



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

Consultation Paper

REVIEW OF VOLUNTARY DELISTING NORMS
UNDER SEBI (DELISTING OF EQUITY SHARES)
REGULATIONS, 2021

AUGUST 14, 2023



OBJECTIVE

1. The objective of this consultation paper is seek comments / views / suggestions from the public on the certain aspects relating to voluntary delisting under SEBI (Delisting of Equity Shares) Regulations, 2021 (*hereinafter referred to as “Delisting Regulations”*).

BACKGROUND

2. Delisting Regulations, *inter-alia*, provide exit opportunity to be provided by the acquirer¹ to all the public shareholders in case the equity shares of the company are sought to be delisted from all the recognised stock exchanges in which they are listed.
3. This exit opportunity is determined at the price arrived when the cumulative shareholding of the acquirer along with the shares tendered/offered by the public shareholders reaches 90% of the total issued shares (“**Discovered Price**”) under Reverse Book Building (*hereinafter referred to as “RBB”*) mechanism.
4. In case the discovered price is acceptable to the acquirer, the acquirer shall be required to accept all the equity shares so tendered by the public shareholders up to such discovered price.
5. However, in case, the discovered price is not acceptable to the acquirer, the acquirer has an option of either making a counter offer or reject the such discovered price.

CONSTITUTION OF THE SUB-GROUP

6. Over the last few years, SEBI has been receiving several suggestions and representations from market participants, industry representatives, various stakeholders etc. suggesting review of the delisting norms including review of reverse book building process, providing an alternative mechanism to reverse book building process, etc.

¹ Acquirer includes a person- (i) who decides to make an offer for delisting of equity shares of the company along with the persons acting in concert in accordance with regulation 5A of the Takeover Regulations as amended from time to time; or (ii) who is the promoter or part of the promoter group along with the persons acting in concert.



7. As a part of SEBI's constant endeavour to align regulatory requirements with the changing market realities as well as to enhance efficiency of the delisting mechanism, a need is felt for a comprehensive review of the aforesaid issues.
8. Accordingly, a sub-group under the chairmanship of Shri Keki Mistry and comprising of the members from Primary Market Advisory Committee (*hereinafter referred to as "PMAC"*) was constituted to provide its detailed recommendations to make delisting of companies a more rational and convenient exercise, balancing the interests of all stakeholders, including investors / shareholders / promoters / acquirers in the process.
9. The sub-group after comprehensive deliberations submitted its report to PMAC on August 08, 2023 setting out various policy recommendations. Subsequently, the report was also placed for consideration before PMAC, wherein PMAC agreed with the recommendations. The sub-group report is appended at **Annexure-A**.

PROPOSALS

10. The PMAC, based on its deliberations, has made its recommendations on the following subject matter-
 - 10.1. Alternatives to the Reverse Book Building process viz.:
 - 10.1.1. Fixed Price Delisting;
 - 10.1.2. Delisting of Investment Holding Companies.
 - 10.2. Counter-Offer framework;
 - 10.3. Determination of "Floor Price" under Delisting Regulations;
 - 10.4. Review of the Reference Date for determination of the Floor Price;

PUBLIC COMMENTS

11. Public Comments are solicited on the recommendations made by PMAC contained in its report.
12. Comments may be sent by email to consultationcfid@sebi.gov.in no later than September 04, 2023. While sending the email, kindly mandatorily mention the subject as "**Comments on the consultation paper on Review of SEBI (Delisting of Equity Shares) Regulations, 2021**"
13. The comments should be sent by Email in MS EXCEL file only in the format prescribed as under:
https://www.sebi.gov.in/sebi_data/commondocs/aug-2023/Comments_sought_format_p.xlsx

**REPORT OF THE SUB-GROUP ON THE SECURITIES AND
EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY
SHARES) REGULATIONS, 2021**

August 8, 2023



**भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India**

Contents

Chapter 1: Introduction..... 1

Chapter 2: Voluntary Delisting – Review of the Reverse Book Building Process and Counter-Offer Mechanism..... 3

Chapter 3: Delisting of Investment Holding Companies 10

Annexure A..... 13

Annexure B..... 14

Annexure C 15

Chapter 1: Introduction

I. Composition of the Sub-Group

The sub-group of the primary markets advisory committee (“**PMAC**”) of the Securities and Exchange Board of India (“**SEBI**”) was constituted on December 18, 2022 to review certain provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 (“**Delisting Regulations**”).

The sub-group comprised the following members:

S. No.	Member Name	Organization and Designation	Capacity
1.	Shri Keki Mistry	Vice Chairman & CEO, HDFC	Chairman
2.	Shri J.N. Gupta	Co-Founder & Managing Director, Stakeholders Empowerment Services	Member
3.	Shri Sandip Bhagat	Partner, S&R Associates	Member
4.	Shri Ajay Saraf	Executive Director, ICICI Securities	Member
5.	Shri Manoj Dengla	Partner, Arpwood Partners	Member
6.	Shri Vishal Kampani	Co-Chairman, CII National Committee on Financial Markets	Member
7.	Shri Pravin Dwivedi	President, Awoke India Foundation	Member
8.	Shri Jeevan Sonparote	Chief General Manager, SEBI	Member (Ex-officio)
	Ms. Yogita Jadhav (w.e.f. May 18, 2023)	General Manager, SEBI	

II. Terms of Reference of the Sub-Group

The sub-group has been constituted to review certain aspects of the Delisting Regulations including:

- (i) reviewing the counter-offer mechanism under the reverse book building process;
- (ii) reviewing the definition of “floor price” under the Delisting Regulations;
- (iii) propose alternatives to the reverse book building process; and
- (iv) reviewing the reference date for calculation of the “floor price” under the Delisting Regulations.

III. Approach

The sub-group had five meetings over a period of eight months with the first meeting held on December 22, 2022 and the last meeting held on August 7, 2023. The sub-group deliberated the matters set out in the terms of reference above.

The sub-group also sought and has relied on the feedback of various stakeholders. The feedback of merchant bankers that acted as mangers to delisting offers was also sought.

This report sets out the recommendations of the sub-group to the SEBI, in connection with proposed amendments to the Delisting Regulations.

The recommendations of the sub-group are set out in the following manner:

- Chapter 2: Voluntary Delisting – Review of the Reverse Book Building Process and Counter-Offer Mechanism
- Chapter 3: Delisting of Investment Holding Companies

IV. Acknowledgements

The Committee expresses its gratitude to Mr. Vimal Bhattar, Deputy General Manager, Mr. Ankur Bishnoi, Assistant General Manager, Mr. Abhijeet Srivastava, Manager and Mr. Roshan Lal Meena, Assistant Manager from the SEBI.

Special thanks are due to Mr. Prem Dcunha from ICICI Securities Limited and Mr. Arjun Mehra from JM Financial Limited for providing their valuable input.

Special thanks are also due to Mr. Swapneil Akut, Mr. Siddharth Urs and Ms. Oshika Nayak from S&R Associates for assistance with the report.

Chapter 2: Voluntary Delisting – Review of the Reverse Book Building Process

This chapter of the report sets out the recommendations of the sub-group in connection with the reverse book building process under the Delisting Regulations.

The recommendations of the sub-group relate to (a) review of the counter-offer mechanism; (b) alternatives to the reverse book building mechanism; (c) the manner of determination of the floor price; and (d) review of the reference date for calculation of the floor price.

A. Review of the Counter-Offer Mechanism

I. Current Position:

An acquirer (*i.e.*, the promoter or the promoter group, along with persons acting in concert) that intends to make an offer to delist the equity shares of a company from all recognized stock exchanges is required to provide an exit opportunity to all public shareholders in accordance with Chapter IV of the Delisting Regulations. Currently, this exit opportunity is required to be provided by the acquirer at a price that is discovered through the reverse book building process.

The reverse book building process is set out below:

- (a) A floor price, calculated in accordance with the Delisting Regulations, is disclosed.¹ The acquirer can also provide an indicative price that is higher than the floor price.
- (b) The public shareholders are required to tender their shares through the stock exchange mechanism. The bidding period remains open for five working days.
- (c) In case the post-offer shareholding of the acquirer, along with the shares tendered/offered by the public shareholders does not reach 90%,² the delisting offer is considered to have failed.
- (d) However, if the post-offer shareholding of the acquirer along with the shares tendered/offered by the public shareholders reaches 90%, the discovered price shall be determined. The discovered price shall be the price at which shares are accepted through eligible bids, that takes the shareholding of the acquirer, along with the persons acting in concert, to 90% of the total issued shares of the company. If the discovered price is accepted by the acquirer, the delisting offer shall be deemed to be successful.
- (e) If such discovered price is not accepted by the acquirer, the acquirer has an option to make a counter-offer. The price at which the counter-offer is made shall not be less than the book value of the company (as certified by the manager to the delisting offer).
- (f) Once a counter-offer is made, the public shareholders are given the opportunity to tender their shares at the counter-offer price through the stock exchange mechanism. The delisting offer is successful if the post counter-offer shareholding of the acquirer, along with the shares tendered/offered by the public shareholders, at the counter-offer price reaches 90% of the total issued shares of the company.

¹ Regulation 2(1)(m) of the SEBI (Delisting of Equity Shares) Regulations, 2021 defines “floor price” to mean “*the minimum price offered by the acquirer, computed in accordance with regulation 8 of the Takeover Regulations as amended from time to time, while making the proposal for voluntarily delisting of the equity shares of the company*”.

² Excluding shares held by certain types of shareholders referred to in sub-clauses (i), (ii) & (iii) of clause (a) of Regulation 21 of SEBI (Delisting of Equity Shares) Regulations, 2021.

II. Sub-Group's Deliberation:

The sub-group deliberated the need to review the current threshold for an acquirer to make a counter-offer under the Delisting Regulations. The Delisting Regulations permit an acquirer to make a counter-offer only if, upon completion of the reverse book building process, the aggregate post-offer shareholding of the acquirer along with the shares tendered by the public shareholders reaches 90% of the total issued shares of the company.

However, in case the aggregate post-offer shareholding of the acquirer along with the shares tendered by the public shareholders does not reach 90% of the total issued shares of the company, the current provisions do not permit acquirer to make a counter-offer. This may lead to a scenario where majority of the public shareholders have tendered their shares and are in favour of delisting, but the delisting offer fails since the required thresholds are not met. In such cases, the acquirer does not have the option to make a counter-offer to the public shareholders. Further, the acquirer will be required to wait for a period of six months to make another delisting offer.

Considering the above constraints present in the current framework, the sub-group proposed to lower the threshold required to make counter-offer. A lower counter-offer threshold would give an acquirer the opportunity to make a counter-offer that could potentially be accepted based on bids received by public shareholders. This could help ensure successful delisting offers where majority of the public shareholders are in favor of a delisting offer.

Further, the sub-group also discussed the absence of any guiding factors in determining the counter-offer price. The sub-group proposed determination of the counter-offer price based on the volume weighted average of the bids received through the reverse book building process. This approach would reflect the general expectation of the public shareholders that had tendered their shares in the reverse book building process and help the acquirer make a meaningful counter-offer that may be accepted.

III. Proposed Counter-Offer Framework:

Based on the discussions of the sub-group, the following mechanism for making a counter-offer has been proposed:

1. Eligibility Criteria:

If the discovered price is not accepted by the acquirer or if the cumulative post-offer shareholding of acquirer fails to reach 90%, the acquirer will have the option to make a counter-offer if the bids received are higher of:

- (a) the difference between the acquirer's shareholding and 75% of the total issued shares of the company; and
- (b) 50% of the public shareholding.

An illustration of the revised counter-offer threshold is set out below:

S. No.	Parameter	Scenario				
		1	2	3	4	5
1	Acquirer Shareholding (i.e., Promoter's Shareholding) (A)	25%	35%	52%	68%	74%
2	Public Shareholding (B)	75%	65%	48%	32%	26%
(i)	Difference between the Promoter's Shareholding and 75% [75%-(A)]	50%	40%	23%	7%	1%
(ii)	50% of Public Shareholding [50% of (B)]	37.5%	32.5%	24%	16%	13%
	Higher of (i) and (ii)	50%	40%	24%	16%	13%

2. Determination of Counter-Offer Price:

- (a) If the acquirer chooses to make a counter-offer, the counter-offer price will be required to be the higher of:
- (i) volume weighted average price (“**VWAP**”) of the shares tendered/offered in the reverse book building process; and
 - (ii) the initial floor price disclosed and calculated for the reverse book building process, in accordance with the Delisting Regulations.

It is clarified that if cumulative shareholding of the acquirer, along with the shares tendered/offered by the public shareholders, is less than 90%, VWAP shall be calculated taking into account all the shares tendered/offered and if cumulative shareholding is equal to or higher than 90%, VWAP shall be calculated taking into account the shares tendered/offered up to 90%.

To help the public shareholders make an informed decision, the VWAP of the shares tendered/offered in the reverse book building process will be calculated as per 2(a)(i) above and announced within two hours of the close of the bidding period.

The acquirer may choose to offer a price that is higher than the price derived through 2(a)(i) and 2(a)(ii) above.

- (b) Accordingly, the acquirer may choose to proceed to make a counter-offer or accept the discovered price through the reverse book building process or abandon the delisting offer altogether.
- (c) If the acquirer chooses to proceed to make a counter-offer, the counter-offer is required to be made at a price determined in accordance with (a) above. Once such counter-offer is made, public shareholders will be given an opportunity to tender their shares at the counter-offer price through the stock exchange mechanism. All public shareholders (and not just the shareholders that participated in the initial reverse book building process) will be given the opportunity to tender their shares at the counter-offer price. This bidding period will also remain open for five working days.
- (d) The delisting offer shall be successful if the aggregate post-offer shareholding of the acquirer, along with the shares tendered/offered by the public shareholders at the counter-offer price, reaches 90% of the total issued shares of the company.

The above process will provide the acquirer with an opportunity to make a meaningful counter-offer based on interest received from a large portion of the shareholders of the company.

B. Review of “Floor Price” under the Delisting Regulations

I. Current Position:

The term “floor price” under the Delisting Regulations is the minimum price required to be offered by the acquirer calculated in accordance with Regulation 8 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as amended (“**Takeover Regulations**”).

The definition of floor price under the Takeover Regulations was drafted in the context of open offers where companies will continue to remain listed. The sub-group discussed the need to define “floor price” separately for delisting offers under the Delisting Regulations. Revised parameters were proposed to ensure that the floor price accurately reflects the value of the equity shares of a company.

II. Proposal of the Sub-Group:

The sub-group proposed certain relevant provisions based on Regulation 8 of the Takeover Regulations for determination of the floor price for delisting offers under Delisting Regulations.

Further, the sub-group also proposed an additional parameter for determination of the floor price to safeguard the interest of the shareholders i.e., "Adjusted Book Value". It was reasoned that in case of a delisting offer, since the company does not continue to remain listed, it would be appropriate to take the fair market value of the assets of the company into consideration while determining the floor price.

Frequently Traded Shares

In case of *Frequently Traded Shares*³, the floor price will be the highest of:

- (a) volume weighted average price paid or payable for acquisitions, by the acquirer, along with persons acting in concert, during the 52 weeks immediately preceding the reference date;
- (b) the highest price paid or payable for any acquisition, by the acquirer, along with persons acting in concert, during the 26 weeks immediately preceding the reference date;
- (c) the volume weighted average market price for a period of 60 trading days immediately preceding the reference date, on the stock exchange where the maximum trading volume of the equity shares is recorded; and
- (d) adjusted book value (considering consolidated financials) as determined by an independent registered valuer.

Infrequently Traded Shares

In case of not frequently traded shares, the floor price will be the highest of:

- (a) volume weighted average price paid or payable for acquisitions, by the acquirer, along with persons acting in concert, during the 52 weeks immediately preceding the reference date;
- (b) the highest price paid or payable for any acquisition, by the acquirer, along with persons acting in concert, during the 26 weeks immediately preceding the reference date;
- (c) price determined by an independent registered valuer, taking into account valuation parameters such as the book value, comparable trading multiples, and any other customary valuation metrics for valuation of shares of companies in the same industry; and
- (d) adjusted book value (considering consolidated financials) as determined by an independent registered valuer.

The definition of adjusted book value is as under-

The adjusted book-value of the company shall mean: **A+B+C+D – L**, where,

A = Book value of all the assets (other than jewellery, artistic work, shares & securities and immovable property) in the balance sheet as reduced by any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

³ Regulation 2(1)(j) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 defines "frequently traded shares" to mean "shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is required to be made under these regulations, is at least ten per cent of the total number of shares of such class of the target company:

Provided that where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares."

B = Price which jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of unquoted/infrequently trade shares and securities as determined considering the internationally accepted valuation methods by the registered valuer. If the shares and securities are quoted and frequently traded on any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange as on the valuation date;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property. In case immovable property is located outside India, market value of the property shall be determined by the independent registered valuer;

L= book value of liabilities shown in the balance sheet, but not including the following amounts, namely :—

- i. the paid-up capital in respect of equity shares;
- ii. the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
- iii. reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
- iv. any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- v. any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

C. Alternatives to the Reverse Book Building Process

I. Current Position:

The Delisting Regulations in case of a voluntary delisting provide for the reverse book building process for discovery of the price at which the exit opportunity is to be provided to all the public shareholders except in the case of delisting of equity shares of a small companies and delisting of equity shares of a subsidiary company pursuant to scheme of arrangement in accordance with Chapter VI of the Delisting Regulations.

The sub-group observed that the announcement for delisting of the equity shares of a company usually results in increased volatility and increased speculative activities in the scrip of such company. One reason could be the fact that the delisting price is not known as such price is determined through reverse book building process. Further, representations were received from various stakeholders for the introduction of an alternative to the reverse book building process. It was also noted that SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended, provides two alternatives to the issuer for listing of its equity shares i.e., by way of the fixed price route or the book-built route.

In view of the above, the sub-group considered providing certain alternatives to the reverse book building process, including an option to the acquirer to delist equity shares of the company at a fixed price.

Further, it was also discussed that the fixed price route will give acquirers and the shareholders certainty with respect to pricing of the delisting offer. This would help shareholders decide upfront whether to participate in delisting process or not at the given price. This could also benefit an acquirer in arranging funds for such delisting offers as the price at which the exit offer will be made is known well in advance. It was also deliberated that by providing fixed price for delisting, the speculation that emerges pursuant to the announcement of delisting may be minimized.

II. Proposal of the Sub-Group:

The sub-group discussed providing an acquirer with the option of providing an exit opportunity to all public shareholders at a fixed price under certain scenarios. The sub-group noted that Delisting Regulations provide adequate safeguards to the public shareholders with respect to delisting offers. This is apparent from the fact that a proposal for delisting requires approval of the shareholders through a special resolution and the special resolution can be acted upon only if the votes cast by public shareholders in favor of the proposal are at least two times the votes cast against the proposal. Further, the public shareholders have the right to not offer their shares during the tendering period.

It was proposed that such delisting mechanism would be permitted only for those companies whose shares are frequently traded as defined under the Takeover Code.⁴

Further, such delisting offer would be subject to the following conditions:

- (a) the fixed price offered by the acquirer shall not be lower than the floor price as determined under the Delisting Regulations; and
- (b) the delisting offer shall be successful if the post-offer shareholding of the acquirer along with the shares tendered by the public shareholders, at the price offered by the acquirer, reaches 90% of the total issued shares of the company.

After the six-month cooling-off period as presently provided under the Delisting Regulations, any subsequent delisting attempt can be made either through the fixed-price route or pursuant to the reverse book building process.

Other provisions of the Chapter IV of the Delisting Regulations relating to, *inter alia*, opening of the escrow account, issuance of a detailed public announcement, filing of a letter of offer and regulations relating to the payment upon success of the offer would continue to apply in respect of delisting offers at a fixed price.

D. Review of the Reference Date for Determination of the Floor Price

I. Current Position

The Delisting Regulations provide for a minimum acquisition price in the delisting offer *i.e.*, the “floor price”. The floor price is calculated as of a reference date. Currently, in terms of the Delisting Regulations, the reference date to calculate the floor price is the date on which the stock exchanges are required to be notified of the board meeting in which the delisting proposal was considered and approved.

II. Sub-Group’s Deliberation:

The sub-group noted that the Regulation 8(1) of Delisting Regulations requires the acquirer to make an initial public announcement to all stock exchanges on which the shares of the company are listed. Subsequently, in terms of Regulation 10(1) of Delisting Regulations the board of directors of the company are required to approve the delisting proposal of the acquirer not later than 21 days from the date of the initial public announcement. Further, Regulation 20(3) of Delisting Regulations, states that the reference date for calculation of the floor price is the date on which the recognized stock exchange(s) was required to be notified of the board meeting in which the delisting proposal was considered and approved.

Further, for a delisting offer in accordance with Regulation 37 of the Delisting Regulations, the board of directors are required to provide a prior intimation to the stock exchanges of the board meeting in which the delisting proposal will be considered, in accordance with Regulation 29 of the Securities and

⁴ *Ibid.*

Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended ("**SEBI Listing Regulations**").

The sub-group noted that there could be a risk of substantial and abnormal trading activity in the shares of the company during the period between the date of the initial public announcement or the date of the prior intimation to the stock exchanges of the board meeting in which the delisting proposal will be considered, as applicable, and the date on which the stock exchanges are required to be notified of the board meeting in which the delisting proposal was considered and approved.

Accordingly, the sub-group acknowledged that the floor price should be calculated based on an "undisturbed price", i.e., the price as of a reference date when information relating to the proposed delisting offer is first disclosed to the public.

III. Proposal of the Sub-Group:

The sub-group accordingly proposed the reference date to be the date of the initial public announcement or the date on which the prior intimation is required to be given to the stock exchanges, as applicable.

Further, it is clarified that if the initial public announcement is made during market hours, then the date of such initial public announcement will be the reference date and if the initial public announcement is made after the market hours, then the next day will be the reference date.

For instance, if the initial public announcement is made at 1:00 p.m. on August 4, 2023 (Friday), then August 4, 2023 will be the reference date. However, if the initial public announcement is made at 4:30 p.m. on August 4, 2023 (Friday), then August 5, 2023 (Saturday) will be the reference date.

Chapter 3: Delisting of Investment Holding Companies

This chapter of the report sets out the recommendations of the sub-group in connection with delisting of investment holding companies.

The recommendations of the sub-group relate to (a) a framework for delisting investment holding companies; and (b) checks and balances in connection with the proposed framework.

A. Delisting Framework for Investment Holding Companies

I. Current Position:

An investment holding company (“**IHC**”) is a company whose main activity is holding investments in listed and unlisted companies. In certain cases, such IHCs may also hold other assets (e.g., property, real estate). The shares of an IHC tend to trade at a discount compared to the underlying value of the investments of the IHC. One of the primary reasons is that investments of the promoters and members of the promoter group in IHCs are long-term investments and the market does not expect the sale of such shares.

The Delisting Regulations currently do not provide a separate framework for delisting of listed IHCs and such companies are required to be delisted in accordance with the Delisting Regulations. However, the market price and the price determined as the floor price will not reflect the intrinsic value of the investments and the reverse book building mechanism may not provide a fair exit price to the public shareholders, as the valuation of such companies is a complex issue given the nature of investments and assets. Accordingly, the sub-group deliberated the need for a separate delisting mechanism for such listed IHCs.

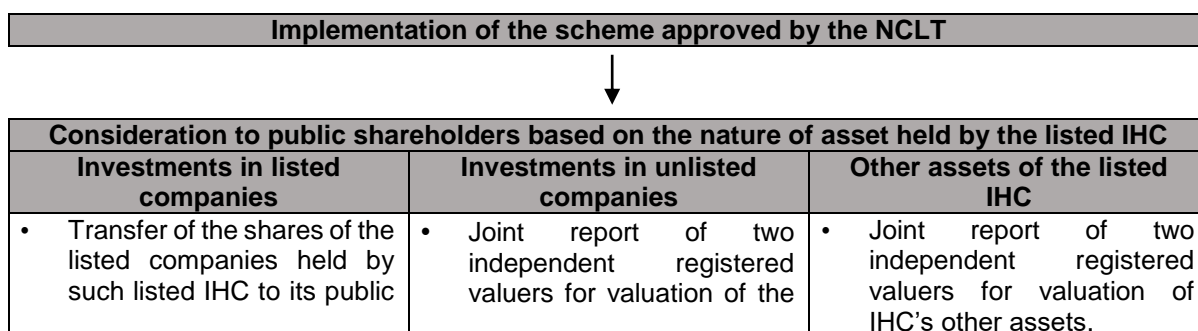
II. Proposal of the Sub-Group:

The sub-group proposed an alternate delisting framework, whereby the shares of the underlying listed companies held by the IHC are transferred to the IHC’s public shareholders and the holding of the public shareholders in the IHC is extinguished pursuant to a court approved scheme of arrangement.

The following mechanism was proposed:

- (a) transfer of underlying shares held by a listed IHC in other listed companies to the public shareholders of such IHC in proportion to the shareholding of the public shareholders in the IHC;
- (b) cash payments to the public shareholders of the listed IHC in exchange for the underlying shares or investments made by such IHC in unlisted companies and other assets; and
- (c) extinguishment of public shareholding of the listed IHC upon transfer of the underlying shares mentioned at (a) and cash payments mentioned at (b), pursuant to a scheme for selective reduction of capital under Section 66 of the Companies Act, 2013, as amended (“**Companies Act**”).

An overview of the proposed mechanism is set out below:



Consideration to public shareholders based on the nature of asset held by the listed IHC		
Investments in listed companies	Investments in unlisted companies	Other assets of the listed IHC
<p>shareholders based on an entitlement ratio.</p> <ul style="list-style-type: none"> Entitlement ratio for shares of each listed company will be such that the public shareholders of the listed IHC will receive such number shares of the listed company that is proportionate to their shareholding in the listed IHC (<u>see Annexure A for an illustration</u>). There will be a separate entitlement ratio for shares of each listed company held by the IHC. 	<p>listed IHC's shareholding in each unlisted company.</p> <ul style="list-style-type: none"> Per share consideration payable by the listed IHC to its public shareholders to be calculated based on their entitlement. Based on the per share consideration payable, the listed IHC will be required to make cash payments to the public shareholders. (see Annexure B for an illustration) IHC will be required to have sufficient liquid resources or procure funding to meet the payment obligation. 	<ul style="list-style-type: none"> Consideration payable by IHC to public shareholders to be calculated. Based on the consideration payable, the listed IHC will be required to make cash payments to the public shareholders. (<u>see Annexure C for an illustration</u>) IHC will be required to have sufficient liquid resources or procure funding to meet the payment obligation.

Pursuant to implementation of the above scheme, the entire shareholding of the listed IHC will be held by the promoters or the promoter group and such IHC will be required to apply to the stock exchanges for delisting.

Section 66 of the Companies Act does not impose any restrictions in relation to payment of consideration or distribution of shares to the public shareholders. However, such schemes are subject to the approval of the National Company Law Tribunal (“NCLT”) and the minority shareholders will have the right to raise any objections. Accordingly, it was proposed to expressly clarify that the above mechanism would be subject to approval of the NCLT.

B. Checks and Balances

I. Current Position:

Chapter III of the Delisting Regulations prescribe certain checks and balances in connection with delisting of listed companies. These include approval of the board of directors, special resolution of the shareholders and in-principle approval of the stock exchanges. Regulation 37 of the Delisting Regulations provides additional safeguards in relation to delisting of a subsidiary company of a listed holding company pursuant to a scheme of arrangement.

The sub-group discussed the need to include certain additional checks and balances in connection with the proposed framework including ensuring that only certain listed IHCs were eligible under the proposed delisting framework.

II. Proposal of the Sub-Group:

The sub-group proposed the following checks and balances in relation to the proposed delisting framework to ensure protection of the interests of public shareholders:

- (a) the above mechanism will only be available to listed companies having at least 75% (which percentage will be subject to the SEBI's review from time to time) of their overall fair value⁵ comprising direct investments in other listed companies;
- (b) the listed IHC will be required to obtain the approval of its audit committee and board of directors prior to filing of the scheme with the stock exchanges;
- (c) the special resolution can be acted upon only if the votes cast by the public shareholders of the listed IHC in favor of the delisting resolution are at least two times the votes cast against it;
- (d) material disclosures in relation to calculation of the entitlement ratio and per share consideration will be required to be included in the explanatory statement of the notice for the shareholders meeting;
- (e) the valuation reports obtained in connection with the scheme will be required to be made public; and
- (f) report to be obtained from a chartered accountant or merchant banker confirming the entitlement ratio.

Based on Regulation 37 of the Delisting Regulations, the sub-group proposed inclusion of additional safeguards, including: (i) continuous listing of the shares of the IHC for a period of at least three years (and not suspended from trading); (ii) absence of adverse orders of the SEBI against such IHC and their promoters or promoter group in the last three years; and (iii) prohibition on relisting of shares of the IHC for a period of three years from the date of delisting. Existing checks and balances including creditor approval for the scheme were also discussed.

The sub-group also deliberated the manner of transfer of fractional shares to the public shareholders of the listed IHC pursuant to the scheme. For such schemes, fractional shares will be dealt with in accordance with the Master Circular on Scheme of Arrangement dated June 20, 2023, as amended, from time to time.⁶ The sub-group agreed to adopt a similar mechanism for transfer of fractional shares to the public shareholders of listed IHCs.

Accordingly, the sub-group proposed amendments to the existing delisting framework i.e., the Delisting Regulations.

⁵ The 'overall fair value' of the listed IHC will, *inter alia*, include: (i) value of investments in frequently traded listed companies at 60 trading day volume weighted average market price; (ii) fair value of investments in infrequently traded listed companies and unlisted companies determined pursuant to a joint report by two independent registered valuers; and (iii) fair value of other assets of the listed IHC determined pursuant to a joint report by two independent registered valuers.

⁶ Master Circular on (i) Scheme of Arrangement by Listed Entities and (ii) Relaxation under sub-rule (7) of rule 19 of the Securities Contract (Regulation) Rules, 1957 dated June 20, 2023.

Annexure A

<u>Illustration: Shares of listed companies</u>	No. of shares (unless mentioned otherwise)	Face Value (Rs. per share)	Percentage
Shareholding of listed IHC in the listed company (A)	15,00,000	10	5%

Shareholding pattern of the listed IHC	No. of shares (unless mentioned otherwise)	Face Value (Rs. per share)	Percentage
Promoter and Promoter Group (B)	82,50,000	10	75%
Public (C)	27,50,000	10	25%
Total (D = B + C)	1,10,00,000	10	

Public holding in listed IHC (%) (E)	25%		
Entitlement (F = E x A)	3,75,000	10	

Entitlement Ratio (approx.) (G = F / C) 0.14

For every 1 share held in listed IHC, IHC will transfer ~0.14 shares of the listed company to IHC's public shareholders

Annexure B

Illustration: Shares of unlisted companies

Value of shareholding of listed IHC in unlisted company (Rs. in crores)	(A)	150
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Shareholding pattern of listed IHC		No. of shares (unless mentioned otherwise)	Face Value (Rs. per share)	Percentage
Promoter and Promoter Group	(B)	82,50,000	10	75%
Public	(C)	27,50,000	10	25%
Total	(D = B + C)	1,10,00,000	10	

Public holding in listed IHC (%)	(E = C)	25%
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Public shareholder entitlement (Rs. in crores)	(F = A x E)	38
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Per share consideration payable by IHC (Rs. per share)	(G = F / C)	136	-	-
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For every 1 share held in listed IHC, the IHC will be required to pay a public shareholder ~Rs. 136 per share, in lieu of the shareholding of the listed IHC in the unlisted company

Annexure C

Illustration: Other assets

Valuation of other assets of IHC (Rs. in crores)	(A)	1,000
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Shareholding pattern of listed IHC		No. of shares (unless mentioned otherwise)	Face Value (Rs. per share)	Percentage
Promoter and Promoter Group	(B)	82,50,000	10	75%
Public	(C)	27,50,000	10	25%
Total	(D = B + C)	1,10,00,000	10	

Public holding in listed IHC (%)	(E = C)	25%
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Public shareholder entitlement (Rs. in crores)	(F = E x A)	250
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Per share consideration payable by IHC (Rs. per share)	(G = F / C)	909
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For every 1 share held in listed IHC, IHC shall pay a public shareholder ~Rs. 909 per share, in lieu of IHC's other assets