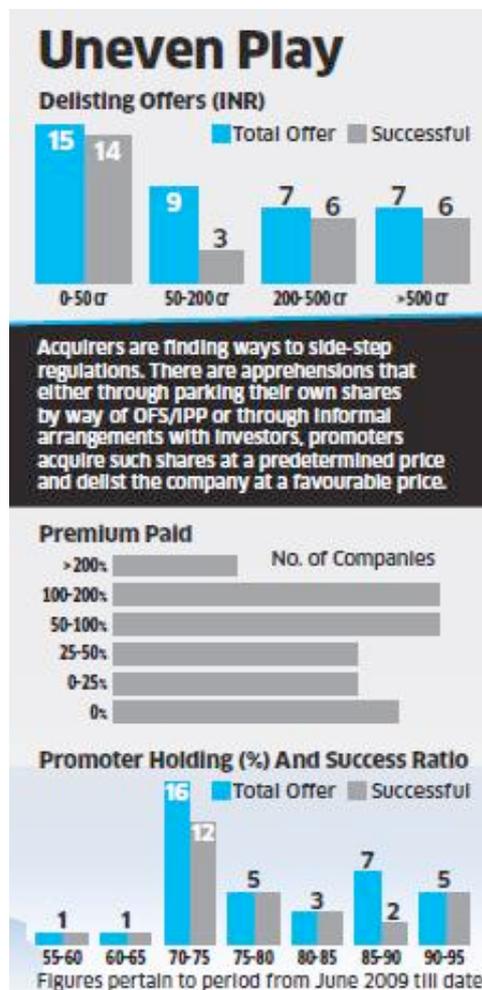


## New delisting regulations: Sebi possibly playing in MNC's hands

Reena Zachariah, ET Bureau May 28, 2014, 05.27AM IST

Chances of a married couple sitting across the table, with one saying, "I want a divorce," and the other saying, "Fine, let's go ahead," are improbable. Usually, one spouse sets the ball rolling on a separation while the other resists. The person who resists will either reluctantly let go or will fight it out but not without seeking his or her due share. Similarly, when promoters attempt to delist their companies, minority shareholders often resist such moves but with no success. "Delisting is like a forced divorce," a senior capital market regulatory official said at a meeting.



"The investor has the right to ask what is due to him. If the promoter can pay, go for divorce. If you are not able to pay, remain listed." Sebi's stance on this stems from its concern for minority shareholders whom it reckons should not lose out in the bargain. Delisting, which leads to the removal of a company's stock from the bourses favours promoters, enabling them to exercise greater control over the businesses. Once the stock is delisted, minority shareholders will not enjoy the luxury of liquidity offered by stock exchanges.

So the regulator wants to ensure that such shareholders gain the most before delisting. With this in mind, a few weeks ago, Sebi proposed revamping the five-year-old delisting rules. The regulator's internal analysis of 38 delisting offers between 2009 (when Sebi introduced delisting regulations) and 2014 revealed that 29 offerings were successful (differently put, almost 24% failed). The analysis showed that some of the delisting offers succeeded because of a tacit understanding between promoters and investors while some failed as the exit price discovered through the reverse book building (RBB) process was unduly influenced by speculators.

In both cases, minority investors were left in the lurch. "The more recent experience with delisting has been that a few shareholders hold out for a higher price, holding the process to ransom," said Amit Tandon, founder and MD of IIAS, a proxy

advisory firm. To gain a better picture of the delisting scenario, the 38 offers need to be classified into two distinct buckets — those relating to MNCs and the ones relating to Indian companies. A further analysis of the data showed that 12 of the 19 MNC offerings were successful (which also means that 40% failed) and in case of Indian offers, 17 out of 19 succeeded (the failure rate being 11%).

Moreover, the average premium (difference between exit price and floor price) in MNC offers was three times the premium for Indian companies. The high premium is also because the

India units have emerged as a jewel in the crown of MNCs businesses even as they grapple with slow growth in their home countries. Lenient FDI rules and removal of caps in many sectors too have allowed MNCs to hold a tighter grip over their local arms. In HSBC InvestDirect's delisting offer, the exit price was Rs 400 against the floor price of Rs 124, a super premium of 223%. Further, in case of seven Indian companies, the premium to floor price was 0%, which means investors tendered at the floor price despite the RBB mechanism allowing them to bid higher.

In contrast, in MNC offers there was not a single offer where the exit price was at 0% premium to the floor price. "The remarkable divergence in trend with higher number of successful offers by Indian companies that too at lower premiums points to market realities that need to be recognised before generalising," said Mehul Savla, director, RippleWave Equity Advisors. Sebi is considering a host of reforms such as modification of RBB process, mandatory tender by minimum number of shareholders or shares and introduction of a fixed price mechanism and counter offers in an attempt to facilitate a fair and transparent exit price for small shareholders.

"The draft Sebi guidelines — offering a broader set of price discovery options, attempts to tilt the balance from a handful to a larger set of shareholders," said Tandon of IIAS. In the proposed RBB process, the exit price will be determined based on the price at which shareholders representing a requisite number of shares tendered are willing to exit. In such an approach, the bid of each shareholder counts unlike the current system where only the bid of the largest shareholder counts.

Yogesh Chande, associate partner at Economic Laws Practice feels that allowing retail investors to bid at the cut-off price similar to an IPO process will be helpful compared to the RBB process. "The cut-off price has persuasive value for retail investors, as has been the experience in case of an IPO," Chande said. However, Savla of RippleWave has a different view on cut-off price. "In an IPO, this makes sense since IPOs require minimum 60% participation from QIBs who are sophisticated investors with good research skills and are well equipped to do the pricing of an IPO. In delisting such a facility should not be allowed."