

# SEBI allows delisting through a fixed-price offer

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**This update covers:**

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1	Background	1
2	Delisting through a fixed-price offer	1
3	Impact	2
4	Looking ahead	2

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## 1 Background

Taking public companies private in India has always been a complex and costly process. One of the main challenges is the reverse book building method of price discovery, which applies to a delisting offer. This method involves public shareholders bidding on the price at which they are willing to sell their shares in the delisting offer. This has produced sub-optimal outcomes, with the delisting price often being at an exorbitant premium, at times more than double the regulatory floor price. The complexity of the price discovery mechanism also leaves the process vulnerable to market manipulation by speculators.

In August 2023, the Securities and Exchange Board of India (SEBI) floated a consultation paper that proposed allowing delisting through a fixed-price offer. (To read our detailed update on this proposal, [click here](#).) SEBI has now followed through on this by approving the proposal, with some modifications, in its board meeting on 27 June 2024.

In its board meeting on 27 June 2024, SEBI decided to allow public companies to be delisted through a fixed-price offer as an alternative to the existing reverse book building method. This move is expected to ease the path for take-private transactions and bolster public M&A deal activity.

## 2 Delisting through a fixed-price offer

A delisting offer may now be made at a price to be fixed up-front by the offeror. Such offer price must include a premium of at least 15% over the floor price. The floor price for a delisting is the same as that for an open offer under SEBI's Takeover Code<sup>1</sup> and is linked to the trading price of the stock over a specified trail period. SEBI will now require such floor price (for delisting) to factor in one additional metric – the 'adjusted book value' of the company, as computed by an independent valuer.

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<sup>1</sup> The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Unlike the reverse book building method, in the fixed-price offer mechanism, public shareholders do not need to bid on the price at which they are willing to sell their shares – they only need to decide whether or not to tender their shares at the fixed offer price. As before, the delisting offer succeeds only if the shares tendered will allow the offeror to reach at least 90% shareholding in the company. Moreover, approval of a super-majority of shareholders (>75% of all votes, including >66.66% of votes by public shareholders) will continue to be required.

The fixed-price offer mechanism will apply only to companies with shares that are '*frequently traded*'<sup>2</sup> and will be available, at the option of the offeror, as an alternative to the existing reverse book building method.

### 3 Impact

SEBI's decision to move away from the reverse book building method is a sign of a maturing market – easing entry and exit barriers to the securities markets is crucial to incentivise efficient capital allocation. This change is likely to streamline take-private transactions and boost public M&A dealmaking. The fact that the offer price is fixed upfront will also insulate the process from market speculation.

Specifying the minimum premium as 15% is helpful guidance – it is a reasonable representation of the control premium that an acquiror may be willing to pay to take a public company private. At the same time, it sets realistic expectations of returns for public shareholders.

The 15% markup also provides good guidance for what SEBI would see as a fair offer price for a delisting undertaken as part of a '*combined delisting and open offer*' under the Takeover Code (**Combined Offer**). A new acquiror was already permitted to offer a fixed price (at a '*suitable premium*' over the floor price) for delisting as part of a Combined Offer – however, what would count as a suitable premium had not been spelt out.

On the contrary, introducing the additional metric of '*adjusted book value*' adds an avoidable layer of complexity – in a listed company with actively traded shares, the stock price is an accurate measure of fair value. Even if an additional valuation is considered necessary, it may have been preferable to not be prescriptive and leave the specific valuation methodology to the commercial judgment of the valuer.

### 4 Looking ahead

The rules for a Combined Offer under the Takeover Code should now be harmonised with the new delisting rules. The Takeover Code allows only a '*new*' acquiror to offer a fixed price for a delisting as part of a Combined Offer. An acquiror who already held more than 25% or joint control in the company or who proposes to acquire joint control with an existing promoter is not treated as a new acquiror for this purpose. This restriction may be removed, as SEBI has now extended the benefit of the fixed-price method even to delistings undertaken by existing promoters.

Designing a straightforward and efficient framework for squeezing out the remaining minority (post-delisting) must also be a priority. There should ideally be a streamlined road map for an acquiror to accrete up to 100% and take the company truly private.

More generally, the remit of specific regulators/courts in relation to take-private deals needs to be refined. Recent delistings have seen activist shareholders initiate class action litigation before the National Company

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<sup>2</sup> Shares of a company are '*frequently traded*' if the traded turnover during the preceding 12 months is at least 10% of the total number of shares.

## UPDATES

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Law Tribunal. While protection of the interests of public shareholders is an important consideration, it may be preferable for contentious issues to be dealt with in an efficient and streamlined manner by the specialised securities regulator, as opposed to being subject to the oversight of multiple courts/tribunals.

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