

Corpsec Hotline

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INTRODUCTION OF ALTERNATE ROUTES FOR INCREASING PUBLIC SHAREHOLDING OF LISTED COMPANIES

In its first board meeting of the year 2012, the Securities and Exchange Board of India ("SEBI") decided to provide alternative methods for companies to increase their public shareholding to 25% or more with the introduction of the following alternate routes (i) Institutional Placement Programme and (ii) Offer for Sale of Shares through Stock

Exchanges by way of **Press Release dated January 3, 2012** ("**Press Release**")¹. Further, in order to implant more effectiveness into the extant buy-back mechanism and reduce the time taken for completion of buy-back, SEBI has decided to introduce certain changes to the offer process contemplated under the SEBI (Buyback of Securities) Regulations, 1998 ("**Buyback Regulations**").

A NEW ENTRY ROUTE TO CAPITAL MARKETS FOR FOREIGN INVESTORS

The Department of Economic Affairs of the Ministry of Finance by its notifications dated **June 4, 2010** and **August 9, 2010**, had earlier decided to increase the minimum public holding requirement for listed companies from 10% to 25% of their total paid-up capital. In the aforementioned notifications, SEBI had provided a long-stop date of June 3, 2013, till which all public listed companies in India (excluding public sector companies) were to reduce their promoter holding to a minimum level of 75%. SEBI, in order to facilitate and encourage non-compliant companies to increase their public holding within the long-stop date, has by way of the Press Release, decided to provide alternate routes for such companies and their promoters.

INSTITUTIONAL PLACEMENT PROGRAMME ("IPP")

This route is available only for companies which are currently not in compliance with the minimum public shareholding requirements and can be implemented either by way of fresh issue of capital by such companies or by dilution of the promoter shareholding through an offer for sale. The IPP route would be similar to other public offers of securities like IPOs and rights issues, however the major differentiating factor is that only qualified institutional buyers ("**QIBs**") can participate in this route. The IPP route is also different from the existing qualified institutions placement ("**QIP**") regime in the following manner:

Public Offer: While QIP is a private placement of securities where in offer of securities cannot be made to more than 49 persons, the Press Release prescribes for filing of prospectus by issuing company under the IPP route, therefore the IPP route would be a public offer of securities;

Pricing restrictions: Unlike the QIP route there are no pricing restrictions prescribed in the Press Release for offer of securities under the IPP route.

Eligible companies: It is to be noted that the QIP route is available only for companies which already have a minimum public holding of more than 25% of their paid-up capital² while the IPP route is available only to companies which are currently not in compliance with the minimum public shareholding requirements.

Some of the salient features of IPP are as follows:

1. Since the IPP would be a public offer of securities, companies using this route would be required to simultaneously file a prospectus with SEBI, Registrar of Companies and stock exchanges;
2. Offer can be made only to QIBs with a minimum of 25% reserved for mutual funds and insurance companies;
3. Issuers would be required to announce an indicative price band a day prior to the opening of the offer and the aggregate demand to be displayed by the stock exchanges;
4. A minimum of 10 allottees are required for issuance under this route and a single investor shall not be entitled to receive allotment of more than 25% of the offer size. It is pertinent to note that the allotment of shares may be made on the basis of either (i) price priority, or (ii) proportionately, or (iii) any other pre-specified criteria. Such basis of allotment once disclosed in the prospectus shall not be subject to any further modifications.

The IPP route can be used by non-compliant companies to increase their public shareholding to 10% or such lesser percentage as may be required to comply with the minimum public shareholding of 25%.

OFFER FOR SALE THROUGH STOCK EXCHANGE

As the name suggests, this route is only available to promoters/ members of the promoter group of non-compliant companies, who can tender their shares for sale on a separate window of the stock exchanges. Promoters/ members of the promoter group would not be allowed to bid for securities under this window. Some of the salient features of this route are as follows:

1. Subject to a minimum of INR 25 crores, the minimum offer size shall be 1% of the paid up capital of the issuer

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company;

2. Separate trading window (co-terminus with the regular trading window) to be offered by the stock exchanges for the purpose of facilitating sales under this route;
3. Every bid/ buy order to be supported by 100% upfront cash margin and allotment shall be done either on a price priority or clearing price basis proportionately.

In one of the more interesting moves, SEBI has also allowed this route for promoters of top 100 companies (based on average market capitalization) for sale of their shares

AMENDMENT TO BUYBACK REGULATIONS

In addition, the Press Release has also prescribed certain amendments to the Buyback Regulations to enhance the efficiency of the buy-back process, by reducing the overall timelines of the buyback process and allowing shareholders to offer more shares for buyback than their entitlement.

ANALYSIS

The Press Release at the advent of the new year should be a welcome move for companies who are struggling to comply with the minimum public holding requirement due to the adverse market conditions and existing stringent regulations. While some of the industry experts have reasoned that the introduction of alternate routes is to facilitate the divestment target of the government, it cannot be denied that this move would also facilitate the larger interest of market to have a more diverse shareholding of publicly listed companies in India and also provide alternate avenues to raise capital. While one of the major objective to increase the public shareholding requirement was to ensure more participation of retail investors in listed companies in India, the alternate routes introduced by SEBI does not provide for retail participation and targets only sophisticated investors like QIBs, which may again lead to concentrated holdings in Indian listed companies.

The IPP route is an innovative route where the investor base is restricted only to QIBs, however it still retains the colour of public offer, where issuing companies would have to comply with the detailed disclosures as in the case of IPOs and rights issues. We are of the view that since the investor audience is restricted to sophisticated QIBs and not to retail investors, companies should not be required to comply with detailed disclosure requirements, which is a time taking and tedious exercise. The regulators could have made this route more attractive by curtailing the disclosure requirements like they have done in cases of QIPs and Fast Track Issues. However, the move to freely manage the offer price one day prior to opening the issue, is a welcome change which would allow issuing companies to manage the risk of fluctuating market prices of securities effectively and not be restricted by stringent pricing restrictions.

Another interesting point to notice in the Press Release is that IPP route can be availed to increase the public shareholding upto a maximum of 10% of the paid up capital. It is difficult to rationalize the threshold of 10% since a company which currently has a promoter holding of 85% or more would not be able to comply with the minimum public shareholding requirement solely by using the IPP route and may have to use alternate avenues to further reduce promoter holding in order to meet the June 2013 deadline.

The other route of creating a separate window on the stock exchanges for promoters to sell their securities is also a good move by SEBI, as this would provide a separate platform for promoters and institutional investors to effect negotiated transactions without majorly impacting the market prices of securities on the main listing board. Since there would be no pricing restrictions under this route, as is the case in bulk and block trades, it may facilitate more transactions at a mutually agreed price which may be different from prevailing market prices. In addition, SEBI has also provided this separate window of trading to promoters of top 100 companies (by way of market cap) which would facilitate more liquidity in the such stocks as it is likely to further reduce the promoter shareholding of such companies.

The streamlining of the buyback process and to reduce the over-all timelines may increase the buy-back activity in the market as the Buyback Regulations would now provide an option for shareholders to tender more shares than their proportionate entitlement.

CONCLUSION

In the background of repressed market conditions globally and the need to improve the liquidity of the Indian capital markets, these alternate avenues would provide a fillip to not only the divestment target of the government but assist companies to meet the deadline of June 2013 to achieve the minimum public shareholding requirements. While the issuance of Press Release is a proactive step by SEBI, only upon release of the fine print of the regulatory framework, one would be able to determine the attractiveness of these alternate routes.

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You can direct your queries or comments to the authors

¹ PR No. 2/ 2012

² Regulation 82 A (c) of the SEBI Issue of Capital & Disclosure Requirements Regulations, 2009.

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