REPORT OF WORKING GROUP ON REVIEW OF SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE AND LISTING OF SECURITISED DEBT INSTRUMENTS) REGULATIONS, 2008

OCTOBER 2024

Composition of the Working Group

SEBI constituted this Working Group ("WG") on August 26, 2024 comprising of the following members:

1. Mr. Vinod Kothari, Vinod Kothari Consultants Pvt. Ltd. (Chairman)
2. Mr. Nihas Basheer, Deputy Managing Partner, Wadia Ghandy & Co;
3. Mr. Aditya Bhargava, Partner, Trilegal;
4. Ms. Manisha Shroff, Partner, Khaitan & Co;
5. Mr. Amit Singh, Linklaters; and
6. Ms. Ruhi Patil, Counsel, Dentons, UKIME

Terms of Reference

This Working Group (WG) was constituted to review and align the provisions of SDI Regulations taking into account the revised directions issued by RBI in September 2021 on Securitisation. SEBI's mail dated August 26, 2024 put the following terms of reference for the Working Group:

(a) Review and alignment of the provisions of the SDI Regulations with the revised RBI directions, wherever relevant;
(b) Updation of the SDI Regulations in line with IOSCO principles, wherever applicable in the Indian context;
(c) Incorporation of the changes necessitated by the SARFAESI Act, if any; and
(d) Any other measures incidental to the above.

As a part of the "other incidental measure", the WG decided to make some significant recommendations to RBI, limited to the extent of removing any conflict that the SSA Directions may have with the SDI Regulations. However, given the primary reportee of the Report being SEBI, the WG decided to make these recommendations by way of a separate Addendum.

Executive Summary of the Recommendations

Amendments relating to form and nature of SDIs, ticket size, meaning of debt etc.

1. Form of issuance

1. Currently, the SDI Regulation permits the issuance of SDIs in either physical or dematerialized form at the option of the investors. Additionally, paragraph 38D mandates that SRs be issued solely in dematerialized form.

   The WG recommends that to enhance the ease of transferring these instruments during secondary market transactions SDIs should be issued in demat form only.

2. Ticket size, face value etc

1. The SSA Directions mandate a minimum ticket size of Rs. 1 crore for each issuance. In contrast, paragraph 38D of the SDI Regulations requires a minimum allotment of Rs. 10 lakhs for SRs to QIBs, but nothing specified for PTCs.

   The WG recommends that the face value of such instruments be kept at Rs. 10,000 subject to the appointment of at least one Merchant Banker by the Issuer and compulsory rating of the SDI.

2. The initial minimum investment may be kept at Rs. 10 lakhs unless a higher threshold is required under any other law as applicable to the originator.

3. Number of investors private placement

1. Para 21(4) of the SDI Regulations deems an offer of securitised debt instruments to fifty or more persons as a public offer, conflicting with the private placement definition under the Companies Act, 2013.

   The WG recommends that the number of persons specified herein be made consistent with the limit specified in Companies Act, 2013, that is, 200.

4. Updating offer period for SDIs

1. Regulation 36(1) of the SDI Regulations provides that a scheme of SDI offered to the public should be offered to the public through newspaper advertisement and should be kept open for at least 2 days. Regulation 29 of the SDI Regulations provides that the public offer for SDIs shall not be kept open for more than 30 days. Further, the compliance requirements in relation to advertisement of public offer is slightly dated and needs to be updated.

   SEBI may consider updating the time period for keeping the public offer for SDIs open for a minimum of 2 working days and a maximum of 30 working days and club this into one provision for ease of reference in line with the approach taken under NCS Regulations.

2. In relation to updating the advertisement requirements, it is recommended to align the provisions with the SEBI NCS Regulations.

5. Separate chapters for private placement and public issue

1. Currently, the relevant provisions relating to public issue and private placement in the SDI Regulations are not separately captured. In line with similar regulations for NCDs, it is recommended that separate chapters governing private placement and public issues may be issued.

Amendments to relating to structural elements of the securitisation transaction

6. Minimum risk retention

1. The SSA Directions require originators to retain a minimum risk in transactions, ensuring they have a stake in the outcome. However, the SDI Regulations lack such a provision.

   The WG recommends that a MRR of 10% may be incorporated in the regulations

2. However, transactions where receivables have a scheduled maturity up to 24 months may carry a low MRR requirement of 5%. This is also in line with the present RBI requirements.

3. The MRR may be exempted, for a period of 2 years from the date of notification of the amendment, in case of "small value issuers", that is, those issuers whose total book value of issuance under these Regulations does not exceed Rs 50 crores.

7. Clean-up call option

1. Currently there is no fixed limit for exercise of clean-up call under the SDI Regulations, unlike the RBI SSA Directions which stipulates a threshold of 10% of the original value of the underlying notes.

   The WG recommends that the clean-up call threshold may be kept at not higher than 10%.

8. Definition of securitisation

1. Currently, the SDI Regulations do not permit single asset securitisation as well as replenishing structures.

   The WG proposes that SEBI SDI Regulations be amended to permit single asset securitisation, as well as use of a replenishing structure.

9. Liquidity Facility

1. Currently, SEBI regulations acknowledge the concept of liquidity facilities but lack sufficient detail regarding their nature and specifications. The SDI regulations should specify the features of liquidity facilities within the SDI Regulations.

10. Regulation 2(g) (Definition of debt / receivables)

1. Changes have been proposed to increase the scope of the term "debt"/ "receivables".

2. The scope has been expanded to include receivables as per Factoring Regulation Act, lease rental receivables, equipment leasing receivables, warehouse receivables and invoice receivables.

3. Further, changes have been proposed to make the position clear on the permissibility of issuance of SDIs backed by receivables from debt securities; and caveats have been incorporated to ensure diversification in such cases.

Amendments relating to trustees

11. Composition of Board of Trustees

1. As per SDI Regulations, Nominees / associated persons of sponsor /originator shall not constitute more than one half of the Board of SPDE. As per RBI SSA Directions, the originator can have only one representative, without veto power, on the board of the SPE. The Board will have at least 4 members with independent directors in majority).

   While it is not common to have a board of trustees in case of securitisation transactions, it is recommended that the requirements under SDI Regulations may be aligned with those provided under SSA Directions.

12. Removal or Replacement of Trustee

1. SEBI regulations mandate prior approval from SEBI for the removal or replacement of trustees. This requirement can create delays and may hinder the timely management of trust arrangements, impacting the overall efficiency of securitisation transactions.

   The SDI Regulations be amended to allow SDI holders representing 75% by value to remove or replace trustees. Additionally, any such modification must be communicated to SEBI and the Stock Exchange within 15 days of the change, including the reasons for the removal and details regarding the incoming trustees, along with their eligibility for appointment.

13. Trustee obligations

1. Currently, SDI Regulations provide for obligations of the trustees, however, certain clauses lack clarity, and certain clauses demand changes in order to increase the accountability and transparency of trustees in general.

   The WG recommends certain changes to the obligations of the trustees as provided in Schedule III of the SDI Regulations.

14. **Code of Conduct for Trustees**

1. The WG recommends certain changes to the code of conduct as provided in Schedule III of the SDI Regulations.

Amendments relating to disclosure requirements

15. Periodic Disclosure of Information on SDI

1. The IOSCO Principles provide for disclosure of updated information on ABS on an annual or other periodic basis. However, the SEBI Regulations currently do not mandate any such disclosure of information on a periodic basis.

   The WG recommends that the regulations should be amended so as to align with the IOSCO principles and mandate disclosure of updated information regarding the SDIs on a semi-annual basis. The WG has prescribed the information to be disclosed for both SDIs representing credit facilities as well as for other receivables.

   Further, the WG also recommends that the offer document should make such disclosures as to permit the investor to conclude whether the issuance complies with "simple, transparent and comparable" requirements as per RBI's SSA Directions.

16. Disclosure of information relating to the originator in case of private placement of SDI

1. Schedule V (containing the disclosures to be made in the offer letter) is heavy on disclosure requirement in connection with the originator of the loans

   In privately placed issuance of SDIs which are proposed to be listed in terms of SEBI SDI Regulations, originators are often reluctant in making such disclosures about the originator about matters other than with respect to the loan pool being securitised.

Clarificatory Changes

17. Clause 12(4) of Schedule 5 (Disclosures about the Servicer)

1. Clause 12(4) of schedule 5 talks about disclosures regarding default by the servicer. However, there is no clarity of the nature of defaults that need to be disclosed.
   It should be clarified that these defaults should cover only defaults in connection with servicing obligations undertaken in the past.

18. Clause 16 of Schedule 5 (Outstanding litigations and material developments

1. Clause 16 of schedule 5 requires disclosures regarding outstanding litigations and material developments generally. However, it is not clear whether the disclosures relate to.

   It should be clarified as to the entity in respect of whom such disclosures should be made. Ideally, such disclosures should be made for Obligors, servicers, or any other parties to the transaction which could be prejudicial to the interests of the investors.

19. Clause 19 of Schedule 5 (Declaration)

1. Clause 19(ii) of schedule 5 requires that declarations be made by the directors of the originator. In case of private placement, usually the originators delegate the authority to carry out necessary actions for securitisation transactions to identified individuals, who may or may not be directors of the company.

It is recommended that instead of directors, the declaration may be allowed to be made by any authorised person of the originator where the issuance is done through private placement.

20. Clause 4(2) (Eligibility criteria for trustees)

1. Clause 4(2) exempts certain entities from the registration requirement prescribed under the provisions of SDI Regulations. The extant provision is not clear on the carveout provided for certain entities.

   SEBI may consider amending these regulations so that the entities which are exempted from the registration requirement shall comply with all other provisions of SDI Regulations.

21. Clause 35A (2) (Application for listing)

1. Since the SEBI LODR Regulations is now applicable for all listed entities, it is recommended that this provision be deleted.

Revisions to legislative references

22. Meaning of "group" or "under the same management"

1. The SDI Regulations currently make references to concepts and provisions from Monopolies and Restrictive Trade Practices Act, 1969 and Companies Act, 1956 for defining when the originator and the trustee would be considered as part of the same group and part of the same management.

   Since both these legislations have now been repealed, the SDI Regulations may define the term 'Group' as set out in the Competition Act 2002. The concept of 'under the same management' does not find any mention in the Companies Act, 2013 or any relevant legislation and therefore the restriction may be limited to 'Group' only (in line with RBI SSA Directions).

23. Reference to Companies Act, 1956 – regulation 16(1) (Accounts)

1. Regulation 16(1) states that an SPDE shall maintain or cause to be maintained proper accounts and records to enable a true and fair view to be formed of its assets, liabilities, income and expenditure and those of all its schemes and to comply with the disclosure requirements of these regulations and other applicable laws "without prejudice to provisions of the Companies Act, 1956 (1 of 1956), or any other applicable law". It may be clarified that references to Companies Act, 1956 shall be replaced by Companies Act, 2013.

24. Meaning of "expert"

1. Regulation 26 states that an offer document shall not include a statement purporting to be made by an expert unless certain conditions are complied with.
   It may be clarified that "expert" shall have the same meaning as in sub-section (38) of section 2 of the Companies Act, 2013 (references to Companies Act, 1956 may be dropped as the legislation has now been repealed).

25. Meaning of special resolution

1. Regulation 34(3) states that a decision for removing a trustee or appointing a trustee shall be taken by means of a special resolution of the investors of the scheme.

   It may be clarified that Sections 109 and 114 of the Companies Act, 2013 shall apply to such special resolution (references to Companies Act, 1956 may be dropped as the legislation has now been repealed).

26. Time period to give notice for meeting of investors

1. Regulation 34(7 & 8) states that investors shall be deemed to have given their consent to variation if and only if 21 days' notice is given to them of the proposed variation and it is approved by a special resolution passed by them through postal ballot.

   It may be clarified that Section 110 and Section 114 of the Companies Act, 2013 shall apply to the special resolution (references to Companies Act, 1956 may be dropped as the legislation has now been repealed).

27. Meaning of qualified auditor

1. Regulation 43 states that the Board may appoint a qualified auditor to inspect the books of account or inquire into the affairs of the special purpose distinct entity.

   It may be clarified that the expression "qualified auditor" shall have the meaning derived from section 141 of the Companies Act, 2013 (references to Companies Act, 1956 may be dropped as the legislation has now been repealed).

Amendments to SEBI LODR

28. Scope of Chapter III of LODR

1. Currently in case of listed SDIs both Chapter III of the SEBI LODR Regulations as well as Chapter VIII (in case of SDI) and Chapter VIIIA (in case of SRs) becomes applicable. Chapter III contains certain regulatory requirements including the requirement to appoint a compliance officer, having in place a policy for the preservation of documents.

   The WG recommends that SEBI clarifies that the compliance requirements as provided under Chapter III be compiled with at the trustee level.

29. SCORES

1. In terms of LODR regulations, the entity issuing the listed SDIs is required to be registered on the SCORES Platform. However, having a SCORES registration is operationally not feasible for each trust. It is suggested that such SCORES registration may be obtained at the Trustee level instead of the SPE level, so that one single registration can be used in all transactions administered by a single trustee.

Amendments to/ with respect to SARFAESI Act

30. Inclusion of trustees appointed in securitisation transactions in the definition of secured creditors

1. The definition of secured creditors under SARFAESI Act includes debenture trustee for secured debt securities. The definition of debt securities is borrowed from SEBI (Issue and Listing of Non Convertible Securities) Regulations 2021. The definition of debt securities under the NCS Regulations excludes SDI and SRs, therefore, the investors of SDIs and SRs will not have access to SARFAESI Act. It is recommended that the SEBI may consider amending the definition of debt securities for this limited purpose to include SDIs and SRs within the ambit of debt securities in order to provide access to the investors of SDIs and SRs to SARFAESI Act.

   The WG feels that it is necessary to empower securitisation trustees to enforce security interests under the SARFAESI Act.

Other amendments

31. Registered Trust Deed

1. It has been observed in certain cases that stock exchange(s) require registered trust deeds for listing of SDIs. Under Indian Stamp Act, registration of securitisation trust deed is not mandatory, and this makes the process of listing complicated. The requirement does not come from any of the SEBI circulars, and is purely for administrative reasons.

   It is recommended that a clarification may be issued by SEBI that it is not mandatory to submit registered trust deeds for listing of securitised debt instruments

32. Application for listing within T+3 days

1. The SEBI Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper requires issuers to make an application for listing of the SDIs within t+3 days. Such an application should be complete in all respects. However, it may not be operationally feasible for rating agencies to issue the final rating within such short timelines.

   It is suggested that SEBI may reconsider the timelines for listing so as to enable the parties involved complete the listing process conveniently.

33. Listing of subsequent issuances of SDIs

1. In accordance with Regulation 62A of the SEBI LODR Regulations, a listed entity with non-convertible debt securities is required to list all non-convertible debt securities it proposes to issue. This requirement is currently not applicable to SDIs.

The WG considered introducing a listing requirement for securitisation transactions involving SDIs. However, given the diversity of asset pools from the same originator, mandating listed issuance based solely on prior listing history could discourage listing. As a result, the WG concluded that the timing for such a requirement is not appropriate at this time.

34. Reduction in listing fee

1. Currently, the initial listing fee prescribed by BSE is Rs.20,000. Subsequently, annual listing fee has to be paid by entities which falls in the range of Rs.70,000 to 10,00,000 depending upon the issue size.

   The WG recommends that SEBI consider applying an *ad valorem* approach to the initial listing fee as well, depending on the size of the issue.

Recommendations of the Working Group[4]

Amendments to SEBI SDI Regulations

Amendments relating to form and nature of SDIs, ticket size, meaning of debt etc.

1. Form of issuance:

Issue: Paragraph 23 of the SDI Regulations permits the issuance of SDIs in either physical or dematerialized form at the option of the investors Additionally, paragraph 38D mandates that SRs be issued solely in dematerialized form.

Recommendation: Given that the primary subscribers of the SDIs are intended to be sophisticated investors and in the interest of advancement of SEBI's settlement system, the option to issue SDIs in physical form is redundant. Therefore, it is recommended that, moving forward, all SDIs be required to be issued in dematerialized form to enhance the ease of transferring these instruments during secondary market transactions. Accordingly, SEBI may consider deleting references to physical SDIs in all regulations legislating the issuance and listing of physical SDIs, namely regulation 23(2), regulation 23(3), regulation 31(1)(b) and regulation 35(2)(c).

Stakeholders' feedback: No objection.

Amendments to the text of law:

Clause 23(2) of the SDI Regulations:

> *The special purpose distinct entity shall issue the securitised debt instruments in ~~give an option to the investors to receive the securitised debt instruments either in the physical form or in~~ dematerialised form.*

Clause 23(3) of the SDI Regulations:

> ~~*The holders of dematerialised instruments shall have the same rights and liabilities as holders of physical instruments.*~~

Clause 31(1)(b) of the SDI Regulations:

> ~~*in case of securitised debt instruments in the physical form the certificates shall be dispatched within eight days of closure of the offer;*~~

Clause 35(2)(c) of the SDI Regulations:

> *maintenance of a record of the holders thereof~~., whether holding the same in physical form or dematerialized form~~*

[4] The amendments to the text of law have been suggested in blue

2. Ticket size, face value etc.:

Issue: The SSA Directions currently require the minimum ticket size of each issuance to be Rs. 1 crore. Paragraph 38D of the SDI Regulations states that the minimum allotment of SRs to Qualified Institutional Buyers should be of Rs. 10 lakhs. However, the SDI Regulations do not prescribe any minimum ticket size for SDIs.

Recommendation: Given the complexity and inherent risks associated with SDIs, it is crucial to establish a larger initial ticket size for investments to attract accredited investors who can effectively assess the risks associated with the instrument, and therefore, reduce the likelihood of misinterpretation of risks. This initial ticket size should be set at a higher threshold, as in case of SSA Directions, thereby ensuring that participants possess the requisite expertise and commitment to conduct thorough due diligence.

Once a track record of stable performance is established, participation from smaller investors can be considered. Currently, for listed NCDs, a minimum face value of Rs. 10,000 has been allowed, provided a merchant banker is appointed. The question arises: can SDIs be given the same treatment as NCDs? Notably, NCDs may include third-party collateral and structural features like market-linked coupon payments or dual-recourse features, indicating that they need not always be plain vanilla debt securities. As long as the associated risks and rewards are adequately captured and disclosed to investors, there is no reason to differentiate the regulatory treatment of SDIs and NCDs.

In light of SEBI's decision to lower the face value for NCDs, it is recommended that the minimum face value for rated instruments, with a merchant banker appointed, be set at Rs. 10,000. For other cases, a minimum face value of Rs. 1 lakh should be maintained. Additionally, the WG suggests a minimum investment size of Rs. 10 lakhs for such instruments.

This approach facilitates a balanced market dynamic - the larger initial ticket size draws in serious investors who can stabilize the market, while the subsequent availability of a lower face value enables broader participation once the instrument has demonstrated reliability and performance. This phased approach not only mitigates risks for less sophisticated investors but also enhances overall confidence in the securitisation market.

Stakeholders' feedback: *This issue attracted strong feedback from the stakeholders. The initial recommendation of the WG was to have a minimum face value of Rs 1 lakh, and the minimum initial ticket size of Rs. 10 lakhs.* While some were in favor of keeping the minimum face value lower than Rs. 1 lakh so as to enable retail participation, some argued that retail investors should be kept away from such an instrument which is generally perceived as difficult to understand. Proponents of retail participation argued that since rating agencies already provide the rating based on the risk perception of the instrument, there should not be any reason to not allow retail participation since they are aware of the rating and therefore the risk it entails. It was further argued that SDIs in many instances have performed better than other plain vanilla debt instruments such as bonds.

A concern was expressed on behalf of the RBI as well that there are attempts to transgress the RBI's threshold of Rs 1 crore to securitising the cash flows from a securitised note by financial sector originators.

A recommendation was also made by some WG members and stakeholders that instead of keeping the face value as high as Rs. 1 lakh, only investors fulfilling a certain networth criteria should be allowed to invest in SDIs.

Several stakeholders and WG members pointed out that interest in the retail segment is growing and could gain momentum if the minimum face value is further reduced, potentially attracting more investors. However, the WG also recognised the complexities of the product and, therefore, accepted the recommendation with certain safeguards. These safeguards are intended to ensure that investors are fully informed about the risks and rewards, allowing them to appropriately price the transaction.

Amendments to the text of law:

The following paragraphs may be inserted in SDI Regulations:

(a) Face Value of SDIs

The face value of SDIs should not be less than Rs. 1 lakh.

Provided that an Issuer may issue privately placed SDIs having face value of not less than Rs 10 thousand subject: (a) to the appointment of at least one Merchant Banker by the Issuer for the issuance; and (b) compulsory rating of the SDI.

(b) Minimum subscription

The minimum allotment to any investor at the initial subscription to the SDIs should be no less than Rs. 10 lakhs, unless a higher threshold is required under any other law as applicable to the originator.

3. Number of investors private placement

Issue: Para 21(4) of the SDI Regulations states any offer of SDIs made to fifty or more persons in a financial year shall always be deemed to have been made to the public. This is not in line with the aggregate number of persons to whom an offer / invitation to subscribe to securities can be made to qualify as a private placement under section 42 of the Companies Act, 2013 read with rule 14(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Further, regulation 38D(1) of the SDI Regulations also provides that an issuer may list its SRs on a recognized stock exchange subject to the following conditions inter alia (a) the security receipts have been issued on a private placement basis; and (c) the offer or invitation to subscribe to security receipts shall be made to such number of persons not exceeding two hundred or such other number, in a financial year, as may be prescribed from time to time.

Recommendation: It is recommended that the number of persons specified herein the SDI Regulations in be made consistent with the limit specified under section 42 of the Companies Act, 2013, read with rule 14(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 with respect to number of persons (in a financial year), that is, 200, to whom an offer can be made to subscribe to securities on private placement basis. Further, it is also recommended to consider including the carve-out for an offer or invitation made to qualified institutional buyers while calculating the limit of 200 persons.

Stakeholders' feedback: No objection.

Amendments to the text of law:

Clause 21(4) of the SDI Regulations:

> *21(4) Notwithstanding sub-regulation (2), any offer of securitised debt instruments made to two hundred ~~fifty~~ or such other number as may be prescribed under the Companies Act in a financial year shall always be deemed to have been made to the public.*
>
> *Provided any issuance to a qualified institutional buyer shall not be reckoned for the purpose of this limit.*

4. Updating offer period for SDIs

Issue: Offer period is linked to days instead of working days - Regulation 36(1) of the SDI Regulations provides that a scheme of SDI offered to the public should be offered to the public through newspaper advertisement and should be kept open for at least 2 days. Regulation 29 of the SDI Regulations provides that the public offer for SDIs shall not be kept open for more than 30 days. Further, the compliance requirements in relation to advertisement of public offer is slightly dated and needs to be updated.

Recommendation: SEBI may consider updating the time period for keeping the public offer for SDIs open for a minimum of 2 working days and a maximum of 30 working days and club this into one provision for ease of reference in line with the approach taken under NCS Regulations. In relation to updating the advertisement requirements, it is recommended to align the provisions to the SEBI NCS Regulations

Stakeholders' feedback: *No objection.*

Amendments to the text of law

Clause 29 of the SDI Regulations:

> *No public offer of securitised debt instruments shall ~~remain open for more than thirty days~~ be kept open for a minimum of two working days and a maximum of thirty working days.*

Clause 36(1) of the SDI Regulations:

> *~~In respect of public offers of securitised debt instruments, the special purpose distinct entity or trustee thereof shall satisfy the recognised stock exchange to which a listing application is made that each scheme of securitised debt instruments was offered to the public for subscription through advertisements in newspapers for a period of not less than two days and that applications received in pursuance of the offer were allotted in accordance with these regulations and the disclosures made in the offer document.~~*
>
> *The Issuer shall make an advertisement of public offer of SDIs through electronic modes such as online newspapers or website of the issuer or the stock exchange, or in an English national daily and regional daily with wide circulation at the place where the registered office of the issuer is situated, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as specified in [to insert the relevant updated schedule].*

Provided that Issuers opting to advertise the public issue through electronic modes shall publish a notice, in an English national daily and regional daily newspaper with wide circulation at the place where the registered office of the Issuer is situated, exhibiting a QR Code and link to the complete advertisement.

5. Separate chapters for private placement and public issue

Currently, the relevant provisions relating to public issue and private placement in the SDI Regulations are not separately captured. In line with similar regulations for NCDs, it is recommended that separate chapters governing private placement and public issues may be issued.

Stakeholders' feedback: No objection.

Amendments to relating to structural elements of the securitisation transaction

6. Minimum risk retention

Issue: The SSA Directions mandate minimum risk retention by originators, ensuring they maintain a skin-in-the-game in the transaction. However, the SDI Regulations do not have a similar provision. Minimum risk retention plays a critical role in safeguarding transactions, a concept introduced post-GFC to counter the risks of the originate-to-sell model. This model can harm investors' interests by potentially compromising credit underwriting and lack of alignment of interests of the originator and investor. As a result, a disparity arises between originators in the financial sector and those in the non-financial sector.

Recommendation: To align standards for securitisation transactions originated by non-financial entities with internationally accepted norms, we would recommend that a minimum retention requirement is introduced under the SDI regulations. We believe this would also give confidence to the RBI to permit regulated financial entities to also participate in the SDI market.
By introducing MRR in the SDI Regulations, non-financial sector entities will be held to similar standards of accountability, skin-in-the-game, reducing the risks associated with the originate-to-sell model and aligning their practices with those of financial sector originators. This will strengthen investor confidence across the board and mitigate risks of moral hazard or lax underwriting standards.

Not requiring a skin-in-the-game also potentially creates regulatory arbitrage. Even if the principal activity from which receivables emanate is a non-financial activity, the sale of receivables by the issuer and investment in the receivables by the investors is a financial investment. If the originator, on whom the transaction has a significant continuing dependence, does not need to hold a part of the receivables with himself, there may be questions on accountability, adverse selection, etc., which surfaced during the GFC. In the larger interest of ensuring sanctity and robustness of the instrument, if there is a minimum skin-in-the-game required, such requirement is expected to be for the long-run good of the instrument.

This recommendation benefited from diverse views of WG members. Some WG members were of the view that there is a significant market of originators outside the financial entity domain where the originators securitise receivables including through an online bond platform provider (OBPP). Introduction of a MRR requirement for such originators to ensure they have some skin in the game, would have a negative impact

on the Indian securitisation market. Some WG members also felt that even if a skin-in-the-game requirement is introduced, there may be a carve-out for issuances upto a particular size, say, by way of a "small value issuance" [a WG member suggested an issue size upto Rs 50 crore per issuance]. On the other hand, other WG members felt that we have to move towards creating international standards for securitisation transactions, and we should create practices/standards which gain investor confidence and help the market in the long run. OBPP platforms are trading platforms - there is no question of risk retention by the platform; however, the originator who originates and securitises the transaction is not the platform itself. Such originators should, therefore, have a minimal investment, for the sake of alignment with investors' interests.

WG members brought global experience on this recommendation too. One WG member provided insights into the US retention rule where the requirement is premised on the insulation of the transaction from the originator insolvency risks and orphas-status of the SPV. Other WG members provided insights on the way the risk retention rules have been implemented by EU and UK regulators.

Based on the majority view of the WG members, it is recommended that an MRR of 10% may be incorporated in the SDI Regulations., subject to the following exceptions/relaxations:

- Transactions where receivables have a scheduled maturity up to 24 months may carry a low MRR requirement of 5%. This is also in line with the present RBI requirements.
- SEBI may consider to retain the present flexibility of "small value issuers" with an appropriate threshold for a period, so as to not lead to an immediate disruption of the existing market.

With respect to the manner of fulfillment of MRR requirements, the same should be designed with sufficient flexibility to accommodate various transaction structures, including creation of collateral interest on assets/interests held by the issuer.

The WG makes it clear that this requirement will only be prospectively applicable.

The MRR may be held in the form of:

(a) Cash collateral
(b) Over collateral, or creation of security on any other asset having a fair value at least equal to the extent required herein
(c) Investment in junior tranche
(d) Investment in vertical slices of senior and junior tranche

Further, there is no stipulation that the MRR be, either wholly or partly, held only through the junior tranches.

Stakeholders' feedback: One of the participants highlighted that leasing entities already retain the residual value risk, and this should be considered for fulfilling MRR requirements. Additionally, a recommendation was made to differentiate between MRR-compliant and non-MRR-compliant entities, allowing financial institutions to invest only in MRR-compliant transactions.

It was further recommended that MHP should also apply to SDIs along with MRR. However, in the case of future flow securitization, the receivables arise over time. While the underlying assets or contracts from which these receivables arise may have seasoning, the receivables themselves may not. Therefore, the MHP condition does not seem clearly applicable to future flows. Further, it is also important to note that while

global regulations prescribe risk retention rules, the seasoning or holding period is left for originator/investor discretion.
There were also views from stakeholders that there are no similar requirements currently, say, on TREDS or OBPPs.

The WG has taken into account the various arguments and recommendations from stakeholders and has decided to uphold its recommendation of MRR. However, for non financial originators, there could be situations where retention is being maintained in some form (for example in leasing transactions, the residual value of the leased assets continues to be held by the originator) and therefore such retention should also be counted towards the MRR requirement.

Amendments to the text of law:

A new paragraph may be inserted in SDI Regulations:

> *Minimum risk retention:*
>
> *The originator should retain a minimum of 10% of the book value of the asset being securitised. Such retention should be in one or more forms, or combinations thereof:*
>
> *(i) Cash collateral*
> *(ii) Over collateral or creation of security on any other asset having a fair value at least equal to the extent required herein;*
> *(iii) Proportional investment in the receivables being securitised*
> *(iv) Investment in junior tranche*
> *(v) Investment in vertical slices of senior tranche*
>
> *Provided that the retention requirement above:*
> - *(a) May be 5% of the book value of the asset being securitised, in case the scheduled maturity of any of the cashflows in the transaction is within 24 months;*
> - *(b) May be exempted, for a period of [2 years] from the date of notification of the amendment, in case of "small value issuers", that is, those issuers whose total book value of issuance under these Regulations is not to exceed [Rs 50 crores].*

7. Clean-up call

Issue: Currently, the SDI Regulations define clean-up call option as:

> *"clean-up call option" means an option retained and exercisable by the originator to purchase the debt or receivables assigned to a special purpose distinct entity, if the residual value of such debt or receivables falls below a specified percentage of the price at which it was assigned;*

The Regulations also require the issuer to make disclosures regarding the presence of clean-up call option, and the terms of exercise of such option; however, they do not prescribe any fixed limit for exercise of clean-up call, unlike the RBI SSA Directions which stipulates a threshold of 10% of the original value of the underlying notes.

Recommendation: The clean-up call option, as the name suggests, allows the originator to repurchase the outstanding pool of a securitisation transaction when the outstanding pool balance falls below a certain

threshold, making it uneconomical. This option is at the discretion of the originator, not an obligation, to maintain true sale conditions, and the clean-up call option is an exception to the conditions of true sale. Thus, it is a crucial feature of any securitisation transaction and should ideally be included in the SDI Regulations.

Upon introduction of the provisions relating to clean-up call option in the SDI Regulations, while financial sector originators will follow SSA Directions, the approach for non-financial sector originators is less clear. For the non-financial sector entities, a threshold should be established, but it needs to be reasonable, and should not be kept open to let the market forces determine. If the clean-up call threshold is set high, say 50%, it would be nothing but an option to repurchase the assigned receivables, contradicting the true sale concept.

Therefore, it is recommended that the clean-up call threshold may be kept at not higher than 10%.

Stakeholders' feedback: It was argued that the threshold for the clean-up call should be set at 20% instead of 10%, as this aligns with the maximum permissible exposure for an originator under the SEBI SDI Regulations. However, the purpose of a clean-up call is to conclude a transaction when it is no longer economically viable. Globally, the standard threshold is 10%, which is also the case under the RBI SSA Directions. In view of this, the threshold has been proposed at 10%.

Amendments to the text of law:

(a) A new para may be inserted in the SDI Regulations:

Clean-up call

1. *The originator can exercise the clean-up call at a threshold of not more than 10% of the original value of the underlying assets or securitised debt instruments.*

2. *The exercise of the clean-up calls, if any, should not be mandatory on the originator, in form or substance and must be at the discretion of the originator.*

3. *The clean-up call options, if any, should not be structured to avoid allocating losses to credit enhancements or positions held by investors or otherwise structured to provide credit enhancements.*

   Provided that if a clean-up call, when exercised, is found to serve as a credit enhancement (for example, to purchase delinquent underlying exposures), the exercise of the clean-up call should be considered a form of implicit support provided by the originator.

   Provided further that clean-up calls should be exercised by the originator at arm's length, on market terms and conditions (including price/fee) and should be subject to the originator's normal credit approval and review processes;

8. Definition of securitisation

Issue: The issue in the present case is two-fold:

(a) Single asset securitisation: Currently, SEBI SDI Regulations permit the securitisation of a pool of receivables, while the RBI SSA Directions also allow for single asset securitisation. This discrepancy may limit the flexibility and options available to market participants under SEBI's framework.
(b) Replenishing structure: Currently, the SDI regulations does not explicitly permit replenishing structures which is not in line with the RBI SSA Directions.

Recommendation: It is proposed that SEBI SDI Regulations be amended to permit single asset securitisation, as well as use of a replenishing structure. Allowing such would align SEBI regulations with RBI guidelines, providing greater flexibility and opportunities for originators and investors.

Stakeholders' feedback: No objection.

Amendments to the text of law:

Clause 2(r) of the SDI Regulations:

> *securitisation" means acquisition of debt or receivables by any special purpose distinct entity from any originator or originators for the purpose of issuance of securitised debt instruments to investors based on such debt or receivables and such issuance*
>
> *Provided that receivables consisting of obligations from a single obligor, or based on a single asset, shall also be eligible to be securitised.*
>
> *Provided further that securitisation structures having a replenishment period may also be permitted, only if the assets purchased during the replenishment period are from the same originator(s) of the assets underlying the securitised debt instruments already issued under the scheme.*
>
> *For the purpose of this, replenishment, during a specified period, refers to the process of using the cash flows from the securitised assets to acquire further debt or receivables, identified in a manner and with criteria forming part of the transaction documents,,, followed by a period (amortising period), during which the cashflows are used to make payouts to the investors..*

9. Liquidity facilities

Issue: Currently, SEBI regulations acknowledge the concept of liquidity facilities but lack sufficient detail regarding their nature and specifications. This absence of clarity may hinder effective implementation and understanding of liquidity support in securitisation transactions, especially the ones issued by the non-financial sector entities.

Recommendation: In a securitisation transaction, a liquidity facility is vital for managing temporary cash flow mismatches between the timing of inflows from the underlying assets and payments to investors. It acts as a buffer to ensure that payments remain on schedule despite short-term delays, thereby helping to

maintain the credit rating of the securitised instruments. Since credit ratings are sensitive to payment delays, any disruption could lead to a downgrade, impacting the transaction's creditworthiness and market perception. By preventing default scenarios caused by cash flow issues, the liquidity facility also boosts investor confidence, making the securitisation more appealing.

It is essential to distinguish between a liquidity facility and credit enhancement because they serve different purposes. Credit enhancement absorbs losses and improves the credit quality of the assets, offering protection to investors. In contrast, a liquidity facility only addresses temporary cash flow mismatches without covering losses or enhancing credit quality. This distinction affects regulatory treatment, as credit enhancement often requires higher capital charges, while properly defined liquidity facilities face fewer requirements.

The RBI SSA Directions explicitly outline this difference, and a similar clarification should be incorporated into the SEBI SDI Regulations. This can be achieved by detailing the features of both credit enhancements and liquidity facilities within the SDI Regulations.

Stakeholders' feedback: No objection.

Amendments to the text of law:

A new paragraph may be introduced in the SDI Regulations:

Liquidity facility

1. *A liquidity facility is intended to manage timing mismatches between the issuer's receipt of cash flows from the underlying assets and payments to investors. To ensure it does not function as credit enhancement or support, it must satisfy the following conditions:*

    a) *The facility provider must be regulated by at least one financial sector regulator.*
    b) *The facility should be structured separately from other arrangements, with clear documentation detailing its nature, purpose, scope, and performance standards in a written agreement executed at the time of the transaction and disclosed in the offer document.*
    c) *The facility should be provided on an 'arm's length basis,' under market terms, and subject to the provider's usual credit approval and review process.*
    d) *Payment of fees or income related to the facility must not be subordinated, deferred, or waived.*
    e) *The facility should be limited to a specified amount and duration.*
    f) *The duration should not exceed the earlier of:*
        i) *settlement of all claims related to the securitisation notes issued by the issuer; or*
        ii) *termination of the facility provider's obligations.*
    g) *There should be no recourse to the facility provider beyond its fixed contractual obligations.*
    h) *A legal opinion should confirm that the agreement protects the facility provider from liability to investors or the SPE/trustee, except for its contractual obligations.*
    i) *The SPE and/or investors should have the right to select an alternative provider, subject to compliance with these conditions.*
    j) *The documentation should clearly define the circumstances under which the facility may or may not be accessed.*

k) The facility should only be drawn if there are sufficient non-defaulted assets to cover it or if a significant credit enhancement covers potential non-performing assets.
l) The facility must not be used for:
i) providing credit enhancement;
ii) covering the issuer's losses;
iii) acting as permanent revolving facility (it should be used as an exception, not the norm); or
iv) covering losses in the underlying assets before a drawdown.
m) The facility should not be available for:
i) meeting recurring securitisation expenses;
ii) funding additional asset acquisition by the issuer;
iii) covering final scheduled repayments to investors; or
iv) addressing warranty breaches.
n) The facility should be provided to the issuer, not directly to investors.
o) Once drawn, the facility provider shall have priority over future cash flows from the underlying assets, ranking senior to the senior tranche.
p) The originator shall not be liable for any shortfall in liquidity support provided by an independent third party.

2. If any of these conditions are not met, the liquidity facility will be regarded as serving the economic purpose of credit enhancement. In such cases, a third-party liquidity facility shall be classified as credit enhancement.
3. As the liquidity facility is meant to address temporary cash flow mismatches, it should only be drawn for short periods and preferably not used for two consecutive repayment cycles.

10. Regulation 2(g) (Definition of debt / receivables)

Issue: Currently the definition of debt or receivables under the SDI Regulations means any right that generates or results into a cash flow and includes only the following:

a. mortgage debt;
b. such receivables arising out of securities as may be specified by the Board;
c. any financial asset within the meaning of clause (l) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)

There are three concerns:

(a) The scope of this definition does not include receivables under Factoring Regulation Act.
(b) The second one deals with receivables arising out of unlisted debt securities. The SDI Regulations permit the securitisation of receivables arising from securities specified by SEBI. However, the term "securities" is not defined within the regulations. For terms not explicitly defined in the SDI Regulations, the meaning is derived from the SEBI Act or regulations made under it, the Companies Act, 2013, the SARFAESI Act, or RBI regulations. The SEBI Act and Companies Act reference the Securities Contracts (Regulation) Act, 1956 (SCRA) for the definition of "securities." Under SCRA, the definition is broad enough to cover unlisted NCDs. Despite this, there has been

resistance to listing SDIs backed by unlisted debt under the SDI Regulations due to ambiguity about whether such listings are permissible when receivables come from debt securities.

(c) SDI Regulations do not explicitly include other receivables in the nature of rental receivables, equipment leasing receivables, warehouse receivables and invoice receivables that can be securitized.

Recommendation:

(a) With respect to the first issue and the third issue, it is recommended that the definition may be amended to include "receivables" as defined in the Factoring Regulation Act 2011 and specifically include other forms of receivables in the nature of rental receivables, equipment leasing receivables, warehouse receivables and invoice receivables so as to increase the scope of the definition of "debt or receivables".

(b) With respect to the second issue - Debt securities, whether listed or unlisted, qualify as "securities" as long as they are marketable. Therefore, the issuance of SDIs backed by receivables from unlisted debt securities should be permitted. However, this may create an opportunity for regulatory arbitrage, as issuers of unlisted NCDs—despite not being listed entities—could access the capital markets by listing SDIs backed by these unlisted NCDs. The WG does not see a concern if the SDIs are backed by a diversified pool of debt securities, whether listed or unlisted. This approach aligns with the global practice of Collateralized Debt Obligations (CDOs). Ensuring adequate diversification would address the risk of regulatory arbitrage while also introducing a new asset class to the market.

The WG recommends that the SDI Regulations be amended to allow the listing of SDIs backed by unlisted NCDs, subject to the following conditions:

1. The NCDs must be part of a pool;.
2. In the pool of NCDs, a single NCD should represent no more than 10% of the total pool.

Stakeholders' feedback: No objection was raised with respect to the first issue. With respect to the second issue, while all stakeholders agreed that SDIs backed by unlisted debt securities should be allowed, there were differing opinions on whether SDIs backed by a single unlisted NCD should be permitted.

Amendment to the text of law:

Regulation 2(g) of the SDI Regulations may be amended to:

(g) "debt" or "receivables" means any right that generates or results into a cash flow and includes-

(i) mortgage debt ;

(ii) receivables including lease rental receivables, equipment leasing receivables, warehouse receivables and invoice receivables;

(iii) such receivables arising out of securities, as defined in section 2(h) of Securities Contracts Regulation Act, 1956 (42 of 1956), or as may be specified by the Board;

(iv) any financial asset within the meaning of clause (l) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(v) any receivables within the meaning of clause (p) of section 2 of the Factoring Regulation Act, 2011 (12 of 2012).

(

Provided that for the purpose of sub-clause (iii) of this clause, where the debt or receivables represent receivables from unlisted securities, the value of receivables arising

from a single security or security of a single issuer should constitute no more than 10% of the aggregate value of securitised debt instruments issued, at the time of issuance.

Amendments relating to trustees

11. Composition of Board of Trustees

Issue: As per SDI Regulations, Nominees / associated persons of sponsor /originator shall not constitute more than one half of the Board of SPDE. As per RBI SSA Directions, the originator can have only one representative, without veto power, on the board of the SPE. The Board will have at least 4 members with independent directors in majority). The two are not aligned.

Recommendation: While it is not common to have a board of trustees in case of securitisation transactions, it is recommended that the requirements under SDI Regulations may be aligned with that provided under SSA Directions.

Stakeholders' feedback: No objection.

Amendments to the text of law:

Clause 9(9) of the SDI Regulations:

~~*Trustees who are nominees of the sponsor or the originator or who are associated in any manner with the sponsor or the originator or with a company in the same management as the sponsor or originator shall not constitute more than one half of the Board of Trustees of the special purpose distinct entity, as the case may be*~~
The originator or sponsor should not have more than one representative, without veto power, on the board of the special purpose distinct entity provided the board has at least four members and independent directors are in majority.

12. Removal of Trustees:

Issue: Currently, SEBI regulations mandate prior approval from SEBI for the removal or replacement of trustees. This requirement can create delays and may hinder the timely management of trust arrangements, impacting the overall efficiency of securitisation transactions.

Recommendation: Trustees act on behalf of the investors, so the power to appoint, remove, or replace them should also reside with the investors. The requirement for prior SEBI approval can delay the removal process. From a regulatory standpoint, SEBI's primary concern should be the trustee's capability to manage transactions, which is already addressed by requiring the appointment of SEBI-registered trustees for transactions intended for listing under SDI Regulations.

Therefore, it is recommended that the SDI Regulations be amended to allow SDI holders representing 75% by value to remove or replace trustees, which is also covered in clause 34(3) of the SDI Regulations, if they

have reasonable cause to believe that the trustee has not fulfilled its duties as outlined in the Trust Deed and applicable laws, thus jeopardizing the interests of the SDI holders. Additionally, any such modification must be communicated to SEBI and the Stock Exchange within 7 days of the change, including the reasons for the removal and details regarding the incoming trustees, along with their eligibility for appointment.

Stakeholders' feedback: The initial proposal allowed SDI holders representing 75% of the value to remove or replace the trustees, without requiring SEBI's prior approval. However, concerns were raised that this could harm the trustees' interests and disrupt the operational flow of the transaction during the transition. Therefore, the recommendation was revised to permit the removal of trustees only if investors have reasonable grounds to believe that the trustee has failed to perform its duties as specified in the Trust Deed and applicable laws.

Amendments to the text of law:

(a) Para 34(3)(b) of SDI Regulations:

remove the trustee, if the SDI holders have reasonable cause to believe that the trustee has failed to act in accordance with the Trust Deed and the applicable laws.

(b) Clause 16 of Schedule IV of SDI Regulations:

The removal of the trustee in all cases ~~would require the prior approval of~~, and subsequent appointment of the new trustee, should be informed to the Board within a period of 7 days from such removal.

13. Trustee obligations

Issue: Currently, SDI Regulations provide for obligations of the trustees, however, certain clauses lack clarity, and certain clauses demand changes in order to increase the accountability and transparency of trustees in general.

Recommendations: The following changes have been proposed to the obligations of the trustees.

Duties of trustee under SDI Regs	Amendments, if any, proposed in SDI regulations.
7. … (c) it shall take adequate steps for redressal of grievances of the investors within twenty-one calendar days of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received	(c)it shall take adequate steps to redress the grievances of the investors within twenty-one calendar days of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received, and the manner in which such complaints have been redressed or dealt with, as the case may be, in the manner as specified by the Board;
(2) The trustees shall ensure that the covenants in the trust deed and any other	(2) The trustees shall ensure that the covenants in the trust deed and any other transaction document are

Duties of trustee under SDI Regs	Amendments, if any, proposed in SDI regulations.
transaction document are complied with by the concerned parties.	complied with by the concerned parties and shall take necessary steps in case of any breach of covenants in terms of the trust deed and transaction documents.
(f) take appropriate measures for protecting the interest of the investors including informing the board about any action, legal proceeding, etc., initiated against it in respect of any material breach or noncompliance by it, of any law, rules, regulations, directions of the Board or of any other regulatory body;	These are two different aspects - first part is covered in (c) above - so duplicacy can be removed. (f) inform the board about any action, legal proceeding, etc., initiated against it in respect of any material breach or noncompliance by it, of any law, rules, regulations, directions of the Board or of any other regulatory body;
(h) call for periodic reports from the originator regarding the performance of the underlying asset pool, atleast on quarterly basis;	Corresponding obligation can be cast on originator to provide periodic reports to the trustee regarding the performance of the underlying asset pool
(i) communicate to the investors regarding the compliance by the servicer with its obligations and the actions taken thereof, atleast on quarterly basis;	(i) communicate to the investors regarding the status of compliance by the servicer with its obligations and the actions taken thereon, atleast on quarterly basis;
(j) obtain a certificate from the auditor(s) of originator regarding the disclosures of underlying asset pool assigned to the securitization trust, as made by the originator, on quarterly basis	Corresponding obligation should be present on the originator
k) share such reports and auditors certificate as received from the originator or the auditor(s) of originator, with the credit rating agency which is rating the securitised debt instrument	Corresponding obligation should be present on the originator
(l) call a meeting of all the investors on a requisition, in writing signed by at least one-tenth of investors in value for the time being outstanding or at the occurrence of an event, which constitutes a servicer default or which in the opinion of the trustees affects the interest of the investors;	(l) shall call a meeting of all the investors on— (a) a requisition in writing signed by at least one-tenth of the investors in value for the time being outstanding; or (b) the happening of any event, which constitutes a servicer default or breach of covenants (as specified in the trust deed or transaction documents) or which in the opinion of the trustee affects the interest of the investors; (2) In all other cases, the trustee may call a meeting of the investors, if required in the opinion of the trustee. (3) The meetings of investors shall be called and conducted in such manner as may be specified by the Board from time to time, subject to the following - (a) in order to facilitate wider participation and collective sense, meetings shall be facilitated by video-conferencing and voting shall be facilitated by electronic means,

Duties of trustee under SDI Regs	Amendments, if any, proposed in SDI regulations.
	(b) to facilitate timely decision-making, the sense of the meeting shall be ascertained on the basis of present and voting, (c) as to requisite majority, unless otherwise explicitly provided in these regulations or any other regulations framed by the Board or any other law for the being in force or the trust deed, any matter placed before the SDI holders shall be decided by a majority of more than 50% of the value of SDIs outstanding. Provided that the terms of the issue of SDIs or trust deed may provide for a higher majority. Explanation: *For the purpose of these regulations, standards, if any, as specified by the Board with respect to the calling of meetings of SDI holders shall mutatis mutandis apply to the calling of meetings of investors.*
(n) ensure that any change in registration status or any administrative, civil or penal action taken by Board or any material change in financial position which may adversely affect the interests of investors is promptly informed to the investors;	(n) ensure that any change in registration status or any administrative, civil or penal action taken by Board against the trustee under any of the applicable regulations or any material change in financial position of the trustee which may adversely affect the interests of investors is promptly informed to the investors;
(q) appoint a compliance officer for performing duties including: (i) monitoring the compliance of the acts, rules and regulations, notifications, guidelines, instructions, etc., issued by the Board, Central Government and State Government(s); (ii) redressal of investors grievances.	Minimum qualifications of the compliance officer can be prescribed - CA, CS, Lawyer

Stakeholders' feedback: No objection.

14. Trustees' code of conduct

Issue: Given that the SDI Regulations are dated, the code of conduct in Schedule III of the SDI regulations have not been amended to keep up with the advancement in the securities market**.**

Recommendation: SEBI may consider aligning the code of conduct and duties of trustees to the code of conduct and duties of debenture trustees provided in Schedule III (read with regulation 16) given that a trustee of the issuer in a securitisation transaction is akin to a debenture trustee in debenture issuance and

that they have the same fiduciary relation with the subscribers of the SDIs that a debenture trustee has with the investors. Accordingly, we recommend the following amendments to Schedule III of the SDI Regulations.

Stakeholders' feedback: No objection.

Amendments to the text of the law:

1. Schemes of a special purpose distinct entity shall not be organised, operated, managed in the interest of the originator or sponsor or a special class of investors. Interests of all classes of investors of the scheme shall be taken into account in such organisation, operation and management.
2. A special purpose distinct entity and its trustee shall ensure the dissemination to all investors of adequate, accurate, explicit and timely information fairly presented in a simple language about the asset pools, transactions & arrangements with originator, credit enhancer, underwriter, liquidity provider, securitised debt instruments, financial position, credit ratings and general affairs of the scheme or any other party to the securitisation or regulated activity.
3. A special purpose distinct entity and its trustee shall avoid conflicts of interest in managing the affairs of the schemes and other regulated activities, ~~and~~ shall keep the interest of all investors paramount in all matters *and shall make adequate disclosure of its interest.*
4. A special purpose distinct entity and its trustee shall ensure scheme-wise segregation of bank accounts, asset pools and holders of securitised debt instruments' and security receipts' accounts or folios.
5. A special purpose distinct entity and its trustee shall carry out the business in accordance with objectives stated in the offer documents and take decision solely in the interest of investors.
6. A special purpose distinct entity and its trustee shall not use any unfair or unethical means, directly or indirectly, to sell or market the securitised debt instruments or induce any investor to buy such instruments.
7. A special purpose distinct entity and its trustee shall not employ any unfair or unethical means in valuation and conversion of asset pools or in the course of securitisation or any other regulated activity.
8. A special purpose distinct entity and its trustee shall maintain high standards of integrity and fairness in all their dealings and in the conduct of their business.
9. A special purpose distinct entity and its trustee shall render at all times high standards of service, exercise due diligence and independent professional judgment and take reasonable care and skill in performing its functions.
10. A special purpose distinct entity and its trustee shall not make any exaggerated statement, whether oral or written, either about their qualifications or capability to render services or their achievements or in respect of asset pools.
11. A special purpose distinct entity and its trustee shall always ensure that the debt and receivables acquired by it are through a genuine transaction amounting to a true sale and legally realizable by it.
12. A special purpose distinct entity and its trustee shall fulfill its obligations in a prompt, ethical and professional manner.
13. A special purpose distinct entity and its trustee shall not divulge to anybody either orally or in writing, directly or indirectly, any confidential information about its investors which has come to its knowledge, without taking prior permission of its investors, except where such disclosures are required to be made in compliance with any law for the time being in force.
14. A special purpose distinct entity and its trustee or any of its directors, partners or managers, shall not either through its account or through associates or family members, relatives or friends indulge in any insider trading.

15. A special purpose distinct entity and its trustee shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its investors and other registered entities from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.
16. A special purpose distinct entity and its trustee shall ensure that good corporate policies and corporate governance is in place and shall develop internal code of conduct for governing its internal operations and laying down standards of appropriate conduct for its employees for carrying out their duties. *Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance of conflict of interests, disclosure of shareholdings and interests, etc.*
17. A special purpose distinct entity and its trustee shall not be party to—
    a. creation of false market;
    b. price rigging or manipulation;
    c. passing of unpublished price sensitive information in respect of securities which are listed and proposed to be listed in any stock exchange to any person or intermediary.
18. *A special purpose distinct entity and its trustee shall take all reasonable steps to establish the true and full identity of each of its clients, and of each client's financial situation and maintain record of the same.*
19. *The trustee shall ensure that any change in registration status/any penal action taken by Board or any material change in financial position which may adversely affect the interests of investors is promptly informed to the clients and any business remaining outstanding is transferred to another registered intermediary in accordance with any instructions of the affected clients*
20. *A special purpose distinct entity and its trustee shall put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its business or where any conflict of interest arises, shall take reasonable steps to resolve the same in an equitable manner.*
21. *A special purpose distinct entity and its trustee shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as trustee which would impair its ability to render fair, objective and unbiased services.*
22. *A special purpose distinct entity and its trustee shall not indulge in any unfair competition, which is likely to harm the interests of other trustees or subscriber to the securitised debt instrument or is likely to place such other trustees in a disadvantageous position while competing for or executing any assignment nor shall it wean away the clients of another trustee on assurance of lower fees.*
23. *A special purpose distinct entity and its trustee shall not discriminate among schemes / their clients, except and save on ethical and commercial considerations.*
24. *A special purpose distinct entity and its trustee shall share information available with it regarding client companies, with registered credit rating agencies.*
25. *A special purpose distinct entity and its trustee shall provide (clients of the trustee) and holders of securitised debt instrument and security receipt with adequate and appropriate information about its business, including contact details, services available to clients, and the identity and status of employees and others acting on its behalf with whom the client may have to contact.*
26. *A special purpose distinct entity and its trustee shall ensure that adequate disclosures are made to the holders of securitised debt instrument and security receipt, in a comprehensible and timely manner so as to enable them to make a balanced and informed decision.*
27. *A trustee shall endeavour to ensure that—*
    a. inquiries from holders of securitised debt instrument and security receipt are adequately dealt with;
    b. grievances of holders of securitised debt instrument and security receipt are redressed in a timely and appropriate manner;

c. *where a complaint is not remedied promptly, the holders of securitised debt instrument and security receipt is advised of any further steps which may be available to the investor under the regulatory system*

28. *A special purpose distinct entity and its trustee shall make reasonable efforts to avoid misrepresentation and ensure that the information provided to the investor is not misleading.*
29. *A special purpose distinct entity and its trustee shall maintain required level of knowledge and competency and abide by the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), regulations and circulars and guidelines.*
30. *A special purpose distinct entity and its trustee shall not make untrue statement or suppress any material fact in any documents, reports, papers or information furnished to the Board.*
31. *A special purpose distinct entity and its trustee ensure that the Board is promptly informed about any action, legal proceeding, etc., initiated against it in respect of any material breach or non-compliance by it, of any law, rules, regulations, directions of the Board or of any other regulatory body.*
32. *A special purpose distinct entity and its trustee or any of his employees shall not render, directly or indirectly, any investment advice about any security in the publicly accessible media, whether real-time or non-real-time unless a disclosure of his interest including long or short position in the said security has been made, while rendering such advice.*
33. *A special purpose distinct entity and its trustee is rendering such advice, the investor shall ensure that he discloses his interest, the interest of his dependent family members and that of the employer, including their long or short position in the said security, while rendering such advice.*
34. *A special purpose distinct entity and its trustee shall ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience).*
35. *A special purpose distinct entity and its trustee shall ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf.*
36. *A special purpose distinct entity and its trustee shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients, investor and other registered entities from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.*
37. *A special purpose distinct entity and its trustee shall be responsible for the acts or omissions of its employees and agents in respect to the conduct of its business.*
38. *A special purpose distinct entity and its trustee shall provide adequate freedom and powers to its compliance officer for the effective discharge of its duties.*
39. *A special purpose distinct entity and its trustee shall ensure that the senior management, particularly decision makers, have access to all relevant information about the business on a timely basis.*

Amendments relating to disclosure requirements

In assessing the adequacy of disclosure requirements under the SDI Regulations, references have been made to the Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities by IOSCO[5]. The proposed amendments to the SDI Regulations are outlined below, with a detailed comparison included in Annex I of this report.

[5] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD318.pdf (last accessed in October 2024)

15. Periodic Disclosure of Information on SDIs:

Issue: The IOSCO Principles provide for disclosure of updated information on ABS on an annual or other periodic basis. However, the SEBI Regulations currently do not mandate any such disclosure of information on a periodic basis.

Recommendation: It is recommended that the regulations should be amended so as to align with the IOSCO principles and mandate disclosure of updated information regarding the SDIs on a semi-annual basis.

Further, the global securitisation regulations, as well as SSA Directions of the RBI has brought relaxed risk weights for what is termed as "simple, transparent and comparable" (STC) securitisations. It is important to note that the STC treatment may be given by the investor, including a secondary investor. There are several conditions to be complied with by a transaction to gain the STC label. Unlike in some countries, Indian market does not have an external STC labeling. Therefore, in case of investors in secondary market transactions, there will be no way for the investor to ensure adherence to the STC conditions except by way of disclosures in the offer documents. Hence, the WG recommends that the originator/issuer should make such disclosures as may be required for an investor, including a secondary market investor, to assess compliance with the STC conditions. For the purpose, reference may be Annexe *I* to the RBI's SSA Directions.

Accordinngly, the following information may be mandatorily disclosed to the investors:

In case of all transactions:
The Issuer shall make such disclosures as may be pertinent or required for an investor, including a secondary market investor, to assess whether the issuance complies with requirements provided in Annex I of the RBI's SSA Directions.

In case of receivables from loan, credit facilities or securities (financial asset):

- Amount and number of additional/top up loans given on the same underlying financial asset.
- Probability of Default (PD) and Loss Given Default (LGD) with respect to the underlying financial asset and any change thereof
- Any material amendment to the transaction document relating to the financial asset
- No. of loan accounts where there was an amendment to the payment terms during the reporting period
- No. of accounts where pre-payment was made during the period - including the prepayment fee paid
- No. of defaulted loan accounts during the period - including details relating to suits filed etc. for recovery of amount
- Amount of cumulative recoveries from defaulted accounts during the period
- Any information that the originator is aware of which could impact the credit assessment of significant obligators (being anyone who owes receivables in excess of 10% of total pool)
- Information regarding significant enhancement providers
- Assessment of Compliance with Applicable Servicing Criteria including an independent third party check of aspects of the servicing function

In case of receivables from other receivables:

- Information relating to actual recovery of the receivables as compared to the cash flows projected at the time of the issuance of the instruments.

- Any amendment or modification pertaining to the contract, transaction or cash flows from which the receivables arise
- Any event of default or adverse material change relating to any obligor from whom the receivables arise
- Any material event which could impact the performance of the originator under the underlying contracts from which the receivables emanate.
- Any information that the originator is aware of which could impact the credit assessment of significant obligors (being anyone who owes receivables in excess of 10% of total pool)
- Information regarding significant enhancement providers
- Assessment of Compliance with Applicable Servicing Criteria including an independent third party check of aspects of the servicing function

Stakeholders' feedback: No objection.

Amendments to the text of law:

A new Schedule may be inserted in the SDI Regulations to suggest the format of the disclosures to be made on a semi-annual basis.

16. Exemption from certain disclosure requirements in case of privately placed SDIs

Issue: Schedule V (containing the disclosures to be made in the offer letter) is heavy on disclosure requirement in connection with the originator of the loans including disclosure regarding, Financial Information concerning the originator's assets and liabilities, financial position, and profits and losses, for the purpose of which the originator shall provide a complete audited financial statements for past 3 years and, if necessary, unaudited financial statements prepared within 120 days from the date of the application for registration of the asset backed securities is made effective.

In privately placed issuance of SDIs which are proposed to be listed in terms of SEBI SDI Regulations, originators are often reluctant in making such disclosures about the originator about matters other than with respect to the loan pool being securitised. Further, there may be originators who have been in existence for less than 3 years, therefore, the inability to provide financial statements for past 3 years makes them ineligible for securitisation. Infrastructure SPVs, which are created only for the purpose of owning infrastructure projects, may for instance, be adversely affected by this requirement.

Recommendation: It is being recommended that the requirement to furnish financial statements for past 3 years may be relaxed, and changed to lower of 3 years or number of years since formation of the originator.

Stakeholders' feedback: No objection.

Clarificatory changes

The following clarificatory changes may be provided in the SDI Regulations:

17. Clause 12(4) of Schedule V (Disclosures about the Servicer)

Issue: Clause 12(4) of schedule V talks about disclosures regarding default by the servicer. However, there is no clarity of the nature of defaults that need to be disclosed.

Recommendation: It should be clarified that these defaults should cover only defaults in connection with servicing obligations undertaken in the past.

Stakeholders' feedback: No objection.

Amendments to the text of law:

Clause 12(4) of Schedule V of SDI Regulations may be amended to:

> *Disclosure about defaults in connection with servicing obligations undertaken in the past, if any.*

18. Clause 16 of Schedule V (Outstanding litigations and material developments)

Issue: Clause 16 of schedule V requires disclosures regarding outstanding litigations and material developments generally. However, it is not clear whether the disclosures relate to.

Recommendation: It should be clarified as to the entity in respect of whom such disclosures should be made. Ideally, such disclosures should be made for originator, servicer, or any other parties to the transaction which could be prejudicial to the interests of the investors

Stakeholders' feedback: No objection.

Amendment to the text of law:

Clause 16 of Schedule V of SDI Regulations may be amended to:

> *Outstanding litigations and material developments, in relation to the originator or servicer or any other party to the transaction which could be prejudicial to the interests of the investors.*

19. Clause 19 of Schedule V (Declaration)

Issue: Currently clause 19(ii) of schedule V requires that declarations be made by the directors of the originator. In case of private placement, usually the originators delegate the authority to carry out necessary actions for securitisation transactions to identified individuals, who may or may not be directors of the company.

Recommendation: It is recommended that instead of directors, the declaration may be allowed to be made by any authorised person of the originator where the issuance is done through private placement.

Stakeholders' feedback: No objection.

Amendment to the text of law:

Clause 19(ii) of Schedule V may be amended to:

> *The offer document shall also contain a declaration made by the directors, or authorised signatory(ies) in case of privately placed SDIs, of the originator in the following terms:*
>
> *"We ..... being the directors (or authorised signatories) of the originator namely: ..... accept responsibility for the information contained in this offer document. To the best of our knowledge and belief and we have taken all reasonable care to ensure that the information contained in this document is in accordance with facts which are true, fair and adequate and does not omit anything likely to affect the import of such information.*
> *In our opinion, the originator is a going concern.*
>
> *In our opinion, the expected cash flow from the asset pool is sufficient to meet the obligations on the securitised debt instruments."*

20. Clause 4(2) (Eligibility criteria for trustees)

Issue: Clause 4(2) exempts certain entities from the registration requirement prescribed under the provisions of SDI Regulations. The extant provision is not clear on the carveout provided for certain entities.

Recommendation: SEBI may consider amending these regulations in the manner set out below so that the entities which are exempted from the registration requirement shall comply with all other provisions of SDI Regulations.

Stakeholders' feedback: No objection.

Amendment to the text of law:

> *The requirement of obtaining registration shall not apply to the following persons, who may act as trustees of special purpose distinct entities, namely:-*
>
> *(a) any person registered as a debenture trustee with the Board;*
>
> *(b) any person registered as a securitisation company or a reconstruction company with the Reserve Bank of India under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
>
> *(c) the National Housing Bank established by the National Housing Bank Act, 1987 (53 of 1987);*
>
> *(d) the National Bank for Agriculture and Rural Development established by the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981):*

~~*Provided that the aforesaid persons and special purpose distinct entities in respect of which they are trustees shall comply with all other provisions of these regulations:*~~

~~*Provided further that the provisions of these regulations shall not apply to the National Housing Bank and the National Bank for Agriculture and Rural Development to the extent of inconsistency with the provisions of their respective Acts.*~~

(e) any scheduled commercial bank other than a regional rural bank;

(f) any public financial Institution as defined under clause (72) of section 2 of the Companies Act, 2013; and

(g) any other person as may be specified by Board.

Provided that the aforesaid persons and special purpose distinct entities in respect of which they are trustees shall comply with all other provisions of these regulations:

Provided further that the provisions of these regulations shall not apply to the National Housing Bank and the National Bank for Agriculture and Rural Development to the extent of inconsistency with the provisions of their respective Acts.

21. Clause 35A (2) (Application for listing)

Issue and Recommendation: Since the SEBI LODR Regulations is now applicable for all listed entities, it is recommended that this provision be deleted.

Stakeholders' feedback: No objection.

Amendment to the text of law:

Every special purpose distinct entity which has previously entered into agreements with a recognised stock exchange to list securitised debt instruments shall execute a fresh listing agreement with such stock exchange within six months of the date of notification of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Revisions to legislative references

The SDI Regulations on several occasions make reference to certain legislations which have been replaced by newer legislations. This section lists down the instances where modification is required in this respect:

22. Meaning of "group" or "under the same management" - references to MRTP Act and Companies Act 1956 - regulation 10(3) (Assignment of debt or receivables)

Issue and recommendation: The SDI Regulations currently make references to concepts and provisions from Monopolies and Restrictive Trade Practices Act, 1969 and Companies Act, 1956 for defining when

the originator and the trustee would be considered as part of the same group and part of the same management. Since both these legislations have now been repealed, the SDI Regulations may define the term 'Group' as set out in the Competition Act 2002. The concept of 'under the same management' does not find any mention in the Companies Act, 2013 or any relevant legislation and therefore the restriction may be limited to subsidiaries or associates as defined in the accounting standards applicable to the originator.

Stakeholders' feedback: No objection.

Amendment to the text of law:

Clause 10(3) of SDI Regulations may be amended to:

> *No special purpose distinct entity shall acquire any debt or receivables from any originator which is part of the same group ~~or which is under the same management~~ as the trustee.*
> *Explanation: For the purposes of sub-regulation (3), two persons shall be deemed to be "part of the same group"*
> *(a) if they belong to the same group within the meaning of clause (b) of the Explanation to section 5 of the Competition Act 2002; or*
> *(a) they share the relationship of holding-subsidiary, or investor-associate or joint venture, in terms of accounting standards applicable to the originator of the transaction.*
> *~~clause (ef) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) or if they own "inter-connected undertakings" within the meaning of clause (g) of section 2 of that Act; (b)the expression "under the same management" shall have the meaning derived from subsection (1B) of section 370 of the Companies Act, 1956 (1 of 1956).~~*

23. Reference to Companies Act, 1956 – regulation 16(1) (Accounts)

Issue and recommendation: Regulation 16(1) states that an SPDE shall maintain or cause to be maintained proper accounts and records to enable a true and fair view to be formed of its assets, liabilities, income and expenditure and those of all its schemes and to comply with the disclosure requirements of these regulations and other applicable laws "without prejudice to provisions of the Companies Act, 1956 (1 of 1956), or any other applicable law". It may be clarified that references to Companies Act, 1956 shall be replaced by Companies Act, 2013.

Stakeholders' feedback: No objection.

Amendment to the text of law:

Regulation 16(1) of SDI Regulations may be amended to

> *Without prejudice to provisions of the Companies Act, 2013 (18 of 2013), ~~1956 (1 of 1956),~~ or any other applicable law, a special purpose distinct entity shall maintain or cause to be maintained proper accounts and records to enable a true and fair view to be formed of its assets, liabilities, income and expenditure and those of all its schemes and to comply with the disclosure requirements of these regulations and other applicable laws.*

24. Meaning of "expert" - reference to Companies Act 1956 - regulation 26 (Contents of offer documents)

Issue and recommendation: Regulation 26 states that an offer document shall not include a statement purporting to be made by an expert unless certain conditions are complied with. It may be clarified that "expert" shall have the same meaning as in sub-section (38) of section 2 of the Companies Act, 2013 (references to Companies Act, 1956 may be dropped as the legislation has now been repealed).

Stakeholders' feedback: No objection.

Amendment to the text of law:

Explanation to clause 26(2) of SDI Regulations may be amended to:

> *For the purpose of this regulation "expert" shall have the same meaning as in sub-section (38~~2~~) of section 2 ~~59~~ of the Companies Act, 2013 (18 of 2013)~~1956~~.*

25. Meaning of special resolution - reference to Companies Act 1956 - regulation 34(3) (Rights of investors in securities issued by the SPDE)

Issue and recommendation: Regulation 34(3) states that a decision for removing a trustee or appointing a trustee shall be taken by means of a special resolution of the investors of the scheme. It may be clarified that Sections 109 and 114 of the Companies Act, 2013 shall *mutatis mutandis* apply to such special resolution (references to Companies Act, 1956 may be dropped as the legislation has now been repealed).

Stakeholders' feedback: No objection.

Amendment to the text of law:

Proviso to clause 34 of SDI Regulations may be amended to:

> *Provided that any such decision shall be taken by means of a special resolution of the investors of the scheme and sections 114~~179 and 189~~ of the Companies Act, 2013 (18 of 2013) ~~1956 (1 of 1956)~~ shall mutatis mutandis apply to such special resolution:*

26. Time period to give notice for meeting of investors - reference to Companies Act 1956 - regulation 34(8) (Rights of investors in securities issued by SPDE)

Issue and recommendation: Regulation 34(7 & 8) state that investors shall be deemed to have given their consent to variation if and only if 21 days' notice is given to them of the proposed variation and it is approved by a special resolution passed by them through postal ballot. It may be clarified that Section 110

and Section 114 of the Companies Act, 2013 shall *mutatis mutandis* apply to the special resolution (references to Companies Act, 1956 may be dropped as the legislation has now been repealed).

Stakeholders' feedback: No objection.

Amendment to the text of law:

Clause 34(8) of SDI Regulations may be amended to:

> *Sections 110 ~~189~~ and 114~~192A~~ of the Companies Act, 2013 (18 of 2013)~~1956~~ ~~(1 of 1956)~~ and the rules framed thereunder shall mutatis mutandis apply to the special resolution referred to in sub-regulation (7).*

27. Meaning of qualified auditor - reference to Companies Act 1956 - Regulation 43 (Appointment of auditor or valuer)

Issue and recommendation: Regulation 43 states that the Board may appoint a qualified auditor to inspect the books of account or inquire into the affairs of the special purpose distinct entity. It may be clarified that the expression "qualified auditor" shall have the meaning derived from section 141 of the Companies Act, 2013 (references to Companies Act, 1956 may be dropped as the legislation has now been repealed).

Stakeholders' feedback: No objection.

Amendment to the text of law:

Explanation to Clause 43(1) of SDI Regulations may be amended to:

> *For the purposes of this sub-regulation, the expression "qualified auditor" shall have the meaning derived from section 141~~226~~ of the Companies Act, 2013 (18 of 2013)~~1956~~ ~~(1 of 1956)~~.*

Amendments to SEBI LODR

28. Applicability of SEBI (LODR)

Issue: Currently in case of listed SDIs both Chapter III of the SEBI LODR Regulations as well as Chapter VIII (in case of SDI) and Chapter VIIIA (in case of SRs) becomes applicable. Chapter III contains certain regulatory requirements including the requirement to appoint a compliance officer, having in place a policy for the preservation of documents.

Recommendations: It is suggested that SEBI may clarify that the compliance requirements as provided under Chapter III be compiled with at the trustee level.

Stakeholders' feedback: No objection.

Amendment to the text of law:

The clarification may either be inserted in Chapter III of SEBI LODR or as a separate notification.

29. SCORES

Issue: In terms of LODR regulations, the entity issuing the listed SDIs is required to be registered on the SCORES Platform. However, having a SCORES registration is operationally not feasible for each trust.

Recommendation: It is suggested that such SCORES registration may be obtained at the Trustee level instead of the SPE level, so that one single registration can be used in all transactions administered by a single trustee.

Stakeholders' feedback: No objection.

Amendment to the text of law:

Para 13 (2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 may be amended to:

> *(2)The listed entity shall ensure that it is registered on the SCORES platform or such other electronic platform or system of the Board as shall be mandated from time to time, in order to handle investor complaints electronically in the manner specified by the Board.*
>
> *Provided that in case of issuance of securitised debt instruments, the trustee shall have to be registered on the SCORES platform instead of the issuer.*

Amendments to/ with respect to SARFAESI Act

30. Inclusion of trustees appointed in securitisation transactions in the definition of secured creditors

Issue and recommendation: The definition of secured creditors under SARFAESI Act includes debenture trustee for secured *debt securities*. The definition of *debt securities* is borrowed from SEBI (Issue and Listing of Non Convertible Securities) Regulations 2021. The definition of *debt securities* under the NCS Regulations excludes SDI and SRs, therefore, the investors of SDIs and SRs will not have access to SARFAESI Act. It is recommended that the SEBI may consider amending the definition of *debt securities* for this limited purpose to include SDIs and SRs within the ambit of debt securities in order to provide access to the investors of SDIs and SRs to SARFAESI Act.

Stakeholders' feedback: No objection.

Amendment to the text of law:

SEBI may take appropriate measures to empower securitisation trustees to enforce security interests under the SARFAESI Act.

Other amendments

31. Registered Trust Deed

Issue: It has been observed in certain cases that stock exchange(s) require registered trust deeds for listing of SDIs. Under Indian Stamp Act, registration of securitisation trust deed is not mandatory, and this makes the process of listing complicated. The requirement does not come from any of the SEBI circulars, and is purely for administrative reasons.

Recommendation: It is recommended that a clarification may be issued by SEBI that it is not mandatory to submit registered trust deeds for listing of securitised debt instruments.

Stakeholders' feedback: No objection.

Amendment in the text of law: No amendment required as such, however, a clarificatory circular may be issued in this regard.

32. Application for listing within T+3 days

Issue: The SEBI Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper requires issuers to make an application for listing of the SDIs within t+3 days. Such an application should be complete in all respects. However, it may not be operationally feasible for rating agencies to issue the final rating within such short timelines.

Recommendation: It is suggested that SEBI may reconsider the timelines for listing so as to enable the parties involved complete the listing process conveniently.

Stakeholders' feedback: SEBI noted that, given its ongoing efforts to reduce listing timelines for other instruments, extending the timeline for listed SDIs may not be feasible. One participant pointed out that while rating agencies typically take 60-90 days to issue a final rating, stock exchanges are requiring the final rating at the time of listing. Therefore, it was recommended if listing can be permitted based on the provisional rating and thereafter the final rating can be submitted in due course.

33. Listing of subsequent issuances of SDIs

In accordance with Regulation 62A of the SEBI LODR Regulations, a listed entity with non-convertible debt securities is required to list all non-convertible debt securities it proposes to issue. This requirement is currently not applicable to SDIs.

The feasibility of introducing such a requirement was considered by the WG in case of SDIs. However, there may be multiple types of securitisation transactions, with diverse asset pools, emanating from the same originator. If an issuer is mandated to come with listed issuance merely based on the history of listing listing, this may act as a disincentive to listing in the first place. Therefore, the WG is of the view that the timing for such a requirement is not presently opportune.

34. Reduction in listing fee

Issue: Currently, the initial listing fee prescribed by BSE is Rs.20,000. Subsequently, annual listing fee has to be paid by entities which falls in the range of Rs.70,000 to 10,00,000 depending upon the issue size.

Recommendation: At present, the initial listing fee is fixed, whereas the annual listing fee is ad valorem, based on the size of the issue. This structure makes the listing of SDIs economically unviable for smaller transactions. Therefore, it is recommended that SEBI consider applying an ad valorem approach to the initial listing fee as well, depending on the size of the issue.

Stakeholders' feedback: The stakeholders also indicated the same opinion.

Annex I: Minimum risk retention requirements in various jurisdictions

India

Para 12-17 of the SSA Directions prescribes the quantum of MRR and the manner in which the MRR is to be retained by the Originator.

MRR for Loans with Original Maturity of 24 Months or Less:

- The MRR is 5% of the book value of the loans being securitised.

MRR for Loans with Original Maturity Greater than 24 Months or with Bullet Repayments:

- The MRR is 10% of the book value of the loans being securitised, applicable for loans with an original maturity exceeding 24 months and for loans with bullet repayments.

MRR for Residential Mortgage-Backed Securities (RMBS):

- The MRR is set at 5% of the book value of the loans being securitised, irrespective of the original maturity.

Manner of Retaining MRR:

- For MRR up to 5% of the book value of loans being securitised:
    - Through the First Loss Facility (FLF), if available.
    - If the FLF is unavailable, or if retaining the entire FLF is less than 5%, the balance must be retained through the equity tranche.
    - If the combination of FLF and equity tranche is less than 5%, the balance must be retained *pari passu* in the remaining tranches sold to investors.
- For MRR greater than 5% of the book value of loans being securitised:
    - Retained through a combination of the FLF, equity tranche, or any other tranche sold to investors.

Further, the directions by way of an explanation provides that the FLF for this purpose will not include any over-collateralisation that may be available.Investment in the Interest-Only Strip representing Excess Interest Spread or Future Margin Income, whether subordinated or not, is not counted towards the MRR in terms of the directions.

Furthermore, it is also prescribed that the form of MRR should remain consistent throughout the life of the securitisation. The MRR, as a percentage of the unamortised principal, should be maintained on an ongoing basis, except for reductions due to repayments or loss absorption.

European Union

The EU Securitisation Framework, allow the following five methods to be used as risk retention methods:

a. Vertical Slice (VES): a retention of no less than 5% of the nominal value of each of the tranches sold or transferred to investors.
b. On-balance Sheet (OBS): a retention of randomly selected exposures equivalent to not less than 5% of the nominal value of the securitized exposures.

c. First Loss Tranche (FLT): the retention of the equity tranche and, if necessary, other tranches that have the same or a more severe risk profile than those transferred or sold to investors and that are not maturing any earlier, so that the retention equals in total no less than 5 % of the nominal value of the securitized exposures.
d. First Loss Exposure (FLE): the retention of the FLE of not less than 5% of every securitized exposure. It needs to be applied so that the credit risk retained is always subordinated to the credit risk that has been securitized in relation to those same exposures. The retention may also be fulfilled by the sale of the tranches at a discounted value of the underlying exposures of not less than 5%.
e. Pari Passu Share / Revolving Exposure: a retention of the originator's interest of not less than 5% of the nominal value of each of the securitized exposures.

USA

The Dodd-Frank Act allows for both vertical and horizontal retention by the Originator to fulfill its MRR requirements.
Under the vertical risk retention method, a sponsor can meet its risk retention requirements by retaining (or having a majority-owned affiliate retain) at least 5% of each class of asset-backed securities (ABS) interests issued in the securitisation transaction. Alternatively, the sponsor (or majority-owned affiliate) may hold a single vertical security that entitles it to receive a specified percentage of both the principal and interest payments on each class of ABS interests, effectively representing the same proportion across all classes. In both scenarios, the vertical risk retention option reflects an interest in the entire structure of the securitisation transaction.

Under the horizontal risk retention method, a sponsor can satisfy its risk retention obligations by retaining (or causing a majority-owned affiliate to retain) an "eligible horizontal residual interest" in the issuing entity, amounting to at least 5% of the fair value of all ABS interests issued in the securitisation. The horizontal risk retention option represents a first-loss position, meaning it absorbs losses first across the entire asset pool.