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Analysing developments impacting business

SEBI INTRODUCES SPATE OF AMENDMENTS TO ENHANCE THE EASE OF DOING BUSINESS FOR LISTED DEBT ISSUERS

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Securities and Exchange Board of India (SEBI) has brought in a slew of amendments to the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) by way of: (i) the SEBI ILNCS (Second Amendment) Regulations, 2024, dated 18 September 2024 (Second Amendment Regulations); (ii) SEBI Circular on 'Usage of UPI by individual investors for making an application in public issue of securities through intermediaries', dated 24 September 2024 (UPI Circular); (iii) SEBI Circular on 'Reduction in the timeline for listing of debt securities and Non-convertible Redeemable Preference Shares to T+3 working days from existing T + 6 working days (as an option to issuers for a period of one year and on a permanent basis thereafter such that all listings occur on a T+3 basis)', dated 26 September 2024 (Circular on Reduction in Timeline); and (iv) SEBI FAQs on the Corporate Bond Market, dated 10 October 2024 (FAQs dated 10 October 2024).

The aforementioned amendments aim at enhancing ease of doing business for listed debt issuers and reducing the cost of raising funds through debt issuances. We have summarised the impact analysis of these amendments.

A. Key amendments

1. ***Second Amendment Regulations –***

   Reduced period for posting draft offer document for public comments - The timeline for uploading draft offer document for public comments on the stock exchange's website has been reduced from seven (7) to five (5) working days, from the date of filing the document with stock exchange(s). For companies with equity shares listed on a recognised stock exchange, the minimum period of posting has been further reduced to two (2) days from the date of filing the draft offer document with stock exchange. This move will fast track the entire process for public issue of debt securities.

   Minimum subscription period - The minimum subscription period for public issues has been reduced from three (3) to two (2) working days. This reduction will help in hastening completion of listing formalities and receipt of funds thereby helping many frequent issuers who do not intend to keep their issuances open for a prolonged time period.

   Extended bidding period – If the price band or yield is revised, the bidding period can be extended by minimum of one (1) working day instead of three (3) working days, within the maximum 10 working days. This change enables the issuers extend the issue for a shorter period of time instead of three (3) working days, in the event the issue is undersubscribed, thereby providing much needed flexibility in public issue of debentures.

   Electronic advertising – Issuers will now have an option to publish statutory advertisement either through electronic modes such as online newspapers/

website of the issuer/ stock exchange, or on an English national daily and regional daily with wide circulation at the place where the registered office of the issuer is situated. For electronical publishing of statutory advertisements, they have to publish a notice in a newspaper with a QR code and link to the full advertisement. This will reduce the cost of public issue of debt securities by doing away with the requirement of full-page newspaper advertisements.

2. ***Circular on Reduction in Timeline –***

   Reduction of listing time from T+6 to T+3 working days – SEBI has decided to reduce the timeline for listing of public issue of debt securities to three (3) working days from six (6) days at present, to facilitate faster access to funds. This new timeline will be optional for the first year i.e., up to 31 October 2025 and mandatory from 1 November 2025 onwards. The listing timelines have aligned with the T+3 listing timeline for listing of equity shares and listing of debt securities issued by way of private placement.

3. ***UPI Circular –***

   Mandatory UPI application for retail investors – SEBI has streamlined the application process for public issue of debt securities by making it mandatory for individual investors applying for amounts up to INR 5 lakh, through intermediaries i.e. syndicate members, registered stockbrokers, registrar to an issue and transfer agent and depository participants, to use only Unified Payments Interface (UPI) to block funds. This can reduce the need for physical documentation, making transactions faster and more efficient than traditional banking methods. However, individual investors investing through other methods, including through self-certified syndicate banks (SCSB) and stock exchange platforms, are free to use other methods to invest in public issue of debt securities, thereby ensuring flexibility. The provisions of the UPI Circular shall be applicable to public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities, and securitised debt instruments.

B. Relaxation with disclosure requirements

SEBI has simplified the disclosure requirements for non-convertible securities in offer documents, for both public issues and listed private placements of debt securities by introducing changes such as:

- Requirement for promoters to disclose their PAN and personal address in the offer documents has been removed. PAN and personal address of promoter(s) is now required to be submitted separately to the stock exchanges at the time of making the application for in-principle approval.
- Details regarding branches/units need not be disclosed in the offer documents. The information regarding branches or units can be provided through a QR code or weblink. Such information should also be separately shared with the debenture trustee for their due diligence and inspection.
- If the number of vendors for the issuer is more than five, then disclosures as required by SEBI NCS Regulations regarding vendors can be provided for top five vendors in the offer document and details for the rest of the vendors can be provided though a QR code/ weblink. Such information should also be separately shared with the debenture trustee for their due diligence and inspection.

C. Authorisation of Offer Documents by the board of directors

SEBI, by way of the Second Amendment Regulations, has also introduced the following additional specific requirements under para 3.3.37 of Schedule I of the SEBI NCS Regulations:

- Only persons authorized by the issuer shall attest the declarations needed under the amended para 3.3.37.

- In terms of the new sub-clause (f) of para 3.3.37, the contents of the document are to be perused by the board of directors of the issuer.
- The amended para 3.3.37(f) further provides the list of authorised persons in case the issuer is a body corporate.
- As per the new sub-clause (g) of para 3.3.37, such persons are to be duly authorised to attest by the board of directors or the governing body, as the case may be, by a resolution.

Thus, it is now mandatory for the issuers to authorise one or more combinations of persons, as prescribed by SEBI, as authorised persons in relation to both public issue of debt securities and private placement, and the board of directors can no longer attest the same.

SEBI has clarified the above position under the FAQs dated 10 October 2024. While approval of the offer documents by way of a board meeting is not mandatory, it is mandatory for the directors of the issuer to peruse the offer documents before issuance. SEBI has also clarified in the FAQ that in case of private placement of debt securities, the directors are required to peruse both the general information document (GID) and key information document (KID) as GID and KID together constitute an offer document. This requirement also applies to prospective issuances of debt securities through KID, issued under a valid GID as on the date of the Second Amendment Regulations.

While this requirement intends to simplify the process of approval of offer documents and ease of doing business for listed debt issuers, the requirement of all directors signing the offer documents for public issue of debt securities shall continue as issuers would have to comply with the requirements of Section 26(4) of the Companies Act, 2013, which requires all directors of the issuers to sign the offer documents.

Conclusion

The above-discussed amendments are a step in the right direction towards making the process of raising funds easier, faster, and cheaper. However, some of the changes under the Second Amendment Regulations are prescriptive in nature and have unintended practical consequences. While SEBI has clarified the position on certain changes brought about by the amendments by way of the FAQs dated 10 August 2024, full impact of the changes in the amendments will be felt in the coming days. There may be occasions where SEBI would have to further clarify to alleviate any confusion within the market participants and issuers.

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