Consultation paper

Primary market debt offering through private placement on electronic book

1. Background

Over the past several years, various measures have been taken by SEBI, Government and RBI for development of the corporate bond markets. The Indian corporate bond market has evolved gradually over a period of time.

SEBI notified the regulatory framework for issue and listing of corporate bonds through SEBI (Issue and Listing of Debt Securities) Regulations, 2008. This regulatory framework prescribed a disclosure based regime, whereas the earlier regime required mandatory investment grade rating for public issues. The total primary market issuance has increased from Rs.1,74,781 crore in 2008-09 to Rs. 4,13,558 crore in 2014-15.

A. Table showing amount raised through public and private placement issuances of corporate bonds:

Financial year (A)	No. of public issues (B)	Amount raised through public issue (Rs. crore) (C)	No. of private placement (D)	Amount raised through private placement (Rs. crore) (E)	Total amount raised through public issue and pvt. placement (Rs. crore) (F)	Private placement as a percentage of total corporate bond issuances (G)
2008-09	1	1,500	1041	173,281	174,781	99%
2009-10	3	2,500	1278	212,635	215,135	99%
2010-11	10	9,451	1404	218,785	228,236	96%
2011-12	20	35,611	1953	261,283	296,894	88%
2012-13	20	16,982	2489	361,462	378,444	96%
2013-14	35	42,383	1924	276,054	318,437	87%

2014-15	25	9,713	2611	404,136	413,849	98%
2015-16#	8	3,702	1922	2,86,650	2,90,352	98%

#-As on October 30, 2015

From the above table, it can be seen that public issues of corporate bonds has increased from Rs 1,500 crores in 2008-09 to Rs 9,451 crores in the year 2010-11. Thereafter, in the year 2011-12, the public issue of corporate bonds increased from Rs 35,611 crores to Rs 42,383 crores in the year 2013-14 due to tax free bond issuances and consequently the issuance declined to Rs 9,713 crores in the year 2014-15. Further, in case of private placement, the issuances have increased from Rs 173,281 crores in 2008-09 to Rs 404,136 crores in 2014-15. It can be also be seen that in all the financial years, private placement of corporate bonds constituted a substantial proportion of the total issuances.

IOSCO's Emerging Market Committee (EMC) published a report during November 2011 on development of corporate bond markets in the emerging markets. As per the report, it has been, inter-alia, observed that aside from public issuance and private placements, emerging markets (EMs) have introduced hybrid offer regimes. Among the EMs surveyed, the alternative offer regime carries the most importance in Malaysia, India, Brazil, and Thailand accounting for 99%, 80%, 70% and 36% of total issuance, respectively. A hybrid regime refers to issuance frameworks that contain elements of both public and private regimes and which has lighter regulatory requirements and are designed with target investors of corporate bonds in mind – i.e. professional or institutional investors.

2. Introduction of Electronic Book for Private Placement

SEBI placed an agenda item on introduction of an electronic book for primary market debt offering through private placement before the "Corporate Bonds and Securitization Advisory Committee" (CoBoSAC) meeting held in July 2015. The committee, in-principle, accepted the said proposal and recommended the initiation of public consultation process on the captioned proposal.

SEBI (Issue and Listing of Debt Securities) Regulations, 2008 govern public issue of debt securities and listing of debt securities issued through public issue or on private placement basis, on a recognized stock exchange. It has been observed from the available data that the majority of the issuances in India take place through private placement route, which are subsequently listed on stock exchange. During financial year 2014-15, private placement accounted for approximately 98% of debt securities issuances that have been subsequently listed. These issues of private placements are usually negotiated by the issuers directly with the investors such as Qualified Institutional Buyers (QIBs)/ High Net Worth individuals (HNIs) or placed through the arrangers over-the-telephone market and then listed on stock exchanges. It is felt that this mechanism may lack transparency and is an informal way to discover price.

Based on a review of sample private placement allotment data for FY 2014-15, received from the market participants regarding types of investors coming to the primary market for private placement of corporate bonds, it has been observed that banks and mutual funds, inter-alia, constitute the majority of the investors.

The key benefits of electronic book vis-à-vis over-the-telephone market, inter-alia, are improvement in efficiency, transparency of the price discovery mechanism and also reduction of cost and time taken for such issuance. Usage of electronic book by investors for trading securities in Indian markets have demonstrated that the benefits can percolate in terms of efficient price discovery, reduction in timelines, reduction of cost, transparency, etc.

3. <u>Proposals</u>

3.1 Keeping in view the benefits of electronic auction mechanism such as making it a formal and transparent mechanism, it is proposed that a platform for electronic book may be created in India.

3.2 Applicability – Optional or mandatory: With respect to this platform for electronic book, two approaches are possible:

3.2.1 To begin with, the electronic book may be provided as an alternative to the existing mechanism. Subsequently, based on the performance/ acceptability of such a book , this could be made mandatory for all issuers for issuance of privately placed Non-Convertible Debentures (NCDs), which are proposed to be listed or ;

3.2.2 To make electronic book mandatory for all private placement issues having a threshold of Rs. 500- Rs 1,000 crores in terms of amount being raised.

3.3 In order to enable issuers to use electronic book for private placement of corporate bonds, which are subsequently proposed to be listed, it is proposed to create a platform for creation of electronic book, which would be provided by entity to be called as "Electronic Book Provider" (EBP).

3.4 The issuer shall enter into an agreement with the EBP, before using its services. The agreement shall contain necessary terms and conditions for usage of the book as well as rights and liabilities of both the parties.

3.5 The issuer and EBP shall ensure that all requisite compliances prescribed under various legislations such as Companies Act, SEBI Regulations etc. with regards to private placement, are adhered to by the electronic book. For example – the EBP shall ensure that there is no public solicitation and the total number of bidders should not exceed 200 (excluding QIBs) as required under Companies Act, 2013 and the rules made thereunder.

3.6 Eligibility criteria as EBP : It is proposed that the following would be eligible to act as EBP:-

3.6.1 Regulated market infrastructure institutions such as recognized stock exchange(s) / depositories and

3.6.2 Category I Merchant Bankers (having minimum networth of Rs. 100 crores).

3.7 **<u>Condition for acting as a EBP</u>**: - The EBP would provide services through an electronic book. Therefore, there is a need for putting in place criteria so as to ensure high level of service and prevention of conflict of interest, if any, and conditions to act as EBP shall be as follows:-

a) EBP shall obtain prior approval of SEBI before establishing and offering its services.

b) The EBP shall ensure compliance with all requisite conditions, provisions, legislations etc., with regard to private placement of debt securities.

c) The EBP shall ensure safety, secrecy, integrity and retrievability of data.

d) EBP should own electronic book website/ URL on which it proposes to offer its services.

e) EBP should have adequate human, technology and risk management capabilities.

f) EBP should have policies and procedures to address potential conflicts which may arise among issuer(s), bidders and EBP.

g) In order to enhance transparency, self bidding by EBP (or proprietary bidding) may not be allowed. However, if safeguards such as bidding on arms-length basis is there , then such bidding and subsequent disclosure of same may be considered.

h) Adequate backup, disaster management and recovery plans should be there for the electronic book so provided by EBP.

i) Electronic book so provided by EBP would be subject to periodic audit by Certified Information Systems Auditor (CISA).

3.8 <u>Bidding framework of the proposed electronic Book :</u>

a) The following stakeholders may be involved in the mechanism:

  i. Issuer
  ii. Arranger, if any, engaged by issuer
  iii. Electronic Book Provider (EBP)
  iv. Broker registered with SEBI (Sub-arranger who will appointed by the arranger) will be a Category 1 Participants who can enter bids either on proprietary basis or for other participants such as High Net Worth Individuals (HNIs), Institutional investors etc.
  v. Institutional Investors (as defined in Regulation 106X(b) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009)- will be Category 2 Participants who can enter bids on proprietary basis provided that minimum application or bid value is Rs. 100 crore or can participate through an arranger.

b) The EBP shall provide all bids / applications to the issuer after end of bidding.

c) The EBP shall provide all bidding details to centralized repository as specified by SEBI and the issuer shall provide allotment details to such repository.

d) The EBP shall lay down operational procedure including steps for uploading of the private placement offer letter/ placement memorandum containing details about private placement, list of the eligible participants for bidding in auctions, respective time lines for each event etc. Such information should be disclosed to the eligible bidders.

e) The issuer/arranger/EBP shall ensure KYC of the bidders before allowing them to make bids on the book.

f) Disclosure with regards to requirement of margin money or pay in , if any, to be made in the private placement memorandum. (PPM)

g) Issuer shall specify minimum issue size.

h) Disclosure shall be made in the PPM with regards to green shoe option along with the reasons for the retention of excess amount, if any.

3.9 <u>The salient features of the proposed electronic book:</u>

i. Issue specific participant enablement as well as dissemination of information.

ii. Issue specific time with facility to extend timing.

iii. Facility to display issue information as well as attach necessary documents.

iv. Provision for maximum and/ or minimum coupon beyond which bids cannot be entered. Similarly, there should be provision for maximum/minimum price in case of re-issuances.

v. Bid details will include application amount in INR and coupon/ yield in bps.

vi. Minimum and maximum coupon/ yield and in multiple of "x" bps.

vii. Display of bid details on real time basis from lower yield to higher yield. Aggregate bid details with number of bid value at each yield point.

viii. Participant could be allowed to enter multiple bids i.e. single participant can enter more than one bid

ix. After the closure of bidding session, EBP will hand over results/ all bidding details to the issuer.

x. Issuer to make allotment after receipt of bidding results.

xi. In case of any dispute arising among issuer, EBP and bidder(s), it shall be resolved through arbitration.

4. Public Comments

i. In the light of the above, public comments are invited on the consultation paper. Comments may be forwarded by email to **ebp@sebi.gov.in** or may be sent by post to the following address latest by **December 18, 2015:**

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ii. Comments should be given in the following format:

Name of entity/ person/ intermediary: ______________________			
S. No.	Pertains to Point No.	Proposed/ suggested changes	Rationale

Issued on December 04, 2015