Report of the Committee

on

Delisting of Shares

Part I

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1. **Background**

1.1 There is a growing trend of delisting of shares from the Indian stock exchanges. The Multi-National Companies (MNCs) have also been seeking delisting from the stock exchanges for a variety of reasons and according to the statistics and indications available with the Committee, the number of such companies has been on the increase in the last two years and this trend is likely to continue. The trend has engaged the attention of the public, media and investor associations and has caused uneasiness and anxiety among investors. In several quarters, a view has also been expressed that delisting should not be resorted to. The Ministry of Finance (MOF) have also written to SEBI on the increasing instances of MNCs delisting from the Indian stock exchanges and the possible negative impact on the securities market, as also about the non compliance by MNCs of the compulsory dilution of equity norms under FDI policy. As indicated by the MOF, these issues were also discussed in the Parliamentary Standing Committee on Finance and in the Parliament.

1.2 It is being argued that permanent delisting of shares shrinks the universe of liquid stocks and thus affects depth and liquidity of the

market, results in loss of investment opportunities for the public, and reduces the wealth of the securities market. The exit price offered to the shareholders is not perceived to be commensurate with the company's fundamentals, its true worth and the permanent loss of investment opportunity, especially when delisting takes place under depressed market conditions. Minority shareholders seem to perceive that they are compelled to sell their shares at the offer price, even if the offer price is not in their opinion attractive enough, because they run the risk of holding an illiquid investment. The way in which delisting takes place at present is thus perceived as being unfair, both to the investors as well as to the market.

1.3 The main concern according to the above argument thus does not appear to be so much against delisting per se, as against the inadequacy of investor protection through the prevailing exit price mechanism.

2. Constitution of the Committee

2.1 Taking note of the above issues and concerns which underpin the need to revisit the present delisting requirements and the listing conditions, SEBI decided to set up a Committee under the convenorship of Pratip Kar, Executive Director SEBI with the following terms of reference:

a. to examine and review the present conditions for the delisting of securities of companies listed on the recognised stock exchanges including the delisting by MNCs and suggest norms and procedures in connection therewith
b. to review and standardise the listing agreement
c. to examine the concept of listing at regional stock exchange and the establishment of a listing authority across the stock exchanges.
d. to suggest ways for effective implementation of listing conditions and penal provisions for non-compliance

e. to recommend changes in laws, rules regulations etc. in order to give effect to the recommendations on the above mentioned matter.

2.2 The Committee comprised the following members:

1.	Mr. Sameer Biswas*	Regional Director, Western Region, Department of Company Affairs
2	Ms. Sucheta Dalal	Member, Board of Trustees Consumer Education & Research Centre
3	Mr. A. N. Joshi**	Executive Director The Stock exchange, Mumbai
4	Mr. R. M. Joshi	Executive Director, SEBI
5	Ms. Kamala K.	Executive Director, Bangalore Stock Exchange
6	Mr. Pratip Kar	Convenor of the Committee, Executive Director, SEBI
7	Mr.P.Krishnamurthy	Representative, Confederation of Indian Industry
8	Mr. Vipul Modi	Secretary, Investors Grievance Forum
9	Mr. Ravi Narain	Managing Director, National Stock Exchange
10	Mr. T. R. Ramaswami	CEO, Association of Merchant Bankers of India
11	Ms. D. N. Raval	Executive Director, SEBI
12	Mr. A. C. Singhvi	Representative, Federation of Indian Chambers of Commerce and Industry

* Replaced by Shri C D Paik Regional Director, Western Region, Department of Company Affairs and then by Shri R Vasudevan Director of Inspection and Investigation, Department of Company Affairs

** Replaced by Dr. Manoj Vaish Dy. Executive Director, The Stock Exchange, Mumbai

Meetings of the Committee

2.3 The Committee held seven meetings. It examined the present conditions for listing and delisting of shares and the investor protection issues arising in the case of delisting of shares, the concerns arising from delisting by the MNCs, the present exit price mechanism available to shareholders, whether further refinement is possible to provide higher protection to investors, whether there is a need to introduce specific provisions to discourage this trend, listing conditions and the listing agreement, the relevance of regional stock exchange, and the need for Central Listing Authority (CLA).

2.4 The Committee also had the benefit of the suggestions of Shri Prithvi Haldea and the presentation made by him on delisting by MNCs and on Central Listing Authority.

3. Issues before the Committee

3.1 Arising from the terms of reference of the Committee and the discussions in various fora on the subject of delisting and the present regulatory regime for delisting, the issues raised before the Committee were as follows:

a. whether there should be regulations to prohibit or discourage delisting of companies from stock exchanges;
b. whether the present exit option by way of price mechanism available for voluntary delisting of companies under the various SEBI regulations / guidelines need further refinement to provide for adequate compensation to the shareholders specially having regard to the fact that delisting implies complete loss of investment opportunity for the shareholders;
c. whether such price regulation would be adequate to protect the interest of minority shareholders and also discourage delisting of shares; and whether such price regulation would be contrary to free pricing regime which is being otherwise pursued by SEBI in the primary market;

d. whether regulations or guidelines should be put in place which can discourage delisting by one class of companies such as MNCs;
e. whether separate price regulations for delisting of companies would open up the possibility of regulatory arbitrage with the provisions for acquisition of shares which are solely governed by SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997;
f. whether when one class of securities (for example equity) of a company is delisted, other classes of securities of the company (for example debentures) should also be delisted;
g. whether in the context of electronic trading on the stock exchanges, the concept of regional stock exchange remains relevant;
h. whether in the case of multiple listing of the same security, the security can be delisted from the regional and other stock exchanges without giving any exit route to the shareholders as long as such security continues remains listed in any stock exchange which has nation-wide access; and whether this should provide sufficient access to liquidity for the investors;
i. whether the existing Listing Agreement needs to be reviewed in the context of present market structure and whether the Listing Agreement should be common for all classes of securities of a company, namely equity and fixed income securities such as convertible and non-convertible debentures;
j. whether stock exchanges can compulsorily delist the shares of a company if it has not complied with the listing conditions and if so the manner in which the interest of investors/shareholders should be protected;
k. whether the due diligence for listing of a security is uniform across all stock exchanges and if not whether a separate agency needs to be set up to bring about uniformity in the due diligence by the stock exchanges for listing of a security; and,
l. whether the powers of the stock exchanges are adequate to act as deterrent for violation of the Listing Agreement.

4. Recommendations

4.1 The Committee examined the current provisions in regard to listing and delisting of securities and the definition of the terms “listing” and “delisting” in the current regulatory framework.

4.2 The term “listing” means the admission of the securities of a company to the trading privileges on a stock exchange with the principal objectives of providing a ready marketability and imparting liquidity and free negotiability to securities, ensuring proper supervision and

control of dealings therein; and protecting the interests of shareholders and of the general investing public. Section 73 of the Companies Act makes it obligatory on companies seeking to offer shares or debentures to the public for subscription by the issue of a prospectus, to make an application to one or more recognized stock exchange for permission for dealing in the shares or debentures so offered in such stock exchanges. For the purpose of listing, a company is required to enter into a listing agreement with the stock exchange. Rule 19 of SCR Rules enumerates some of the contents of the Listing Agreement and the standard format of the listing agreement is contained in Bye-laws of the stock exchanges.

4.3 While "listing" has been defined in and is governed by various statutory provisions, regulations, the SCR Act, SCR Rules and the Companies Act 1956- the main legislations governing offering, listing and trading of securities and the stock exchanges - are conspicuously silent on the delisting of securities. Delisting of securities has been referred to in regulation 21, clause (3) sub clause (a) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 and in the circular issued by SEBI on delisting.

4.4 Prior to the circular issued by SEBI on April 29, 1998 which laid down the various provisions under which the securities could be voluntarily or compulsorily delisted from the stock exchanges, a circular no. F6/9/SE/78 dated June 28, 1979 of the MOF permitted the stock exchanges to delist under certain circumstances, with the prior approval of the Government. These circumstances were: a company's

net worth falling below its capital on account of losses in the previous three years; infrequent trading of the company's securities and the company's securities remaining listed on the regional stock exchange. A circular of the MOF no. F/14(2)/SE/85 dated September 23, 1985 allowed delisting of a listed company if the number of public shareholders fell below 5 for every Rs 1 lakh of capital or to below 50% of the offer (except on account of holdings by the institutions), in other words delisting was allowed when the floating stock fell below the minimum level. With the issuance of the SEBI circular dated April 29, 1998, pursuant to the recommendations of the Chandratre Committee, the aforementioned circulars of MOF were withdrawn.

4.5 The term "delisting" of securities means permanent removal of securities of a listed company from a stock exchange and is therefore different from "suspension" or "withdrawal" of admission to dealings of listed securities, which the stock exchanges can resort to for a limited period. Delisting is also different from "buy back" of securities in which the securities of a company are extinguished with consequent reduction of capital of the company. In the case of delisting there is no reduction of capital. This distinction is of no mean significance, for it implies in the first place, that in the case of buy back securities, the company itself is the acquirer and hence provides the funds for buy back. In the case of delisting, the securities are acquired by a person other than the company and who could be the promoter, majority shareholder or a person in control of the management and the funds have to be provided by that acquirer. As

the two processes are fundamentally different, the concerns and safeguards for the shareholders should also be necessarily different.

4.6 The Committee noted that currently there are several routes available for delisting of companies on the Indian stock exchanges :

? companies may upon request get voluntarily delisted from any stock exchange other than the regional stock exchange for the company, following the provisions in delisting guidelines contained in the SEBI circular dated April 29,1998. In such cases, the companies are required to obtain prior approval of the holders of the securities sought to be delisted by a special resolution at a General Meeting of the company and the holders of securities in the region where the stock exchange is located are given an exit opportunity. This exit opportunity is to be given by the promoters or those who are in the control of the management to buy the securities offered by the holders at a price not less than the weighted average of the traded price in the security of preceding 6 months, in any stock exchange where the highest volume of trading in the security has been recorded. In case there is no trading in the security on any stock exchange in the preceding 6 months, the auditors of the company may compute a fair price;

? companies can get delisted from all stock exchanges pursuant to a process of acquisition of shares in accordance with SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations 1997; the regulation requires that if the public shareholding is reduced to 10 per cent or less of the voting capital of the company or if the public offer is in respect of a company where the public shareholding is already less than 10 per cent, the acquirer who has made the public offer has an option to make an offer to buy the outstanding shares from the remaining shareholders at the same offer price;

? the stock exchanges themselves can, under certain circumstances provided in the SEBI circular dated April 29, 1998 compulsorily delist the securities of a listed company subject to certain procedure being followed by the stock exchanges. In such cases there is no provision for an exit route for the holders of the securities except that the stock exchanges would allow trading in the securities under the permitted category for a period of one year after delisting;

? mergers and amalgamations, and schemes of arrangements under the directions of the court can result in delisting, and

? by operation of law on account of directions under BIFR companies can be delisted.

Delisting of shares of a listed company

4.7 As already discussed in paragraphs 1.1 to 1.3, the growing trend in the delisting of companies, in particular by the MNCs has caused some degree of uneasiness and there is a perception among some of the market participants and investors that they are not being adequately compensated for the permanent withdrawal of a good investment opportunity.

4.8 It appears that in the recent past, the MNCs have been using the route available under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 for delisting. The reasons for delisting are varied: depressed market conditions present an opportune moment for acquisition of the remaining securities from the shareholders; the liberalised FDI norms and removal of sectoral caps now allow foreign companies to hold 100 per cent equity in many key sectors and provide an opportunity to control entire holdings so as to give complete flexibility in operational decisions, and preference of retaining listing only in one place, preferably in the home country. It has also been argued that besides the flexibility in operational decisions, delisting allows the boards of companies the sole decision-making powers, greater independence in investment decisions, freedom from the regulatory environment, possibility of easier repatriation of profits and tax rebates in the country of their origin. These factors however do not contribute to good corporate governance.

4.9 The counterpoint to these arguments is that listing and delisting are commercial decisions and should be based on business considerations. So long as delisting has the approval of the shareholders and the minority shareholders are adequately compensated, there cannot be any objection to delisting. It is further argued that any restrictive condition goes against the grain of a market driven economy which should not have any barrier to entry and exit. Artificial barriers to free exit to companies could ultimately prove to be entry barriers.

4.10 The Committee was of the view that the current criticism of the growing trend of delisting of shares does not appear to be against delisting per se, but stems more from present perception of the investors/shareholders that the exit mechanism and the exit price being offered to the minority shareholders, inadequately compensates them for the total loss of investment opportunity. Investor interest would therefore be better served if the available safeguards in the case of delisting are further strengthened and the exit pricing is fair, transparent and not detrimental to the investors' interest.

4.11 The Committee also noted that internationally, stock exchanges do not impose any restriction on delisting and allow delisting subject to certain conditions such as minimum notice period for the company, exit offers to investors, etc. The entire class of the securities is called for redemption; appropriate notice thereof is given; funds sufficient for the payment of all such securities are deposited with an agency authorised to make such payments; and such funds are made available to security holders.

4.12 The Committee therefore felt that, notwithstanding the fact that delisting, especially of companies whose shares are regarded as value investments by investors narrows the market and limits the choice for investors. In the current liberalised environment and in a market driven economy, entry and exit into and from the market should be free within the regulatory framework. It would be desirable therefore not to have any provision in the regulatory framework which may act as an exit barrier. The Committee was also of the view that the delisting requirement cannot vary according to the ownership structure of companies. In view of the discussions in the foregoing paragraphs, the Committee therefore recommends that –

a) there should be no prohibition per se against delisting of securities provided that the securities of company have been listed for a minimum period of 3 years on any stock exchange.

b) there should not be any selective restriction or discrimination against any class of companies for delisting. However, the regulatory framework may need to be strengthened to prevent any misuse by the companies and to ensure that investors' interests are protected at all times;

c) any acquisition of shares or scheme or arrangement, by whatever name referred to, which may result in delisting of securities shall be in compliance with the relevant provisions under any SEBI regulation, circular or guideline and the provisions of the Listing Agreement so as to ensure protection of investors' interest.

4.13 The Committee was informed that the companies often use the route of share buy back or preferential allotment as a first step towards

delisting. The objective of enhancing shareholder value by buying back shares out of surplus funds would be entirely defeated, if the shares of remaining shareholders do not continue to have liquidity which listing ensures. It was also brought to the notice of the Committee, that companies usually propose buy back proposal or proposal for delisting when the share prices are low. While this would make commercial sense to the company, it is perceived by investors to be against their interest as they may get a very low price compared to the value of the company.

4.14 The Committee noted that under the present SEBI circular SMDRP/Policy/Cir-28/01 dated May 02, 2001, there is already a prohibition against using buy back for the purpose of delisting. The Committee therefore recommends that –

SEBI should clarify once again that no company could use the buy-back provision to delist the company.

Need for a separate and comprehensive delisting provision and its applicability of these provisions

4.15 The Committee noted that at present there is no single comprehensive guideline or regulation which governs permanent delisting of shares of a company from all stock exchanges. The present guidelines issued by SEBI in its circular dated April 29, 1998 referred to in earlier paragraphs, govern voluntary delisting of securities of companies in stock exchanges other than regional stock exchanges and compulsory delisting by the stock exchanges under certain conditions. The SEBI (Substantial Acquisition of Shares and Takeovers) 1997 govern

delisting of a company arising from fall in public holding to 10 per cent or less as a result of a public offer. There is therefore a need to harmonise the delisting provisions in various guidelines and regulations of SEBI and bring them under one single regulation/guideline.

4.16 The Committee however felt that while framing the separate comprehensive delisting provisions, it must be ensured that there is no scope of regulatory arbitrage between these provisions and the relevant provisions in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997. Otherwise there could be a possibility that companies would follow the more advantageous provision, and completely bypass the others. For example, if the comprehensive delisting provisions lay down certain principles for calculating exit price for the minority shareholders which are different from the provisions in regulation 21, clause (3) sub clause (a) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997, then it would but be natural for companies to choose the route more beneficial to them, rendering the other ineffective. Such situations should be avoided. In such situations, the comprehensive delisting procedure recommended by the Committee should be followed. The Committee therefore recommends that –

There should be comprehensive provisions which should also include procedures governing the entire subject of delisting of securities of companies, and should cover cases in which companies on their own seek delisting of their securities from all or some of the stock exchanges, as well as those where the stock exchanges can compulsorily delist the securities of a company.

Applicability of the comprehensive delisting provisions

4.17 The Committee also recommends that

the comprehensive provisions for delisting will be applicable in cases where a person in control of the management is seeking to consolidate his holdings in a company, in a manner which would result in the company being delisted, or in cases where as a result of a takeover process, the public (non promoter holding) falls below the prescribed threshold.

Principles for calculating the exit price for delisting of shares

4.18 As has been discussed before, the objections and criticisms against delisting seem to stem from the perceived inadequacy of the exit price mechanism currently being used by the delisted companies, which is based on the average of the preceding 26 weeks high and low prices. The arguments against this mechanism is that under depressed market conditions, the exit price arrived on the basis of this principle does not adequately compensate the shareholder for the permanent loss of investment opportunity, especially in a company whose shares are regarded as value investment. Views of certain members of the Committee were that the companies which have delisted, in particular the MNCs, have offered a price which was at a premium to the price calculated on the above basis and thus have adequately compensated the shareholder/investor for the permanent loss of investment opportunity. The Committee examined various options in this context.

4.19 One such option was that of introducing a book building mechanism which will allow the shareholders to bid to sell on the screen of any stock exchange with nation wide access and the highest price at which the maximum number of shareholders would be willing to sell should

be the offer price. This would allow the investor to take a considered view in a more transparent manner. The final price in the book building process may be determined as the price at which the maximum number of shares that have been offered. It would be up to the acquirer to accept or not to accept the price. If the acquirer does not accept the price, in that case, the company does not get delisted. Since the company would continue to remain listed, the shareholders would not stand to lose in any case.

4.20 It was felt that book building process would provide the transparent, fair and reasonable mechanism for pricing of the shares and which ensures investors' participation in the whole process of delisting. The acquirer / buyer is also not forced to buy the shares, unless the price matches his business consideration. The investors would not also have reason to complain that the exit price is unfair to them as they themselves arrived at the price through a participative process. It is expected that rational investors would quote the reasonable premium in the book building.

4.21 The Committee also examined alternative methods of arriving at a minimum offer price. In this context the Committee took note of the pricing principle in the present regulation 21, clause (3) sub clause (a) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997. Under this regulation an acquirer is required to make an offer to buy securities at the same offer price. The principle to be followed is whether the acquirer makes an offer to buy 100% of the securities or reaches through several stages of acquisition a level

of 90% or more, he has to make an offer to buy the remaining securities at the same offered price. In case there has been no acquisition of shares by an acquirer who could be the majority shareholder or a person in the control of the management, as in the case of several MNCs, the average of 26 weeks closing highs and lows was being taken as the minimum price and according to data available, the offer for delisting was being made at a premium to this minimum price. A cross section of investors, investor associations and the media feel that in such cases, the principle of calculating the minimum offer price on the basis of average of weekly closing highs and lows for 26 weeks is flawed, because if the market sustains a declining trend over a over a long period, such a method is bound to give a low minimum price. This would be unfair to the investors.

4.22 The Committee also examined the trend of market price of the shares of a company to be delisted over a longer period. A long term trend would most likely cover both the bullish and bearish phases of the market and hence would be secular without any deliberate bias in any one direction. It would also be fair to the investors as it would match their investment horizon which is generally long term. In this context, the Committee also looked at the price over a period of 52 weeks period.

4.23 The Committee compared the averages of closing highs and lows of 52 weeks and with those of averages of weekly closing highs and lows for 26 weeks from the date of offer for companies which have already delisted from BSE. It was found that in 14 out of 29 companies which

have been or are in the process of being delisted from the BSE, the 52 weeks average was greater than the 26 weeks average. The majority of the Committee felt that it could be desirable to arrive at a price through a transparent price discovery mechanism which will give all the shareholders an opportunity to participate in the price determination process. Accordingly, the Committee recommends that

a). The exit price for delisting should be in accordance with the book building process described in **Annexure –1.**

b). The offer price should have a floor price which will be the average of 26 weeks traded price and without any cap of maximum price.

c). Market Forces of demand and supply should determine the price above the floor price.

d). The stock exchanges would provide the infrastructure facility to enable the investors to see the price on the screen to bring transparency to the delisting process.

e). In the event of securities being delisted, the acquirer should allow a further period of 6 months for any of the remaining shareholders to tender shares at the same price.

f). To reduce the possibility of price manipulation, the scrips should be kept under special watch by the stock exchanges.

g). To ascertain the genuineness of physical shares if tendered and to avoid the bad papers, R&TA should be asked to co-operate with the Clearing House / Clearing Corporation to determine the quality of the papers upfront.

h). If the quantity eligible for acquiring shares at the final price offered does not result in public shareholding falling below 25%, the company would remain listed.

i). The paid up share capital should not be extinguished as in the case of buyback of shares.

j). In case of partly paid-up shares, the price determined by the book building process would be applicable to the extent the call has been made and paid. The amount of consideration for the departing shares would be settled in cash.

4.24 However the representative of CII did not agree with the aforesaid recommendation. His observations are quoted below:

"Comments on the Final Draft Report

Procedure for arriving at Exit Price for Delisting

While I am in agreement with the recommendation that the 26 week average should be the minimum price in case of an open offer for delisting, I have serious reservations against adopting the reverse book building method for arriving at the exit price for the following reasons:

- First of all, a reverse book building process would operate in a restricted audience, unlike in an IPO which is open to the general public. This raises doubts about the efficacy of the concept in a limited universe, since it is not a free market; and hence makes the process prone to manipulation.

- Any open offer for delisting should indicate the price that the buyer is willing to pay. The requirement in case of reverse book building requires generating

offers from the sellers (shareholders) who have no indication of the buyer's intention, or the price that the buyer is willing to pay for the strategic value of the company. The only indication the shareholders have is the 26 week average. This asymmetry of information places the shareholders at a distinct disadvantage, which may cause them to peg their offer at a low price, particularly in weak markets. If the price quoted by the shareholders is low, then the offer would go through, but there is a distinct possibility that the investor would not have got as high a price as the buyer was willing to pay, which works against the shareholders' interest.

Alternatively, a few shareholders who do not have the motivation to offer their shares can derail the process through manipulative bidding at unrealistically high prices, particularly given that the universe of sellers is limited to the existing shareholders.

- Further, the process builds in conditionality as regards the price as well as the occurrence of the transaction itself. There is no guarantee that the buyer will accept the book built price, in which case the deal falls through, thus depriving shareholders who would have otherwise exited at a reasonable offer price.

- In the event the acquirer is unable to get the company delisted, or finds the process too complex, it is possible for the acquirer to promote a 100% subsidiary to undertake new activities, (as is permitted under current regulations and has happened in some cases), thereby diluting the value of the existing listed company. Thus while the company continues to remain listed, its value would get eroded. This would work against the shareholders' interest.

Therefore, I do not subscribe to the view that a reverse book building process will bring about a more efficient price discovery and ensure that the investors get a fair exit price. I recommend that we adopt the minimum offer price as the average of weekly highs and lows of **either** 26 weeks **or** 52 weeks."

Delisting from one or more stock exchanges

4.25 The Committee noted that as on March 31, 2002 total number of listed companies on all stock exchanges (excluding double counting) was

9644. Of these, 5782 companies were listed and traded on the BSE, which includes 1744 companies for which BSE is the Regional Stock exchange. Most of the companies which are listed and traded on the NSE are also listed and traded on the BSE. This implies that there are 3862 companies which are listed and traded in one or many of the stock exchanges excluding BSE and NSE.

4.26 The listed companies could thus be classified into three categories – those listed only on the BSE and NSE, those listed on the BSE and NSE as well as on one or more of the other stock exchanges of which one would be a regional stock exchange for a company, and the companies listed on one or more of the other stock exchanges but not listed on the BSE and NSE.

4.27 The Committee was of the view that so long as a security of a company remains listed on a stock exchange which has nation wide access and active trading viz. BSE and NSE, a shareholder would not suffer in terms of liquidity even if the security is delisted from other stock exchanges and hence no exit offer need be made to their shareholders. But the converse would not hold good. If a company which is not listed either on the BSE or the NSE, seeks to delist from its regional stock exchange or any other stock exchange where it is listed, the liquidity of the shareholders would suffer and an exit offer would have to be made to their shareholders. The Committee therefore recommends -

a) a company which is listed on any stock exchange may be allowed to delist from that stock exchange without an exit offer

being made to its shareholders provided that the securities of the company are listed on BSE or NSE which have nationwide reach. As the securities of the company would continue to be listed on stock exchanges which have nation wide reach, investors' interests would not be jeopardized and hence no additional exit route need be separately provided to them;

b) in all other cases, viz. when a company which is listed on any stock exchange or stock exchanges other than BSE or NSE seeks delisting, an exit offer must be made to the shareholders in accordance with the recommendation in the paragraph 4.23 of this Report.

Abolition of the concept of mandatory listing at regional stock exchange

4.28 The concept of regional stock exchange has its genesis in the circular issued by Ministry of Finance, Government of India vide F. NO. 14(2)/SE/85 dated September 23, 1985 which stipulated that all existing listed companies are required to be listed also on the stock exchange located in the state in an area where the registered office or the main works /fixed assets of the company are situated. This stipulation was then necessary, as in the absence of automation, it helped stock exchanges to cater to the need of the regional investors and that of the industry for mobilization and regional allocation of capital and resources. However, automated trading and expansion of trading terminals have made capital generation and allocation at the national level much easier and regional stock exchanges virtually redundant.

4.29 Market design and structure for the Indian securities market have undergone several far reaching changes with the automation of the

stock exchanges and the availability of nation-wide trading facility with the geographical spread of trading terminals of BSE and NSE to nearly 400 cities and towns across the country. This has also been accompanied with the loss of business and liquidity at the regional and small stock exchanges, which used to allow trading in the same shares listed on BSE and NSE either as listed or permitted securities. During 2001-02, there was no trading in 7 of the 21 stock exchanges (excluding NSE and BSE). Decline in or absence of trading, in turn, has resulted in increase in the number of inactive securities on those stock exchanges. It has been pointed out to SEBI that in the absence of a trading, listing of the companies in those stock exchanges hardly serves any purpose to the investors. From the company's point of view also, listing in those stock exchanges only adds to its cost in terms of listing fees, without any commensurate benefit either to the investors or the company. The Committee was informed that a number of companies which are listed in BSE or NSE, have been approaching stock exchanges and SEBI to seek permission to delist from the regional stock exchange in which there is hardly any trading. The Committee therefore recommends that –

a) the MOF circular F. NO. 14(2)/SE/85 dated September 23, 1985 should be withdrawn;

b) there should not be any compulsion for the existing companies to remain listed on any stock exchange merely because it is a regional stock exchange and companies should have the freedom to list on a stock exchange of its choice.

Delisting of all or one class of securities

4.30 A question arises whether in the case of a company which has both shares and debentures listed on the stock exchanges, delisting of the shares should also automatically entail delisting of fully and partly convertible debentures, warrants etc of the company. Clause 24 (a) of the Listing Agreement makes it obligatory on the company whose securities are listed to make an application to the stock exchange to list any new issue of securities. While in all cases it is obligatory under clause 8 of the SEBI Disclosure and Investor Protection (DIP) Guidelines, to list equity shares before debt instruments, creating exemptions have been given to unlisted companies and municipal corporations, under the clause 8.2 of the DIP Guidelines to list debt securities without getting the equity listed. This implies that it should be possible in principle to get debt instruments listed without listing of equity.

4.31 There are arguments on both sides for allowing one class of securities to remain listed while delisting other classes of securities. Argument for allowing debentures to remain listed when shares of the company are delisted, is that debentures are fixed tenure instruments and listing could still provide some liquidity to investors till instrument is extinguished on maturity. The counter argument is that sufficient continuous disclosures may not be available once the company's shares are delisted. The stock exchange will also not be able to redress any investor grievance related to the past equity shares as the it will no longer have any jurisdiction over the instrument. In this context, the Committee noted that equity and fixed income instruments are different class of securities. The equity securities holders are the

owners and are the last in priority in the realisation of capital in case of liquidation of a company. The fixed income instruments have higher priorities in such situations. In some of the international stock exchanges, securities can be listed by class. The Committee therefore recommends that –

even if the shares of a company are delisted, the fixed income securities may continue to remain listed on the stock exchange. If however a company has a convertible instrument outstanding, it should not be permitted to delist its equity shares till the exercise of the conversion options.

Compulsory Delisting of Companies by the Stock Exchanges

4.32 Under the current procedures, companies listed on the stock exchanges enter into a listing agreement with the respective stock exchanges whereby the companies agree to make submissions/comply with various requirements set out in the agreement according the time frames prescribed. It was felt that it would not be prudent to allow continued trading in the security of companies which default in making submissions and disclosures as laid down in the listing agreement, some of which may affect the market prices of the security. In such cases the stock exchanges, as first step, intimate the companies about non compliance. In case of persisting non compliance by a company despite follow up by the stock exchange, the stock exchange has little choice but to suspend the trading in the securities until the company complies with all the requirements. It was informed by the stock exchanges that there were a large number of such companies, mostly illiquid or infrequently traded, which are not complying with the requirements of the listing agreement. In such

cases the stock exchanges should delist the securities of the companies and no compensation be paid to the investors.

4.33 The Committee was informed that investors feel that stock exchanges by suspending/delisting the shares of the companies without giving them an opportunity to exit, are playing into the hands of unscrupulous promoters/directors of erring companies, and in the process penalising the investors. At the same time not taking action against the company, may adversely affect the interest of new investors who may be investing in the shares of these companies.

4.34 The stock exchanges informed that there are companies which have a large pendency of investor complaints for a long time but do not respond to the stock exchanges, and companies which may not have investor complaints, but the shares continue to be listed without trading for more than three years. Besides, there is also a large number of very small cap and medium sized companies whose shares are illiquid and have been suspended by the stock exchanges for more than six months. For all practical purposes, there is hardly any investor interest in these companies. The stock exchanges felt that such companies were adding on to their cost of compliance and hence there was a need to evolve a mechanism for delisting these companies from the stock exchanges. In this context the Committee's attention was invited to the existing SEBI circular which sets out the norms for compulsory delisting by the stock exchanges, which include minimum percentage of floating stock, minimum trading level of shares, financial/ business aspects, track record of compliance with the

conditions of listing agreement, track record of promoter directors, whereabouts of the company. The circular also prescribes the procedure to be followed for compulsory delisting by the stock exchanges. The Committee therefore recommends that -

a) stock exchanges should be empowered to delist those companies which have been suspended for a minimum period of six months for non-compliance with the Listing Agreement.

b) as an alternative to the norms and procedure laid down in Annexure II of the existing SEBI Circular SMDRP/CIR–14/98 dated April 29, 1998 the stock exchange should give a show cause notice to these companies besides adequate and wide public notice through newspapers and on the notice boards of the stock exchanges;

c) these companies should be brought into the framework of arbitration mechanism of the stock exchanges so that the investors could have the opportunity of receiving monetary compensation;

d) the Department of Company Affairs may be requested to amend the Companies Act for allowing the stock exchanges to make an application for winding up of the company. However, such petitions against companies should be filed by the stock exchanges only on the basis of investor complaints.

Harmonising the level of public holding

4.35 The Listing Agreement provides for a minimum level of non promoter shareholding in a company as a condition for continuous listing to serve as a measure for investor protection. The objective of this quantitative condition is to ensure availability of minimum floating stock on a continuous basis. The company cannot make preferential allotment or an offer to buy back its securities, if such allotment or offer results in reducing the non-promoter holding below the limit of

public shareholding as specified at the time of initial listing. The requirements of public holding at the time of initial listing have varied from time to time over a wide range from 60% to 40%. Currently this level of public shareholding required at the time of listing is 25% of the share capital of the company in most cases and 10% under certain conditions. The variation in the minimum level of public or non promoter holding from company to company depending on when the company was initially listed, creates a non level playing field for companies in different situations for example in the case of buy back, takeovers etc.

4.36 It is necessary to harmonise the condition for minimum level of non promoter holding in different regulations to bring in greater clarity and to provide for a level playing field for all companies. To achieve this, first, uniform terminology needs to be used for public holding and non-promoter holding, as public holding can also include holding by the acquirer, while non-promoter holding excludes the acquirers holding. The two terms have two different meanings and are used in different contexts for different purposes. Second, it would be desirable that the level of shareholding for the purpose of continuous listing and Takeover Regulations are made the same. This could either be at the level of 25 per cent or 10 per cent for non-promoter holding (which excludes the shareholding by the acquirer who may or may not have been the promoter of the company). The Committee therefore recommends that –

the requirement of continued listing be made as non-promoter holding of 25 % or 10% as per exemptions provided in Rule 19 (2) (b) of

SC(R) Rules for public shareholding taking into account the exemption given under Rule 19 (2) (7).

4.37 Currently the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 allows acquisition up to 90 per cent and thereafter provides for acquisition of the remaining shareholding. This implies that a company under these Regulations can remain listed with a public holding of even 10 per cent (for 3 months) and less than 25 per cent for all times to come. Under Clause 40 A (i) of the Listing Agreement a company must have on a continuous basis the minimum non-promoter holding at the level of public shareholding as required at the time of listing, and if the non-promoter holding as on April 1, 2001 was less than the limit of public shareholding as required at the time of initial listing, the company would have to increase the non-promoter holding to at least 10 per cent within 1 year. If the company fails to do so, then it would be required to make an offer to buy the remaining shareholding as provided in the Takeover Regulations. There is thus a dichotomy between the provisions for continuous listing which varies from company to company and the provisions of the Takeover Regulations.

4.38 In the case of a rights issue, all shareholders are given equal opportunity to subscribe the securities at a pre-determined price. It is possible that the promoter or persons in the control of management may by subscribing to the unsubscribed portion in a rights issue cross the level of 90% which would in contravention of the Clause 40 A (i) of the listing agreement. The Takeover Regulations as mentioned

earlier allows an acquirer to cross the level of 90% provided he inter alia agrees to buy the remaining shares. These two conditions also need to be harmonized. The Committee therefore recommends that -

in case of rights issue, allotment to the promoters or the persons in control of the management may be allowed even if they subscribe to unsubscribe portion which may result in the non promoter holding falling below the permissible minimum level, provided that adequate disclosures have been made in the offer document to that effect and provided further that they agree to buy out the remaining holdings at the price of right issue or offer for sale to bring the non-promoter holding at the level of 25% or 10% (as the case may be) to remain the company listed.

Central Listing Authority

4.39 Multiple listing of the same security is permitted under the present rules and regulations of the stock exchanges. At present, a company has to apply for listing permission individually to each stock exchange, which has been mentioned in the offer document. Situations have arisen, where a listing application has been accepted by one stock exchange but declined by another. It is also not certain whether all stock exchanges have equal capability of due diligence for scrutinising the listing applications. In the view of the Committee, this calls for an urgent need of institutionalizing a common mechanism to scrutinise all listing applications on any stock exchanges, to bring about uniformity in the due diligence process. Setting up of a Central Listing Authority (CLA) could help in achieving these objectives. The Committee noted that such an authority exists in the UK under the aegis of the Financial Services Authority.

4.40 The Committee also noted that as there are 23 stock exchanges in the country, post demutualisation of the stock exchanges, there would be a likely change in the structure and number of the stock exchanges. While the number of stock exchanges may reduce in number, several stock exchanges may still remain and the issuers may like to list its securities more than one stock exchange besides BSE and NSE. The BSE and NSE have entry norms in terms of minimum capital which are different from other stock exchanges. While it is possible that BSE and NSE may raise the entry barriers further, multiple listing may still remain relevant. This situation further underlines the importance and the need for CLA so that uniformity in the level of due diligence is achieved across all stock exchanges in scrutinizing the listing application of any company seeking to list on any stock exchange including BSE and NSE. This will also help the companies reduce time and cost for listing.

4.41 The Committee extensively discussed the various aspects of the CLA. It was of the view that CLA should be set up under the aegis of SEBI and derive powers from SEBI Act or its Regulation. The Committee therefore recommends the following -

a) to bring about the uniformity in the exercise of due diligence in scrutinizing listing applications, a separate agency be formed designated as the Central Listing Authority (CLA);

b) the initial role of the CLA may be confined to scrutinizing listing agreement and reviewing the provisions of Listing Agreement from time to time;

c) it would be up to SEBI to expand the scope of CLA to include monitoring and compliance with the Listing Agreement at later date;

d) the CLA will be suitably empowered by SEBI;

e) a company seeking listing of fresh securities would make an application in a prescribed format listing first to the CLA. The CLA should give its opinion within 30 days after submission of application. After receiving the approval of CLA, the company would be free to apply to any stock exchange along with the letter of approval of CLA. The stock exchange would independently decide on whether to list the security or not with reference to its listing criteria and in case it does not list the security, it shall give its reasons in writing. The stock exchange shall convey its decision within the time frame already prescribed under the applicable regulations. The decision of the stock exchange would be appeal able to the Securities Appellate Tribunal;

f) the members of the CLA should not exceed 11 and CLA may be chosen from among the judiciary, lawyers, and people having expertise in securities market regulation, financial experts, academicians and Investor associations. 4 members of the CLA should always be drawn from the stock exchanges who would provide the CLA with expertise and experience in the area of scrutinizing applications for listing;

g) the quorum will be of 4 members. The representative of the stock exchanges where listing may be sought by the company, would not form a part of quorum of the CLA. Of the members present at the time of granting approval to a listing application, 50% should be non-stock exchange members;

h) SEBI would draw up a panel of names for members of the CLA;

i) the term of a member shall be for a period of 3 years unless the member has been found unfit for any reason or the member has himself expressed his desire to discontinue. No member may be given re-appointment after two terms of 3 years each;

j) to enable the CLA to function efficiently, it should have a permanent secretariat which may be provided by the stock exchanges / SEBI who may depute personnel to the CLA to enable CLA to analyse and scrutinize applications, convene meetings etc;

k) CLA may charge a reasonable processing fee from the company making application for listing to it;

l) the CLA will be accountable to SEBI and shall provide a quarterly report on their activities in a specified format to SEBI;

m) SEBI would periodically review the performance and working of CLA based on the reports and may reconstitute the CLA as and when necessary.

Reinstatement of delisted securities

4.42 The Committee is of the opinion that the existing provisions for the reinstatement of the delisted securities should continue and be permitted by the stock exchanges. The companies seeking re-listing of securities which were earlier delisted by the stock exchange would be required to make a fresh application after a reasonable period of say two years. The application for re-listing would be considered by first by the CLA and thereafter by the stock exchange based on the respective norms/criteria for listing prevalent at the time of making the application. The Committee therefore recommends that –

reinstatement of delisted securities should be permitted by the stock exchanges with a cooling period of 2 years. In other words, relisting of securities should be allowed after 2 years of delisting of the securities. It would be based on the respective norms / criteria for listing at the time making the application and the application will be initially scrutinized by the CLA.

5. Implementing the recommendations of the Committee

The Committee felt that SEBI should decide the appropriate manner to implement the delisting guidelines either through a circular or through a separate regulation.

6. Review of the Listing Agreement

The Committee would submit its report on the review of the listing agreement in Part II of the Report.

7. Acknowledgements

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The Committee on Delisting of Shares

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Abbreviations used in this Report

1.	Committee	: The Committee on Delisting of Shares
2.	Companies Act	: The Companies Act, 1956
3.	BSE	: The Stock exchange, Mumbai
4.	NSE	: National Stock exchange of India Limited
5.	MNC	: Multi National Company
6.	SCR Act	: The Securities Contracts (Regulation) Act, 1956
7.	SCR Rules	: The Securities Contracts (Regulation) Rules, 1957
8.	SEBI	: The Securities and Exchange Board of India
9.	SEBI Act	: The Securities and Exchange Board of India Act, 1992
10.	SAT	: Securities Appellate Tribunal
11.	CLA	: Central Listing Authority

Annexure 1

Book Building Process

Process Flow

1. As and then the appropriate trigger is reached the dominant promoter/shareholder group of the company (the acquirer) which proposes to acquire shares will be required to make an open offer to acquire shares through this book building process.

2. The acquirer shall appoint a merchant banker and make a public announcement regarding the book build process making appropriate disclosures. (decision on floor price, methodology to be adopted for determination of acceptable price, period for which the offer shall be valid etc.)

3. The floor price at which the acquisition shall be specified but no ceiling price shall be specified.

4. The acquirer shall be required to keep an deposit in an escrow account. (the amount may be based on the floor price indicated).

5. The book building process should require that all stock exchange centers are covered through the electronic book building with a minimum of at least thirty centers.

6. The offer to buy shall remain open to the shareholders for a minimum period of three days.

7. The final buy-back price may be determined as the price at which the maximum number of shares that have been offered. The acquirer may accept or not accept the price. If the price is accepted then the acquirer will be required to accept all offers upto and including the final price but may not have to accept higher priced offers. The same is illustrated below :

Offer Quantity	Offer Price	Remarks
50	120	Floor price
82	125	
108	130	Final price (as quantity offered is maximum).
27	135	
5	140	

If final price is accepted the acquirer will have to accept offers up to and including the final price i.e. 240 shares at the final price of Rs. 130/-.

The book build process

? Investors may approach identified trading members for placing offers on the on-line electronic system. The format of the offer form and the details that it must contain should be prescribed.

? The investors shall be required to deposit the shares offered with the trading members prior to placement of orders. Alternately they may mark a pledge for the same to the trading member. The trading members in turn may place these securities are margin with the exchanges/clearing corporations.

? The offers placed in the system shall have an audit trail in the form of confirmations which gives broker ID details with time stamp and unique order number.

? At the end of the book build period the merchant banker to the book building exercise shall announce in the press and to the concerned exchanges the final price and the acceptance (or not) of the price by the acquirer.

? The acquirer shall make the requisite funds available with the exchange/clearing corporation on the final settlement day (which shall be three days from the end of the book build period). The trading members shall correspondingly make the shares available. On the settlement day the funds and securities shall be paid out in a process akin to secondary market settlements.

? This entire exercise shall only be available for demat shares. For holders of physical certificates the acquirer shall keep the offer open for a period

of 15 days from the final settlement day for the shareholders to lodge the certificates with custodian(s) specified by the merchant banker.

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