



August 21, 2020

Securities and Exchange Board of India
Corporation Finance Department,
SEBI Bhavan, Plot No. C4-A,
'G' Block, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051

Respected Madam/Sir,

Sub: Request for an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003, in relation to the provisions of (a) the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, (b) circulars issued by Securities and Exchange Board of India in relation to offer for sale through stock exchange mechanism read with the Securities and Exchange Board of India (Stock Broker) Regulations, 1992, (c) the Securities and Exchange Board of India (Real Estate Investment Trust) Regulations, 2014 and (d) the Securities and Exchange Board of India (Infrastructure Investment Trust) Regulations, 2014

This is a request for an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 (hereinafter referred to as the "**SEBI Informal Scheme**").

1. Background

- 1.1. Citigroup Global Markets India Private Limited ("**Citi India**") is registered with the Securities and Exchange Board of India ("**SEBI**") as a (i) merchant banker under the Securities and Exchange Board of India (Merchant Banker) Regulations, 1992 (the "**MB Regulations**"), (ii) stock broker under the Securities and Exchange Board of India (Stock Broker) Regulations, 1992 (the "**SB Regulations**"), and (iii) research analyst under the Securities and Exchange Board of India (Research Analyst) Regulations, 2014.
- 1.2. Citi India, pursuant to its registration as a merchant banker, routinely acts as a book running lead manager, lead manager, syndicate member, or underwriter (collectively referred to herein as the "**BRLM**"), in the capital market transactions in the nature of an initial public offering ("**IPO**"), further public offering ("**FPO**"), rights offering ("**Rights Offering**"), and qualified institutions placement ("**QIP**") of specified securities (as defined under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (the "**ICDR Regulations**")), and the units of a real estate investment trust ("**REIT**") and infrastructure investment trust ("**InvIT**") (such units as the "**Units**" and together with the specified securities, the "**Securities**") undertaken by its clients, in accordance with the ICDR Regulations, the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations 2014 (the "**REIT Regulations**"), and the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations 2014 (the "**InvIT Regulations**" and together with the ICDR Regulations and the REIT Regulations, the "**Primary Market Regulations**"), respectively (collectively such offerings referred to as the "**Primary Market Transactions**"). Further, Citi India also acts as a selling broker for its clients in relation to offer for sale of shares through stock exchange mechanism ("**OFS**") undertaken in accordance with various circulars issued by the SEBI and the stock exchanges, including circular number CIR/MRD/DP/18/2012 dated July 18, 2012 ("**OFS Transaction**" and such circulars as the "**OFS Circulars**") and the SB Regulations.

- 1.3. Citi India while acting as a BRLM or selling broker, provides various services to its issuer and seller clients in relation to the aforementioned Primary Market Transactions and OFS Transactions, including *inter-alia* assisting them in marketing the Securities to investors in accordance with the Primary Market Regulations, the OFS Circulars and the MB Regulations.

2. Relevant provisions of Primary Market Regulations and other regulations

We have highlighted below provisions of the Primary Market Regulations and the OFS Circulars that deal with the restrictions on advertisement and publicity which the issuer companies and BRLMs or sellers and selling brokers are required to comply with, in relation to the Primary Market Transactions and OFS Transactions, respectively.

2.1 ICDR Regulations

Initial Public Offer

- Regulation 42 requires that *“All public communication, publicity materials, advertisements and research reports shall comply with the provisions of Schedule IX.”*
- Regulation 43 (4) requires that *“During the period the issue is open for subscription, no advertisement shall be released giving an impression that the issue has been fully subscribed or oversubscribed or indicating investors’ response to the issue.”*

Rights Issue

- Regulation 83 requires that *“All public communication, publicity materials, advertisements and research reports shall comply with the provisions of Schedule IX.”*
- Regulation 84 (2) requires that *“During the period the issue is open for subscription, no advertisement shall be released giving an impression that the issue has been fully subscribed or oversubscribed or indicating investors’ response to the issue.”*

Further Public Offer

- Regulation 138 requires that *“All public communication, publicity materials, advertisements and research reports shall comply with the provisions of Schedule IX.”*
- Regulation 139(4) requires that *“During the period the issue is open for subscription, no advertisement shall be released giving an impression that the issue has been fully subscribed or oversubscribed or indicating investors’ response to the issue.”*

Schedule IX – Public Communication and Publicity Materials (relevant extract)

- Clause 1 requires that *“Any public communication including advertisements, publicity material and research reports (referred to as public communication) issued or made by the issuer or its associate company, or by the lead manager(s) or their associates or any other intermediary connected with the issue or their associates, shall contain only such information as contained in the draft offer document/offer document and shall comply with the following....”*

- Clause 10 requires that *“No information which is extraneous to the information disclosed in the draft offer document or offer document, as the case may be, or otherwise, shall be given by the issuer or any member of the issue management team or syndicate to any particular section of the investors or to any research analyst in any manner whatsoever, including at road shows, presentations, in research or sales reports or at bidding centres.”*
- For the purpose of Schedule IX *“public communication or publicity material” includes corporate, issue advertisements of the issuer, interviews by its promoters, directors, duly authorized employees or representatives of the issuer, documentaries about the issuer or its promoters, periodical reports and press releases.”*
- Clause 12(g) of Schedule XIII requires that *“At the end of each day of the bidding period, the demand, shall be shown graphically on the bidding terminals of the syndicate member(s) and websites of the stock exchanges for information of the public (details in relation to allocation made to anchor investors shall also be disclosed)”*
- Clause 12(p) of Schedule XIII requires that *“The stock exchanges shall continue to display on their website, the book building data in a uniform format, inter alia, giving category-wise details of the bids received, for a period of at least three days after the closure of the issue. Such display shall be as per the format specified in Part B of this Schedule.”*
- Part B of Schedule XIII requires that *“The total demand shall be aggregated by all the stock exchanges on an hourly basis and be displayed on their websites.”*

2.2 InvIT Regulations

Initial Public Offer

- Regulation 15(6)(i) of the InvIT Regulations requires that *“With respect to advertisements pertaining to the offer of units by an InvIT with respect to public issue of its units, such advertisement material shall not be misleading and shall not contain anything extraneous to the contents of the offer document”*
- Regulation 15(6)(iii) of the InvIT Regulations requires that *“the advertisements shall be in accordance with any circulars or guidelines as may be specified by the Board in this regard.”*

Guidelines for public issue of units of InvITs - Public Communication and Publicity Materials (relevant extract)

- Clause 9(7) requires that *“The bidding terminals shall contain an online graphical display of demand and bid prices updated at periodic intervals, not exceeding thirty minutes.”*
- Clause 9(11) requires that *“The stock exchanges shall continue to display on their website, the data pertaining to book built issues in a uniform format, inter alia giving category-wise details of bids received, for a period of atleast three days after closure of bids.”*
- Clause 13(1) requires that *“Any public communication including advertisement, publicity material, research reports, etc. concerned with the issue shall not contain any matter extraneous to the contents of the offer document.”*

- Clause 13(5) of the guidelines for public issue of units of InvITs requires that *“No such public communication shall be issued giving any impression that the issue has been fully subscribed or oversubscribed during the period the issue is open for subscription.”*
- Clause 14(4) requires that *“The post-issue merchant banker shall ensure that InvIT, advisors, brokers or any other entity connected with the issue do not publish any advertisement stating that issue has been oversubscribed or indicating investors’ response to the issue, during the period when the public issue is still open for subscription by the public.”*

2.3 REIT Regulations

Initial Public Offer

- Regulation 15(3) of the REIT Regulations requires that *“Any advertisement material relating to any issue of units of the REIT shall not be misleading and shall not contain anything extraneous to the contents of the offer document”*
- Regulation 15(5) of the REIT Regulations requires that *“The advertisements shall be in accordance with the offer document and any circulars or guidelines as may be specified by the Board in this regard.”*

Guidelines for public issue of units of REITs - Public Communication and Publicity Materials (relevant extract)

- Clause 9(7) requires that *“The bidding terminals shall contain an online graphical display of demand and bid prices updated at periodic intervals, not exceeding thirty minutes.”*
- Clause 9(11) requires that *“The stock exchanges shall continue to display on their website, the data pertaining to book built issues in a uniform format, inter alia giving category-wise details of bids received, for a period of atleast three days after closure of bids.”*
- Clause 13(1) requires that *“Any public communication including advertisement, publicity material, research reports, etc. concerned with the issue shall not contain any matter extraneous to the contents of the offer document.”*
- Clause 13(5) of the Guidelines for public issue of units of REITs requires that *“No such public communication shall be issued giving any impression that the issue has been fully subscribed or oversubscribed during the period the issue is open for subscription.”*
- Clause 14(4) of the guidelines for public issue of units of REITs requires that *“The post-issue merchant banker(s) shall ensure that REIT, advisors, brokers or any other entity connected with the issue do not publish any advertisement stating that issue has been oversubscribed or indicating investors’ response to the issue, during the period when the public issue is still open for subscription by the public.”*

2.4 OFS Circulars

- Clause 4(a) of SEBI Circular no. CIR/MRD/DP/ 18 /2012 dated July 18, 2012 prescribes that *“Advertisements about the offer for sale of shares through stock exchange(s), if any, shall be made after the announcement/ notice of the offer for sale of shares to the stock exchanges in*

accordance with para 5 (b) below and its contents shall be restricted to the contents of the notice as given to the stock exchange under Para 5 (b)."

2.5 SB Regulations

- Clause 8 of section B of schedule II of the SB Regulations prescribes "*Competence of Stock-Broker: A stock-broker should have adequately trained staff and arrangements to render fair, prompt and competence services to his clients*"

3. Analysis of the Primary Market Regulations

3.1 *Sharing of the bidding data available on the stock exchange website in relation to IPO, Rights Offering, and FPO*

3.1.1 Information relating to the supply and demand of securities plays a pivotal role in price discovery in capital markets transaction. This principle has been recognised by SEBI in its report by the Committee of Fair Market Conduct in 2018, where it has been acknowledged that the securities market is based on free and open access to information, streamlining of information asymmetry, fair play and transparency.

3.1.2 Similarly, bidding data is an important consideration in a Primary Market Transaction or OFS Transaction. Schedule XIII of the ICDR Regulations requires the stock exchanges and syndicate members to disclose the bidding data on the stock exchange website and the bidding terminals of the syndicate members (at the end of each bidding date), respectively, for public information. Further, the stock exchanges are under an obligation to constantly update the bidding data, on an hourly basis, therefore, which signifies the importance of the availability of up-to-date bidding data in a Primary Market Transaction. The intent to disseminate bidding data is further reflected in the detailed format prescribed under Schedule XIII of the ICDR Regulations. Also, such bidding data is often reported by various newspapers during the course of the bidding period.

3.1.3 Schedule IX of the ICDR Regulations also permits sharing of information by a BRLM (including other member of issue management team) where such information is either disclosed in the offer document or available otherwise. In our view, the intent behind the regulation is to prohibit sharing of information which is not generally available to public, since it can create an asymmetry of information between the investors. However, sharing of information which is generally available to the public and which does not result in any information asymmetry, is permitted. Since the bidding data is publicly available information, we believe sharing of such information by a BRLM or a syndicate member is permitted under the ICDR Regulations. Further, the principle laid out under the ICDR Regulations in relation to sharing of such information will equally apply to other Primary Market Transactions.

3.1.4 Given the relevance attached to the bidding data for Primary Market Transactions, coupled with the obligations imposed on stock exchanges and syndicate members under the ICDR Regulations to make this bidding data publically available, we believe the regulatory intention is to not put any restrictions on the sharing of such data. Accordingly, the restriction on disclosing "investors' response to the issue" under Regulations 43(4), 84(2) and 139(4) of the ICDR Regulations, is to merely prevent sharing of any specific information relating to an investor, which is not available on the website of the stock exchanges. Such a reading is supported by the restriction provided under Schedule XIII of the ICDR Regulations, which suggests that the names of investors submitting the bid shall not be made public. However, sharing the bidding data, which is devoid of any personal investor information, in our view is not restricted under the ICDR Regulations.

- 3.1.5 A wide category of investors, spanning across different geographies, participate in Primary Market Transactions and quite often the bidding data which is intended to be made available to the public does not reach such investors. Inability to access the data, which is constantly updated and therefore time sensitive, could be due to (a) lack of awareness about the availability of such data or (b) lack of resources to access such data. Sharing of the bidding data by the BRLMs or the syndicate members often helps such investors to take an informed decision. Failure to share the bidding data with such investors may lead to an asymmetry or disparity of information among the investors. Therefore, we believe sharing of bidding data with the investors is permitted under the ICDR Regulations.
- 3.1.6 We also note that the REIT Regulations and the InvIT Regulations have similar regulatory restrictions as that of ICDR Regulations. However, the aforementioned rationale for the sharing of the bidding data would apply even under the REIT and InvIT Regulations.
- 3.1.7 Therefore, considering the rationale as highlighted above, our view is that a BRLM or syndicate member can share the bidding data available on the website of the stock exchanges with the investors for an IPO, Rights Offering and FPO of Securities (i.e. specified securities and Units) during the bidding period either on a stand-alone basis (i.e. reflecting the bidding data available on the individual stock exchange) or on an aggregate basis (after consolidating the bidding data available on more than one stock exchange) either on their own accord, or in response to a request received from the investors.
- 3.2 *Sharing of bidding data in relation to an OFS*
- 3.2.1 Unlike the ICDR Regulations, the OFS Circulars do not stipulate any restrictions on a selling broker from disclosing “investors’ response to the issue”. However, the OFS Circulars state that any advertisements for OFS shall be restricted to the contents of the notice as given to the stock exchange.
- 3.2.2 Similar to the obligations imposed on the stock exchanges to disclose the bidding data on their website, under the ICDR Regulations (see para 3.1.2 above), the OFS Circulars impose an obligation on the stock exchanges to disclose the cumulative bid quantity data throughout the trading session in respect of orders with 100% upfront margin and separately in respect of orders placed without any upfront margin, on their websites. Further, the OFS Circulars also require the stock exchanges to disclose the indicative price for the OFS to the market throughout the trading session. Accordingly, the stock exchanges have been disclosing such bidding data on their websites.
- 3.2.3 Considering the above and the fact that there are no restrictions whatsoever on the selling broker from “disclosing the investors response to the issue”, under the OFS Circulars, we believe that the OFS Circulars do not prohibit a selling broker from distributing the bidding data which is available on stock exchanges’ websites, to the investors in an OFS. This can be further inferred from various frequently asked questions issued by the stock exchanges, where the public has been informed about the availability of the price and quantity details for bids placed on their websites.
- 3.2.4 Further, in relation to the requirement under the OFS Circular which stipulates that any advertisement for an OFS shall be restricted to the contents of the notice as given to the stock exchange, our view, is that the intent behind this restriction is to prohibit sharing of information which is not generally available to public, since it can create an asymmetry of information between the investors. However, sharing of information which is generally available to the public

and which does not result in any asymmetry of information, is permitted. Since the bidding data is publicly available information, we believe sharing of such information by a selling broker is permitted under the OFS Circulars.

3.2.5 The OFS Circulars also permit the broker acting for the seller to undertake transactions on behalf of eligible buyers (i.e. investors). In terms of Clause 8 of Section B (Duty to the Investor) of Schedule II of SB Regulations, a stock broker is required to render fair, prompt and competence services to its clients. Accordingly, a selling broker is expected to provide bidding data on the OFS transactions as and when requested by its clients, to ensure compliance with the provisions of the SB Regulations on selling broker's duty to its investor clients.

3.2.6 Therefore, in our view a selling broker in an OFS transaction can share the bidding data sourced from stock exchanges website with the investors either on a stand-alone basis (i.e. reflecting the bidding data available on the individual stock exchange) or on an aggregate basis (after consolidating the bidding data available on more than one stock exchange) either on their own accord, or in response to a request received from the investors.

3.3 *Sharing of publicly available information (other than bidding data) upon investor request*

3.3.1 SEBI has prescribed disclosures to be made in an offer document for various Primary Market Transactions under the respective Primary Market Regulations. The disclosures are based upon materiality of information and objective disclosures prescribed by SEBI. However, BRLMs are often faced with queries from investors for information which are not required to be disclosed under the Primary Market Regulations. On the other hand, such information may be available on the websites of the stock exchanges or the issuers either voluntarily in the ordinary course or pursuant to the statutory or regulatory requirements under the Companies Act, 2013, or the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations ("**LODR Regulations**"). The information available on such websites are accessible to public in India without any restriction and does not create any information asymmetry between investors.

3.3.2 Schedule IX of the ICDR Regulations also permits sharing of information by a BRLM (including other member of issue management team) where such information is either disclosed in the offer document or available otherwise. We believe that the intent of the regulation is to prohibit sharing of information which is not generally available to public, since it can create information asymmetry for investors. However, sharing of information which is generally available to the public is permitted. We believe the principle laid out under the ICDR Regulations in relation to sharing of such information will equally apply to other Primary Market Transactions. Accordingly, , we believe that the sharing of information with an investor, which is in the public domain such as the website of the stock exchanges or an issuer, is permitted under the Primary Markets Regulations.

3.3.3 The challenges in relation to sharing information becomes more acute in case of an OFS transaction, where the OFS notice required to be provided by the seller in an OFS transaction to the exchanges does not contain any disclosure in relation to the listed company. However, by virtue of being a listed company, information sought by an investor, is often available on the websites of the stock exchanges and the listed company pursuant to the LODR Regulations. Further, as stated above, unlike the Primary Market Regulations, the OFS Circulars do not stipulate any restrictions on a selling broker from sharing any information available from reliable public sources, such as the website of the stock exchanges.

3.3.4 We therefore believe sharing of publically available information, available on the website of the stock exchanges or the issuer, upon a request by an investor, is permitted under the Primary Market Regulations, i.e. the ICDR Regulations, InvIT Regulations and REIT Regulations (in case of IPO, Rights Offering, FPO and QIP) and OFS Circulars (in case of an OFS).

4. Clarification sought

In accordance with the provisions of SEBI Informal Scheme, we would like to seek your guidance on the following queries by way of interpretative letter:

- (a) Whether a BRLM can share the standalone or aggregate bidding data available on the website of the stock exchanges for IPO, Rights Offering and FPO of Securities (i.e. specified securities and Units) with the investors, during the bidding period;
- (b) Whether a BRLM can share the standalone or aggregate bidding data available on the website of the stock exchanges for IPO, Rights Offering and FPO of Securities (i.e. specified securities and Units) with investors, as and when requested by such investors, during the bidding period;
- (c) Whether a selling broker can share information available on the website of the stock exchanges in an OFS Transaction, with investors;
- (d) Whether a selling broker can share information available on the website of the stock exchanges in an OFS Transaction, with investors, as and when requested by such investors; and
- (e) Whether a BRLM can share information (other than the bidding data) available in the public domain, including information on the websites of the stock exchanges and the issuers in an IPO, Rights Offering, FPOs, QIP and OFS of Securities (i.e. specified securities and Units) as and when requested by the investors.

We have made the payment for INR 25,000/- by way of online transfer in favour of Securities and Exchange Board of India, Mumbai towards fees payable for seeking an informal guidance.

In case of further clarifications and additional information required, our contact details are as under:

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Thanking You.

Yours faithfully
For Citigroup Global Markets India Private Limited

Arvind Vasthista
Managing Director

