A makeover for the takeover code

August 01, 2011 11:12 AM | SHARE

R Balakrishnan

The Securities and Exchange Board of India continues to act in the interest of the business community rather than provide equity for investors

The changes in the takeover code, announced by the Securities and Exchange Board of India (SEBI) last week are noteworthy for two things.

First, SEBI is just a regulator and not a protector of investor interest. And SEBI acts in the interests of big business and investment bankers rather than provide equity for investors.

One of the problems with the takeover rules has been the vexing issue of acquirers having to only deal with the main shareholder and not caring about the interests of the non-promoter shareholders. The Ranbaxy takeover was a prime example. The promoters got a price which was not available to each and every shareholder. The law merely said that the acquirer had to make an 'open' offer to buy an additional 20% of total capital. This led to a situation where the promoter got a 100% exit at one price and the non-promoter shareholder got only partial exit.

Now, SEBI has increased the 20% to 26%. There was no logic for 20%, and there is none for 26%. At least SEBI is being consistent! Why is SEBI still fighting shy of legislating that the acquirer should be willing and able to buy out each and every shareholder who tenders his holdings, in toto? Is SEBI playing up to the interests of the investment bankers who want more M&As to happen by making acquirers get away with a meal, without paying for it. As of now the acquirer has just to pay the main promoter. The others can be dealt with partially.

Here, SEBI has clearly put the interests of the business community at the forefront. Anyways, with news reports announcing that the retail investor presence is diminishing, SEBI may be thinking that there are fewer and fewer people to hurt. So, why not favour one group which can provide regulators with a livelihood? After all, investors are only a nuisance for

SEBI, with their umpteen pleas.

One investment banker has said that 26% and not 100% is right because the 'poor' Indian promoter does not get 'bank funding' for these kind of activities, so making him buy all the shareholders would make it 'costlier". Such a foolish argument and the normally hyper-critical media carry it without any comment!

SEBI has also said that there cannot be a 'non-compete' payout to the promoters. While this looks good to the investor, I am not sure that this is a legally tenable amendment. If I am a majority shareholder, I can always demand a premium for giving up control. As a promoter, it is my brains and my sweat that have built the business, so I have a right to get something more than a mere financial investor. This is a debatable issue and I think we have not heard the last of it.

Now we will have private deals struck between promoters and the acquirers, where payouts are made in a manner that the law will not detect. There are cases where promoters have been paid off overseas, or have got some benefits that are not apparent.

However, in a way, I support the SEBI ban on non-compete, since most Indian promoters have built businesses with public money, grown the brands spending company money and enjoyed everything from marriage party expenses to a private jet at company expense. And most often, they will take a high non-compete when there is a large public shareholding, so that the acquirer has an easy task of having to acquire not more than 20% (now 26%) of other shareholding.

The second big takeaway is the change of the trigger point for an open offer from 15% to 25%. This is great for hostile takeovers. We have seen many 'promoters' owning miniscule stakes in their company and depending on the government to fight hostile buyers (like the old Escorts deal of the Indira Gandhi era, when Swaraj Paul was denied Escorts due to government intervention). Now, it's going to be exciting.

Twenty-five per cent s as close to a 'blocking' minority as one can get. Promoters will find it difficult to push through special resolutions which need a 75% approval from shareholders. If someone owns 25%, all that has to happen is that he votes against the proposal and the promoter has to ensure that each and every other shareholder votes the other way! We can witness some nice corporate battles, which will ultimately be good for the non-promoter shareholder.

I am sure that many people are already picking up targets for acquisition and greenmail. I hope the government would step back and let free market forces operate. With this change, even a company like Infosys would become a target. Savvy investors with a healthy risk appetite can start building positions in companies which can be buyout or greenmail targets. This brings some action to a stock market that is threatening to become home to Rip Van Winkle.

(R Balakrishnan is a regular contributor to *Moneylife*. His email address is balakrishnanr@gmail.com.)

Share this article:

1

Articles you may like:

Search Go

Resolve investor complaints within a month: SEBI to brokers - Moneylife Personal Finance site and magazine

Failure to comply with the said requirement will render the stock broker liable for penal action,"

Does SEBI really pay any heed to investors' compla...

Moneylife has had a personal experience of this For some years now, Moneylife has heard from investors and has been writing that the market regulator, the

Concepts to explore:

Stock market

Majority shareholder, Debt securities, Buyout, Share price

Financial markets

Retail investor, Capital Market, Market making, Financial instruments

Dhiti

Submit your comments

Name * :

Email Id * :

Author Url: http://

Comment*:

alert me when new comment is posted on this article

Security Code: JM5AF

Not readable? Change text.

Submit Comments

What's Hot

From this section

Establishing standards for effective management information systems
A good MIS is absolutely necessary for MFIs to manage the interface with clients and conduct activities/processes in a manner that is efficient, effective and transparent

Regulation: Paralysed regulators
With wrong people at the helm, distrust and lack of integrity are the norm

Does SEBI really pay any heed to investors' complaints?
Despite repeated persuasion, investors' complaints filed with the market regulator either remain unheard, or are disposed off with vague replies. Moneylife has had a personal experience of this

RBI panel proposals for NBFCs will structurally strengthen the
The ratings agency has welcomed the new recommendations as they better guard firms against potential risks, though additional provisioning could have a short-term impact on profitability

Finance Ministry dismisses allegations made by former whole-time
As the tussle between KM Abraham and the Securities and Exchange Board of India gets more bizarre, the finance ministry has gone one step further, saying it has received serious complaints against the former member of SEBI of abuse of power and corruption


Moneylife Foundation held a workshop on How to select the Right Mutual Fund Scheme on 13 September 2011


Moneylife Foundation held a workshop on 'Investor, Empower Yourself' in Chennai on 10 September 2011

Moneylife Foundation held a seminar on 'How to use the Right to Information Act Effectively' on 3 September 2011

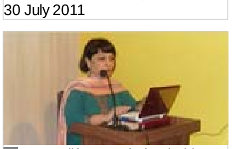

Moneylife Foundation held a seminar on 'The importance of your credit history & credit score" on 23 August 2011


Moneylife Foundation together with Awaaz hosted the screening of "Bellary Mines: Haunted Blood Soil" by Paranjoy Guha Thakurta, on 12 August 2011

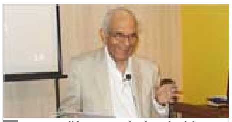

Moneylife Foundation held a seminar on 'How to be safe with your money' at the Indian Medical Association on 6 August 2011


Moneylife Foundation held a workshop on the 'Truths behind Mutual Funds' on 9 August 2011


Moneylife Foundation held a seminar on 'How to be safe and smart with your money' in Pune on 30 July 2011


Moneylife Foundation held a workshop on 'Beware of deception by pyramid schemes, MLMs trying to lure people with promise of high returns' on 23 July

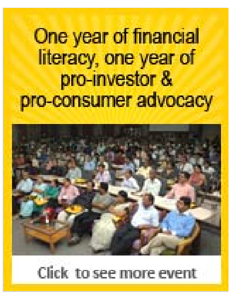
Moneylife Foundation held a workshop on 'Investor, Empower Yourself' in Bengaluru on 16 July 2011



Moneylife Foundation held a seminar on 'How to use the Right to Information Act Effectively' on 12 July 2011

Moneylife Foundation held a workshop on 'Investor, Empower Yourself' in Kolkata on 4 June 2011

Moneylife Foundation celebrated its 1st Anniversary on 5th February 2011 at the Welingkar Institute of Management Development & Research



About Moneylife

Contact Us

Moneylife Navigator

Subscribe to Moneylife | **Send a Gift Subscription** | **Visit Moneylife Store** | **Offers & Promotions** | **Moneylife Newsletter** | **Useful Resources**
Newsviewer | Commentary | Markets | Companies & Sectors | Investing | Personal Finance | Small Business | Life
Moneylife Home | Moneylife Magazine | Moneylife Shop | Corporate Moneylife | Contact Us

Personal Finance Magazine moneylife know what's coming