

Consultation Paper on “Review of the regulatory framework of promoter, promoter group and group companies as per Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018”

I. Objective

- 1) The objective of this consultation paper is to seek comments / views from the public on the following relating to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations):
 - A. Reduction in lock-in periods for minimum promoter’s contribution and other shareholders for public issuance on the Main Board.
 - B. Rationalization of the definition of ‘Promoter Group’
 - C. Streamlining the disclosures of group companies and
 - D. Shifting from concept of ‘promoter’ to concept of ‘person in control’

II. Background

- 2) The Indian capital markets have matured over the years, with a more robust disclosure framework, adoption of best international practices aimed at providing better information to investors for decision making, at the same time balancing the ease of doing business for issuers.
- 3) In May 2019, Primary Markets Advisory Committee (PMAC) had constituted a sub group to examine the relevance of ‘concept of promoter’ in the context of Indian Securities Market.
- 4) The sub-group held deliberations and also interacted extensively with various stakeholders, including investors, law firms, industry associations as well as corporates. The sub-group also did a study of various international jurisdictions, where concept of ‘controlling shareholder’ is used rather than the term ‘promoter’.

5) The recommendations of the sub group were deliberated in the PMAC, which has suggested that public comments may be sought on the following:

A. Reduction in lock in period for minimum Promoters' Contribution and other shareholders for public issuance on the Main Board

Present Provisions

- a) Presently, in terms of Regulation 16 of the ICDR Regulations, the minimum promoters' contribution of 20% is locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the initial public offer, whichever is later and the promoters' holding in excess of minimum promoters' contribution is locked in for a period of one year from the date of allotment in the initial public offer.
- b) Besides, in terms of Regulation 17 of the ICDR Regulations, the entire pre-issue capital held by persons other than the promoters is locked-in for a period of one year from the date of allotment in the initial public offer.

Proposed Changes

- a) It is proposed that if the object of the issue involves offer for sale or financing other than for capital expenditure for a project, minimum promoters' contribution (20%) shall be locked-in for a period of one year from the date of allotment in the initial public offer, as opposed to existing requirement of three years.
The shares held by Promoter(s) shall be exempt from lock-in requirements after six months from date of allotment in the IPO, only towards the purpose of achieving compliance with minimum public shareholding norms.
- b) Promoters' holding in excess of minimum promoters' contribution shall be locked in for a period of six months as opposed to the existing requirement of one year from the date of allotment in the Initial Public Offer.
- c) The entire pre-issue capital held by persons other than the promoters shall be locked-in for a period of six months from the date of allotment in the initial public offer as opposed to the existing requirement of one year.

Rationale

- a) Historically 20% lock-in of promoters' shareholding for 3 years was considered necessary when companies raised public capital for project financing/ greenfield projects with an objective to ensure continuous 'skin in the game' by such promoters.
- b) Nowadays, companies going public are well established with mature businesses, have pre-existing institutional investors like private equity firms, alternate investment funds etc. and their promoters have demonstrated 'skin in the game' for several years before proposing listing.
- c) An analysis of data of companies that listed during 2007–15 reveals that, in a large number of companies, promoters did not materially sell their shares even after the expiry of the lock-in period.
- d) Besides, greenfield financing through IPOs is presently almost non-existent. Further, IPOs exceeding ₹100 crs. (excluding the component of offer for sale) are required to have a monitoring agency, seeking to ensure that the funds mobilized are used for the intended purpose of the objects of the Issue.

B. Rationalization of the definition of 'Promoter group'

Present Provisions

- a) The Companies Act 2013 has incorporated a definition of promoter in Section 2 (69), however it does not define promoter group. The definition for promoter group has been provided in Regulation 2(pp) of the ICDR 2018.
- b) Regulation 2(1)(pp) of the ICDR Regulation defines Promoter group. Regulation 2(1)(pp)(iii)(c) stipulates that promoter group *inter-alia* includes “*Any body corporate in which a group of individuals or companies or combinations thereof acting in concert, which hold twenty percent or more of the equity share capital in that body corporate and such group of individuals or companies or combinations thereof also holds twenty percent or more of the equity share capital of the issuer and are also acting in concert.*”
- c) The intention of capturing the promoter group is to disclose the interrelationships of various entities within the group to the entity accessing the capital market.

Proposed Change

- a) It is proposed to do away with the requirement of including entities specified in the said Regulation 2(1)(pp)(iii)(c) in the definition of promoter group. To give effect to this proposal, the said regulation would be deleted.

Rationale

- a) The above definition of the promoter group focuses on capturing holdings by a common group of individuals or persons and often results in capturing unrelated companies with common financial investors. Capturing the details of holdings by financial investors while being a challenging task, may not result in any meaningful information to investors. Further, post listing, it is more relevant to identify and disclose related parties and related party transactions. Accordingly, this deletion shall rationalize the disclosure burden and bring it in line with the post listing disclosure requirements.

C. Streamlining the disclosures of ‘Group Companies’

Present Provisions

- a) A “group company” is defined in the Regulation 2 (t) of ICDR Regulations to include those companies (other than promoters and subsidiaries) with which the issuer company has had related party transactions during the period for which financials are disclosed in the offer document.
- b) Presently, in terms of the ICDR Regulations, the information such as date of incorporation, nature of activities, equity capital, reserves, sales, profit after tax, earnings per share and diluted earnings per share, net asset value, pending litigation involving the group company which has a material impact on the issuer etc. has to be provided for the last three years for the five largest listed group companies. In case there are no listed group companies, the financial information has to be given for the five largest unlisted group companies based on turnover.

Proposed Changes

- a) It is proposed that only the names and registered office address of all the Group Companies should be disclosed in the Offer Document. All other disclosure requirements like financials of top 5 listed/unlisted group companies, litigation etc., presently done in the Draft Red Herring Prospectus can be done away. However, these disclosures may continue to be made available on the websites of the listed companies.

Rationale

- a) The concept of group companies does not continue after listing and does not find a mention either in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) or the SEBI (Substantial Acquisition of Shares and Takeover Regulations), 2011 (Takeover Regulations).
- b) Many a times, financial investors get covered under the said definition (2(t)) on account of investments made and/or dividend paid etc. despite there being no other transactions between them and the listed company.
- c) Besides, entities which are not material to the issuer company also get covered under this definition.
- d) Disclosure on related party transactions is required to be made in an offer document (including in the financial statements). There may be no need to have additional disclosures on group companies. Disclosures on related party transactions are also made post listing in terms of the LODR Regulations.
- e) Besides, there is a possibility where companies may have ceased to be group companies during the last three years but issuers are required to reach out to such companies and seek their cooperation for providing information.

D. Shifting from concept of 'promoter' to concept of 'person in control'

Concept of Promoter

- a) ICDR Regulations define a "promoter" as a person who has been named as such in the offer document or in the annual return of the issuer or a person who has

control over the issuer (directly or indirectly) or in whose advice, directions or instructions the board of directors of the issuer is accustomed to act. Thus, the definition of promoter is wide-ranging and goes beyond persons in control of the issuer.

- b) The concept of promoter is used in a number of regulations issued by SEBI and other regulatory authorities. Further, the identification of promoters is also relevant from an enforcement perspective.

Need for revisiting the concept of promoter

a) Changing nature of ownership of listed entities

- i. The investor landscape in India is now changing. Unlike the past, the concentration of ownership and controlling rights does not vest completely in the hands of the promoters or the promoter group. There has been a significant increase in the number of private equity and institutional investors who invest in companies and take up substantial shareholding, and in some cases, control. Such private equity and institutional investors invest in unlisted companies and continue to hold shares post listing, many times being the largest public shareholders, having special rights on the listed company, such as the right to nominate directors.
- ii. A number of businesses, including new age and tech companies, are non-family owned and/or do not have a distinctly identifiable promoter group. Also, traditional and family run companies with identified promoters are now increasingly open to M&A opportunities and exits instead of maintaining a “once a promoter, always a promoter” status.
- iii. The aggregate shareholdings of promoters in the top 500 listed entities in terms of market value, peaked at 58% in 2009 and is showing a downward trend. The promoters’ shareholding was approximately 50% in 2018. At the same time, the shareholding of institutional investors in the top 500 listed companies, in terms of market value, increased from approximately 25% in 2009 to 34% in 2018.¹

¹ Source: OECD report. *Ownership structure of Listed Companies in India, 2020*

iv. The above changes in nature of ownership, could lead to situations where the persons with no controlling rights and minority shareholding continues to be classified as a promoter. By virtue of being called promoters, such persons may have influence over the listed entity disproportionate to their economic interest, which may not be in the interests of all stakeholders.

b) Increased focus on quality of board and management

i. Increasingly, there is focus on better corporate governance with the responsibilities and liabilities of shifting to the board of directors and management. Shareholders now look to the board of directors and management to protect their rights and add value, while discharging their duties. This increased focus on quality of board and management has also reduced the relevance of the concept of promoter.

c) Utility of identification of promoter group

i. The identification and updation of promoter group is required to be done for each promoter of a listed entity. Over time, this exercise may become more challenging especially for large conglomerates, even resulting in the identification of persons who are not involved with the business of the issuer. Thus, in certain cases, this information may not be meaningful for investors.

The above issues have led to an increasing debate on the need to revisit the concept of promoter and shift to the concept of 'person in control' or 'controlling shareholders'. Such a shift, as and when undertaken, would lead to removing the reference to promoters and promoter group, at the same time introducing the concept of person in control or controlling shareholders in various SEBI Regulations such as ICDR Regulations, LODR Regulations, Takeover Regulations, SEBI (Prohibition of Insider Trading) Regulations. The shift may also have implications on laws administered by other regulators such as the MCA, RBI and IRDAI. Given that the freezing of promoter holdings is presently an important tool of enforcement in securities market, the shift would also necessitate reorientation of enforcement strategies.

It is also argued that it is time to plan for such a shift, over a period, in a smooth and progressive manner without causing any disruption.

Views sought

Considering the above, views are sought on the following:

- a) Whether the existing concept of promoter and promoter group should continue or there is a need to shift to the concept of 'person in control' or 'controlling shareholders' and 'persons acting in concert', respectively and
- b) in case of latter, what should be the timeframe and manner for making such a shift.

III. Public Comments

- 6) Considering the implications of the said changes on market participants including issuers and investors, public comments are invited on the proposals at Paras A, B C and D contained in the discussion paper. Public comments may be provided in the following format:

Name of entity/ person/ intermediary:			
Name of organization (if applicable):			
Contact details:			
Sr. No.	Proposals	Proposed/ suggested changes	Rationale
	Page No. Para No.		

While sending the email, kindly mention the subject as "Comments to Consultation Paper on Review of the regulatory framework of promoter, promoter group and group companies as per Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018".

Comments may be forwarded by e-mail to Ms. Komal Bais, Assistant General Manager at komalb@sebi.gov.in or sent by post or email at the following address latest by June 10, 2021.

Ms. Yogita Jadhav
General Manager
Corporation Finance Department
Securities and Exchange Board of India
SEBI Bhavan
Plot No. C4-A, "G" Block
Bandra Kurla Complex
Bandra (East), Mumbai - 400 051
Ph.: +91-22-26449583
Email id : yogitag@sebi.gov.in

Issued on: May 11, 2021
