

Listing & Delisting Of Securities

By Vinay Ranjan

Listing

Listing means admission of securities to dealings on a recognized stock exchange. The securities may be of any public limited company, Central or State Government, quasi governmental and other financial institutions/corporations, municipalities, etc.

The objectives of listing are mainly to:

- provide liquidity to securities;
- mobilize savings for economic development;
- protect interest of investors by ensuring full disclosures.

A company, desirous of listing its securities on the Exchange, shall be required to file an application, in the prescribed form, with the Exchange before issue of Prospectus by the company, where the securities are issued by way of a prospectus or before issue of 'Offer for Sale', where the securities are issued by way of an offer for sale.

Delisting of securities means permanent removal of securities of a listed company from the stock exchange where it was registered. As a result of this, the company would no longer be traded at that stock exchange.

Rules and guidelines for listing of securities:

- Securities Contract (Regulation) Act, 1956.
S. 21. of the Act deals with the listing of the public companies.
- Securities Contract (Regulation) Rules 1957.
S. 19 of the Act deals with the requirements and documents to be submitted with respect to the listing of securities on a recognized stock exchange and i.e.
 - a) Memorandum and articles of association and, in case of a debenture issue, a copy of the trust deed.
 - b) Copies of all prospectuses or statements in lieu of prospectuses issued by the company at any time.
 - c) Copies of offers for sale and circulars or advertisements offering any securities for subscription or sale during the last five years.
 - d) Copies of balance sheets and audited accounts for the last five years, or in the case of new companies, for such shorter period for which accounts have been made up.
 - e) A statement showing-
 - (i) Dividends and cash bonuses, if any, paid during the last ten years (or such shorter period as the company has been in existence, whether as a private or public company).
 - (ii) Dividends or interest in arrears, if any.
 - f) Certified copies of agreements or other documents relating to arrangements with or between:-
 - (i) Vendors and/or promoters,
 - (ii) Underwriters and sub-underwriters,
 - (iii) Brokers and sub-brokers.
 - g) Certified copies of agreements with-
 - (i) Managing agents and secretaries and treasurers,

- (ii) Selling agents,
- (iii) Managing directors and technical directors,
- (iv) General manager, sales manager, manager or secretary.
- h) Certified copy of every letter, report, balance sheet, valuation contract, court order or other document, part of which is reproduced or referred to in any prospectus, offer for sale, circular or advertisement offering securities for subscription or sale, during the last five years.
- i) A statement containing particulars of the dates of, and parties to all material contracts, agreements (including agreements for technical advice and collaboration), concessions and similar other documents (except those entered into in the ordinary course of business carried on or intended to be carried on by the company) together with a brief description of the terms, subject-matter and general nature of the documents.
- j) A brief history of the company since its incorporation giving details of its activities including any reorganization, reconstruction or amalgamation, changes in its capital structure (authorized, issued and subscribed) and debenture borrowings, if any.
- k) Particulars of shares and debentures issued (i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount, or (iii) in pursuance of an option.
- l) A statement containing particulars of any commission, brokerage, discount or other special terms including an option for the issue of any kind of the securities granted to any person.
- m) Certified copies of-
 - (i) letters of consent of the Controller of Capital Issues
 - n) Particulars of shares forfeited.
- o) A list of highest ten holders of each class or kind of securities of the company as on the date of application along with particulars as to the number of shares or debentures held by and the address of each such holder.
- p) Particulars of shares or debentures for which permission to deal is applied for:

• **Companies Act, 1956.**

As per S. 73 of the companies Act, 1956, a company seeking listing of its securities on a stock exchange is required to submit a Letter of application to all the stock exchanges where it proposes to have its securities listed before filing the prospectus with the registrar of companies.

• **SEBI Guidelines.**

- A company is required to complete the allotment of securities offered to the public within 30 days of the date of closure of the subscription list and approach the designated stock exchange for approval of the basis of allotment.
- Issuer Company to complete the formalities for trading at all the stock exchanges where the securities are to be listed within 7 working days of finalization of the basis of allotment.
- Companies making public/rights issues are required to deposit 1 % of the issue amount with the designated stock exchange before the issue price.

• **Stock Exchange guidelines.**

In addition to all these rules, regulation and compliance every stock exchange have a set of guidelines of its own for the companies to be listed on them. For example

they may provide for the minimum issue size and market capitalization of the company

A company has to enter into a listing agreement before being given permission to be listed on the exchange. Under this agreement the company undertakes amongst other things, to provide facilities for prompt transfer, registration, sub-division and consolidation of securities: to give proper notice of closure of transfer books and record dates, to forward 6 copies of unabridged Annual reports, balance sheets and profit & loss accounts, to file shareholding patterns and financial results on quarterly basis and to intimate promptly to the exchange the happenings which are likely to materially affect the financial performance of the company and its stock price and to comply with the conditions of Corporate governance.

The companies are also required to pay to the exchange some listing fee as prescribed by the exchange every financial year.

A company not complying with these requirements may face some disciplinary action, including suspension/ delisting of their securities.

In case the exchange does not give permission to the company for listing of securities, the company cannot proceed with the allotment of shares. However the company may file an appeal before SEBI under S. 22 of SCRA, 1956.

A company delisted by a stock exchange and seeking relisting at the same exchange is required to make a fresh public offer and comply with the extant guidelines of the exchange.

Delisting

As stated above delisting of securities means removal of the securities of a listed company from the stock exchange. It may happen either when the company does not comply with the guidelines of the stock exchange, or that the company has not witnessed trading for years, or that it voluntarily wants to get delisted or in case of merger or acquisition of a company with/by some other company. So, broadly it can be classified under two heads:

1. Compulsory delisting.
2. Voluntary delisting.

Compulsory delisting refers to permanent removal of securities of a listed company from a stock exchange as a penalizing measure at the behest of the stock exchange for not making submissions/comply with various requirements set out in the Listing agreement within the time frames prescribed. In voluntary delisting, a listed company decides on its own to permanently remove its securities from a stock exchange. This happens mainly due to merger or amalgamation of one company with the other or due to the non-performance of the shares on the particular exchange in the market.

A stock exchange may compulsorily delist the shares of a listed company under certain circumstances like:

- non-compliance with the Listing Agreement. for a minimum period of six months.
- failure to maintain the minimum trading level of shares on the exchange.

- promoters' Directors' track record especially with regard to insider trading, manipulation of share prices, unfair market practices (e.g. returning of share transfer documents under objection on frivolous grounds with a view to creating scarcity of floating stock, in the market causing unjust aberrations in the share prices, auctions, close-out, etc. (Depending upon the trading position of directors or the firms).
- The company has become sick and unable to meet current debt obligations or to adequately finance operations, or has not paid interest on debentures for the last 2-3 years, or has become defunct, or there are no employees, or liquidator appointed, etc

Where the securities of the company are delisted by an exchange under this method, the promoter of the company shall be liable to compensate the security-holders of the company by paying them the fair value of the securities held by them and acquiring their securities, subject to their option to remain security-holders with the company. In such a case there is no provision for an exit route for the shareholders except that the stock exchanges would allow trading in the securities under the permitted category for a period of one year after delisting.

Companies may upon request get voluntarily delisted from any stock exchange other than the regional stock exchange, following the delisting guidelines. In such cases, the companies are required to obtain prior approval of the holders of the securities sought to be delisted, by a special resolution at a General Meeting of the company.

The shareholders will be provided with an exit opportunity by the promoters or those who are in the control of the management.

Companies can get delisted from all stock exchanges following the substantial acquisition of shares. The regulation state that if the public shareholding slides to 10 per cent or less of the voting capital of the company, the acquirer making the offer, has the option to buy the outstanding shares from the remaining shareholders at the same offer price.

An exit price mechanism called the book-building method is used by the delisted companies to derive to the price at which the share will be brought into and that which will be paid to the shareholders. However, an exit opportunity need not be given in cases where securities continue to be listed in a stock exchange having nationwide trading terminals.

Under the existing SEBI takeover code, an acquirer is required to make an offer to buy securities at the same offer price. However, here the exit price is based on the average of the preceding 26-week high and low prices.

The acquirer is required to allow a further period of 6 months for any of the remaining shareholders to tender securities at the same price. The stock exchange monitors the possibility of any price manipulation and keeps under special watch the securities for which announcement for delisting has been made.

This mechanism however is not seen as beneficial in depressed Indian market conditions as the price arrived through this principle may not adequately compensate

the shareholder for the permanent loss of investment opportunity, especially in a company whose shares are regarded as value investment.

The SEBI (Delisting of Securities) Guidelines- 2003 is the regulating Act framing the guidelines and the procedure for delisting of securities. Under this the prescribed procedure is:

1. The decision on delisting should be taken by shareholders though a special resolution in case of voluntary delisting & though a panel to be constituted by the exchange comprising the following in case of compulsory delisting:

- Two directors/ officers of the exchange (one director to be a public representative).
- One representative of the investors.
- One representative from the Central government (Department of Company Affairs) / regional director/ Registrar of Companies.
- Executive Director/ secretary of the Exchange.

2. Due notice of delisting and intimation to the company as well as other Stock Exchanges where the company's securities are listed to be given.

3. Notice of termination of the Listing Agreement to be given.

4. Making an application to the exchange in the form specified, annexing a copy of the special resolution passed by the shareholders in case of voluntary delisting.

5. Public announcement to be made in this regard with all due information.

Conclusion

There was a time not very long ago when there was no regulating agency like SEBI. Trading was done then also but then it was a one way route. Every company that issues shares to the public is required to have its shares listed on a recognised stock exchange. In 1956, the Government of India enacted a law called Securities Contracts (Regulations), 1956, which came into force with effect from February 1957. Among other things, this law regulated operations of stock exchanges and listing of public issues. The Controller of Capital Issues fixed the price of shares issued by any company. Normally, the Controller used to permit a small premium that could be charged by a company while issuing shares to the public.

However, with the changing economic scenario and with the opening up of the Indian economy, the country witnessed huge influx of foreign capital. This resulted in growth in the number of listing of companies on the stock exchanges. Alternatively it also laid to demand from several India-based MNCs that they should be permitted to delist their shares. The reason remains the non-performance of the shares on the stock exchange and in case of merger and acquisition of one company with the other. To consider the prevailing position in respect of delisting, SEBI appointed a committee to study the whole issue and, as a result, issued guidelines for delisting of securities in 2003.

However, in the present scenario, if the market is studied minutely many MNC seeks to get their shares delisted at the expense of those investor who themselves are worried seeing their hard earned money whooping in number game. The reason being, the exit route method applied in case of voluntary delisting. Under the present norms the exit price is decided on the basis of price of company's shares on 26 weeks highs and lows and in this market condition these companies are finding it profitable to buy back their shares at this price. In this scenario SEBI should look after any such possibility of playing fraud on the investors by these big companies.