



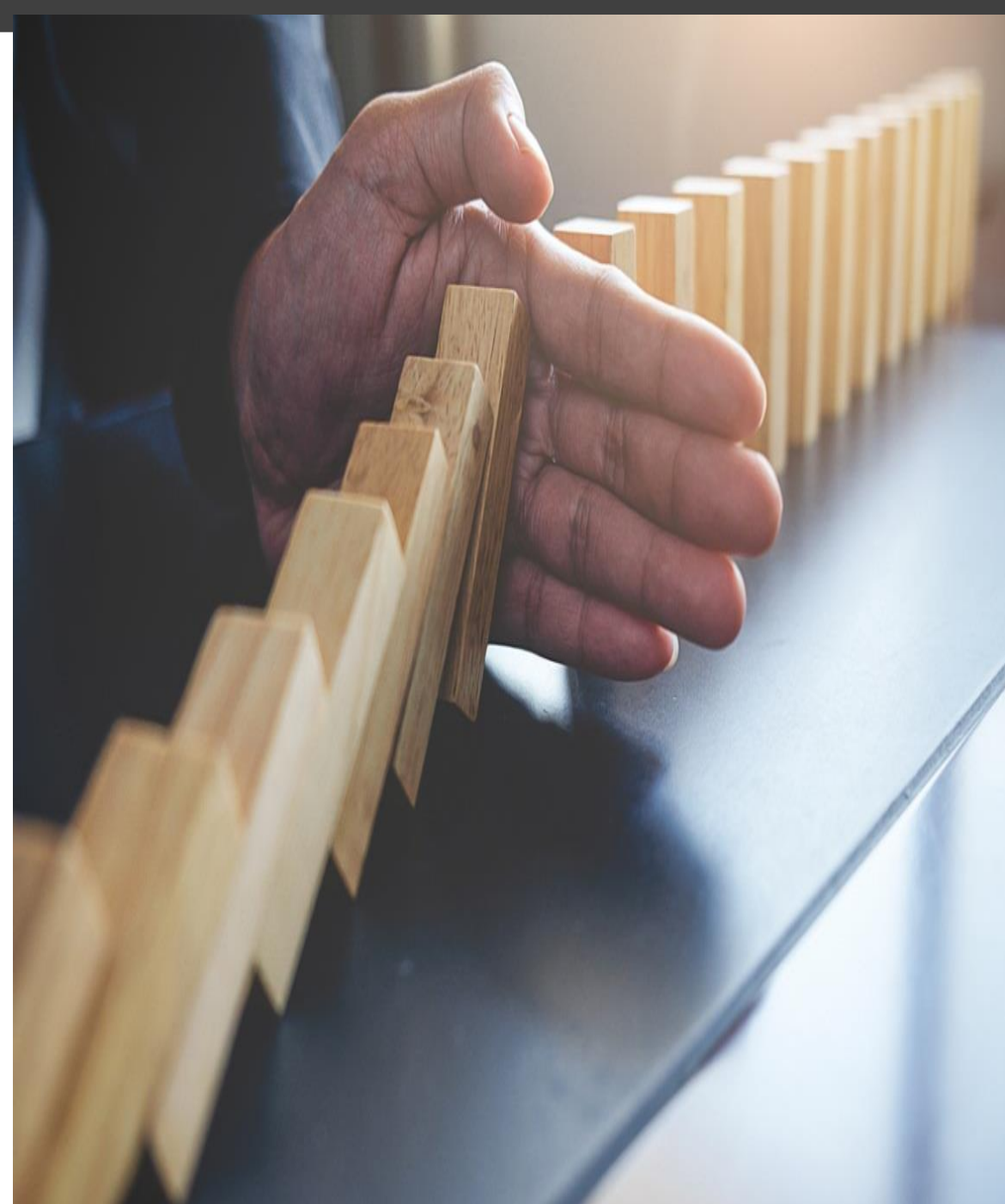
Preferential Allotment

**EASE OF FUND RAISING-THROUGH THE
PRIVATE PLACEMENT ROUTE**

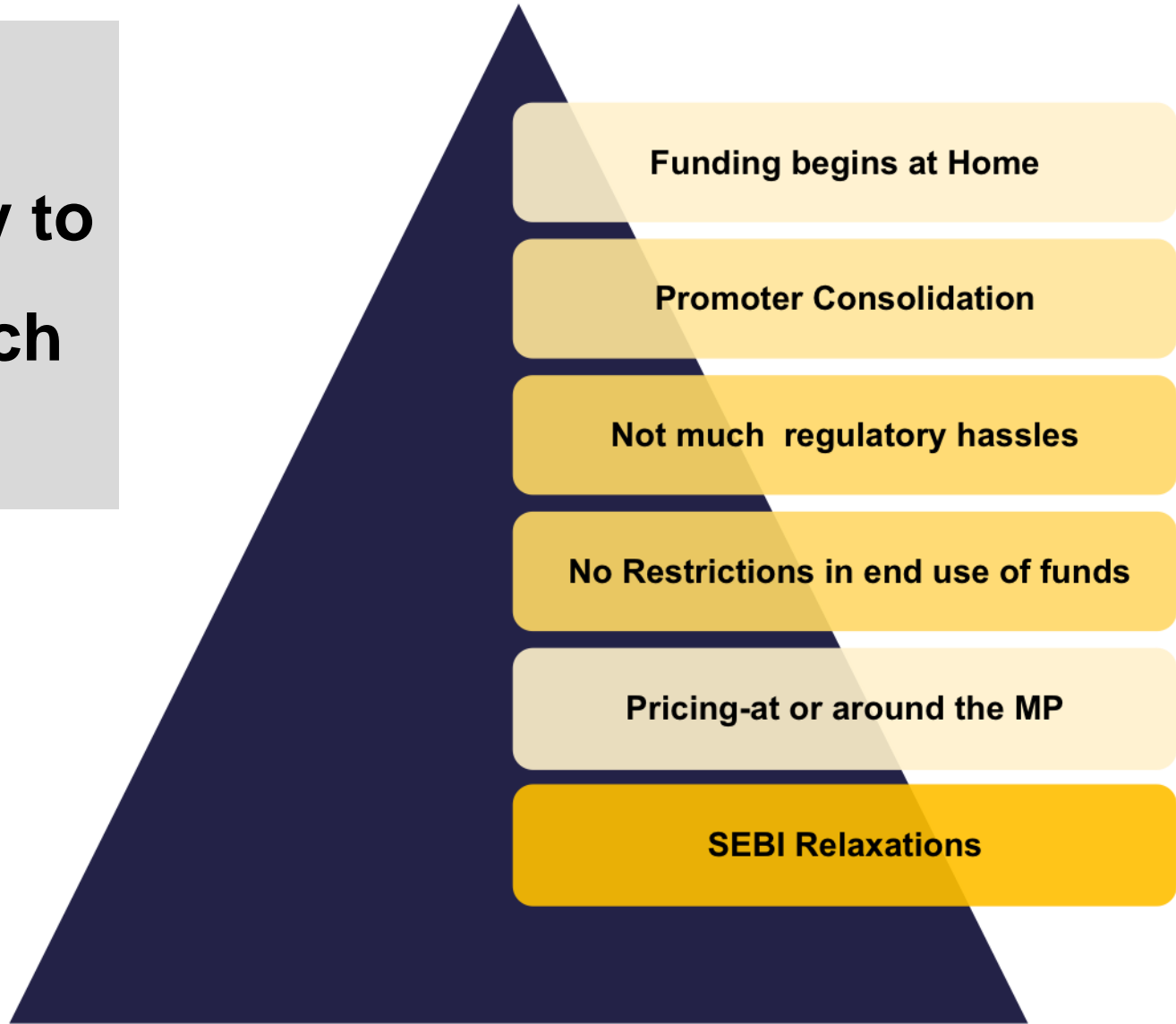
C	OPERATE
C	OVID
C	RISIS
C	ASH CRUNCH

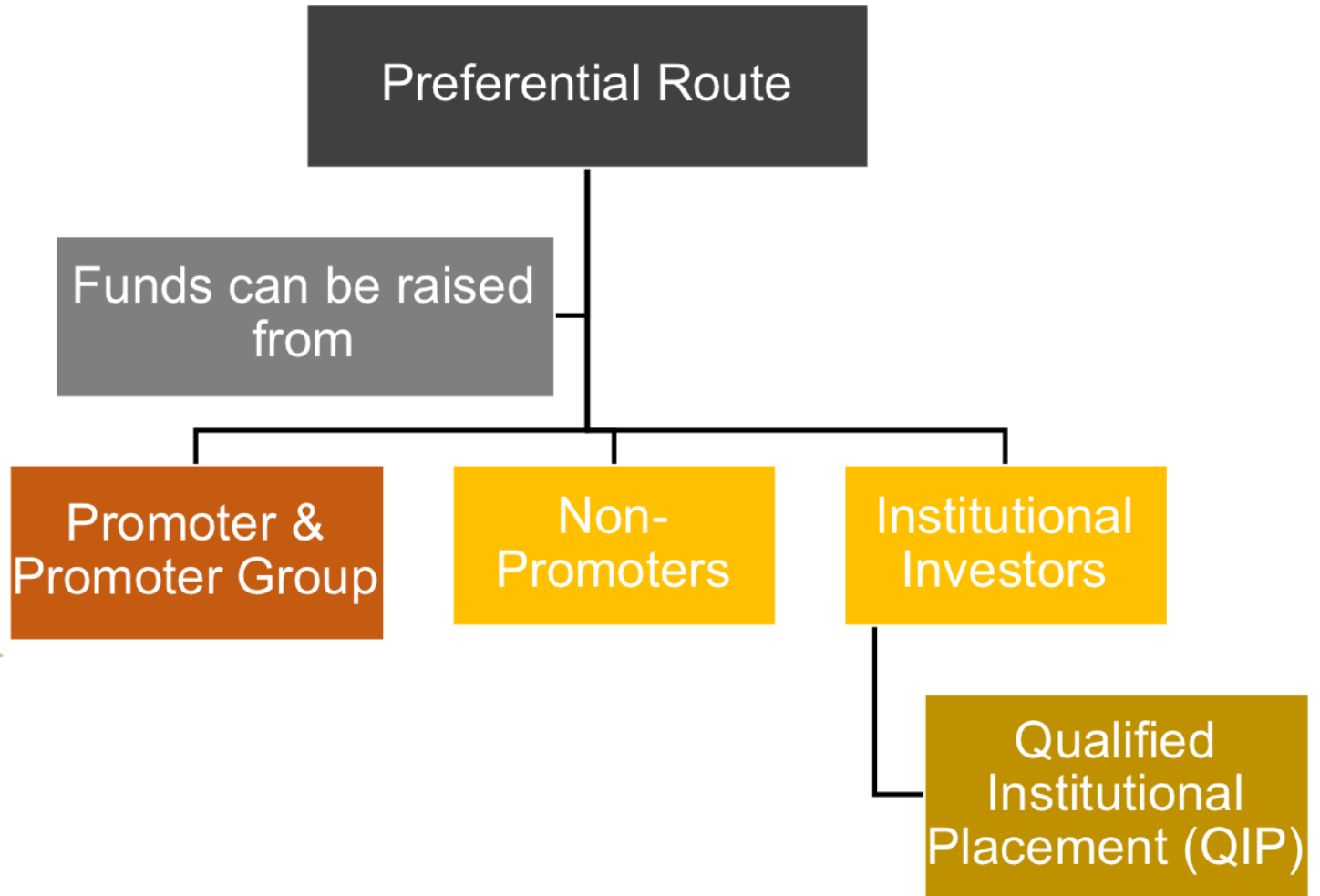


HOW Preferential ISSUE CAN HELP?



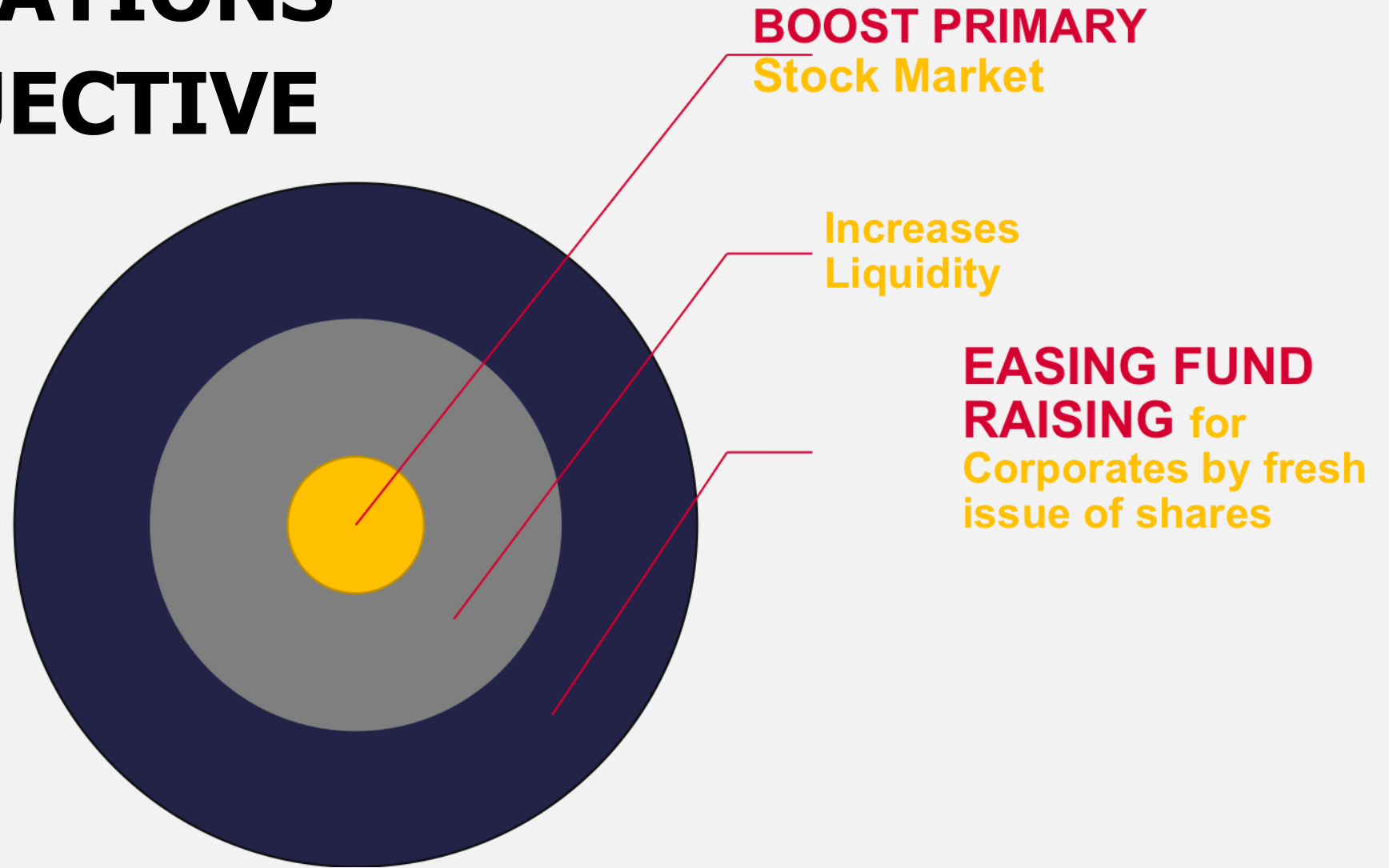
Preferential Issue is the fastest and simplest way to raise capital without much Regulatory Hassles





SEBI RELAXATIONS-

A TWIN OBJECTIVE



SEBI's PREFERENTIAL BOOSTER DOSE



Funding from
Promoters



Increases Creeping Acquisition
limit from 5% to 10% in a FY



Funding from
Non-Promoters



Brings a Ray of Hope for Stressed
Companies

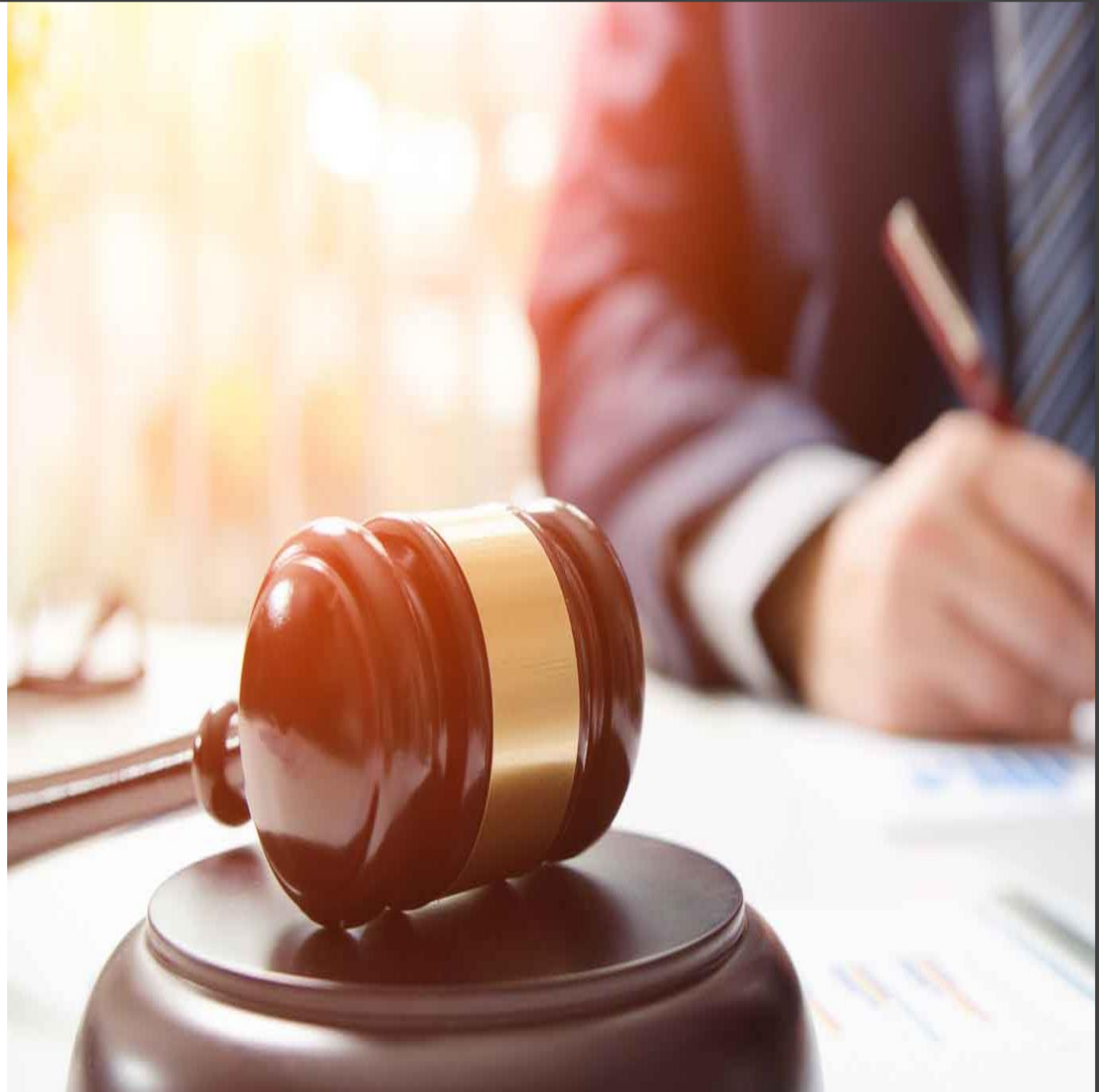


Funding from
Institutions



Reduces time gap between 2 QIPs from 6
months to 2 weeks

REGULATORY SCENARIO- PREFERENTIAL ISSUE



Legal framework applicable to Listed Companies



Companies Act, 2013



SEBI (ICDR) Regulations, 2018



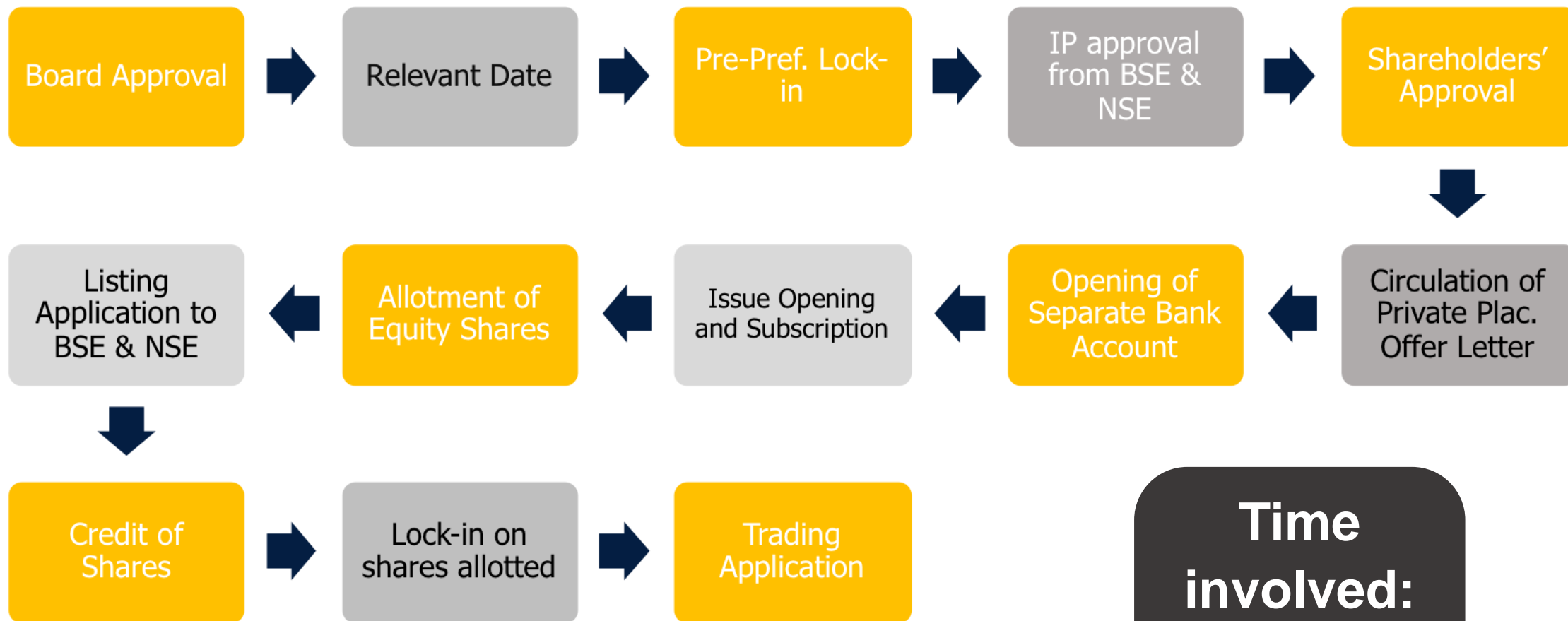
SEBI Takeover Regulations, 2011



SEBI Insider Trading Regulations, 2015

Preferential Issue Process & Objectives





**Time
involved:
2-3
months**

OBJECTIVES OF PREFERENTIAL ALLOTMENT TO PROMOTERS

1

FUND INFUSION
into the Company
for long terms or
short term capital
requirements

2

To increase their
stake in the
Company

3

Conversion of any
outstanding loans
into Equity

KEY Regulatory PROVISIONS



Eligibility

- **Demat Mode:** Entire Pre-Preferential holding to be in demat mode only;
- **Sale/ Transfer**
No issue to persons who have sold any equity shares of company **during last 6 months preceding the relevant date;**
- **Sale/ Transfer by** any person belonging to Promoter/ Promoter Group,



Entire Promoter/ Promoter Group will become ineligible, if any shares sold last 6 months preceding the relevant date;

- No previously unsubscribed/ cancelled warrants of Promoter/ Promoter Group during last 1 year.
- None of the promoters/ directors should be fugitive economic offenders.

RELAXATION GRANTED- ICDR 2018

- Qualifying Inter-se Transfer amongst promoters/ promoter group;
- Transfer of shares on account of invocation of pledge by a scheduled commercial bank or PFI or a systemically important NBFC or mutual fund or insurance company

Relevant Date:

Relevant Date: 30 days prior to the date of shareholders' approval.

(To check lock-in conditions & Pricing Provisions)

Pricing

If Shares are frequently traded - Higher of Average of High and **Low of 26 weeks/2 weeks Volume Weighted Avg.** Price preceding the Relevant date

If Shares are in-frequently traded – the Company shall take into account parameters like book value, comparable trading multiples etc for determining price

Consideration

- **Equity Shares** – 100% at the time of allotment

Allotment

Within 15 days of Shareholders' approval **'OR'** regulatory approval, **whichever is later**

Pre-Pref Lock-in

- In case of Pref. Allotment of Equity Shares

From: Relevant Date

Upto: 6 months from the date of Trading Approval

Lock-in of shares Pref. allotted

- In case of Pref. Allotment made to Promoters: For 3 years from the date of Allotment

(Upto 20% of Capital to be locked –in for 3 years, balance to be locked in for 1 year)

In case of Pref. Allotment made to Non Promoters: For 1 year from the date of Allotment

LINE OF CONTROL/ MAJOR OBSTACLE FOR PROMOTERS IN PREFERENTIAL ROUTE

**Reg 3(2) of SEBI Takeover
Regulations, 2011**



**A PROMOTER ALREADY HOLDING > 25% OF
CAPITAL CAN ADDITIONALLY ACQUIRE ONLY
UPTO 5% OF SHARES IN A FY WITHOUT
TRIGGERING OPEN OFFER REQUIREMENT**

- REG. 3(2) OF SEBI SAST REGULATIONS

SEBI comes to RESCUE

PROMOTERS & the COMPANY



BOOSTS FUND RAISING BY PROMOTERS IN THE TIMES OF CRISIS

FOR FY 2020-21 SEBI HAS
INCREASED THIS CREEPING
ACQUISITION LIMIT FROM 5% TO
UPTO 10% FOR PREFERENTIAL
ISSUE OF EQUITY SHARES TO
PROMOTERS.



PLANNING a Preferential Issue...

FACTORS TO BE CONSIDERED



PREFERENTIAL ISSUE PRICE vis-à-vis RUNNING MARKET PRICE

- Average Preceding 26 weeks price are at their all time low due to Covid impact in the last 3 months.
- Shortening of gap between Pref. Issue Price and Running market price.

EXISTING PROMOTER & GROUP SHAREHOLDINGS

If Promoter has already made creeping acquisition upto 5%, then Preferential Issue can be made for balance 5% in FY 2020-2021

If any Promoter/ Promoter Group shareholding < 25%, then post allotment, it should not breach 24.99% threshold under Reg. 3(1) of Takeover Regulations.

IT'S ALL ABOUT CHOOSING THE RIGHT MIX



SCENARIO 1:

FUND INFUSION into the Company for long term or short term capital requirements

AT A GIVEN ISSUE PRICE

As per the current stock price trend under
PREFERENTIAL ISSUE ROUTE,
**more shares can be acquired at a given level of funds
infused**

**Fund Infusion by Promoters: Pref. Allot. UPTO 10% of Acquisition
Balance Funding → Pref. Allot. To NON-PROMOTERS**

SCENARIO 2:

To increase Promoter stake in the Company

IF Market Price < Issue Price

Can make Market Purchase upto 5% in Current FY

For Balance, Preferential Allotment for further 5% acquisition

Additionally, investment at a current date can be made in Warrants, which can be converted in next FY

SCENARIO 3:

**Conversion of any Outstanding Loans into
Equity**

At a Given Issue Price

**Equity Shares can be issued upto 10% to Promoters towards
conversion of loan given to the Company.**



STRESSED COMPANIES- A SURVIVAL PLAN BY SEBI

**Amendment in
SEBI ICDR Regulations &
SEBI TAKEOVER Regulations**



RATIONALE BEHIND

- Listed companies facing financial stress are generally, in need of fund infusion to tide over the stress situation
- To avoid Insolvency/Bankruptcy of such Companies
- Difficulties faced in raising capital through the conventional means.
- In listed companies having “stressed assets” experience progressive fall in their share price.
- Unwillingness of investors to bail out at high price.



A listed entity shall be considered as STRESSED WHEN??

1. Defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions on listed and unlisted debt securities for at least 90 days in terms of SEBI Circular dated November 21, 2019.

2. Existence of Inter-creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019.

3. Downgrading of Credit Rating to “D” of the listed/ unlisted instruments

ANY 2 out of 3 to be met **at the time of dispatch of Notice to shareholders'**
AND
At the time of Allotment

To be certified by
Statutory Auditor
+
Audit Committee

Relaxations GRANTED

Min. Issue Price (Reg 164A)

- Avg. Of weekly highly & low of VWAP in 2 weeks preceding the R.D.

Exemption from Open Offer (Reg. 10(2A))

- Acquisition > 25% exempt from Reg 3(1) & Reg. 4

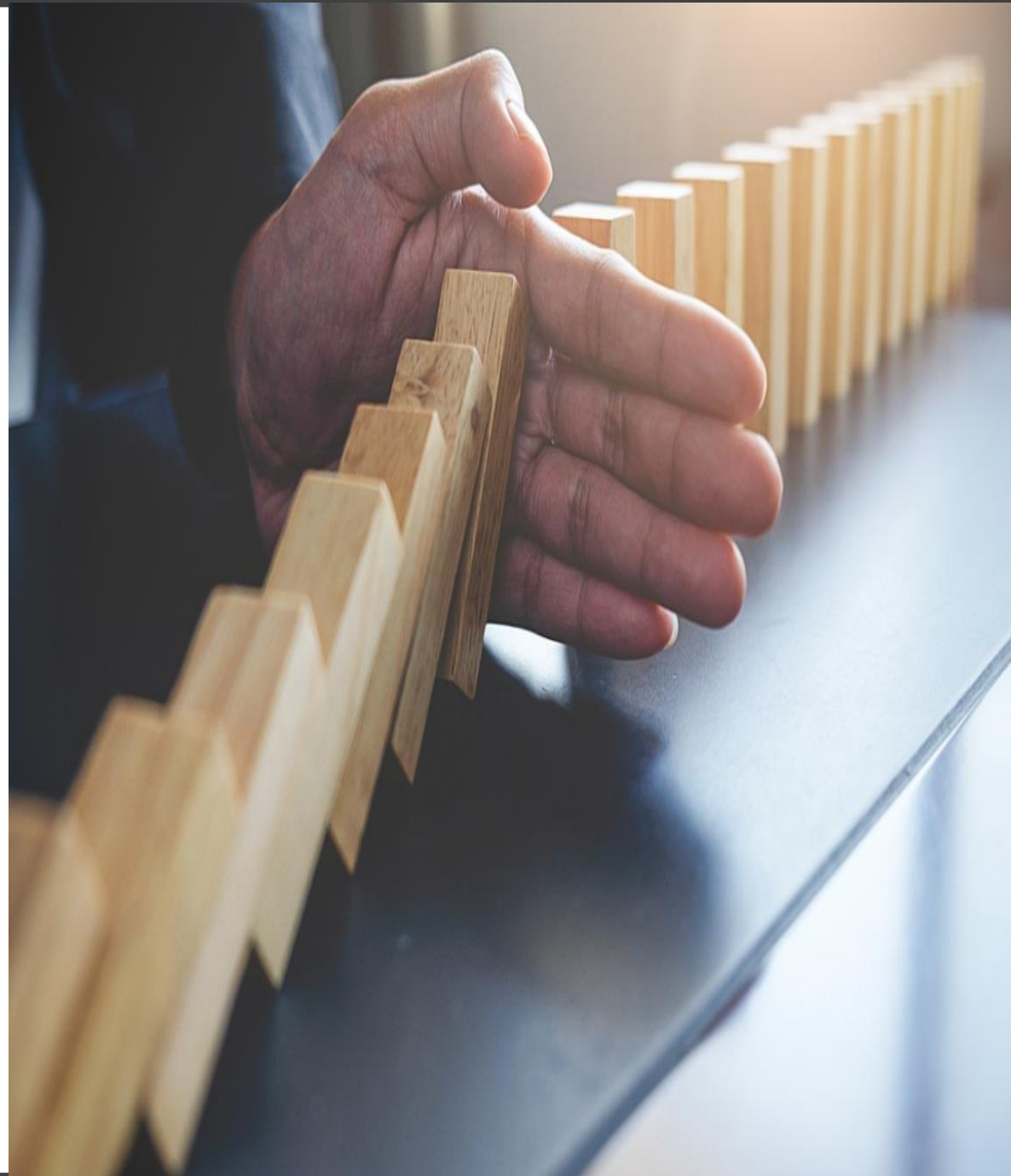
CONDITIONS PRECEDENT!

Allottees	NON- PROMOTER
Special Resolution	Passed by MAJORITY of MINORITY
Fund-use Restriction	Can't be used for Repayment of Loans taken from Promoters
Monitoring Agency	To be appointed to monitor End-use funds
Lock-in	3 years from the date of trading approval



KEY IMPLICATIONS UNDER SEBI TAKEOVER REGULATIONS FOR PREFERENTIAL ISSUES

Why check on Takeover Regulations is important while doing a Preferential allotment?



Preferential issue within the thresholds of Takeover Regulations

1

Initial Trigger of 25% or more of the voting rights

2

Creeping acquisition limit of 5% shares in a FY, if shares held are more than 25% but less than 75%

3

Both limits shall be checked on Individual as well as Aggregate basis

No Open offer obligation, if acquired within the threshold provided under Regulations

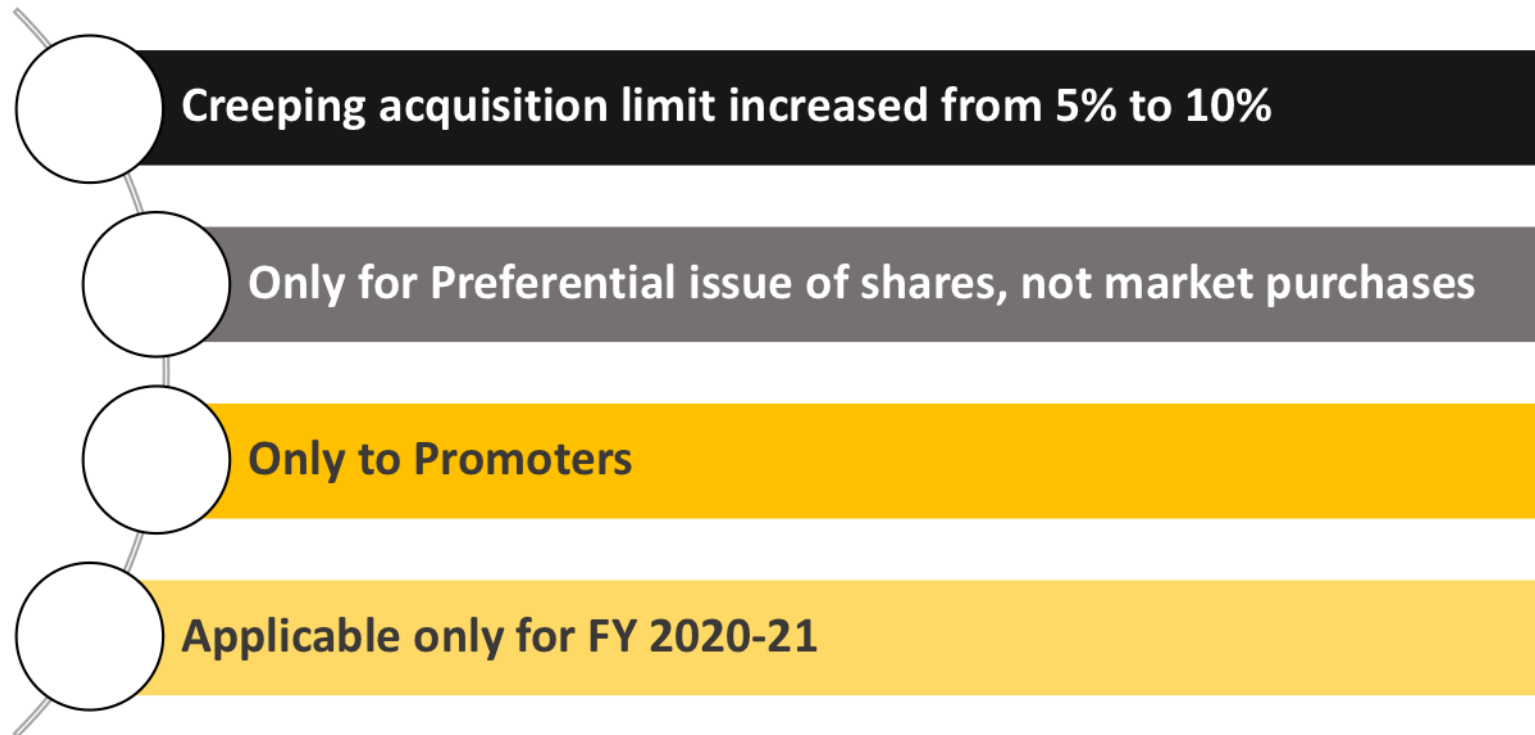
What changes SEBI has made considering during COVID times for preferential issue under Takeover Regulations?

Creeping acquisition limit has been increased from 5% to 10% for Preferential issues to Promoters

Provisions before amendment	Amendment
<ul style="list-style-type: none">▪ If an Acquirer along with Person Acting in Concert ('PAC') holds more than 25% but less than 75% of shares or voting rights in the Target Company, then they can acquire only up to 5% within the creeping acquisition limit in a financial year, without making an Open Offer under the Regulations.	SEBI vide its amendment has increased this creeping acquisition limit of up to 5% to up to 10% for Preferential issue of shares to Promoters
<ul style="list-style-type: none">▪ This 5% can be acquired either through Market purchases or by way of fresh issuance of shares	

What changes SEBI has made considering during COVID times for preferential issue under Takeover Regulations?

Creeping acquisition limit has been increased from 5% to 10% for Preferential issues to Promoters



Why this change was necessary?

Promoters
intended to infuse
funds in
Companies during
Covid times

Due to fallen
stock market
prices, fund
infusion can be
done at a lower
prices

Exemption from Open Offer in Stressed Companies

Exemption to
persons other than
Promoter

Available from Initial
threshold of 25%
and acquisition of
control

Such person shall
not be 'Fugitive
Economic Offender'

Such person shall
not be 'Wilful
defaulter'

Such person shall
not be 'Debarred by
SEBI'

How to calculate creeping acquisition limit?

- Gross Acquisition alone shall be taken into consideration regardless of any intermittent fall in the shareholding or voting rights whether owning to disposal or dilution of voting rights owning to fresh issue of shares by the Target Company;
- In the case of acquisition of shares by way of issue of new shares by the Target Company or where the Target Company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.

How to calculate creeping acquisition limit?

Date	Particulars	Shareholding (%)
01.04.2017	Shareholding of Acquirer	30.00
30.04.2017	On Market Acquisition	2.00
01.07.2017	Dilution in the shareholding pursuant to the increase in capital	1.00
07.07.2017	Increase in shareholding pursuant to preferential allotment	4.00

Whether Regulation 3(2) triggered?

Yes, Regulation 3(2) triggered, as gross acquisition of shares alone shall be taken into consideration irrespective of any intermittent fall in the shareholding pursuant to dilution of voting rights. Accordingly, gross acquisition is 6% in the above case.

How to calculate creeping acquisition limit?

Particulars	Shares	Percentage
Pre-Preferential shareholding	30,000	30% of pre-preferential share capital i.e. Rs. 10,00,000 constituting 1,00,000 Equity Shares of Rs. 10 each
Preferential allotment	10,000	-
Post-Preferential shareholding	40,000	36.36%% of post preferential shareholding i.e. Rs. 10,50,000 constituting 1,10,000 Equity Shares of Rs. 10 each
Change	6.36%	

Whether Regulation 3(2) triggered?

No, Regulation 3(2) gets triggered, since difference between pre and post allotment > 5%

Note: In above illustration it has been presumed that Acquirer + PACs held more than 25% but > 75% voting rights in the Target Company.

**Can
Promoters
acquire
more than
75%
shares?**

**Acquirer along with PAC shall not
acquire shares beyond 75%
which is the maximum non public
shareholding threshold as per
SCR**

If acquired beyond 25% or 10%?

Then, Open offer shall be made

Offer Price is
calculated on the
basis of 60
trading days
VWAP, which will
come at lower
side

Consolidation of
shares at a lower
cost

Disclosures?

On first time
acquisition of 5%
under Regulation
29(1)

Within 2 working days
With STX and TC

If holding more than
5%, then on any
changes of +/- 2%
under Regulation 29(2)

Within 2 working days
With STX and TC

THANK YOU



**Corporate
Professionals**