

Need to amend listing agreement



MARKET VIEW

Rajesh Relan

Clause 47 (c) of the Standard Listing Agreement, requires all the listed companies to submit a Certificate from a Practising Company Secretary to the effect that all the certificates lodged for transfer, sub-division, consolidation, renewal, exchange or endorsement etc have been issued within one month from the date of lodgement. This Clause was inserted around two years back and was very much relevant at that time as it helped to a great extent in curbing the mal-practice adopted by managements of some companies to delay transfer of shares through which they tried to maintain and even at times boost up their company's share price as delay in transfer of shares resulted in scarcity of floating stock in the market and consequent increase in share price.

However, now the time has changed and transactions in respect of almost all the actively traded shares have to be settled by deliveries in compulsory dematerialised form only by all investors. In case of delivery of shares in dematerialised form from transfer of shares is instantaneous.

In view of the changed scenario, certificate under Clause 47 (c) has lost its relevance completely as more than 90 per cent of the turnover in Stock Exchanges is in shares which are in compulsory demat mode.

Agreements signed by companies with depositories viz, NSDL and CDSL provide that shares have to be dematerialised within 15 days from the date of receipt of Demat request. However, a time period of 30 days is provided for bulk lodgements. Generally speaking this clause is hardly being complied by companies and investors have to wait for much longer time before shares sent for Demat are finally credited to

their demat account.

Therefore, in order to ensure smooth process of dematerialisation and also to boost confidence of investors in capital markets, it has become necessary that the process of dematerialisation be subjected to audit by a Practising Company Secretary.

SEBI has vide its letter no.SM-DRP/NSDL/3254/00 dated 18th February 2000, has made it mandatory for companies, whose shares are being traded compulsorily in dematerialised form only by all investors, to provide for transfer and dematerialisation of securities simultaneously and this process is subject to audit by Statutory Auditor / Practising Company Secretary, as the company is required to furnish a certificate to NSDL on monthly basis to the effect that the procedure prescribed for transfer-cum-demat has been duly observed. Despite this, a major loophole in the whole system is that no certificate is required to be submitted by companies in respect of shares that are directly received by them for dematerialisation and not as transfer-cum-demat.

In view of the changed scenario as discussed above and also to plug the loophole in the present system of dematerialisation of shares, it has become necessary that SEBI should immediately direct the Stock Exchanges to amend Clause 47 (c) of the Standard Listing Agreement and the amended clause should provide that companies whose shares are being traded. Compulsorily in dematerialised form only by all investors should furnish a certificate to Stock Exchanges, obtained from a Practising Company Secretary, certifying that all the provision of the Depositories Act, SEBI (Depositories & Participants) Regulations 1996, Bye Laws & Business Rules framed by depositories and various Clauses under agreements signed with depositories have been duly observed.