



Consultation Paper on certain Amendments to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, with the objective of increasing transparency and streamlining certain processes.

1. Objective:

1.1. This consultation paper seeks comments/views/suggestions from the public on the following proposals relating to amendments to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations):

- a) **Underwriting for public issue (IPO and FPO)**
- b) **Precondition for announcing Bonus Issue by a listed entity and issuance of Bonus Issues in dematerialised form.**
- c) **Inclusion of “*Pension funds sponsored by entities which are associate of the lead manager*”, to participate in Anchor Investor category in a public issue.**
- d) **Inclusion of following requirements in respect to disclosures made in the offer document:**
 - **Providing access to list of material contracts and material documents for inspection through online means apart from inspection at the registered office.**
 - **Providing complete industry report in the list of material documents for inspection.**
 - **Hosting draft offer document and offer document(s) on website of Issuer Company.**

2. Underwriting in public issue:

2.1. **Existing provisions** – As per Regulation 40 of ICDR Regulations, following provisions are prescribed regarding underwriting for IPO (for FPO same provisions are under Reg. 136):

“40. (1) If the issuer making an initial public offer, other than through the book building process, desires to have the issue underwritten, it shall appoint merchant bankers or stock brokers, registered with the Board, to act as underwriters.

*40(2) If the issuer makes a public issue through the book building process,
a) the issue shall be underwritten by lead manager(s) and syndicate member(s):
Provided that at least seventy five per cent. of the net offer proposed to be compulsorily allotted to qualified institutional buyers for the purpose of compliance of the eligibility conditions specified in sub-regulation (2) of regulation 6, cannot be underwritten.*



- b) the issuer shall, prior to filing the prospectus, enter into underwriting agreement with the lead manager(s) and syndicate member(s), indicating therein the number of specified securities which they shall subscribe to at the predetermined price in the event of under-subscription in the issue.*
- c) if the syndicate member(s) fail to fulfil their underwriting obligations, the lead manager(s) shall fulfil the underwriting obligations.*
- d) the lead manager(s) and syndicate member(s) shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.*
- e) in case of every underwritten issue, the lead manager(s) shall undertake minimum underwriting obligations as specified in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.*
- f) where the issue is required to be underwritten, the underwriting obligations should at least to the extent of minimum subscription.”*

Evolution of Underwriting in Indian Markets and current market practice

- 2.2. Underwriting in fixed price issue regime - Common practice during the fixed price issue regime, prior to 1999, was that the Issuers had the option to have their offering underwritten (such that the underwriters bring in funds to the extent of under-subscription in the issue). Underwriting was at the option of the issuer and there was an underwriting commission paid to the underwriters. If the issue devolved (i.e. the issue was under-subscribed and there was lack of demand), underwriting was invoked to the extent of the shortfall. This format is generally referred to as ‘hard underwriting’.
- 2.3. Underwriting in book-building route - In 1999, SEBI introduced the book building route, wherein pricing was determined on closure of the issue and based on demand received at various price points within the price band. In the process through the book building route, the pricing is finalized based on demand received. The underwriters (BRLMs/ Syndicate Members) have to compulsorily underwrite the issue after pricing but prior to filing the Prospectus (which is post closure of the public issue). This underwriting is invoked in case of shortfall in funds against demand received through valid bids, either on account of technical rejections or any other reason. Thus, essentially under the Book Building route underwriting covers only the ‘payment risk’ rather than ‘subscription risk’ and is referred to as ‘soft underwriting’ and is not envisaged to bridge the shortage in demand. ‘Hard underwriting’ can be optional in case of issues through book building route.



Sequence of key events in this process is

Sr. No.	Key Activities in issues through book building route	Up to Timeline (T+6)
1.	Issue closes	T
2.	Finalization of IPO price (once demand is received enabling pricing of the issue)	T+1
3.	Executing (soft) Underwriting agreement	T+1
4.	Filing of the Prospectus with the ROC	T+1
5.	Finalization of technical rejections; BRLMs underwrite the shortfall	T+3
6.	Send Underwriting notice to Underwriter(s); receipt of funds from Underwriter(s)	T+3
7.	Finalization of basis of allotment	T+3

Issue

2.4. It is noted that with respect to underwriting agreement the following is disclosed in the draft red herring prospectus (DRHP) and red herring prospectus (RHP), *“The agreement to be entered into amongst our Company, the Selling Shareholders, Registrar to the Offer and the Underwriters, on or after the Pricing Date but before filing of the Prospectus.”* In all such cases the rationale behind such disclosures is that issuer intends to do a ‘soft underwriting’ i.e. underwriting only for technical rejections for which agreement can be entered prior to filing of prospectus and there is no committed underwriting for under-subscription due to shortfall in demand i.e. no ‘hard underwriting’.

2.5. However, presently ICDR regulations specifically does not differentiate between underwriting for technical rejections and underwriting for shortfall in demand. In terms of Regulation 40(2)(b) of ICDR -

“b) the issuer shall, prior to filing the prospectus, enter into underwriting agreement with the lead manager(s) and syndicate member(s), indicating therein the number of specified securities which they shall subscribe to at the predetermined price in the event of under-subscription in the issue.”

Therefore, as per the present provisions of ICDR, an issuer can very well enter into an agreement for underwriting the under-subscription portion of an issue due to shortfall in demand (hard underwriting) even after issue closing, but before filing of prospectus.



2.6. Purpose of hard underwriting is to cover subscription risk rather than payment risk. Therefore, in case of inadequate demand to the issue, if the issue is not insured by underwriters' financial commitment then in such scenario issue is deemed as failed issue and the issuer has to refund the application money.

2.7. In view of above, if an underwriting agreement is done after issue closure to cover shortfall in demand without same being disclosed in the RHP is not right in context to investors, as this information was not made available to the subscribing investors while making application in IPO. Also, this would be a post event decision to save the issue, rather underwriting an eventuality which is not duly disclosed to investors. Therefore, this information should mandatorily be included in the RHP and for that purpose underwriting agreement should be entered into before filing of RHP.

2.8. It is pertinent to note that 'hard underwriting' involves determining the risk and price of the proposed security and it gives insurance to the issuer company and the prospective investors also feel confident that the underwriters had evaluated the issue and are backing the issue with financial commitment. Thus, such agreements for underwriting the under-subscription portion of an issue due to shortfall in demand i.e. 'hard underwriting' should be entered before filing of RHP and all underwriting and subscription arrangements made by the lead manager(s) shall be disclosed in the RHP.

2.9. Further, an underwriter need not always subscribe himself and may also procure subscription from a third party. Such arrangement to procure subscription is not captured in the current provisions of ICDR Regulations, even though, "underwriting" in SEBI (Stock Brokers) Regulations, 1992, and SEBI (Merchant Bankers) Regulations, 1992, is defined as:

"Underwriting" means an agreement to subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed.

Proposals

2.10. It is proposed that provisions in respect to underwriting for public issue (IPO and FPO) may be amended as under:

"Underwriting

40. (1) If the issuer making an initial public offer, other than through the book building process, desires to have the issue underwritten to cover under-subscription in the issue, then it shall appoint merchant bankers or stock brokers, registered with the Board, to act as underwriters and shall upfront and prior to filing the red herring prospectus, enter into underwriting agreement indicating therein the maximum number of specified securities which they shall subscribe to, either themselves or by procuring subscription, at the predetermined price not less than issue price.

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(1a) the issuer shall, prior to filing the prospectus, enter into underwriting agreement with the lead manager(s) and syndicate member(s), indicating therein the maximum number of specified securities which they shall subscribe to, either themselves or by procuring subscription, at the predetermined price not less than issue price to the extent of rejection of valid bids procured by the lead manager(s) or their respective syndicate member(s).

(2) If the issuer makes a public issue through the book building process,

a) the issue shall be underwritten by lead manager(s) and syndicate member(s):

Provided that at least seventy five per cent. of the net offer proposed to be compulsorily allotted to qualified institutional buyers for the purpose of compliance of the eligibility conditions specified in sub-regulation (2) of regulation 6, cannot be underwritten.

b) the issuer shall, prior to filing the prospectus, enter into underwriting agreement with the lead manager(s) and syndicate member(s), indicating therein the maximum number of specified securities which they shall subscribe to, either themselves or by procuring subscription, at the predetermined price not less than issue price to the extent of rejection of valid bids procured by the lead manager(s) or their respective syndicate member(s).

b1) if the issuer desires to have the issue underwritten, to cover under-subscription in the issue, then it shall upfront and prior to filing the red herring prospectus, enter into underwriting agreement with the lead manager(s) and syndicate member(s), indicating therein the maximum number of specified securities which they shall subscribe to, either themselves or by procuring subscription, at the predetermined price not less than issue price.

c).....”

Public Comments

2.11. Comments / suggestions are invited from public on the following points:

- a) Whether there is a need to amend provisions of ICDR Regulations to bring in more clarity on underwriting provisions as mentioned at para 2.10 above?
- b) Whether there is a need for any minimum underwriting threshold in terms of issue size, if the issuer desires to have the issue underwritten, to cover under-subscription in the issue i.e. in case of ‘hard underwriting’?



3. Precondition for announcing Bonus Issue by a listed entity and issuance of Bonus Issues in dematerialised form.

Current Regulatory Framework for Bonus Issue

- 3.1. Bonus issues are governed by Section 63 of the Companies Act, 2013 and Chapter XI of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations).
- 3.2. The Companies Act, 2013 provides for certain conditions for issuance of Bonus Shares such as bonus issue may be issued out of its free reserves, or securities premium or the capital redemption reserve account. The ICDR Regulations provide for certain additional conditions, restrictions for bonus issue. It also provides the timelines for completion of bonus issue. Relevant extracts of Companies Act, 2013 and ICDR Regulations is placed at Annexure-1.

Issue

- 3.3. It is observed that in some instances, an issuer announces bonus issue while it has not received in-principle approval for listing and trading approval from stock exchange(s) for its previous issuances and such previous issuances has certain non-compliances such as issuing shares without taking in-principle approval from stock exchanges or failure to follow pricing guidelines / non-compliance with regulatory provisions etc. In such scenarios, issuer may have issued shares but would fail to get in-principle approval for listing and trading approval for such issued shares.
- 3.4. Now in such situation when Issuer Company announces a bonus issue, there is a mismatch between the listed capital and issued capital of the issuer. Hence, due to the mismatch in issued shares and listed shares, stock exchange may find it difficult to grant in-principle approval for the bonus issue, unless the discrepancy is resolved as providing approval to such bonus issue will further exacerbate the mismatch between the listed capital and issued capital of the issuer. Thus, in such scenario, it would not be prudent to grant bonus shares on such incorrect past issuance.
- 3.5. In view of above it is felt that, as long as such mismatch exists between listed capital and issued capital, Issuer Company may not considered eligible to announce bonus issuance as bonus issue announcement is a price sensitive information and it is imperative that the bonus issue is implemented in a timely manner.
- 3.6. As per data of bonus issue in last 2 years, it is observed that % of bonus shares issued in physical mode is very less. A synopsis of data is as below:

Year	No. of Bonus Issues	% allotment in demat mode	% allotment in physical mode
2021	71	98.38%	1.62%



2022	122	98.72%	1.28%
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3.7. Bonus shares to shareholders holding physical securities are allotted in physical mode. Since issuance of shares in dematerialised mode provides elimination of risks associated with physical certificates such as loss, theft, mutilation and fraud and ensures timely credit, it is felt that bonus shares to shareholders may be issued in dematerialised form only.

3.8. If investor does not have demat account then in such scenario, Issuer companies are required to open a separate demat account for dealing with unclaimed securities. Issuer may urge investors (not having demat account) to open a demat account for enabling transfer of such bonus shares in their demat account.

Proposals

3.9. It is proposed to amend the ICDR Regulations to include following requirements with respect to bonus issuance:

- a. A listed issuer shall be eligible to announce its bonus issue only if it has received in-principal approval from the stock exchanges for listing of all the pre-bonus securities issued by the listed entity excluding Employee Stock options (ESOPs) and convertibles shares/ warrants.
- b. Bonus Issuance to shareholders shall be made in the dematerialised form only.

Public Comments

3.10. Comments / suggestions are invited from public on the proposals mentioned at para 3.9 above on following points:

- a) Whether announcement of bonus issue by a listed issuer shall be subject to requirement of receiving in-principal approval from the stock exchanges for listing of all the pre-bonus securities issued by the listed entity excluding Employee Stock options (ESOPs) and convertibles shares/ warrants?
- b) Whether Bonus Issuance to shareholders shall be made in the dematerialised form only?

4. Inclusion of “Pension funds sponsored by entities which are associate of the lead manager”, to participate in Anchor Investor category :

Existing provisions

4.1. In terms of ICDR Regulations, clause 10 of Part A - Schedule XIII, specifies the terms of participation of Anchor Investors in Book Building Process. Sub-clause (k) of clause 10 of Part A - Schedule XIII, restricts Lead Managers and its associates from participating as Anchor Investors. The stipulations of clause 10 (k) are as follow:

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“(k) Neither the (i) lead manager(s) or any associate of the lead managers (other than mutual funds sponsored by entities which are associate of the lead managers or insurance companies promoted by entities which are associate of the lead managers or Alternate Investment Funds (AIFs) sponsored by the entities which are associate of the lead manager or [a foreign portfolio investor other than individuals, corporate bodies and family offices] sponsored by the entities which are associate of the lead manager) nor (ii) any person related to the promoter/promoter group/ shall apply under the Anchor Investors category.”

4.2. Lead Manager(s) and its associates are restricted from applying under Anchor Investor Category. An exception has been made for mutual funds sponsored by entities which are associate of the lead manager or insurance companies promoted by entities which are associate of the lead manager or Alternative Investment Funds (AIFs) sponsored by entities which are associate of the lead manager or a foreign portfolio investor other than individuals, corporate bodies and family offices, sponsored by entities which are associate of the lead manager.

4.3. However, Pension funds sponsored by entities which are associate of the lead manager, do not fall under the exception available under clause 10(k) of of Schedule XIII of ICDR Regulations.

4.4. Anchor Investors, under ICDR Regulations, mean a qualified institutional buyer (QIB) who makes an application for a value of at least ten crore rupees in a public issue on the main board made through the book building process.

Rationale

4.5. Presently, Pension Funds which are not an associate of the Lead Manager can participate as an anchor investor in the book building process.

4.6. It is noted that an exception has been made for Pension Funds of entities which are associate of the lead manager, for participation as an Anchor Investor in public issue of REITS. However, similar exceptions have not been provided under ICDR Regulations.

4.7. Pension funds are registered intermediaries under Pension Fund Regulatory and Development Authority (PFRDA) and are duly regulated with defined roles & responsibilities.

4.8. Pension Funds with minimum corpus of twenty five core rupees are defined as QIB under ICDR Regulations.



Proposal

- 4.9. Considering, the existing regulatory supervision of PFRDA and exception available to pension funds promoted by entities which are associate of the lead manager for participation as an Anchor Investor in a public issue of REITS; clause 10 (k) of Schedule XIII may be amended to allow Pension Funds of entities which are associate of the Lead Managers, to participate as an Anchor Investor in a public issue.
- 4.10. In ICDR Regulations, with respect to pension funds under QIB definition, we may add words “*registered with Pension Fund Regulatory and Development Authority (PFRDA)*” after “*a pension fund with minimum corpus of twenty five crore rupees.*”

Public Comments

- 4.11. Should Pension Funds sponsored by entities which are associate of the Lead Managers, be allowed to participate as an Anchor Investor in a public issue?

5. Inclusion of requirements w.r.t. disclosure made in the offer document:

- 5.1. Material contracts and documents for inspection – In terms of ICDR provisions, Issuer Company is required to disclose details regarding time and place at which the material contracts and documents will be available for inspection. Generally, physical copies of material contracts and documents are made available for inspection at the registered office of the issuer company.

However, during Covid period, Issuers and Lead Managers were advised to also provide access to material contracts and documents through online means, since there were restrictions on physical movement. In view of the same, it is felt that the aforesaid requirement may be incorporated in the regulations to have legal binding for compliance by issuer and Lead Managers, in addition to existing requirement of making physical copies of material contracts and documents available for inspection at Registered office of the issuer company.

- 5.2. Providing complete industry report in the list of material documents for inspection – In the draft offer document and offer document the Issuer Company under “Industry Overview” section, provide overview of the industry by commissioning industry reports from third party agencies. This industry overview is generally an extract of the report prepared by third party agencies commissioned by the issuer.

With regard to above, Lead Managers have been instructed to include complete industry report in the list of material documents for inspection, as the same provides information to the investors interested in reading the detailed industry report. Accordingly, it is felt that the aforesaid requirement may be incorporated in the



regulations to have legal binding for compliance by the Lead Managers and ensure that complete industry report is available for inspection at physical address and at online link provided by Issuer Company

- 5.3. Hosting draft offer document and offer document(s) on issuer company website – Presently in terms of ICDR Regulations, draft offer document and offer document is required to be hosted on the websites of SEBI, Stock Exchange(s) and BRLMs associated with the issue.

Suggestions have been received that draft offer document and offer document should also be displayed on the website of the issuer company. It is also noted that some issuers on a voluntarily basis display their draft offer document and offer document on their website, after filing the same with SEBI / stock exchange(s). Hence, it is felt that this requirement may be incorporated in the regulations mandating all issuers to host draft offer document and offer document on their website.

Proposals

- 5.4. It is proposed to amend the ICDR Regulations to include following requirements in respect to disclosures made in the offer document:
- a) Providing access to material contracts and material documents (as per the list provided in the DRHP/RHP) for inspection through online means apart from inspection at the registered office.
 - b) Providing complete industry report as part of material documents for inspection both through offline and online modes.
 - c) Hosting draft offer document and offer document(s) on website of Issuer Company.

Public Comments

- 5.5. Comments / suggestions are invited from public on the proposals mentioned at para 5.4 above on following points;
- a) Whether material contracts and material documents access is needed through online means?
 - b) Whether complete industry report should be included in material document for inspection?
 - c) Whether draft offer document and offer document(s) should be hosted on issuer company website?



6. Submission of Public Comments:

6.1. In order to take into consideration, the views of various stakeholders, public comments are invited on the proposals at para 2.11, 3.10, 4.11 and 5.5 above.

6.2. Comments may be sent by email to consultationcfid@sebi.gov.in no later than March 08, 2023. While sending the email, kindly mention the subject as “**Consultation Paper on certain Amendments to ICDR Regulations, 2018, with the objective of increasing transparency and streamlining certain processes**”. The comments should be sent by email in MS Excel file in the following format only: [link to download the format](#).



Annexure 1

1. Companies Act, 2013

Section 63 of the Companies Act, 2013 states as follows

“63 (1) A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

- (i) its free reserves;*
- (ii) the securities premium account; or*
- (iii) the capital redemption reserve account:*

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets

(2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), unless—

- (a) it is authorised by its articles*
- (b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;*
- (c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;*
- (d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;*
- (e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;*
- (f) it complies with such conditions as may be prescribed.*

(3) The bonus shares shall not be issued in lieu of dividend”

2. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

Chapter XI of the ICDR Regulations deal with Bonus Issue. The regulations in the said chapter states as follows

Conditions for a bonus issue

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293. Subject to the provisions of the Companies Act, 2013 or any other applicable law, a listed issuer shall be eligible to issue bonus shares to its members if:

a) it is authorised by its articles of association for issue of bonus shares, capitalisation of reserves, etc.:

Provided that if there is no such provision in the articles of association, the issuer shall pass a resolution at its general body meeting making provisions in the articles of associations for capitalisation of reserve;

b) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

c) it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus;

d) any outstanding partly paid shares on the date of the allotment of the bonus shares, are made fully paid-up;

e) any of its promoters or directors is not a fugitive economic offender

Restrictions on a bonus issue

294. (1) An issuer shall make a bonus issue of equity shares only if it has made reservation of equity shares of the same class in favour of the holders of outstanding compulsorily convertible debt instruments if any, in proportion to the convertible part thereof.

(2) The equity shares so reserved for the holders of fully or partly compulsorily convertible debt instruments, shall be issued to the holder of such convertible debt instruments or warrants at the time of conversion of such convertible debt instruments, optionally convertible instruments, warrants, as the case may be, on the same terms or same proportion at which the bonus shares were issued.

(3) A bonus issue shall be made only out of free reserves, securities premium account or capital redemption reserve account and built out of the genuine profits or securities premium collected in cash and reserves created by revaluation of fixed assets shall not be capitalised for this purpose.

(4) Without prejudice to the provisions of sub-regulation (3), bonus shares shall not be issued in lieu of dividends.

(5) If an issuer has issued SR equity shares to its promoters or founders, any bonus issue on the SR equity shares shall carry the same ratio of voting rights compared to ordinary shares and the SR equity shares issued in a bonus issue shall also be



converted to equity shares having voting rights same as that of ordinary equity shares along with existing SR equity shares.

Completion of a bonus issue

295. (1) An issuer, announcing a bonus issue after approval by its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors:

Provided that where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.

Explanation: For the purpose of a bonus issue to be considered as 'implemented' the date of commencement of trading shall be considered.

(2) A bonus issue, once announced, shall not be withdrawn.
