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Analysing developments impacting business

SEBI CLARIFICATION: NEW ISIN NOT REQUIRED FOR CHANGE IN SECURITY FOR NON-CONVERTIBLE SECURITIES

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Introduction

After the introduction of the distributed ledger technology for secured debt issuances on 1 April 2022, the Securities and Exchange Board of India (SEBI) had for better investor protection, issued directions to cover for due diligence and security creation for security offered after the issue date. SEBI *vide* Circular No. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/106 dated 4 August 2022 (August 4 Circular), had further laid down guidelines for debenture trustees and listed issuer companies on additional security creation and due diligence requirements. The August 4 Circular introduces additional provisions for ensuring that the guidelines for due diligence which were prescribed for the primary security apply similarly to additional security or when an unsecured issue is converted to a secured issue. The previous ERGO written on the August 4 Circular is accessible [here](#).

However, under the August 4 Circular, there persisted an ambiguity as to whether a new international securities identification number (ISIN) is to be allocated in case of:

- (i) a change in underlying security;
- (ii) creation of additional security; or
- (iii) creation of security in case of unsecured debt securities.

An ISIN is a twelve-digit alphanumeric code which is uniquely assigned to instruments such as debentures. Under the circular No. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/176 dated December 19, 2022 (December 19 Circular), SEBI has provided clarifications on whether a new ISIN is required to be allocated in the aforesaid scenarios where there is a change in security offered.

Clarifications issued under the December 19 Circular

SEBI has clarified that, none of the aforesaid scenarios can be considered as instances where there is a change in the structure of the underlying non-convertible debt securities. Consequently, in the aforesaid scenarios, where there is merely a change to the structure of security offered to secure such non-convertible securities, a new ISIN is not required to be allocated by the depositories, provided there are no other changes to the terms or nature of issue of the non-convertible debt securities such as maturity

date, coupon rate, face value, redemption schedule, nature of the secured or unsecured non-convertible debt securities, etc.

It is however pertinent to note that mandatory requirements under the August 4 Circular such as amendment to the debenture trustee agreement, due diligence by debenture trustee, amendment of debenture trust deed and perfection of charge, and approval of stock exchange are required to be complied for the aforesaid changes in security as well. Moreover, where there is a change in the underlying security, the debenture trustee is required to ensure conformity with the regulation 15(1)(i) of the SEBI (Debenture Trustees) Regulations 1993 which enlists the duties and requisite compliances to be undertaken by the debenture trustees.

Comment

SEBI has made an essential clarification and resolved an operational challenge faced by market participants and the depositories in complying with provisions of the August 4 Circular for security creation of additional or alternate security after the issuance of debt securities. The requirement of new ISIN would have otherwise caused another process with the depositories for such a change in existing security of listed debt issues.

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