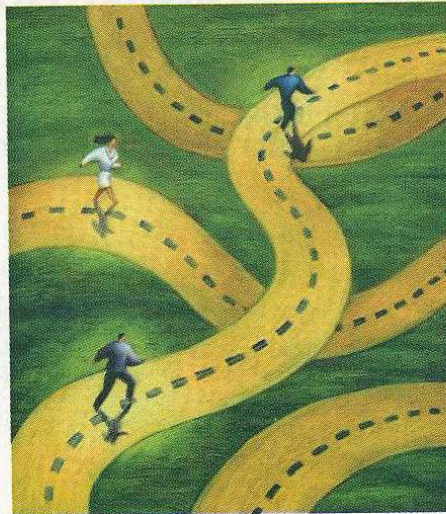
Under the erstwhile Sebi guidelines, companies were permitted to delist if the level of public shareholding after the delisting offer declined below the minimum level of public shareholding required as per Clause 40A of the stock-exchange listing agreement, which is either 10% or 25% of the equity capital. Under the new regulations, a delisting offer is deemed to be successful if, post offer, the shareholding of the promoter group reaches the higher of the following: 90% of the total issued shares of that class, or pre offer promoters' shareholding plus 50% of the offer size.

Earlier, the promoters could increase their shareholding to above 75% and, thereafter, apply for delisting if the level of minimum public shareholding for the company was 25%. But, now, they will have to increase their shareholding to at least 90%. Thus, the new threshold limit specified under the regulations can become a stumbling block for promoters.

Not only this, at least 50% of the public shareholders must accept the exit offer

and tender their shares to the promoters. Thus, it will no longer be possible to acquire just one share in compliance with the regulations when the promoter group already holds over 90% shares of the company. The saving grace for the promoters is that there is no bar on making an offer of a minuscule size, say, 1,000 shares. Accordingly, there is a loophole in the delisting mechanism, which needs to be plugged by Sebi at the earliest.

The revised regulations further provide that after voluntary delisting of shares, application for re-listing of shares cannot be made to the stock exchanges for five years from the date of delisting. The erstwhile Sebi guidelines prohibited re-listing of shares for only two years. The amended provision will



check the tendency of the promoters who want to get their shares delisted for the sake of getting them listed once again at a hefty premium through an initial public offer (IPO). Such promoters will not only have to undergo through the tedious process of delisting but also have to wait for at least five years, which is a long period from the stock market's perspective.

Another investor-friendly measure is that investors who cannot tender their shares during the exit offer have the option to sell their shares to the promoters up to a period of one year from the date of delisting at the same exit price that was fixed through reverse book building. The erstwhile delisting guidelines provided such an opportunity only for six months from the date of delisting.

In case of compulsory delisting by the stock exchanges, the promoters will have to buy the shares from the public shareholders. A similar provision was there in the erstwhile delisting guidelines, too. But the million-dollar question is how many times have the stock exchanges or Sebi invoked this provision and compelled the promoters to buy back the shares from the public shareholders in instances of compulsory delisting of shares?

This provision is more or less theoretical rather than being of any practical use as the promoters may not be traceable in most of the cases and, many times, they may not have enough funds to purchase the shares from the public. Every year, a number of companies are compulsorily delisted by the stock exchanges on account of violations of the listing agreement or simply because they fail to pay the annual listing fee. Compulsory delisting is prejudicial to the interests of the investors as they are saddled with unmarketable securities. But the argument put forth by the stock exchanges and Sebi is that it is necessary to delist the defaulting companies to clean the system.

The steps taken by Sebi to make the process of voluntary delisting difficult for promoters are laudable. The underlying message is loud and clear: promoters cannot just enter and walk out of the stock market at their own sweet will. But the point to ponder is what is the safeguard if the promoters adopt dubious tactics that ultimately compel the stock exchanges to compulsory delist such shares. The need of the hour is that Sebi should devise appropriate mechanism to adequately compensate the public shareholders in the event of compulsory delisting of shares.

—Rajesh Relan

Opportunities lost

Over the past few years, many well known companies have got their shares voluntarily delisted from the stock exchanges. In the process, their minority shareholders lost an opportunity to benefit from the subsequent run-up in share prices

COMPANY NAME	DELISTED DATE	REASON	EXIT PRICE (Rs)
Bhoruka Steel	30/03/09	-	10
Indl. Cables (I)	2/12/2008	-	10
Niryat Sam App	11/6/2009	-	10
TVS Fin. & Ser.	29/05/08	-	25
Uniproducts (I)	1/7/2009	-	40
Bhuruka Gases	25/11/08	-	41
Guj. JHM Hotels	19/12/08	-	42
Pearl Global	21/08/09	-	47.5
Pearl Global*	21/08/09	-	47.5
PSI Data System	6/4/2009	-	60
SI Group	23/09/09	-	70
Balmer Lawr. Vanl	4/3/2008	-	70
Tudor India	8/5/2009	-	70
GE Cap. Trans. Fin	22/10/08	-	110
Madras Aluminium	19/06/09	-	115
Avery India	15/09/09	-	135
Rayban Sun Optic	22/10/08	-	140
DGP Securities	24/07/09	-	185
J.K. Investo Trd	19/02/08	-	195
Matrix Labs.	21/08/09	-	211
Matrix Labs.*	21/08/09	-	211
Sai Service	2/1/2009	-	220
M & P Pumps	27/01/09	-	250
iGate Global Sol	4/2/2008	-	410
iGate Global Sol*	4/2/2008	-	410

* Delisted from the NSE, otherwise from the BSE

COMPANY NAME	DELISTED DATE	REASON	EXIT PRICE (Rs)
Lotte India	24/07/09	-	540
Bosch Chassis	7/11/2008	-	600
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Parry Agro Inds	29/05/08	-	1950
SMZS Chemicals	22/09/08	Liquidated	-
Cons. Fibres & Ch	22/02/08	Liquidated	-
Beta Naphthol	22/09/08	Liquidated	-
J & N Fin. Serv.	22/02/08	Liquidated	-
Nucor Wires	22/02/08	Liquidated	-
BCL Financ. Serv	22/02/08	Liquidated	-
Guj. Optical	4/2/2009	Liquidated	-
Kar. Fin. Serv.	22/02/08	Liquidated	-
Pal-Peugeot	4/3/2009	Liquidated	-
Shree Synthetics	22/02/08	Liquidated	-
Mysore Kirloskar	22/02/08	Liquidated	-
Tata Constrn.	22/02/08	Liquidated	-
Uniplus India	22/02/08	Liquidated	-
Meltron Semicon.	22/02/08	Liquidated	-
Guj. Telephone	17/06/08	Liquidated	-
Geekay Exim	22/02/08	Liquidated	-
Global Finance	22/02/08	Liquidated	-
Bells Controls	22/02/08	Liquidated	-
Pentamedia Graph*	9/1/2009	Currently trading on the BSE	-
Antarctica	1/4/2008	Currently trading on the NSE	-