BEACON RESEARCH

Consultation paper on review of provisions of NCS Regulations and LODR Regulations

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Background

- On 9th December 2023 SEBI has issued on a Consultation Paper focused on a review of provisions of NCS Regulations and LODR Regulations for ease of doing business and introduction of fast-track public issuance of debt securities
- The Following Points has been discussed in the Master Circular

Ease of Doing Business – proposed relaxations from provisions of NCS and LODR Regulations

1. Reduction in denomination for privately placed debt securities (NCDs) and nonconvertible redeemable preference shares (NCRPS)

2. Amendment to Schedule I (Disclosures for Issue of Securities) of the NCS Regulations- Rationalisation of disclosures by inserting web-link and QR code for the audited financials

3. Amendment to Schedule I (Disclosures for Issue of Securities) of the NCS Regulations- Details of certain information required for the current year

4. Standardization of shut period/ 'Record Date'

5. Due Diligence Certificate by the Debenture Trustee (DT)

6. Publishing Financial Results in newspapers as per LODR regulations

Fast Track public issue and listing of debt securities

1. Introduction of concept of Fast Track public issuance and listing of debt securities

2. Proposed Fast Track Public Issue Process:-
   - Requirement of prospectus or GID-KID for fast-track public issuance
   - Eligibility of the issuers for fast-track public issuance
   - Filing time for draft GID
   - Disclosures in GID and KID
   - Digital statutory advertisement for fast-track public issuance
   - Period of subscription
   - Minimum Subscription
   - Retention of Over Subscription
   - Listing timelines

1 Reduction in denomination for privately placed debt securities (NCDs) and nonconvertible redeemable preference shares (NCRPS)

Background

SEBI introduced new rules in October 2022 for NCS regarding their denomination and trading. These rules, now part of Chapter V of the Operational Circular dated August 10, 2021, set the face value for private placements at Rs. 1 lakh, previously Rs. 10 lakhs. These regulations don't apply to public issues. There's a noticeable rise in the issuance of Securitized Debt Instruments (SDIs) with corporate bonds as underlying assets.

Need For Change

Public feedback indicates that the high denomination is a hurdle for non-institutional investors in the corporate bonds market. With more non-institutional investors on online bond platforms, it's suggested to lower the minimum face value of debt securities and NCRPS for private placements to encourage their participation. This should be coupled with necessary risk mitigation measures.

Proposed

SEBI made bonds more accessible by reducing their face value from 10 lakhs to 1 lakh, which led to a notable increase in non-institutional investor participation from under 1% to 4%. This move aimed to boost involvement through Online Bond Platforms (OBPs). SEBI proposed issuers to issue NCDs or NCRPS with a face value of Rs. 10,000, requiring oversight by a merchant banker for due diligence. SEBI aims to align SDI regulations with similar risk management strategies by proposing SDIs with face values of Rs. 1 lakh or Rs. 10,000, also mandating merchant banker due diligence and it should be disclosed in the private placement

2

Amendment to Schedule I (Disclosures for Issue of Securities) of the NCS Regulations- Rationalisation of disclosures by inserting web-link and QR code for the audited financials

Background

Audited financial statements (standalone and consolidated) for a period of three completed years, which shall not be more than six months old from the date of the issue document or issue opening date, as applicable. Such financial statements shall be audited and certified by the statutory auditor. Listed issuers, following listing rules, can share unaudited interim financial info in the specified format with a limited review report in the issue document on stock exchanges. This replaces the need for audited interim financial statements, but they must disclose this in the issue document, including related risks.

Need For Change

The Offer Document gets too big with audited financials from three years plus stub period, already available in the annual report. This causes tech issues while filing with the Registrar of Companies and uploading on websites. Comments have suggested that instead of inserting the Audited Financials for last three Financial Years and Stub period financials in the Offer Document, the same may be allowed to be provided as a QR code scanning of which opens the web-link to the Financials on Issuer's Website.

Proposed

If issuers have listed outstanding NCDs during the issue date, they can use a QR code in the Offer Document. Scanning it will lead to a web-link providing Audited Financials for the last three years and the stub period, link shall direct the user to the Stock Exchange's website where such data is hosted.

3 Amendment to Schedule I (Disclosures for Issue of Securities) of the NCS Regulations- Details of certain information required for the current year

Background

The following information as per Schedule I requires providing information for preceding three financial years and Current financial year

No	Clause	Details
a.	Clause 3.3.11 (b)	Changes in its capital structure
b.	Clause 3.3.11 (c)	Details of the equity share capital
c	Clause 3.3.12 (b)	Details of change in directors
d	Clause 3.3.14 (b)	Details of change in auditor
e	Clause 3.3.18 (b)	Details of all default/s and/or delay in payments of interest and principal of any kind of term loans, debt securities, commercial paper (including technical delay) and other financial indebtedness including corporate guarantee or letters of comfort issued by the company
f	Clause 3.3.21	Details of default and non-payment of statutory dues
g	Clause 3.3.23	Details of acts of material frauds committed against the issuer, if any, and if so, the action taken by the issuer
h	Clause 3.3.25	Related party transactions entered with regard to loans made or, guarantees given or securities provided
i	Clause 3.3.36(b) (iii)	Refusal of listing of any security of the issuer by any of the stock exchanges in India or abroad; and
J	Clause 3.3.41(k)	The details of acts of material frauds committed against the issuer, if any, and actions taken by the issuer.

Need For Change

It has been specified that the above details should be specified for up-to the latest quarter, since issuers need to close books of account to Finalize certain information such as Related Party Transactions, Borrowings etc. This eases the procedure involved in the preparation of disclosures for an issuer.

Proposed

Issuers, instead of providing the information for the current financial year (i.e., as on date), the information for the aforesaid clauses may be provided till up-to the latest quarter of the current financial year.

4 Standardization of shut period/ 'Record Date'

Background

At present, as per Schedule I of the NCS Regulations, disclosures w.r.t record date is to be made as part of the summary sheet in the offer document.

Need For Change

There is inconsistency in terms of the duration of the shut period, which is said to vary from 1 to 45 days across issuers/ issuances. On average, it was observed to be around 15 days before the due date of payment. It was suggested that there should be uniformity and standardization in terms of market practice for the treatment of record dates.

Proposed

The record dates be standardized at 15 days before the due date of payment of interest/ redemption..

5 Due Diligence Certificate by the Debenture Trustee (DT)

Background

According to NCS Regulations, issuers need a due diligence certificate from the debenture trustee when filing the draft offer document and during the securities' listing. The format for these certificates differs as outlined in the 'Master Circular for Debenture Trustees.' The formats are distinct for the draft offer document filing and the listing application.

Need For Change

Comments received have suggested harmonizing the formats specified vide the provisions below and align the format specified under NCS Regulations in line with that of DT Master Circular.

Proposed

The format of the due diligence certificate under Regulation 40 and 44 of NCS Regulations may be modified as specified in Annex-I

6

Publishing Financial Results in newspapers as per LODR regulations

Background

Regulation 52(8) of LODR Regulations inter-alia specifies the following:-
"The listed entity shall, **within two working days of the conclusion of the meeting of the board of directors, publish the financial results**, in at least one English national daily newspaper circulating in the whole or substantially the whole of India"

Need For Change

Online, publishing in newspapers two days later might not add value, just increase costs. To cut expenses, promote digital media use, and consider the environment, proposing to make newspaper publication of financial results optional

Proposed

It is proposed to modify **Regulation 52(8)** to provide the listed. Entity, discretion to publish the financial results in a newspaper within the specified time Period

Fast Track public issue and listing of debt securities

1

Introduction of concept of Fast Track public issuance and listing of debt securities

Background

Eligible issuers, under Regulation 5 of NCS Regulations, can raise funds via public issuance or private placement of nonconvertible securities.

Most funds (around 98%) raised through debt securities come from private placements, mainly by NBFCs/HFCs. The corporate debt market sees frequent issuances by top companies throughout the year. However, non-institutional participation remains below 2%, largely due to limited public issuances.

Proposed

It is proposed to consider, like equity issuances, an avenue to debt issuers to make issuances of public issues on a 'fast-track' basis.

2 Proposed Fast Track Public Issue Process

- ## Requirement of prospectus or GID-KID for fast-track public issuance

  There's a proposal to expand the use of GID and KID concepts, aiming for a unified document for both fast track public issues and private placements. While the GID will cover all issues by the issuer for the year (public or private), the KID for private placements will go to a specific group for subscription, whereas the KID for a fast-track public issue will be accessible to the public. Unlike the KID for private placements, which includes key information and financial results, the KID for fast-track public issues will have additional disclosures specified in. Disclosures in GID and KID

- ## Eligibility of the issuers for fast-track public issuance

  The goal of a fast-track public issuance of debt securities is to help frequent issuers with a good track record to make such issuances faster, cheaper, and easier. For eligibility, the following criteria may be eligible for fast-track public issuance:

  - The issuer must meet regulation 5 of the NCS Regulations
  - Non-convertible securities, specified securities, REITs, or InvITs by the issuer must be listed on a stock exchange for a minimum of three years.
  - Issuer must comply with LODR Regulations, SEBI (Infrastructure Investment Trusts) Regulations 2014, and SEBI (Real Estate Investment Trusts) Regulations 2014, where applicable, during fast-track public issue.
  - The issuer's rating shouldn't have dropped by two or more notches in the last two financial years before filing GID/KID. (E.g., From AAA to AA)
  - No pending regulatory actions against the issuer, its promoters, directors, sponsors, or investment managers under relevant regulations. The issuer should meet requirements set by its principal or other financial regulator like RBI, IRDAI, or PFRDA.
  - The issuer must not be in default regarding repayment of deposits, interest, preference shares, debt securities, dividends to shareholders, or term loans and their respective interest payments

- ## Filing time for draft GID

  The proposed stringent eligibility criteria for fast-track public issues, including thorough due diligence by appointed merchant bankers, ensures eligible issuers have a strong track record of transparent reporting and disclosures for over three years, bolstering credibility with investors. The disclosures filed with stock exchanges encompass all material events as per SEBI NCS Regulations, and the Key Information Document (KID) aligns with relevant disclosures for the public issue. Historical lack of public comments on draft offer documents suggests reducing the **public comment period to 2 working days from 7 working days,**

- ## Disclosures in GID and KID

  The General Information Document (GID) for fast-track public issuance of debt securities includes all disclosures outlined in Schedule I of NCS Regulations. The Key Information Document (KID) for this issuance comprises Part A, covering additional relevant disclosures such as material changes, developments, and undisclosed risk factors from the GID, while Part B details the specifics of the debt securities being offered in this context.

- ## Digital statutory advertisement for fast-track public issuance

  Issuers choosing the fast-track public issue route might be permitted to use electronic modes like their website, stock exchange platforms, and debenture trustee's website to advertise the public issue, eliminating the need for newspaper advertisements. This adjustment would save time and costs for the issuer.

- ## Period of subscription

  The quick public offering of debt securities can **last between one and ten working days**. If there's a change in the price range or yield, the bidding period might be extended by just one working day instead of the usual three days for a regular public issue.

- ## Minimum Subscription

  Most recent public issuers are financial entities like NBFCs/HFCs, needing funds more for capital adequacy and lending than for traditional investments. **Removing the minimum subscription requirement for these entities in fast-track public debt issuances** ensures a steady and cost-effective flow of funds, supporting their crucial operations

- ## Retention of Over Subscription

  The proposal suggests setting the retention limit for fast-track public issue of debt securities to a maximum of five times the base issue size, offering issuers more flexibility in fundraising. Currently, in public debt security issues, issuers can retain up to 100% of the base issue size as oversubscription. Comparatively, in private placements, the retention limit allowed is 5 times the base issue size.

- ## Listing timelines

  Proposal for fast-track public issue of debt securities: Listing timeline to be 'T+3', compared to 'T+6' for regular public issues. An illustration in terms of difference between the timelines involved for a regular public issue and a fast-track public issue is as under:

Sr.no	Steps involved in the issuance and listing of securities	Timelines for a regular public issue	Timelines for a fast track public issue
1.	Seeking public comments on draft offer document	Seven working days	Two working days
2.	Period of subscription, viz. no. of days the issue remains open	Three to ten working days (extension of three days in case of revision in yield)	One to ten working days (extension of one day in case of revision in yield)
3.	Listing timelines	Six days from the date of closure of issue	Three days from the date of closure of issue
4.	Preparation of offer document including due diligence by merchant banker	Generally, it takes around 45-60 days to prepare the same.	Acceptance of GID-KID as the offer document will significantly reduce the timeline by 2-3 weeks.

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