

Discussion Paper on “Revisiting the capital raising process”

Securities market, including the market for public offerings, is dynamic and need to keep pace with the evolving environment. In order to keep pace with the changing economic environment and to address concerns of various market participants especially the issuers and the investing community, the regulations governing the primary market have been amended from time to time. Such a timely review intends to facilitate capital raising by industry while ensuring adequate investor protection.

It has been observed that existing listed issuers have preferred private placement including Qualified Institutional Placement (QIP) route vis-à-vis a subsequent offerings by way of Further Public Offer (FPO) / Rights Issue. Further, participants in various forums have indicated that issuers have inclination towards private placement, because of shorter time frame and lower costs associated with such route. Therefore, SEBI has been examining how to further facilitate capital raising by existing listed companies through FPO/Rights issue so as to provide retail investors the opportunity to participate in subsequent offerings and enable issuers to raise capital in the shortest possible time span.

Further, SEBI has been continuously striving to shorten the time duration from issue closure to listing. Towards this end in 2010, the timeline was reduced from 22 days to 12 days. SEBI has been exploring ways and means to further curtail the timeline from 12 days.

In view of the above, the instant paper contains proposal on the following two areas and seek public comments on the same:

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- I. [Proposal on use of Secondary Market infrastructure for making applications in Public Issue \(“e-IPO”\)](#)
 - II. [Proposal on Fast Track Issuances \(FPO and Rights Issue\)](#)

I. Proposal on use of Secondary Market infrastructure for making applications in Public Issue (“e-IPO”)

1. Background

- 1.1. The Hon'ble Finance Minister in his speech while presenting Union Budget 2012-13 announced the following:

“Simplifying the process of issuing Initial Public Offers (IPOs), lowering their costs and helping companies reach more retail investors in small towns. To achieve this, in addition to the existing IPO process, I propose to make it mandatory for companies to issue IPOs of Rs.10 crore and above in electronic form through nationwide broker network of stock exchanges”

- 1.2. Pursuant to the above, SEBI Board in its meeting held on August 16, 2012 approved a proposal in this regard. Accordingly, SEBI issued a [circular on October 04, 2012](#) and thereby provided an additional mechanism for investors to submit application forms in public issues using the stock broker network of stock exchanges, who may not be syndicate members in an issue. The immediate benefit of the said mechanism was the extended geographical reach of the distribution channel using the stock broker network of the stock exchanges. The additional mechanism was to run parallel to the existing mechanisms / processes to submit applications in public issues.

2. Need for review

- 2.1. Currently, there are several mechanisms to submit an application for a public issue including applying with a cheque and hence, it is difficult to further reduce the post issue timelines from the current T+12 days i.e. 12 days from issue closure to listing and trading. Further, while the cost of raising capital through public issues in Indian securities market is comparable with that in overseas jurisdictions, there is a scope for reducing the same further.
- 2.2. In order to facilitate the promoters to dilute / offload their holding in listed companies in a transparent manner with wider participation, SEBI in February 2012 allowed offer for sale (“OFS”) of shares by promoters of specified categories of companies through a separate window provided by the stock exchange(s). The stock exchanges have witnessed more than 120 OFS issues and under the said mechanism, settlement takes place on T+2 basis using the efficiencies of the widespread trading network, sophisticated risk management, and clearing and settlement systems of the secondary market.

3. Review process

- 3.1. It was, therefore, proposed to utilize the synergies of the secondary market infrastructure for raising capital through public issues.
- 3.2. For this purpose, SEBI had formed a Group consisting of representatives from the Stock Exchanges, Depositories, Registrar & Share Transfer Agents, Merchant Bankers, Stock Brokers and SEBI (“Group”), to propose a policy framework to achieve the following broad objectives:

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- 3.2.1. To further reduce the overall post issue timelines from T+12 days;
 - 3.2.2. To broad-base the retail investor reach across the country for submitting applications;
 - 3.2.3. To reduce the cost of public issuances
- 3.3. The Report submitted by the Group was placed before the Primary Market Advisory Committee (PMAC) of SEBI for deliberation and comments.

4. Proposal

Based on above, the broad process flow by using the secondary market infrastructure for primary issuance would be as under:

- 4.1. Investor will be able to submit his application to / place order with any SEBI registered Stock Broker, Depository Participant (DP) or Registrar and Transfer Agent (RTA) and Self Certified Syndicate Bank (SCSB). Depositories can take access to the Stock Exchange platform and in turn provide the same to their DPs / RTAs (other than the RTA, who acts as the RTA to the particular issue, to address the concerns of conflict of interest). Investor will continue to have the option of submitting Application Supported by Blocked Amount ("ASBA") application to SCSB or stock broker. To start with DP and RTA shall accept only ASBA applications. However, they may be enabled to accept non-ASBA applications in future subject to appropriate changes in the regulatory framework, as may be necessary.
- 4.2. Investors can also fill the application form online and submit it on the web portal of trading member, DP/ RTA or SCSB (in case of ASBA), if provided by the intermediary. Under this case, the investor will not be required to physically sign

any paper as even the Companies Act, 2013 recognizes the electronic form of a document. This will help eliminate printing application form and thereby reduce the overall cost of public issuance.

4.3. On receipt of application, the Stock Broker / DP / RTA/ SCSB will have to lodge the application on the bidding platform.

4.3.1. Once the bid has been entered in the bidding platform by a stock broker, clearing corporation will block 100% funds from the cash collateral of the stock broker. National Payments Corporation of India (“NPCI”) has implemented National Automated Clearing House (“NACH”) a web based solution to facilitate interbank, high volume, electronic transactions which are repetitive and periodic in nature. NACH is a centralised system, launched with an aim to consolidate multiple ECS systems running across the country and provides a framework for the harmonization of standard & practices and removes local barriers/inhibitors. Stock brokers will be advised to use the said NACH mechanism and thereby receive upfront payment from the investor. Through NACH system, an investor can give instructions to its banker for multiple debits at different points of time for making IPO applications. This will help eliminate the delay on account of cheques in the process.

For ASBA applications lodged with Stock Broker, existing process will continue.

4.3.2. For bids made through Depository Participant and RTA, subsequent to bidding, the application will be forwarded to Self Certified Syndicate Bank (“SCSB”) for blocking of funds

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- 4.3.3. For direct ASBA applications, existing process of bidding and blocking of funds by the SCSB shall continue
- 4.4. Investors will not be able to withdraw bids upon closure of the issue. Upon closure of the issue, the bid book shall be made available to the Registrar by Stock Exchanges and Depositories. Details of payment confirmation for the bids will be made available by banks, and clearing corporation to the Registrars.
- 4.5. Based on the bid file and payment confirmations, Registrars will finalise the basis of allotment.
- 4.6. On approval of basis of allotment by Stock Exchanges, Registrars will give instructions to clearing corporations and banks to credit funds in the public issue account maintained by the clearing corporation. Excess money received will be refunded to the investors by the stock broker / bank, as the case may be.
- 4.7. Upon confirmation of receipt of public issue amount by the clearing corporation to the Registrar, instruction will be issued to Depositories to credit securities directly to the investor's account.
- 4.8. On confirmation of the same, Stock Exchanges will issue the listing and trading notice. Based on trading notice, funds will be transferred from public issue account of the clearing corporation to issuer's account.
- 4.9. Investors would get SMS/e-mail alert for allotment under the IPO, similar to alerts being sent to investors for secondary market transactions.

- 4.10. On account of the above, the post issue timelines will reduce from T+12 days to T+6 days. Once the process gets stabilised, timelines can be further curtailed to T+3/2 days. Further, on account of reduction in printing of application forms, the overall cost of public issues will also come down.
- 4.11. The suggested changes shall be applicable for applications in the retail and employee reservation categories. Primary Market Advisory Committee (PMAC) of SEBI while deliberating on the matter proposed that ASBA should be made non-mandatory for non-retail clients as well since the secondary market infrastructure is proposed to be used and thereby the (unutilized / excess) funds of the clients (both retail and non-retail) available with the Brokers can be used for applying in the IPOs/FPOs/RI, instead of bringing additional funds. Another view in this respect was that parity among the investors shall be maintained by mandating 100% ASBA for retail investors also as ASBA has been working well and has scope for reducing timelines by eliminating cheques from the process.
- 4.12. The said proposal may be used for debt issues as well. However, in order to make this mechanism applicable to debt issues, suitable amendments may be required under SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
- 4.13. It is proposed to discontinue the three day monitoring report considering the reduction of overall timelines to T+6. A framework for redressal of investor grievances has been laid out. A framework for use of mobile applications for making bids in public issues has been suggested for implementation in future.

5. Schedule of Activities

Based on the above proposal, the details of day wise schedule of activities is as under:

Categories	T	T+1 day	T+2 day	T+3 day
ASBA Bids	Last Day of Bidding	<ul style="list-style-type: none"> Final Certificate from SCSBs (excluding ASBA application through brokers, DPs, RTAs) Syndicate, Non Syndicate Members, Depository Participant and RTA to forward a schedule and application forms to respective SCSBs for blocking of funds. Registrar to the issue to forward bid files to SCSBs for validation containing the application number and amount, duly sorted centre wise who may use this file for reconciliation. SCSBs to start blocking funds 	Final Collection certificate for ASBA application made through Syndicate , Non-Syndicate Member, Depository Participant and RTA	N.A.
NON-ASBA Bids	Using the NACH mechanism , funds will be available with Stock Broker before the closure of Bidding. Account of	<ul style="list-style-type: none"> Registrar to forward bid files to Clearing Corporation for validation containing the application number and amount, who may use this file for reconciliation. 	Final Certificate from Clearing Corporation about the amount collected.	N.A.

	Syndicate or Non-syndicate member maintained with Designated Clearing Corporation (DCC) / Clearing Corporation (CC) will be blocked for equivalent amount			
<u>Other Activities</u>	<ul style="list-style-type: none"> • Other SE to share the bid file with Designated Stock Exchange (DSE) • DSE to provide End Of Day File (Full Book) to RTA • Validation of DP ID/ CL ID will be done by the Exchange with the depositories data by the EoD. 	<ul style="list-style-type: none"> • Company / BRLM to submit relevant documents to SE (documents presently filed on T+2) • Registrar to give instructions to Depositories to carry out lock-in for pre issue capital 	<ul style="list-style-type: none"> • Registrar to prepare list of rejected bids based on mismatch between electronic bid details and Depositories data base. • Registrar to undertake "Technical Rejection" test based on electronic bid details and prepare list of technical rejection cases." 	<ul style="list-style-type: none"> • Registrar to undertake and complete reconciliation of final certificate received from SCSBs and CC) with electronic bid details. • Minutes and Technical Rejection approval from BRLM and issuer • Submission of Electronic files and Basis documents to exchanges • Basis of allotment finalization from DSE

Categories	T+4	T+5
ASBA Bids		Applicant to receive credit of allocated shares and / or unblock the unutilized money
NON-ASBA Bids		Applicant to receive credit of allocated shares and / or refund of money (same point as above)
<u>Other Activities</u>	<ul style="list-style-type: none"> • Company to Convene Board Meeting for allotment • Registrar to prepare funds transfer schedule based on approved allotment • Instruction by RTA for Transfer of Funds to Public Issue/ Refund Account (Clearing Corporation) and unblocking of ASBA Applicants Accounts • Intimation of basis of allotment by RTA to other SE 	<ul style="list-style-type: none"> • Company to file listing application to obtain listing and trading permission from SE(s) (documents presently filed on T+10 & T+11 day) • Advertisement in Newspaper about Allotment • Listing reports to issuer / CA/CS certificate for allotment • Upload of allotment data to CDSL/NSDL • Registrar to Complete Dispatch of allotment instructions • Registrar to receive confirmation of credit from NSDL & CDSL and Issue Reconciliation certificate of drop cases, if any • Issuer and Registrar to file confirmation of demat credit and refund dispatch with Stock Exchange(s). • Registrar to receive confirmation for Issue related capital lock-in from Depositories, if any (Promoter/ Anchor Investors/ Market Maker, etc.) • Company to deposit commission for Non Syndicate members) based on RTA report. • SE to give Listing and Trading Approval • SE(s) to transfer the commission to Non Syndicate Members through Clearing Corporation based on RTA report.

Trading will commence on the 6th working day from closure of the issue.

6. Public Comments on the proposal

In view of the above, public comments are solicited on the above proposal specifically on the following points:

- a. Should the requirement of having an abridged prospectus along with application form be made non- mandatory?
- b. Should ASBA be mandated for all investors?
- c. If ASBA is continued as a voluntary mechanism for retail investors, should it be made voluntary for non-retail investors as well?
- d. Should NACH mechanism by NPCI be mandated for collecting payment from investors?
- e. Any suggestions/modifications on the mechanism proposed above in order to achieve reduction in time and cost of capital raising?

II. Proposal on Fast Track Issuances (FPO and Rights Issue)

1. Background

- 1.1. For a fast track issuance under SEBI (ICDR) Regulations, 2009 (“ICDR Regulations”), no draft offer document is required to be filed with SEBI. In such cases, SEBI does not issue any clarifications/observations. Issuer can open the issue immediately after filing the Red Herring Prospectus (“RHP”).
- 1.2. Under the existing regulatory framework, fast track route is available to all listed issuers proposing to undertake a rights issue or a follow on public offering (FPO) subject to certain eligibility criteria as stated below:

“Regulation 10 of ICDR Regulations stipulates the following conditions for a fast track issuance:

- a) the equity shares of the issuer have been listed on any recognised stock exchange having nationwide trading terminals for a period of at least three years immediately preceding the reference date*
- b) the average market capitalisation of public shareholding of the issuer is at least Rs. three thousand crore*
- c) the annualised trading turnover of the equity shares of the issuer during six calendar months immediately preceding the month of the reference date has been at least two per cent. of the weighted average number of equity shares listed during such six months’ period*

Provided that for issuers, whose public shareholding is less than fifteen per cent. of its issued equity capital, the annualised trading turnover of its equity shares has been at least two per cent. of the weighted average number of equity shares available as free float during such six months’ period;
- d) the issuer has redressed at least ninety five percent. of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date*

e) *the issuer has been in compliance with the equity listing agreement for a period of at least three years immediately preceding the reference date*

Provided that if the issuer has not complied with the provision of the equity listing agreement relating to composition of board of directors, for any quarter during the last three years immediately preceding the reference date, but is compliant with such provisions at the time of filing of offer document with the Registrar of Companies or designated stock exchange, as the case may be, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the reference date, it shall be deemed as compliance with the condition

f) *the impact of auditors' qualifications, if any, on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed in the offer document does not exceed five per cent of the net profit or loss after tax of the issuer for the respective years*

g) *no show-cause notices have been issued or prosecution proceedings initiated by the Board or pending against the issuer or its promoters or whole time directors as on the reference date*

h) *the entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date “*

2. Need for review

During various interactions with market participants, SEBI has received suggestions on re-considering the criterion related to market capitalisation of public shareholding as only a few companies are eligible based on the said criterion. Accordingly, following issues had emerged for consideration:

- 2.1. Should the requirement of average market capitalisation of public shareholding of Rs. 3000 crore be relaxed so as to enable more companies access the market directly without filing the draft offer document with the Board?

2.2. Alternately, if the company does not meet the public float criteria, should there be other additional conditions.

3. Review Process

In view of the above, an analysis on the matter was placed before the Primary Market Advisory Committee (PMAC) of SEBI for deliberation. After deliberations, PMAC made various recommendations. The details of analysis and recommendations are enumerated in subsequent paragraphs.

3.1. Analysis for Issue at Sl. No. 2.1:

- ⊖ The requirement of average market capitalisation of public shareholding was Rs. 10,000 crore at the time of notification of ICDR Regulations i.e in 2009
- ⊖ The requirement was subsequently brought down to Rs. 5000 crore
- ⊖ The requirement was brought down to Rs. 3000 crore in October 2012

Currently, of the companies listed in India, the following number of companies will qualify for fast track issuance, in case a public float criterion is applied at various levels.

Minimum Public Float	Rs. 3,000 crore	Rs. 2,000 crore	Rs. 1,500 crore	Rs. 1000 crore
Approx. No. of companies eligible	183	240	293	359

Based on public float as on August 2014. Source: Bloomberg

Thus, even if the public float criterion is relaxed to Rs. 1000 crore, only 359 companies would be eligible. Hence, this may not serve the intended purpose of making large number of issuers eligible for rights issue through fast track route.

3.2. Analysis for Issue at Sl. No. 2.2:

SEBI in the past has observed certain concerns in offer documents filed by existing listed companies seeking to raise money from public. Further in this regard, the following is observed:

- ⊖ Often existing listed companies are being investigated by SEBI for which show cause notice is yet to be issued by SEBI
- ⊖ Such issuers may not be aware of such proceedings
- ⊖ Based on the details of such investigation, SEBI often asks for additional disclosures in the offer document in case of subsequent issues of the said issuer
- ⊖ If the requirement of public float is diluted further without any additional requirements to ensure investor protection, such issuers may access the capital market without any SEBI intervention and/or adequate disclosure

4. Proposal

Based on deliberations, it is proposed that the fast track route may be extended to companies having an average market capitalisation of public shareholding between Rs. 250 crores to Rs. 3,000 crores, subject to fulfillment of certain additional conditions, along with the existing conditions stated in Regulation 10 of ICDR Regulations. The additional conditions proposed are as under:

- i. Promoters should mandatorily subscribe to their rights entitlement and should not renounce their rights, except to the extent of renunciations within the promoter group, or for the purposes of complying with minimum public shareholding norms.

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- ii. Shares of the company should not have been suspended (except for corporate actions) from trading in past 3 years.
 - iii. Annualised delivery based trading turnover requirement of 10% of the total paid up capital.
 - iv. No direct or indirect conflict of interest should be there between the lead manager, its group or associate company with the issuer or its group or associate company.
 - v. Issuer, promoter group and directors of the issuer should not have settled any alleged violation of securities laws through the consent mechanism with the Board in last 3 years.

In addition to above, for facilitating divestment of Central Public Sector Enterprises (CPSEs), it is recommended that the fast track issue route shall be available to them without the requirement of a minimum average market capitalisation of public shareholding subject to CPSEs complying with all the other existing conditions for Fast Track route. Also, in case where CPSE is not able to comply with any of these conditions, SEBI may, based on the merits of the case, consider granting exemption.

5. Public Comments on the proposal

In view of the above, public comments are solicited on the above proposal at para 4 specifically on the following points:

- a. Should the existing criteria of minimum market capitalisation of public float be lowered?
- b. If yes, what should be the level of market capitalisation of public float that should be considered for issues under fast track route?
- c. If the requirement of minimum market capitalisation of public float is lowered what additional conditions should be introduced so as to ensure only credible issuers access the market through fast track route without vetting by SEBI?

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- d. Are the additional conditions proposed above are sufficient or further additional conditions may be specified?
 - e. Any other suggestions to facilitate fast tracking of issues by existing listed issuers and at the same time ensuring adequate protection of investors?

III. Details for Public comments:

1. Considering the implications of the said matter on the market participants including listed companies, market intermediaries and investors, public comments on the policy framework proposed above are solicited. Specific comments/suggestions as per the format given below would be highly appreciated:

Name of entity / person / intermediary:				
Name of organization (if applicable):				
Sr. No.	Pertains to paragraph I (6) or II (5)	Pertain to serial number (alphabet)	Proposed changes / suggestions	Rationale

2. Such comments may please be e-mailed on or before January 30, 2015, to capitalraising@sebi.gov.in or sent by post, to:-

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