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# New Sebi takeover norms

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MUMBAI, 23 SEPT: The Securities and Exchange Board of India (Sebi) today notified new takeover rules under which an entity buying 25 per cent stake in a listed firm will have to mandatorily make an open offer to buy an additional 26 per cent shares from public.

The new norms mark an increase in the open offer size for public shareholders from 20 per cent currently. Also the trigger for making such an offer has been raised from 15 per cent under the existing regulations.

“No acquirer shall acquire shares in a target company which taken together with shares or voting rights held by him... entitle them to exercise 25 per cent or more of the voting rights..., unless the acquirer makes a public announcement of an open offer,” it said.

The new regulations, titled as 'The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011', will come into effect from next month.

Under the new rules, there would be no separate provision for non-compete fees, which allows promoters to higher price than the public shareholders, and all shareholders should be given the exit option at the same price.

Partly accepting the recommendations of a Sebi-appointed panel on the matter, the regulator also decided to abolish the non-compete fees that acquirers generally pay to the sellers in merger and acquisition deals.

The notification follows the decision taken at Sebi's board meeting in July.

Last year, a Sebi panel on new takeover regulation had recommended an open offer for buying up to 100 per cent in the target company, while suggesting an increase in the trigger limit to 25 per cent.

While the recommendation on trigger was accepted, the suggestion for offer size has been kept lower due to intense opposition from industry and other market participants.

The panel had opined against non-compete fees for promoters which often worked out to as high as 25 per cent of deal value.

Sebi, as part of the new code, allowed voluntary offers subject to certain conditions.

Regarding control and offer size, Sebi said that the existing definition of control would be retained and the minimum offer size shall be increased to 26 per cent of the target company.

**IDR rights offering**

Sebi said companies offering IDRs through rights issue have to file offer documents as per the prevailing norms in the country.

Through a notification, Sebi today amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, by adding a chapter relating to rights issue of Indian Depository Receipts (IDRs).

“Every listed issuer offering IDRs through a rights issue shall prepare offer documents in accordance with the home country requirements,” Sebi said in a circular.

IDRs are the instruments through which a foreign company raises capital in the country by offering underlying shares to domestic investors.

So far Standard Chartered is the only foreign company which has come out with an IDR issue and the Sebi circular would provide them with guidelines for coming out with a rights offer.

Through a rights issue, a company raises funds by allotting shares to its existing shareholders.

Sebi further said that if the issuing company is in breach of the IDR listing agreement then it cannot come out with a rights offering.

The issuing company would have to inform the stock exchange where its existing IDR is already listed, about the rights issue. Further, the IDRs issued by way of rights issue would have to be listed on one of those stock exchanges in the country.

On fast track issue, the regulator said if the issuer had no disagreement with the stock exchange on the provisions of deposit agreements and listing agreements for at least three years, without any pending show-cause notices or prosecution proceedings, the issuer can get approval for the same.

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