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**Weather**  
 Max: 27.8° C  
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**In Bangalore**  
 Generally cloudy

Thursday 8 September 2011

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## Big bang reforms to help M&A and investors

DHNS

**Major changes announced by Sebi will make life easier for investors, acquirers and promoters, writes Dilip Maitra, with inputs from Suresh Nandi**



Following the principles of evolutionary reform, the Securities and Exchange Board of India (Sebi), the capital market regulator, introduced several policy changes last week.

Though the changes may appear small, they have far reaching implications for large and small investors, acquirers and promoters of companies.

Sebi, under the Chairmanship of U K Sinha, last week said that from now on any entity buying 25 per cent equity stake in a listed company will trigger the Takeover Code and will have to make an open offer for buying a minimum of another 26 per cent from shareholders.

This is a big change from the present norm where the trigger for open offer is 15 per cent and the stipulation for open offer is 20 per cent. The net effect of the new norm is that after acquiring 25 per cent and another 26 per cent (if available) from the open offer, an acquirer will get 51 per cent or a majority stake in a company.

### More practical

Though the Takeover Code reform committee headed by C Achuthan had earlier recommended for a 100 per cent open offer, Sebi's decision to limit it to 26 per cent is more sensible. Had it been kept at 100 per cent, acquisitions would have been much more expensive for Indian companies and difficult to accomplish for the lack of bank funding, pointed out Edelweiss Capital Ltd Head, Equity Capital Markets, Satyen Shah.

Agreed Kotak Investment Banking Sr Executive Director (M&A), Sourav Mallik, ".....Open offer issue of 100 per cent sounds optically good, but actually it's very damaging to investors. If you make open offer expensive, you are not going to have too many open offers."

But, at the same time, since Sebi's new norms will allow an acquirer to bid for the majority stake of a target company, the promoters of such companies will be on alert. It will make it easier for a predator to swoop down on an Indian company in which a promoter has less than 50 per cent stake. According to a recent study, of the 500 companies in the 'BSE 500' list, in as many as 215 companies promoters own less than half the equity stake, making them prime targets for takeover.

"This is probably the most important takeaway of these revisions, as this will result in change of guard and ownership in many Indian companies," said SMC Capitals Ltd Strategist and Head of Research, Jagannadham Thunuguntla. "In the past, it was not easy for an acquirer to get controlling stake in a target company in India. With new norms the concept of 'Buyouts' is a reality now in India."

The other important positive from Sebi's new norms is that companies looking for growth capital will find it easier to raise money from strategic investors not interested in the management. By raising the trigger point from 15 to 25 per cent of the equity, investors like Private Equity (PE) funds, Venture Capital (VC) funds will now get much more headroom to raise their investments in a company without triggering the takeover code.

"We very much welcome this decision. The earlier requirement made it too limiting for PE funds to invest in small or medium cap companies," said Edelweiss' Satyen Shah. But Amarchand & Mangaldas Managing Partner Cyril Shroff feels that there can be a slew PE investors acquiring 24.9 per cent stake, effectively doing clubbed deal for buy outs.

### Equity among shareholders

In another move Sebi disallowed paying of non-compete fee that an acquirer pays to the promoters of target companies to stop the latter entering the same business after selling

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his stake.

From the point of view of 'shareholders equity' this is certainly a welcome move because in a merger & acquisition (M&A) deal, promoters generally take a part of the payment (sometime as much as 25 per cent of the deal value) by way of non-compete fee and the rest from sale of shares. But, other shareholders only get the share transaction price in an open offer.

Now with the scrapping of non-compete fee, all shareholders will be treated equal. Shah, however, feels that this will pose a problem because promoters with a considerable stake in a company signify some extra value for the acquirer.

"That person could be a technology innovator, a progressive leader and/or manager with in depth understanding of the business and the environment, etc. A control premium or non-compete fee is often recognition of this reality." This norm will also make takeovers more expensive as the total value of the deal will now get reflected entirely on share purchase price.

#### Curbing insider trading

In another major move Sebi has asked promoters of all listed companies to disclose their share dealings. As per the stipulation all the promoters and persons who are part of the promoter group (persons acting in concert) of a listed company would also be required to disclose their share dealings.

The promoters would be required to make initial disclosures relating to their shareholding at the time of becoming promoter or part of promoter group. "Besides, continuous disclosures would also be required whenever there is a change in their holdings exceeding Rs 5 lakh in value or 25,000 shares or 1 per cent of total shareholding or voting rights, whichever is lower", said Sebi announcement.

Such disclosures, though irritant for promoters, will go a long way in better corporate governance and improved transparency. This will also help in detecting and punishing insider trading, a menace Indian corporate world is fraught with. Currently, directors and top executives of listed companies are required to make these disclosures.

#### Investor friendly

To make life easier for the retail and small investors, Sebi also simplified IPO application forms and opening of demat accounts. The market regulator has cut down the paper work and removed unnecessary details from IPO application forms. Investors will now get more useful information, such as track record (with regard to price performance) of merchant bankers managing the issue and important details related to the pricing of the offer.

"The IPO form is not investor friendly. It takes a lot of time to understand it. Taking all this into account, the whole form has been changed and this will lead to reduction in the size of the form," Sebi Chairman U K Sinha said. To make it more investor friendly, Sebi has revised the structure, design, format, contents and order of information of the IPO form and prospectus.

Moreover, the revised abridged issue prospectus will contain company/ project specific information and highlight materially relevant disclosures such as peer comparison of important financial ratios and risk factors, it said. "The whole idea of new IPO form is to cut out all the irrelevant information, bring in some additional relevant information and change the order of information," said Prime Database CMD Prithvi Haldea.

With regard to the cumbersome process in opening their trading accounts, Sebi has decided to simplify and rationalise the process with the minimum required paperwork.

It approved a uniform customer identification process for investors in different segments, and also decided to accept Aadhaar or UID as one of the eligible documents for fulfilling the KYC (Know Your Customer) norms. Currently KYC is done by multiple regulated intermediaries, like broker, mutual fund and portfolio manager, which resulted in duplication of work, wastage of record-keeping space.

Besides, it is a burden on the intermediaries and the client seeking to make investments. Now a KYC regulation authority will be set up for creating inter-connectivity among different market segments.

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By: Priya

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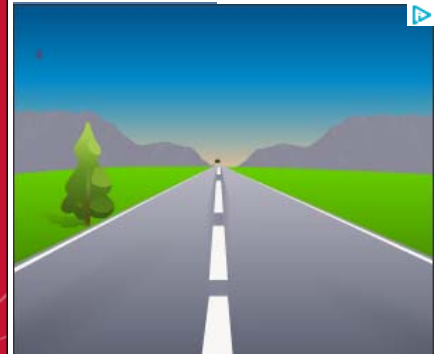
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