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Now, Investors may get option to exit companies on improper use of IPO money

Reena Zachariah, ET Bureau Nov 30, 2015, 04.00AM IST

MUMBAI: Investors will soon get an option to exit companies if the promoters fail to use money raised through initial public offerings for the stated purposes. The Securities & Exchange Board of India (Sebi) board meets on Monday to discuss topics including exit options for dissenting shareholders and amending of rules on clearing corporations in line with KV Kamath panel suggestions. The board will also discuss tweaking of rules related to forfeiture of partly paid shares, introducing an electronic platform for the issue of debt securities and providing a framework for green bonds.

Sebi board, which will meet for the first time after merging with the Forward Markets Commission, the former commodities market regulator, will include new members - Shaktikanta Das, secretary in the department of economic affairs, Tapan Ray , secretary in the Ministry of Corporate Affairs, and part-time member Arun Sathe.

Sebi's move to provide an exit for dissenting shareholders is in line with the Companies Act, 2013. Section 13 (8) of the Act says that a company left with unutilised funds after raising money from the public cannot change the objects stated in the prospectus unless a special resolution is passed and the promoters offer dissenting shareholders a way out. A similar provision is mentioned under section 27.

"It's a change from investing in the promoter alone to investing in the business. Scrupulous promoters may not have a problem, but unscrupulous promoters will certainly have a problem," said Suhail Nathani, a partner at Economic Laws Practice. "The proposed changes are in keeping with the spirit of the new Companies Act, which has substantially enhanced minority rights protection."

The regulator will put up its proposal on the matter for public comment before changing the rules on raising capital.

However, investment bankers said the change could have an impact on IPOs and create problems in meeting the minimum 25% public holding norm.

"If there are onerous restrictions on alteration of end-use of funds, it would discourage potential high-growth companies to go for an IPO," said Mehul Savla, director of RippleWave Equity Advisors." Companies may prefer to raise funds through private equity now and do an IPO later for providing exit to them. This could preclude investors from participating in the growth stage of the company."

Savla added that the move could create problems in terms of compliance with public holding norms, which could fall below prescribed levels.

The regulator also plans to overhaul the corporate debt market by pushing all issuances on to an electronic platform. The Sebi board will discuss introducing entities called electronic book providers. These entities could be merchant bankers and will have to take prior approval from the regulator before providing a platform for electronic services.

India will be among the few countries to move online for all debt issues. At present, electronic platforms are used for equity sales and for government bond auctions. After systems are tested, this could be made mandatory for all issuances.

"Once the electronic platform is put in place, there will be no more asymmetry of information. This will improve transparency in the sales process as all interested investors would become aware of the issue," said a person familiar with the development.

Sebi believes an electronic platform, compared with the current over-the counter system, will attract more investors and also build their confidence in the entire issue process.

"Currently, no one knows whether the merchant banker has approached all the interested investors. Some of the investors may not be even aware of the debt issue," the person said.

About 90% of corporate bond issuances are private placements.The minimum number of members in a private placement of debt securities should not exceed 200, as per the new Companies Act, compared with 49 people previously .

Sebi will discuss a framework for green bonds. At present, there is no standard definition for green bonds, except that such instruments are used to raise funds for environmentally friendly ventures such as renewable energy projects.

Earlier this year, Yes Bank and Exim Bank raised Rs 315 crore and Rs 3,330 crore, respectively, through green bonds.

ET VIEW: Challenges in Implementation

Sebi's proposed rule is investor friendly. It is a grim reminder to promoters that they should use funds raised in an IPO for the stated purpose. The regulator should hold to account a promoter who siphons off funds. But it should also make it mandatory for promoters to explain why they have not used the funds for the intended purpose as some of them could have genuine reasons too. Not an exact comparison, true, but the Companies Act, for example, mandates companies to spend money on corporate social responsibility or explain why they do not. However, Sebi could also find implementation of the rule challenging.