भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CONSULTATION PAPER ON STRENGTHENING CORPORATE GOVERNANCE AT LISTED ENTITIES BY EMPOWERING SHAREHOLDERS – AMENDMENTS TO THE SEBI (LODR) REGULATIONS, 2015

1. Objective

1.1. This consultation paper seeks comments/views/suggestions from the public on proposals to strengthen corporate governance at listed entities by empowering the shareholders to address the following issues:

1.1.1. **Agreements binding listed entities**

1.1.2. **Special rights granted to certain shareholders**

1.1.3. **Sale, disposal or lease of assets of a listed entity outside the 'Scheme of Arrangement' framework and**

1.1.4. **'Board Permanency' at listed entities**.

1.2. The aforesaid issues and proposals are dealt as separate parts (Part A to D) in this consultation paper and the proposals shall be implemented by way of amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**").

PART – A: DISCLOSURE AND APPROVAL REQUIREMENTS FOR CERTAIN TYPES OF AGREEMENTS THAT BIND LISTED ENTITIES

2. Existing requirements for agreements binding listed entities:

2.1. The LODR Regulations require disclosure of material events or information to the Stock Exchanges by listed entities. In terms of regulation 30(6) read with clause 5 of para A of Part A of Schedule III of the LODR Regulations, agreements which are binding and not in the normal course of business have to be disclosed by a listed entity.

2.2. The aforesaid requirement includes disclosure of shareholder agreements, joint venture agreements, family settlement agreements (to the extent that it impacts management and control of the listed entity), agreements with media companies etc. Revisions or amendments and termination of such agreements too have to be disclosed.

2.3. Shareholder agreements are one of the common types of agreements entered into and disclosed by listed entities. A shareholder agreement (**SHA**) is an arrangement that regulates the relationship between the shareholders, the management of the company, ownership of the shares, rights, obligations, and protection of the shareholders. SHA may be entered into between shareholders (without the involvement of the company) or between the shareholder(s) and the company.

2.4. The rights, obligations, protection etc. enshrined in the SHA may be incorporated in the Articles of Association (**AoA**) of a company or may not form part of the AoA of a company. If

such aspects in the SHA are proposed to be included as part of the AoA of a company, it needs the approval of the shareholders of the company by way of a special resolution

3. Issues observed with respect to agreements binding listed entities

3.1. Disclosure of agreements: In terms of the existing provisions of the LODR Regulations, agreements binding listed entities and not in the normal course of business have to be disclosed as material information to the shareholders. Such agreements, whether entered by the listed entity or any of its promoters or shareholders, have to be disclosed. However, if the listed entity is not a party to an agreement, then an obligation must be placed on the parties entering into such agreements to disclose it to the company. This would enable the listed entity to disclose such agreements to the Stock Exchanges.

3.2. There have been instances wherein promoters have entered into binding agreements with third parties having an impact on the management or control of a listed entity or such agreements have placed certain restrictions on the listed entity, however, these facts were not disclosed to the listed entity and its shareholders. Non-disclosure of material information creates information asymmetry and results in significant market reaction when it is known to the public at large at a later stage.

3.3. While the term 'normal course of business' is intended to include agreements that are entered in connection with the business operations of a listed entity, any agreement that impacts management or control, whether or not entered into in the normal course of business operations, is a material information for the shareholders, hence needs to be disclosed to the public.

3.4. Apart from the above, there is a need to mandate disclosure of all agreements that intend to restrict or create any liability on a listed entity as it is a material information for the shareholders.

3.5. Therefore, to overcome the challenges posed by such agreements entered into by the promoters or controlling shareholders with third parties, with / without the knowledge or consent of the listed entity, there is a need to modify the existing provisions in the LODR Regulations for better clarity and adequate disclosures of such types of agreements.

3.6. Approval requirements: SHAs which are not part of the AoA but which bind and place restriction or create any liability on a listed entity are generally not placed before the shareholders for approval. Therefore, the shareholders may not have an opportunity to examine such agreements and express their approval / disapproval towards the said agreements.

3.7. There have been certain recent instances of promoters of listed entities entering into shareholder agreements with the listed entity and in turn with third parties that had placed certain restrictions on the listed entity. These restrictions, particularly when imposed without due process of approval by / within the listed entity, and with no benefit to the listed entity are not in the interest of the listed entity and its shareholders.

3.8. These agreements, apart from not being in the interest of the listed entity, restricted the ability of its shareholders to take decisions in the best interests of the company. Such actions on the part of the promoters were against the fundamental principles of corporate governance and shareholder democracy at listed entities.

3.9. Further, no person or an entity can create any liability or obligation on a third party without its explicit consent. Therefore, existing agreements that were entered without the consent of the listed entity and / or its shareholders (approval of shareholders), imposing restrictions on the listed entity were as good as having no effect on the listed entity. As a result, no restriction or liability would fall upon the listed entity unless and until ratified by the shareholders.

3.10. The aforesaid issues were discussed in the Primary Advisory Committee (PMAC) of SEBI. Based on the discussions and further internal deliberations, certain proposals to address the aforesaid issues are discussed in the subsequent paragraphs.

4. Proposals with respect to disclosure and approval requirements for certain types of agreements:

The proposals with respect to agreements to be entered in future is covered under paragraphs 4.1 to 4.5 and the proposals with respect to existing and subsisting agreements is covered under paragraph 4.6 of this consultation paper.

4.1. Disclosure of agreements under regulation 30 of the LODR Regulations: In order to cover disclosure of any agreement that impacts the management or control of a listed entity or imposes any restriction or creates any liability on a listed entity, it is proposed to introduce a new clause 5A in para A of part A of Schedule III of the LODR Regulations. Further, agreements whose purpose and effect is to impact the management or control or impose any restriction or create any liability also needs to be disclosed. However, agreements entered by a listed entity for the business operations of a company (eg. supply agreements, purchase agreements etc.) is proposed to be excluded from the scope of disclosures.

4.2. The proposed new clause 5A of para A of Part A of Schedule III of the LODR Regulations would read as given below:

"5A. (i) *Agreements which, either directly or indirectly or whose purpose and effect is to, impact the management or control of the listed entity or impose any restriction or create any liability upon listed entity shall be disclosed to the Stock Exchanges, whether or not the listed entity is a party to such agreements.*

Provided that revision(s) or amendment(s) and termination(s) of such agreements shall also be disclosed.

Provided further that only such agreements which are binding and entered into by the shareholders, promoters, promoter group, related parties, directors, key managerial personnel, any other officer of a listed entity or of its holding, subsidiary, associate company, solely or jointly with the listed entity or a third party shall be disclosed.

Provided further that agreements, other than those impacting the management or control of a listed entity, entered into by a listed entity in the normal course of business shall not be required to be disclosed.

(ii) Notwithstanding the above, agreements entered in the normal course of business shall be disclosed if they are required to be disclosed otherwise in terms of the provisions of these regulations."

4.3. Disclosures in the Annual Report of a listed entity:

From April 1, 2023, the details of the aforesaid agreements entered during the financial year shall be disclosed, in addition to disclosure requirements under regulation 30 read with Schedule III of the LODR Regulations, in the Annual Report of the listed entity (i.e., from FY 2023-24 onwards). This shall ensure availability of information about all such agreements at a single place for the shareholders and provides continuity of information to the shareholders.

4.4. Obligation to inform the listed entity:

If the listed entity is not party to any agreement specified at para 4.2 above, it shall be obligatory on the part of the shareholders, promoters, promoter group, related parties, directors, key managerial personnel or any other officer of a listed entity or of its holding, subsidiary, associate company who are parties to such agreements to inform the listed entity about such agreements within 2 working days from the date entering into such an agreement. The listed entity, in turn, shall disclose the said details to the Stock Exchanges within the timelines for disclosure of events specified in para A of Part A of Schedule III of the LODR Regulations.

4.5. Board's opinion and Shareholder approval:

After notification of the amendments to the LODR Regulations, if any future agreement, whether or not the listed entity is party to such an agreement but excluding agreements entered into the normal course of business by a listed entity, imposes or has the effect of imposing any restriction or liability on a listed entity, the Board of Directors shall provide its opinion, along with detailed rationale, as to whether such an agreement is in the economic interest of the listed entity. The directors of the listed entity in consonance with their obligations of fiduciary nature are duty bound to assess the agreement for ensuring that such an agreement is in the economic interest of the listed entity. Further, in order to provide an opportunity to the shareholders to evaluate the impact of such agreements, it is proposed that such agreements that have been entered or is proposed to be entered shall not be effective unless and until approved by the shareholders of the listed entity (approval through special resolution and 'majority of minority').

4.6. Existing and subsisting agreements, including whose purpose and effect is to impact management or control or impose any restriction or create any liability upon a listed entity:

4.6.1. Disclosure of existing and subsisting agreements: If there is any existing and subsisting agreement as specified in para 4.2 above, as on March 31, 2023, the same shall be disclosed to the Stock Exchanges, under regulation 30 of the LODR Regulations, on or before June 30, 2023. Further, details of all such agreements shall also be disclosed in the Annual Report of the listed entity for FY 2022-23.

4.6.2. Obligation to inform the listed entity: If the listed entity is not party to any existing and subsisting agreement specified at para 4.2 above, it shall be obligatory on the part of the shareholders, promoters, promoter group, related parties, directors, key managerial personnel or any other officer of a listed entity or of its holding, subsidiary, associate company, who are parties to such agreements, to inform the listed entity about such agreements on or before May 31, 2023.

4.6.3. Board's opinion and ratification of existing and subsisting agreements: If the listed entity is not a party to any existing and subsisting agreement imposing or having the effect of imposing any restriction or liability on a listed entity, the same shall be placed before the Board of Directors for consideration. The Board of Directors shall provide its opinion along with detailed rationale as to whether such an agreement is in the economic interest of the listed entity. All such existing and subsisting agreements have to be placed before the shareholders in the first general meeting (AGM or EGM) of the listed entity held after April 1, 2023, for ratification and the future obligations arising out of such agreements shall be contingent upon ratification by the shareholders.

5. Public comments: Comments are invited from public on the proposals mentioned at para 4 above. Further, comments are invited on the following specific issues:

a) *Should there be a requirement to disclose all agreements, including existing and subsisting agreements, that impact management or control of the listed entity or impose any restriction or create any liability on a listed entity?*
b) *Do you agree with the proposed clause 5A to para A of Part A of Schedule III of the LODR Regulations? Do you have any specific comments / suggestions?*
c) *Should there be a requirement to disclose specific types of binding agreements entered by the listed entity in the normal course of business? If yes, please specify the types of agreements that need to be disclosed.*
d) *Should there be a requirement of shareholder approval for agreements that impose or have the effect of imposing any restriction or liability on a listed entity?*
e) *Should the existing and subsisting agreements that impose or have the effect of imposing restriction or liability on a listed entity be subject to ratification by the shareholders in case the listed entity is not a party to it?*
f) *Should the approval / ratification of shareholders be by way of 'Special Resolution and Majority of Minority'?*
g) *In the alternative to 5(f) above, should the approval / ratification of shareholders be by way of Special Resolution in which those shareholders and their relatives / associates who had entered into such agreements are not eligible to vote on such resolutions.*

PART – B: REVIEW OF SPECIAL RIGHTS CONFERRED TO CERTAIN SHAREHOLDERS AS PER THE AoA OF A LISTED ENTITY

6. Special rights to certain shareholders:

6.1. **Background**:

6.1.1. Generally, to attract investments in a company prior to listing, special rights are offered by the company to its pre-IPO investors and the promoters. These special rights are included in the SHAs executed between the company and the pre-IPO investors / promoters.

6.1.2. The range of these special rights varies across companies and depends on the specific requirement of the investor(s). Some of the common types of special rights are Nomination Rights, Veto Rights / Affirmative voting, Information Rights, Anti-Dilution Rights, Right of First Refusal, Tag Along Rights, Divestment Rights, etc.

6.1.3. In terms of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations**"), an issuer is required to provide a statement that the shares allotted in the public issue are equal in all respects, including dividends, with the existing shares issued by the company prior to the public issue, excluding SR (Superior Rights) equity shares. The underlying principle is that the shares issued in the Initial Public Offer (IPO) shall rank equally with the existing shares and any right which is not available to other shareholders is not be permitted to survive after listing.

6.1.4. In view of the above, for a company coming up with an IPO, all the existing SHAs are cancelled or modified to the extent that special rights available to certain shareholders, except nominee / nomination rights and information rights, are terminated before listing.

6.2. **Need for periodic approval for the special rights granted to certain shareholders**

6.2.1. As per the principles specified in regulation 4 of the LODR Regulations, every listed entity shall ensure equitable treatment of all shareholders, including minority and foreign shareholders.

6.2.2. However, if any shareholder enjoys special rights and privileges, the same should have been agreed upon by all the other shareholders of a company. Further, such rights and privileges must be in proportion to one's holding in the company.

6.2.3. Once a public company gets listed, the special rights available to shareholders are put up for approval of the shareholders in the first general meeting, post-listing. On a review of the voting pattern of public shareholders and the commentaries available in public domain around such special rights seen in certain recently listed companies, especially the new-age tech companies, it is observed that public institutional shareholders are increasingly voicing their concerns against special rights being conferred upon the promoters / founders / certain body corporates of those companies.

6.2.4. It is also observed that the SHAs are drafted in such a way that those special rights (nomination rights) would continue to be available even after significant dilution of their holding in those entities. This permits the shareholders to enjoy such special rights perpetually, which is against the principle of rights being proportional to one's holding in a company.

6.2.5. It may be noted that even superior voting rights granted to promoters / founders have a sunset clause as per the provisions of the LODR Regulations.

6.2.6. The aforesaid issue and the proposal was discussed in the PMAC meeting of SEBI.

6.2.7. Proposal: Therefore, in order to address the issue of certain shareholders enjoying special rights perpetually, it is proposed that any special right (existing / proposed) granted to a shareholder of a listed entity shall be subject to shareholder approval once in every 5 years from the date of grant of such special rights. Further, the existing special rights available to shareholders shall be renewed within a period of 5 years from the date of notification of the amendments to the LODR Regulations.

6.3. **Public comments:**

6.3.1. Comments are invited from public on the following questions:

a) *Should there be periodic shareholder approval for any special rights (existing / proposed) granted to shareholders?*

b) *Do you agree with the proposal that such special rights should be subject to shareholder approval once in every 5 years?*

c) *Should the special rights, if any, granted to a public financial institution be subject to shareholder approval once in every 5 years, as proposed above?*

Part C – Sale, disposal or lease of assets of a listed entity outside the 'Scheme of Arrangement' framework

7. Background

7.1. Section 180(1) of the Companies Act, 2013 ("**Companies Act**") imposes certain restrictions on the powers of the Board which can only be exercised with the consent of the shareholders by a special resolution. One of the restrictions (under 180(1)(a) of the Companies Act) is '*to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings*', only with prior approval of shareholders through a special resolution.

7.2. Presently, such sale, disposal or lease happens either through Scheme of Arrangement (as prescribed in the Companies Act and / or the LODR Regulations and the circulars issued by SEBI) or outside the Scheme of Arrangement framework, generally referred to as Business Transfer Agreement.

7.3. Scheme of Arrangement:

7.3.1. Merger and Amalgamation of companies are governed in accordance with Chapter XV of the Companies Act and are subject to National Company Law Tribunal ("**NCLT**") approval.

7.3.2. The LODR Regulations specifies obligations under Regulations 11, 37 and 94 with respect to scheme of arrangement on listed entities and stock exchanges.

7.3.3. Regulation 11 of LODR Regulations, inter-alia, ensures that any scheme of arrangement / amalgamation / merger / reconstruction / reduction of capital etc. intended to be presented to any Court or Tribunal for approval does not in any way violate, override or limit the provisions of securities laws or requirements of the Stock Exchanges. Regulation 37 of LODR Regulations provides that the listed entities desirous of undertaking scheme of arrangement or involved in a scheme of arrangement shall file the draft scheme with Stock Exchange(s) for obtaining Observation Letter or No-objection Letter, before filing such scheme with any court or Tribunal. Regulation 94 of LODR Regulations requires Stock Exchanges to forward such draft schemes to SEBI in the manner prescribed by SEBI.

7.3.4. The objective of prior examination of scheme of arrangements by SEBI before filing with NCLT is that SEBI can ensure that rights of the minority shareholders are protected.

7.3.5. SEBI, from time to time, has also issued various circulars/instructions which lay down the detailed requirements to be complied by listed entities while undertaking scheme of arrangements.

7.3.6. One of the safeguards provided in case of slump sale through scheme of arrangements is requirement of taking 'majority of minority' approval from public shareholders. The extract of the provision mentioned in SEBI circular dated November 23, 2021 on 'Master circular on (i) Scheme of Arrangement by listed entities and (ii) relaxation under sub-rule (7) of rule 19 of SCRR 1957' is reproduced below-

"10. Approval of Shareholders to Scheme through e-Voting:

a) …

b) The Scheme of arrangement shall be acted upon only if the votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it, in the following cases:

i. Where additional shares have been allotted to Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group of the listed entity,or

ii. Where the Scheme of Arrangement involves the listed entity and any other entity involving Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group.

iii. Where the parent listed entity has acquired, either directly or indirectly, the equity shares of the subsidiary from any of the shareholders of the subsidiary who may be Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group of the parent listed entity, and if that subsidiary is being merged with the parent listed entity under the Scheme.

iv. Where the scheme involving merger of an unlisted entity results in reduction in the voting share of pre-scheme public shareholders of listed entity in the transferee / resulting company by more than 5% of the total capital of the merged entity;

v. where the scheme involves transfer of whole or substantially the whole of the undertaking of the listed entity and the consideration for such transfer is not in the form of listed equity shares;

For the purpose of this clause, the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent or more of value of the company in terms of consolidated net worth or consolidated total income during previous financial year as specified in Section 180(1)(a)(ii) of the Companies Act.

7.4. Outside the Scheme of Arrangement Framework:

7.4.1. The sale, disposal or lease of the entire undertaking or substantial of the undertaking may also be executed outside the scheme of arrangement framework without being approved by NCLT.

7.4.2. However, presently there is no explicit framework for protecting the interest of minority shareholders which in effect results in sale of the business undertaking without taking such shareholders into confidence.

8. Proposals and public comments

8.1. In order to strengthen the extant framework of slump sale executed outside the scheme of arrangement framework to safeguard the interest of minority shareholders and to align with the requirement, as applicable, under scheme of arrangement, the following proposals are made:

8.1.1. Introducing provisions in LODR Regulations for sale, disposal or lease of whole or substantially the whole of the undertaking of the listed company or where the company owns more than one undertaking, of the whole or substantially the whole of any one or more of such undertakings;

8.1.2. Mandating disclosure of the objects and commercial rationale for such sale, disposal or lease, to the shareholders;

8.1.3. Such sale, disposal or lease of whole or substantially the whole of the undertaking, of the listed company or where the listed company owns more than one undertaking, of the whole or substantially the whole of any of one or more such undertakings can be acted upon only if the votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it. This shall be in addition to the requirement to pass a Special Resolution as provided in the Companies Act.

8.2. **Public comments**: Comments are invited from the public on the following issues:

8.2.1. Should new provisions, as proposed above, be introduced in LODR Regulations to safeguard the interests of minority shareholders in case of sale, disposal or lease of whole or substantially the whole of the undertaking of the listed company or where the company owns more than one undertaking, of the whole or substantially the whole of any one or more of such undertakings?

8.2.2. If yes, do you agree with the proposal of mandating disclosure of objects and commercial rationale for such sale, disposal or lease, to the shareholders?

8.2.3. Do you agree with the proposal of obtaining ‘majority of minority’, in addition to special resolution, for such sale, disposal or lease of an undertaking?

PART – D: ADDRESSING THE ISSUE OF BOARD PERMANENCY IN LISTED ENTITIES

9. Addressing the issue of Board Permanency

9.1. **Background**:

9.1.1. Recently, the issue of few promoters of listed entities enjoying permanency on the board thereby giving them an undue advantage, prejudicial to the interest of the public shareholders, was highlighted in the media. It was stated in the media report that "*A permanent seat on the company's board can be detrimental to investor interest. When the companies' performance deteriorates, promoters hang on to their seats making it harder for investors to effect management change, and arrest value destruction*…."

9.1.2. Other instances of promoter-directors continuing on the board even after substantial dilution of their stake and after ceding the control of the company, were also reported in the media.

9.1.3. Permanent seat on a board is generally secured through two ways viz., (i) by having a clause inserted in the Articles of Association (AoA) of a company enabling appointment of a permanent director, and / or (ii) by getting appointed on the board as a director not liable to 'retirement by rotation' and without any defined tenure.

9.1.4. The Companies Acthas certain provisions (discussed below) relating to mandatory retirement of a specific percentage of directors every year through rotation. The rationale behind having the concept of 'retirement by rotation' is to limit the service lengths of board members and have them vacate their positions at the Annual General Meeting (AGM), unless such directors are proposed for re-appointment in the AGM. Therefore, this provision relating to 'retirement by rotation' and subsequent re-appointment only with shareholders' approval, gives an opportunity to the shareholders to evaluate the performance of such directors and thereafter vote either in favour of or against their re-appointment.

9.1.5. Section 152(6) of the Companies Act states that, unless the AoA provides for retirement of all directors at every AGM, at least 2/3rd of the total number of directors shall be persons whose period of office is liable to determination by 'retirement by rotation' and out of the said 2/3rd, at least 1/3rd of directors shall retire from office every year through rotation.

9.1.6. It thus becomes clear that not all directors serving on the board of a listed entity are subject to 'retirement by rotation', and there can be a director on the board of a company, who will not be liable to 'retirement by rotation' or subject to shareholders' approval after his / her initial appointment.

9.2. **Tenure prescribed for different categories of directors and the requirement to obtain shareholders' approval for re-appointment**:

9.2.1. Directors serving on the board of a listed entity can be classified into two categories viz., Executive and Non-Executive.

9.2.2. Executive Directors i.e., a Whole-time Director (WTD) or a Managing Director (MD) appointed in terms of section 196, 197 and other applicable provisions of the Companies Act have a fixed tenure specified at the time of appointment. Therefore, after completion of the tenure (maximum of 5 years), such a person can be re-appointed to the board subject to the approval of shareholders of the company. Further, such directors may also be subject to 'retirement by rotation' as determined by the company at the time of appointment or re-appointment.

9.2.3. Non-Executive directors are generally classified into two categories viz., Independent Directors (IDs) and other than Independent Directors (directors who hold a non-executive position and do not fulfil the criteria of independence specified in regulation 16(1)(b) of the LODR Regulations).

9.2.4. Though the concept of 'retirement by rotation' does not apply to Independent Directors, the tenure of such directors on the board is fixed (a term of maximum 5 years) and there is a mandatory requirement of shareholders' approval for their re-appointment.

9.2.5. However, there is a possibility that those directors who are non-executive directors (NEDs), other than independent directors, may be appointed to the board of a company as a director not liable to 'retirement by rotation' and without any defined tenure. Therefore, such non-independent NEDs would not be subject to periodic shareholders' approval, unlike other categories of directors.

9.2.6. A combined reading of the provisions of the Companies Act and the extant practices being followed by companies leads to the following conclusion on appointment of directors:

a) Not all directors serving on the board of listed entity may be subject to 'retirement by rotation'.
b) There may be some directors who are appointed to the board of a listed entity without a defined tenure and not liable to 'retirement by rotation'.
c) In addition to the above, by virtue of the provisions of the AoA of a company, a person can be appointed as a director on a "permanent- basis". Such director, so appointed on the basis of the provisions of AoA, serves as a "permanent-director" on the board of the company.

9.2.7. Consequently, the shareholders of listed entities do not get an opportunity to evaluate the performance of such directors appointed in the aforesaid manner. This allows them to serve on the board of a listed entity as long as they desire, thereby enjoying "board

permanency", disregarding the intent of shareholders on continuation of such directors on the board of a listed entity.

9.3. **Need for introducing periodic shareholders' approval requirement for all categories of directors of a listed entity**.

9.3.1. In the interest of good corporate governance at listed entities, all directors appointed to the board of a listed entity need to go through periodic shareholders' approval process, thereby providing legitimacy to the director to continue to serve on the board. This shall substantially address the concerns around grant of board permanency by listed entities to certain selected persons (mostly promoter-directors or related persons) by invoking the rights conferred on it by the AoA of a company or by virtue of such persons being appointed as directors deliberately making them not liable to 'retirement by rotation' and without a defined tenure.

9.3.2. Therefore, on the similar lines being followed in the appointment / re-appointment of MD / WTD and IDs, it is necessary that the directorship of any individual serving on the board of a listed entity should be subject to periodic shareholders' approval at least once in every five years from the date of his / her first appointment to the board.

9.3.3. The aforesaid issue and the proposals were discussed in the PMAC of SEBI.

9.3.4. **Proposal**: Keeping in view the need for a glide-path for compliance, it is proposed to implement the following measures:

a) As on March 31, 2024, if there is any director serving on the board of a listed entity without his / her appointment or re-appointment being subject to shareholders' approval during the last 5 years i.e., from April 1, 2019, the listed entity shall take shareholders' approval in the first general meeting to be held after April 1, 2024, for his / her continuation on the board of the listed entity.

b) From April 1, 2024, subject to the other applicable provisions of law, the listed entity shall ensure that the directorship of all directors serving on the board or appointed to the board is put up to shareholders for approval at least once in every 5 years.

The aforesaid provisions would not be applicable to those cases where the director is appointed pursuant to the orders of a Court or a Tribunal.

9.4. **Public comments**:

9.4.1. Comments are sought from the public on the following issues:

a) *Should there be a requirement of periodic shareholders' approval for all categories of shareholders serving on the board of a listed entity?*

b) *If yes, do you agree with the proposals mentioned at para 9.3.4 above?*

10. Submission of public comments:

10.1. Considering the implications of the aforesaid proposals on listed entities and other stakeholders, comments are invited from the public on the questions posed at paras 5, 6.3, 8.2 and 9.4 above.

10.2. Comments may be sent by email to consultationcfd@sebi.gov.in no later than **March 07, 2023.** While sending the email, kindly mention the subject as "**Consultation paper on strengthening corporate governance at listed entities by empowering shareholders – Amendments to the SEBI (LODR) Regulations, 2015**".

10.3. The comments should be sent by email in MS Excel file in the following format only: link to download the format

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