



PR No.28/2021

SEBI Board Meeting

The SEBI Board met in Mumbai today under the Chairmanship of Shri Ajay Tyagi. The Part-Time Members joined the meeting through video conferencing. The Board, inter-alia, took the following decisions:

I. Proposed framework for Gold Exchange and SEBI (Vault Managers) Regulations, 2021

1. The Board, after deliberations, approved the framework for Gold Exchange and SEBI (Vault Managers) Regulations, 2021.
2. The salient features of the framework for Gold Exchange are as under:
 - 2.1 The instrument representing gold will be called 'Electronic Gold Receipt' (EGR) and it will be notified as "securities" under Securities Contracts (Regulation) Act, 1956.
 - 2.2 EGRs will have the trading, clearing and settlement features akin to any other "securities".
 - 2.3 Any recognized stock exchange, existing as well as new, can launch trading in EGRs in a separate segment.
 - 2.4 The denomination for trading of EGR and conversion of EGR into gold, can be decided by the recognized stock exchanges, with the approval of SEBI.
 - 2.5 The Clearing Corporation will settle the trades, executed on the stock exchange/s, by way of transferring EGRs and funds to the buyer and seller respectively.
 - 2.6 The EGR holder can continue to hold the EGR as long as intended, since EGRs will have perpetual validity.

- 2.7 The EGR holder, at his discretion, can also withdraw the underlying gold from the vaults, upon surrender of the EGRs.
 - 2.8 To lower the costs associated with withdrawal of gold from the vaults, EGRs will be made “fungible” and “inter-operability between Vault Managers” will be allowed.
3. The salient features of SEBI (Vault Managers) Regulations, 2021 are as under:
- 3.1 The Vault Manager should be a body corporate incorporated in India.
 - 3.2 The Vault Manager should have net worth of at least Rs. 50 crores.
 - 3.3 The Vault Manager will be registered and regulated as SEBI intermediary, for providing vaulting services meant for gold deposited to create EGRs.
 - 3.4 The obligations of Vault Manager will include accepting deposits, storage and safekeeping of gold, creation of EGR, withdrawal of gold, grievance redressal and periodic reconciliation of physical gold with the records of depository.
4. The Gold Exchange, encompassing the entire ecosystem of trading of EGR and physical delivery of gold, is expected to create a vibrant gold ecosystem in India commensurate with India’s large share of global gold consumption. The Gold Exchange would be a national platform for buying and selling EGRs with underlying standardized gold in India and also create a national pricing structure for gold. The Gold Exchange is expected to offer a host of benefits for the value chain participants as well as for the entire gold market ecosystem, such as, efficient and transparent price discovery, investment liquidity, assurance in the quality of gold, etc.

II. Framework for Social Stock Exchange

The Board approved the creation of the Social Stock Exchange (SSE), under the regulatory ambit of SEBI, for fund raising by social enterprises (SE). The framework for the SSE has been developed on the basis of the recommendations of a working group and a technical group constituted by SEBI. The salient features of the framework approved by the Board are as follows:

- i. SSE shall be a separate segment of the existing stock exchanges

- ii. Social Enterprises eligible to participate in SSE, shall be entities (Non-Profit Organization - NPO and For-Profit Social Enterprise - FPE) having social intent and impact as their primary goals. Social Enterprises will have to engage in a social activity out of the list of 15 broad eligible social activities approved by the Board.
- iii. Eligible NPOs may raise funds through equity, Zero Coupon Zero Principal (ZCZP) bonds, Mutual Funds, Social Impact Funds, and Development Impact Bonds. NPOs desirous of raising funds on SSE shall be required to be registered with SSE.
- iv. Social Venture Funds under SEBI (Alternative Investment Funds) Regulations will be rechristened as Social Impact Funds (SIFs). The corpus requirements for such funds shall be reduced from Rs. 20 crs. to Rs. 5 crs. Further, the reference to “muted returns” shall be removed.
- v. SEBI shall make suitable amendments to its regulatory framework, towards mandating initial and continuous disclosures for Social Enterprises, covering aspects relating to governance, financial and social impact.
- vi. Audit of social impact, i.e. social audit shall be mandated for SEs raising funds/ registered on SSE. To begin with only reputed firms/institutions having expertise in the area of social audit shall be allowed to carry out social audits employing social auditors who have qualified the certification course conducted by NISM. A separate sustainability directorate under ICAI shall function as an SRO for Social Auditors.
- vii. SEBI shall engage with NABARD, SIDBI and stock exchanges towards institution of a capacity building fund, with a corpus of Rs 100 Crores.

Operationalization of the above framework will require amendments to applicable regulations such as ICDR Regulations, LODR Regulations, AIF Regulations, Mutual Fund Regulations etc. which will be taken up by SEBI.

III. Review of delisting framework pursuant to open offer

The Board approved the proposal to amend the existing regulatory framework for delisting of equity shares pursuant to open offer as provided under the extant Regulation 5A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations).

Under the existing framework, if an open offer is triggered, compliance with Takeover Regulations could take the incoming acquirer's holding to above 75% or perhaps even 90%, however, to ensure compliance with Securities Contract (Regulation) Rules, 1957 (SCRR) the acquirer would be forced to first bring his stake down to 75% as the SEBI (Delisting of Equity Shares) Regulations, 2021 (Delisting Regulations) would not let the acquirer even to attempt at delisting unless the holding is first brought down to 75%. Such directionally contradictory transactions in a sequence pose complexity in the takeover of listed companies especially where the acquirer desires to get the company delisted pursuant to his take over.

The revised framework aims to make M&A transactions for listed companies a more rational and convenient exercise, balancing the interest of all investors in the process. The key features of revised framework for delisting pursuant to an open offer are as under: -

1. The framework shall be made available in the case of open offers under the Takeover Regulations for an incoming acquirer who is seeking to acquire control under Regulation 3(1) or Regulation 4 or Regulation 5.
2. If the acquirer is desirous of delisting the target company, the acquirer must propose a higher price for delisting with suitable premium over open offer price.
3. If the response to the open offer leads to the delisting threshold of 90% being met, all shareholders who tender their shares shall be paid the same delisting price and if the response to the offer leads to the delisting threshold of 90% not being met, all shareholders who tender their shares shall be paid the same takeover price.
4. If a company does not get delisted pursuant to the open offer under this framework, and the acquirer crosses 75% due to the open offer, a period of 12 months from the date of completion of the open offer will be provided to the acquirer to make further attempts to delist the company under the Delisting Regulations using the reverse book building mechanism. If delisting during this extended 12-month period is not successful, the acquirer then must comply with the minimum public shareholding norm within a period of 12 months from the end of such period.
5. If the acquirer at the time of open offer, states upfront that it would opt for remaining listed, and the total stake at the end of the tendering period reaches above 75%, then the acquirer may opt for either proportionately scaling down of purchases made under both, i.e. the underlying share

purchase agreement and the shares tendered under open offer, in such a manner that the 75% threshold is never crossed or alternatively, the acquirer shall have to become compliant with minimum public shareholding within the time stipulated under SCRR.

6. While undertaking delisting under this framework, all the provisions of the Delisting Regulations shall be applicable mutatis-mutandis, save otherwise provided in this framework.

IV. Review of certain provisions related to Superior Voting Rights Shares Framework

The Board decided to relax the eligibility requirements related to Superior Voting Rights (SR) Shares framework as follows:

Earlier, in 2019, SEBI had introduced superior voting rights (SR) framework specifically for issuer companies intensive in use of technology. The framework allows issuance of SR shares to promoters/ founders holding executive position in the company desirous of listing on the Main Board. The framework also has checks and balances such as coat tail provisions –i.e. matters in which SR shares shall have the same rights as that of ordinary shares and sunset clause i.e. time period until which such an SR shareholder shall enjoy superior voting rights.

- i. As per the existing provisions, an SR shareholder should not be part of promoter group having net worth more than INR 500 crs. This has been changed to require that the SR shareholder, as an individual, should not have net-worth of more than INR 1000 crs.
- ii. The minimum gap between issuance of SR shares and filing of Red Herring Prospectus is reduced to 3 months from the existing requirement of 6 months.

V. Review of regulatory provisions on Related Party Transactions

The Board considered and approved the amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, in relation to regulatory provisions on related party transactions (RPTs). Key amendments are as follows:

- I. The definition of related party shall include:

- a. all persons or entities forming part of promoter or promoter group irrespective of their shareholding;
- b. any person/entity holding equity shares in the listed entity, as below, either directly or on a beneficial interest basis at any time during the immediately preceding financial year:
 - i. to the extent of 20 % or more
 - ii. to the extent of 10% or more w.e.f. April 1, 2023.

II. The definition of RPT shall include transactions between:

- a. the listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand;
- b. the listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries w.e.f. April 1, 2023.

III. Prior approval of the shareholders of the listed entity shall be required for material RPTs having a threshold of lower of Rs. 1000 crore or 10% of the consolidated annual turnover of the listed entity.

IV. Approval of the Audit committee shall be required for

- a. All RPTs and subsequent material modifications as defined by the Audit committee;
- b. RPTs where subsidiary is a party but listed entity is not a party subject to threshold of
 - i. 10% of the consolidated turnover of the listed entity,
 - ii. 10% of the standalone turnover of the subsidiary w.e.f. April 1, 2023.

V. Enhanced disclosure of information related to RPTs to be:

- a. placed before the audit committee,

- b. provided in the notice to shareholders for material RPTs, and
- c. provided to the stock exchanges every six months in the format specified by the Board with the following timelines:
 - i. within 15 days from the date of publication of financials;
 - ii. simultaneously with the financials w.e.f. April 1, 2023.

The amendments shall come into force with effect from April 1, 2022 unless otherwise specified above.

VI. Investor Charter for Securities Market

The Board considered and approved an Investor Charter of SEBI for investors in the securities market. The Investor Charter, inter-alia, includes the Vision statement of SEBI for investors. Mission statement, Rights and Responsibilities of Investors, Do's and Don'ts for investors in securities market, etc.

SEBI has also developed Investor Charters of SEBI recognized Market Infrastructure Institutions (MIIs), registered intermediaries and regulated entities in consultation with various entities. These Investor Charters will help the investors in securities markets to get the relevant information at one place, viz.- what rights they have, various services provided by entities to the investors, timelines related to various services provided to investors, investor grievance redressal mechanism etc.

SEBI Investor Charter and the Investor Charters of various intermediaries / entities will be displayed on SEBI website and also on the websites of the respective intermediary / entity.

VII. Amendment to SEBI (Alternative Investment Funds) Regulations, 2012

The Board approved amendment to SEBI (Alternative Investment Funds) Regulations, 2012 allowing Category III AIFs to calculate concentration norms based on Net Asset Value of the fund instead of investable funds for investment in listed equities of investee companies.

VIII. Introduction of Silver Exchange Traded Funds in India

The Board approved amendment to SEBI (Mutual Funds) Regulations, 1996 to enable introduction of Silver Exchange Traded Funds with certain safeguards in line with the existing regulatory mechanism for Gold ETFs.

IX. Amendments to SEBI (Portfolio Managers) Regulations, 2020 and SEBI (Alternative Investment Funds) Regulations, 2012

The Board approved amendments to the SEBI (Portfolio Managers) Regulations, 2020 and the SEBI (Alternative Investment Funds) Regulations, 2012, to facilitate Co-investment by investors of Alternative Investment Funds (AIF) through portfolio management route. The Portfolio Manager providing Co-investment services to investors of AIFs shall invest 100% of the assets under their management in unlisted securities and shall be exempted from certain requirements under SEBI (Portfolio Managers) Regulations, 2020, including minimum investment amount, minimum net-worth etc.

X. Permitting Resident Indians (other than Individuals) to become constituents of FPIs that are registered as AIFs in IFSCs:

To facilitate investment in Indian securities markets through the FPI route by Alternative Investment Funds (AIFs) set up in International Financial Services Centres (IFSCs), the Board considered and approved the proposal to amend the SEBI (Foreign Portfolio Investors) Regulations, 2019 for permitting Resident Indians (other than individuals) to become constituents of FPIs that are registered as AIFs in IFSCs. Such Resident Indians shall be Sponsor/ Manager of the FPI and their contribution in the FPI shall be subject to conditions as specified by the Board.

XI. Amendment to Schedule II of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 - Criteria for determining 'Fit and Proper Person'

The Board considered and approved the agenda on criteria for determining 'Fit and proper Person'.

Fit and Proper Person criteria shall be principle based or/and rule based as applicable. The applicant or intermediary shall have competence and capability in terms of infrastructure, manpower requirements and financial soundness including meeting the net worth requirement, as provided in the regulations applicable to the applicant or the intermediary. The principle based criteria should include integrity, honesty, ethical behaviour, reputation, fairness and character.

The rule based criteria will determine the fit and proper status of the person based on the disqualifications as has been prescribed. Some of such disqualifications include an order of conviction passed against such person by a court for any offence involving moral turpitude or such person has been declared insolvent and not discharged or has been categorized as a willful defaulter or has been declared a fugitive economic offender or against whom an order has been passed by SEBI or any other financial sector regulator.

XII. Inclusion of Cost Accountants for share reconciliation audit under SEBI (D&P) Regulations, 2018

The Board deliberated on the existing provisions of SEBI (Depositories and Participants) Regulations, 2018 [SEBI (D&P) Regulations, 2018], and approved the following proposal to authorize practicing Cost Accountants to carry out share capital reconciliation audit of issuer companies:-

- Under the Regulation 76(1) of SEBI (D&P) Regulations, 2018, in addition to qualified Chartered Accountant or practicing Company Secretary, practicing Cost Accountants are also eligible to carry out share reconciliation audit of issuer companies.

Mumbai
September 28, 2021