



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CONSULTATION PAPER

DDHS – POD 1

**EXPANDING DEFINITION OF QUALIFIED
INSTITUTIONAL BUYERS FOR DEBT SECURITIES**

MAY 2023

How to Respond

We are asking for comments on the Consultation paper (CP) by May 29, 2023.

The comments/ suggestions may be provided to the following email ids:

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By Post to the following address:

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MAY 2023

1. Introduction:

- 1.1. QIBs are an important source of funding for issuers seeking to raise funds through private placement of listed debt securities. QIBs are major participants in public issues of debt securities. While the Corporate Bond market has been dominated with the private placements (almost 98% of the total issuances), QIBs subscribed around 94% of the total funds raised through issuance of Corporate Bonds by the way of private placement¹ on the Electronic Book Provider Platform (EBP) of the Stock Exchanges – a price discovery mechanism for debt private placements. Thus, QIBs have been serving as an important source of funding for issuers seeking to raise funds through private placement of listed debt securities.
- 1.2. Currently the definition of Qualified Institutional Buyer (QIB) is present in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which deals with specified securities – equity shares and convertible securities. The SEBI (issue and Listing of Non-Convertible securities) Regulations, 2021, which deals with non-convertible securities, also follows the definition of QIB as mentioned in the ICDR Regulations.
- 1.3. SEBI has been receiving representations that the definition of the term ‘QIB’ has to be expanded in order to increase the potential investor base for issuers of debt securities and for further developing the debt markets. Hence it is thought fit to seek comments from the public on whether the current definition of QIBs can be expanded on the lines outlined in this consultation paper.

¹ For FY 2022-23

2. Present Definition of QIB:

2.1. The definition of 'QIB' was originally defined in the SEBI (Disclosure and Investor Protection Guidelines) Regulations, 2000. The said guidelines were repealed by SEBI ICDR Regulations in 2009, and which in turn was repealed by SEBI ICDR Regulations 2018.

2.2. Regulation 2(1)(ss) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 defines QIBs as under:

"qualified institutional buyer" means:

- (i) *a mutual fund, venture capital fund, alternative investment fund and foreign venture capital investor registered with the Board;*
- (ii) *foreign portfolio investor other than individuals, corporate bodies and family offices;*
- (iii) *a public financial institution;*
- (iv) *a scheduled commercial bank;*
- (v) *a multilateral and bilateral development financial institution;*
- (vi) *a state industrial development corporation;*
- (vii) *an insurance company registered with the Insurance Regulatory and Development Authority of India;*
- (viii) *a provident fund with minimum corpus of twenty five crore rupees;*
- (ix) *a pension fund with minimum corpus of twenty five crore rupees;*
- (x) *National Investment Fund set up by resolution no. F. No. 2/3/2005-DDII dated November 23, 2005 of the Government of India published in the Gazette of India;*
- (xi) *insurance funds set up and managed by army, navy or air force of the Union of India;*
- (xii) *insurance funds set up and managed by the Department of Posts, India; and*
- (xiii) *systemically important non-banking financial companies*

It is noteworthy that it is not necessary for these entities to register as QIBs with SEBI. If an entity falls under the above-specified categories, they can participate as QIBs for making investments in debt securities (as elaborated below).

3. Significance of QIBs - investment by QIBs in debt securities:

As mentioned above, QIBs are significant investors in debt securities. It is pertinent to note that the law recognizes the importance of QIB as an investor, as follows:

3.1. Legal provisions relating to QIBs - Private Placement of debt securities

- 3.1.1. Section 42 of the Companies Act 2013, read with the Rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules, 2014, *inter-alia*, specifies that:

“An offer or invitation to subscribe securities under private placement shall not be made to persons more than 200 in the aggregate in a financial year

Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees’ stock option shall not be considered while calculating the limit of two hundred persons.”

Explanation II to sub section 3 of Section 42 of the Companies Act, 2013 defines qualified institutional buyers as:

“qualified institutional buyer defined under the ICDR Regulations, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.”

QIBs are thus not counted for determining the numerical limit for private placements.

3.2. Issue of securities by issuers who are in existence for less than 3 years (New issuers)

- 3.2.1. As per para 2.3.8.c under Schedule II of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021:

Issuers other than unlisted REITs / unlisted InvITs desirous of issuing debt securities on private placement basis and who are in existence for less than three years may disclose financial statements mentioned in para 2.3.8 a of Schedule II of SEBI (Issue

and Listing of Non-Convertible Securities) Regulations, 2021 for such period of existence, subject to the following conditions:

- a) The issue is made on the EBP platform irrespective of the issue size; and
- b) The issue is open for subscription only to Qualified Institutional Buyers.

Thus, an issuer without track record can offer debt securities only on a private placement basis and only to QIBs.

3.3. Participation in the issuance of Non-Equity Regulatory Capital instruments

3.3.1. Para 3.1 under Chapter XIII of SEBI Operational Circular dated August 10, 2021 related to issue and listing of Non-Convertible Securities, *inter-alia*, provides that:

“Issuers and stock exchanges shall ensure that only QIBs are allowed to participate in the issuance of all non-equity regulatory capital instruments”

Thus only QIBs are permitted to participate in primary issues of Non-Equity Regulatory Capital instruments like AT1 bonds.

4. Need for Review of the existing definition of QIB

- 4.1. QIBs in general, are large, sophisticated and informed investors who are considered suitable for making investments in the capital markets and have expertise in evaluating investment opportunities and in managing risks. The sophistication in such investors is reflected in their ability to evaluate investments, undertake risk management, carry out due diligence etc.
- 4.2. As such, QIBs play a major role in the primary issuance of debt securities and non-convertible securities. QIBs registered with the EBP get automatically notified of any proposed private placement being undertaken by an issuer on the platform. QIBs are eligible to bid on all such debt issuances. Given the limitation on offers not being extended to investors exceeding 200, the non-QIB investors have to specifically receive authorization from issuers to place the bids and cannot exceed 200. As also mentioned earlier, certain types of non-convertible securities such as non-equity regulatory capital or the issuances by new issuers are available directly and solely to QIBs.
- 4.3. It is noteworthy that many investors, with large corpus, financial sophistication and ability to evaluate investment opportunities have emerged. There are also existing entities which could be considered being recognized as QIBs for the same reason. Such investors can serve to provide required funds to issuers through subscription to debt securities/non-convertible securities, and enhancing the depth in the bond market.
- 4.4. There is also a need to consider parity for certain class or category of Indian investors with Foreign Portfolio Investors, who are included in the present definition of 'QIB'.
- 4.5. Taking into account the above, expanding the definition of QIBs for investing into debt securities will serve to broaden the types, class and categories of investors, enhance access to investment opportunities within the primary issuance at EBP and help in leveling the playing field within the bond market.

- 4.6. Such a measure could also lead to a potential increase in the supply of funds to the issuers of debt securities (including for issuers of non-equity regulatory capital), aid better price discovery, which in turn could lower the cost of fundraising and promote capital formation.

5. Proposed categories of entities for inclusion within the definition of 'QIB' for investing in debt securities:

- 5.1. Taking into account the reasons stated above, it is proposed that the definition of 'QIB' for investment in debt securities be expanded to the categories of entities mentioned in the table below:

Sr. no.	Proposed category of entities
1.	Multistate cooperatives with net worth of more than Rupees five hundred crore
2.	Non-banking financial companies and housing finance companies regulated by RBI, subject to guidelines specified by RBI
3.	Pension Funds (including Overseas Pension Funds, NPS Trust, Employee Provident Fund Organization)
4.	Refinancing Agencies such as MUDRA
5.	Regulatory authorities, autonomous bodies, authorities, boards or Commissions or Agencies, authorities, organizations or entities established, owned or controlled by the Central Government or a State Government
6.	Reinsurance Companies regulated by IRDAI, subject to guidelines specified by IRDAI
7.	SEBI regulated entities with net worth of more than Rupees five hundred crore subject to guidelines specified by SEBI
8.	Small Finance Banks regulated by RBI, subject to guidelines specified by RBI

Sr. no.	Proposed category of entities
9.	Universities or higher educational institutions, or funds or endowments of universities or higher educational institutions recognized by State Governments or Central Government.
10.	Urban local body, municipality or any statutory body or board or corporation, authority, trust or agency established or notified by any Central or State Act or any special purpose vehicle notified by the Central Government or State Government subject to the condition that it undertakes one or more functions that may be entrusted under Article 243W of the Constitution of India.

5.2. Conditions for inclusion of above categories in the definition of QIB

It is also proposed that the new entities to be included in the definition of 'QIB' be subject to certain conditions, as follows:

- 5.2.1. Self-certification: Such an entity shall be required to provide a self-certification, as approved by its governing body (by whatever name called) that it has the necessary and appropriate expertise and skills to evaluate investments into debt securities, undertake risk management and to carry out due diligence in such form as shall be specified and furnish the same to the Stock Exchange prior to commencing investments as a QIB.
- 5.2.2. Availability of necessary expertise: Such an entity may either have a designated functionary or committee comprising of individuals with necessary expertise and skills OR may engage an independent registered investment advisor, portfolio manager or merchant banker (*unconnected / unrelated with the specific debt issuance or issuer or issuer group or with the entity*) on an on-going basis for evaluation, advising on risk management and/or for due diligence. The entity shall however take full responsibility for any investments / divestments in debt securities made by it from time to time.

- 5.2.3. Minimum Investible Surplus: SEBI may also specify if any of the categories above may be required to have a minimum amount of investible surplus (to be certified by its statutory auditor) and furnish the same to the Stock Exchange prior to commencing investments as a QIB. Thereafter, periodically self-certification by the entity will be required.

5.3 Views sought on:

- 1. Are the proposed categories of entities appropriate for inclusion within the definition of QIB for investing into debt securities (together with conditions prescribed at 5.2.1, 5.2.2 and 5.2.3)?*
- 2. Are there any further, categories of entities which should be considered for inclusion within the definition of QIB for investing into debt securities (together with conditions prescribed at 5.2.1, 5.2.2 and 5.2.3)?*
- 3. Are the conditions prescribed at 5.2.1, 5.2.2 and 5.2.3 sufficient for the newer entities included within the definition of QIB for investing into debt securities? Are any changes or modifications required to such conditions?*

6. Public Comments:

- 6.1. The comments/ suggestions on the queries sought may be provided by **May 29, 2023** as per the format given below:

Name of the person/ entity proposing comments:				
Name of the organization (if applicable):				
Contact details:				
Category: whether market intermediary/ participant (mention type/ category) or public (investor, academician etc.)				
Sr. No.	Particulars of Question	Issues	Proposals/ Suggestions	Rationale

Issued on: May 16, 2023