Date : 14-Aug-2010 | Edition : National | Page No.: 12 | Page Name: Money Matters | Size: 349.65 sq. cm

Sector: Banking and Finance | Circulation: 105000 | AVE: INR 506986.34 | Frequency: Daily

News monitored for: Kotak Investment Banking

RAPID FIRE | MERGERS & ACQUISITIONS

Fairness and equity are the basic principles behind takeover code

BY HARINI SUBRAMANI
harini.s@livemint.com

MUMBAI

The proposed changes to markets regulator Securities and Exchange Board of India's takeover code increases the amount of money needed to make open offers. Additionally, takeovers that will be paid for through equity have been made smoother, Sourav Mallik, executive director for mergers and acquisitions at **Kotak Mahindra Capital Co. Ltd** and a member of the panel that drafted the code, said in an interview. Edited excerpts:

What is the basic philosophy behind the changes? Will they erase the division between majority and minority shareholders?

Fairness and equity are the basic principles behind the proposed code. Having said that, majority shareholders continue to have the ability to change the direction of the company or invite strategic investors. The code only provides the minority shareholder with an equitable opportunity to exit.

A contrarian view is that the proposed revisions actually spell bad news for minority shareholders as it permits delisting by paying close to the current market price.

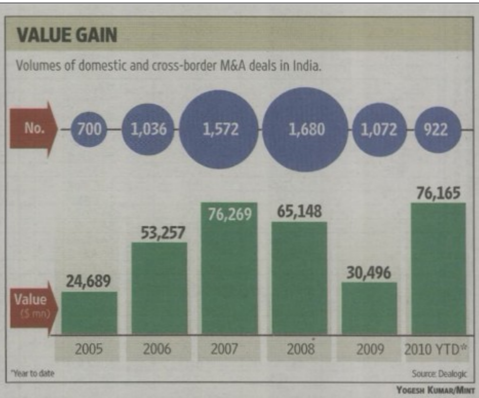
The recommendation suggests delisting only if the acquirer gets 90% or more, which is a result of a voluntary action by a shareholder. If shareholders do not tender (they do not like the price), there is no question of automatic or forced delisting or forced sale.

Do the proposed open-offer norms favour foreign acquirers?

The code does increase the amount of money needed to make open offers. Currently, the average promoter shareholding is 49%. Some companies do have the money to make an open offer to purchase the remaining stake. Additionally, the regime for share-for-share takeovers has been made a lot smoother and uniform for people to utilize this provision.

So, if one can actually argue that a share-for-share takeover regime is beneficial for domestic acquirers as a foreign acquirer cannot do share-for-share, then this doesn't favour foreign acquirers. If the conclusion is that foreign companies have more money, then that itself is suspect in today's regime. Then you can say that it favours foreign acquirers. So, a lot of Indian companies would find flavour with cash plus stock deals.

We at Kotak are already discussing such type of deals. Indian promoters are increasingly less focused on shareholding levels and more focused on growing the transactions.



YOGESH KUMAR/MINT

Eventually, it depends on promoters and willingness and the absolute level of control that they are comfortable with. If they want to remain with a 60-70% shareholding, they would never want to give out shares as consideration.

But if you look at a lot of larger groups in the country, they are comfortable with 30-40% level.

What are the areas that the revisions have not addressed?

There are around two or three areas where reforms would benefit the Indian capital market.

There could be a greater integration of the delisting and takeover regulations as ultimately both deal with consolidation of holdings and how they should be done.

The differential norms in terms of delisting threshold and continuous listing creates a grey zone. Either we reduce the amount of grey area or slowly collapse (the differential norms) to bring about one threshold.

 www.livemint.com