

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

1. Objective

1.1. This memorandum seeks approval of the Board to amend the SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018 (“ICDR Regulations”) with respect to the following specific aspects:

- i. Underwriting for public issue (IPO and FPO)
- ii. Preconditions for announcing Bonus Issue by a listed entity and issuance of Bonus Issues in dematerialised form only.
- iii. Inclusion of “Pension funds sponsored by entities which are associates of the lead manager”, to participate in Anchor Investor category in a public issue.
- iv. Inclusion of following requirements in respect of disclosures made in the offer document:
 - Providing access to list of material contracts and material documents for inspection through online means apart from inspection at the physical address provided by Issuer Company.
 - Providing complete industry report in the list of material documents for inspection.
 - Hosting draft offer document and offer document(s) on the website of the Issuer Company.
- v. Incidental amendment - Replacing reference to “Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014” with “Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.

2. Background

- 2.1. Proposals on the aforesaid items were deliberated in a meeting of the Primary Market Advisory Committee (PMAC). PMAC recommended the proposals and was of the view that public consultation may be carried out for the proposals.
- 2.2. A consultation paper was placed on the website of SEBI on February 22, 2023, seeking public comments on proposals made therein based on recommendations of PMAC. The consultation paper is placed at **Annexure I**.
- 2.3. In response to the consultation paper, comments have been received from 15 entities including from Stock Exchanges, Merchant Bankers, Law firms, Research firms, Listed Companies and individuals. The public comments so received and relevant to the consultation paper have been compiled and tabulated at **Annexure II**.
- 2.4. The following paragraphs detail the existing provisions under ICDR Regulations, issues for consideration, analysis of public comments and proposals for the consideration of the Board.

3. Underwriting in public issue (IPO and FPO):

3.1. Existing provisions:

- i. In terms of Regulation 40 of ICDR Regulations, following provisions are prescribed regarding underwriting in an IPO (for FPO the same is prescribed under Regulation 136):

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

40(2) If the issuer makes a public issue through the book building process,

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

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

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

c) if the syndicate member(s) fail to fulfil their underwriting obligations, the lead manager(s) shall fulfil the underwriting obligations.

d) the lead manager(s) and syndicate member(s) shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.

e) in case of every underwritten issue, the lead manager(s) shall undertake minimum underwriting obligations as specified in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.

f) where the issue is required to be underwritten, the underwriting obligations should at least to the extent of minimum subscription.”

- ii. Term “underwriting” is defined under SEBI (Merchant Bankers) Regulations, 1992, and SEBI (Stock Brokers) Regulations, 1992, as: “Underwriting” means an agreement to subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed.

3.2. Evolution of Underwriting in Indian Markets and current market practice:

- i. Underwriting in fixed price issue regime - Common practice during the fixed price issue regime prior to 1999, was that the Issuers had the option to have their offering underwritten (such that the underwriters bring in funds to the extent of under-subscription in the issue). Underwriting was at the option of the issuer and there was an underwriting commission paid to the underwriters. If the issue devolved

(i.e. the issue was under-subscribed and there was lack of demand), underwriting was invoked to the extent of the shortfall. This form of underwriting is generally referred to as 'hard underwriting' and provides cover for 'subscription risk'.

- ii. Underwriting in book-building route - In 1999, SEBI introduced the Book Building route, wherein pricing was determined on closure of the issue, based on demand received at various price points within the price band. In the Book Building route, the pricing is finalized based on demand received. The underwriters (BRLMs/ Syndicate Members) have to compulsorily underwrite the issue after pricing is finalised (i.e. after issue closure) but prior to filing the Prospectus (which is post closure of the public issue). This underwriting is invoked in case of shortfall in funds against demand received.

For Illustration: An Issuer has offered 100,000 shares through its public issue and has received a total demand for 91,000 shares on issue closure date. In such a scenario pricing will be decided based on the bids received for 91,000 shares and accordingly prospectus will be filed by the issuer company. However, post filing of the prospectus based on the price so finalised basis the demand for 91,000 shares, if there are any rejections (say for 2,000 shares) on any ground (technical, procedural or legal), then underwriters shall step in and fill up the gap created due to such rejections and such underwriting is termed as 'soft underwriting', where underwriters only fill in the funds deficiency arising out of any rejections from the bids received in the issue.

Thus, essentially under the Book Building route underwriting covers only the 'payment risk' rather than 'subscription risk' and is referred to as 'soft underwriting'. The intention behind such soft underwriting by issuer is not to bridge the shortage in demand/subscription but to compensate the shortfall in funds received.

Underwriting for shortage in demand/subscription i.e. 'Hard underwriting' is optional in case of issues made through book building route. In 'hard underwriting', based on the terms of underwriting agreement, underwriters fill in for shortfall in demand in the undersubscribed issue. For example, if the Issuer has offered 100,000 shares through its public issue and has received demand for 60,000 shares only on issue closure date, then underwriters shall be required to subscribe to the remaining unsubscribed portion of 40,000 shares or any other quantity of shares as stipulated in the underwriting agreement executed prior to filing of red herring prospectus (RHP).

Sequence of key events and timelines in IPO process post issue closing are as under:

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

3.3. **Issues for consideration:**

- i. It is noted that with respect to underwriting agreement, currently the following is generally disclosed in the draft red herring prospectus (DRHP) and red herring prospectus (RHP): "The agreement to be entered into amongst our Company, the Selling Shareholders, Registrar to the Offer and the Underwriters, on or after the date of finalisation of price but before filing of the Prospectus."

In all such issues, the rationale behind such disclosure in offer document is that the issuer intends to do a 'soft underwriting' i.e. underwriting only for technical rejections and underwriting is committed through such agreements only to cover shortfall in payment for rejected bids while entering into an agreement with the underwriters (i.e. Lead Manager and Syndicate Member) which happens only after the pricing date (closure of the issue) and before filing of prospectus with Registrar of Companies(RoC).

In the aforesaid scenario, underwriting for under-subscription due to shortfall in demand/subscription i.e. 'hard underwriting' is not envisaged by the issuer.

- ii. Presently, ICDR regulations specifically do not differentiate between underwriting for technical rejections and underwriting for shortfall in demand / subscription. In terms of Regulation 40(2)(b) of ICDR -
"b) the issuer shall, prior to filing the prospectus, enter into underwriting agreement with the lead manager(s) and syndicate member(s), indicating therein the number of specified securities which they shall subscribe to at the predetermined price in the event of under-subscription in the issue."

Therefore, as per the present provisions of ICDR regulations, an issuer can very well enter into an agreement for underwriting even for under-subscribed portion of an issue that may arise due to shortfall in demand / subscription i.e. 'hard underwriting' after the issue closure but before filing of prospectus, though in practice, as discussed above, issuers normally go only for a 'soft underwriting' agreement with the Lead Manager and other Syndicate Members, after the issue closure (and before filing of prospectus).

- iii. Since, the purpose of hard underwriting is to cover subscription risk rather than covering only payment risk after the closure of issue,

therefore, in case of inadequate demand / subscription to the issue, if the success of issue is not insured by underwriters' through a prior financial commitment/ agreement, then in such a scenario, the issue shall be deemed as a failed issue and the issuer has to refund the entire application money to all the applicants.

- iv. If as per the extant ICDR regulations, hard underwriting agreement is entered into only after the issue closure (before filing of the prospectus) to cover up the shortfall in demand/subscription (i.e. to cover up the subscription risk), the same would be done without being disclosed in the RHP and without the knowledge of public, which would not be appropriate and fair to the subscribing investors to whom this information (about hard underwriting agreement) was not made available while inviting applications from them for the book building process of the IPO/FPO. Also, this would be seen as a post event decision by the issuer/merchant banker to save the issue, rather than being perceived as a pre-underwriting event in the issuance of IPO. Hence, information related to 'hard underwriting' should mandatorily be included in the RHP for the benefit of the investors and for that purpose, hard underwriting agreement should be entered into before filing of RHP.

For Illustration – An issuer has not entered into any hard underwriting prior to the RHP and accordingly no disclosures are made in the RHP regarding hard underwriting agreement. Post issue opening, an investor applying in the IPO based on disclosures made in the RHP would assume that in case the issue is undersubscribed the issue shall be deemed as a failed issue and the issuer will refund the entire application money since no disclosures regarding hard underwriting are made in RHP. In such a scenario, if the issuer enters into hard underwriting for unsubscribed portion of the issue after issue closure, an investor may feel misinformed as this information was not made available to him in the RHP prior to inviting application for IPO. Also, in such a scenario where issuer decides to hard underwrite undersubscribed issue, after issue

closure, investor cannot withdraw his application as same cannot be done after issue closure. Whereas, in cases where hard underwriting agreement is entered before RHP and this information is disclosed in RHP, then investor can decide to withdraw his application in issue prior to issue closure, knowing that even though the issue is undersubscribed, issuer may not be required to refund application money since the issue is underwritten.

- v. It is also pertinent to note that 'hard underwriting' involves determining the risk involved in the price of the proposed security. While it gives a kind of insurance to the issuer company, prospective investors also feel confident that the underwriters have evaluated the issue with all its attendant risks and are backing the issue with financial commitment. Thus, such agreements for underwriting the shortfall in demand/subscription i.e. 'hard underwriting' should be entered into before filing of RHP and all underwriting and subscription arrangements made by the issuer should be disclosed in the RHP, for the benefit of investors / subscribers to the issue.
- vi. Further, an underwriter need not always subscribe himself and may also procure subscription from a third party. Such arrangement to procure subscription is not captured currently under provisions of ICDR Regulations. However, in the Merchant Bankers Regulations and Stock Brokers Regulations, "underwriting" is defined as: "underwriting" means an agreement to subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed. Therefore, it is proposed that ICDR Regulations may be amended to include words 'procure subscription' in the underwriting provisions, as well.

3.4. Analysis of Public comments:

- i. 13 commentators have offered specific comments on proposal related to change in underwriting provisions. Majority of the commentators (12 out of 13) have agreed for amendment in ICDR Regulations regarding

underwriting provisions and are of the view that amendment will help to provide clarity to Issuers and Underwriters alike on the requirements of hard and soft underwriting.

- ii. Further, comments have been received from two commentators stating that in fixed price issues, the offer documents are referred to as Draft Prospectus (which is initially filed with SEBI and Stock Exchanges for review), and the Prospectus (which has complete details in relation to issue price, issue dates, objects, etc.). The concept of Red Herring Prospectus (as applicable in case of book-built IPOs) is not applicable in case of fixed price issues. Hence, reference to 'red herring prospectus' in Regulation 40(1) should be replaced with 'prospectus'.

One commentator has also stated that in fixed price issue the term 'bids' is not used and rather term application is used in fixed price issue.

Analysis – It is noted that in fixed price issue there is no concept of Red Herring Prospectus and the prospectus is filed before issue opening, whereas in book built issue Red Herring Prospectus is filed before issue opening and prospectus is filed after issue closure.

Accordingly, accepting the feedback, suitable changes are proposed to be incorporated in the Regulation 40 and 136 of ICDR.

- iii. Two commentators while agreeing to the proposal have suggested that in case of hard underwriting issuer may be permitted to enter into underwriting agreement till release of price band advertisement and at floor price instead of issue price.

Analysis – It may be noted that price band advertisement is not the appropriate documents to disclose any new information which is not disclosed in the RHP as it is issued on two days before issue opening date (information about hard underwriting details in this case). Further, underwriters shall not be subscribing at a price less than the price at which retail and other investors are issued shares, therefore underwriting should be at a price not less than issue price.

- iv. 11 commentators have offered specific comments on “any minimum underwriting” threshold in terms of issue size, if the issuer desires to do ‘hard underwriting’. Majority of the commentators (9 out of 11) are of the view that there is no need for any minimum underwriting threshold in terms of issue size, if the issuer desires to do ‘hard underwriting’ and since hard underwriting obligations, if any, is a commercial arrangement between the Issuer and the Underwriters, SEBI should not specify any minimum underwriting thresholds. Further, commentators have stated that mandating minimum underwriting thresholds may have undesired consequences for the capital markets, including impact on deal sizes, deal volumes and other aspects.

Analysis – We agree with the commentator’s view that since hard underwriting is optional and a commercial arrangement between issuer and underwriter, SEBI may not prescribe any minimum threshold.

3.5. **Proposal for consideration of the Board:**

- i. Following is proposed to bring in more clarity on underwriting provisions:

	Soft Underwriting	Hard Underwriting
Book built Issue	Mandatory & Prior to prospectus	Optional & Prior to RHP
Fixed Price Issue	Mandatory & Prior to prospectus*	Optional & Prior to prospectus*

*In Fixed price issue term RHP is not used and prospectus is filed with ROC before issue opening.

- ii. Accordingly, it is proposed that provisions with respect to underwriting for public issue may be amended as under (Regulation 40 for IPO and Regulation 136 for FPO):

“Underwriting

40/136. (1) If the issuer making an initial public offer, other than through the book building process, desires to have the issue underwritten to cover under-subscription in the issue, it shall, prior to the filing of the prospectus, enter into an underwriting agreement with the merchant bankers or stock brokers registered with the Board to act as underwriters, indicating therein the maximum number of specified securities they shall subscribe to, either by themselves or by procuring subscription, at a predetermined price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the prospectus.

(2) The issuer making an initial public offer, other than through the book building process, shall, prior to the filing of the prospectus, enter into an underwriting agreement with the merchant bankers or stock brokers registered with the Board to act as underwriters, indicating therein the number of specified securities they shall subscribe to on account of rejection of applications, either by themselves or by procuring subscription, at a predetermined price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the prospectus.

(3) If the issuer makes a public issue through the book building process,
a) the issue shall be underwritten by lead manager(s) and syndicate member(s):

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

b) the issuer shall, prior to the filing of the prospectus, enter into an underwriting agreement with the lead manager(s) and syndicate member(s), indicating therein the number of specified securities they shall subscribe to on account of rejection of bids, either by themselves or by procuring subscription, at a price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the prospectus.

c) if the issuer desires to have the issue underwritten to cover under-subscription in the issue, it shall, prior to the filing of the red herring prospectus, enter into an underwriting agreement with the lead manager(s) and syndicate member(s) to act as underwriters, indicating therein the maximum number of specified securities they shall subscribe to, either by themselves or by procuring subscription, at a price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the red herring prospectus.

d).....”

- iii. Para 3 of Part A of Schedule XIII - Book Building Process provides for 'Underwriting' and same shall be revised as under :
- (i) Sub-para 3(b) to be revised as follows: The lead manager(s)/ syndicate member(s) shall enter into underwriting/ sub underwriting agreement on a date prior to filing of the prospectus, or the red herring prospectus, as the case may be.
- (ii) Sub-para 3(c) to be revised as follows: The details of the final underwriting arrangement indicating actual numbers of shares underwritten shall be disclosed and printed in the prospectus or the red herring prospectus, as the case may be, before it is filed with the Registrar of Companies.

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

4.1. Current Regulatory Framework for Bonus Issue:

- i. Bonus issues are governed by Section 63 of the Companies Act, 2013 and Chapter XI of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations).

- ii. The Companies Act, 2013 provides for certain conditions for issuance of Bonus Shares such as bonus shares may be issued out of the free reserves, or securities premium or the capital redemption reserve account.
- iii. The ICDR Regulations provide for certain additional conditions, and restrictions for bonus issue by a listed issuer. It also provides the timelines for completion of bonus issue.

Relevant extracts of Companies Act, 2013 and ICDR Regulations are placed at **Annexure III**.

4.2. **Issue for consideration:**

Eligibility for announcing Bonus Issue by a listed company

- i. It is observed that in some instances, an issuer announces bonus issue while it has not received in-principle approval for listing and trading from stock exchange(s) for its previous issuance and such previous issuance have certain non-compliances such as shares being issued without taking in-principle approval from stock exchanges or failure to follow pricing guidelines or non-compliance with regulatory provisions etc. In such scenarios, even if the issuer may have issued the shares it would fail to get approval for listing and trading of such issued shares.
- ii. Now in such a situation, there is already a mismatch between the listed capital and issued capital of the issuer when Issuer Company announces a bonus issue. Thus, due to the mismatch in issued shares and listed shares arising on account of the previous issuance of securities which are yet to receive listing and trading approval, stock exchanges may find it difficult to grant in-principle approval for the bonus issue, unless the discrepancy already pending with the stock exchanges is first resolved as providing approval to such bonus issue will further

exacerbate the mismatch between the listed capital and issued capital of the issuer.

- iii. In view of the aforesaid, a need is felt that as long as such mismatch exists between listed capital and issued capital owing to certain irregularities / inconsistencies in the issuance of securities, it would not be prudent to grant approval to issuance of bonus shares on the basis of such incorrect past issuance of securities. Hence, Issuer Company may not be considered eligible to announce bonus issue pending resolution of existing mismatch, as bonus issue announcement is a price sensitive information and it is imperative that the bonus issue is implemented in a timely manner, which in the aforesaid factual context, may not be possible to implement when the company has not yet rectified the irregularities surrounding the previous issue of securities.

Bonus Issue by a listed company in dematerialised mode only

- iv. As per data on bonus issues by listed company in the last 2 years, it is observed that percentage of bonus shares issued in physical mode is very less. A synopsis of the relevant data is as below:

Year	No. of Bonus Issues	% allotment in demat mode	% allotment in physical mode
2021	71	98.38%	1.62%
2022	122	98.72%	1.28%
Source – NSE /BSE			

- v. Currently, Bonus shares to shareholders holding physical securities are allotted in physical mode. Since issuance of shares in dematerialised mode provides elimination of risks associated with physical certificates such as loss, theft, mutilation and fraud and ensures timely credit, a need is felt that bonus shares to shareholders may be permitted to be issued in dematerialised form only.
- vi. In case an investor does not have a demat account then the Issuer companies shall be required to open a separate demat account (“bonus escrow account”) for dealing with such securities.

- vii. In case the investor wishes to hold the securities in physical form, he still has the option to rematerialize the shares once he has received the shares pursuant to bonus issue in dematerialised form.
- viii. It may be noted that, it is already mandated that securities can be traded in the market only in dematerialised form and that IPO, FPO and Rights issuance can only be done in dematerialised form.

4.3. Analysis of Public comments:

- i. 12 commentators have offered specific comments on proposal that listed issuer shall be eligible to announce its bonus issue only if it has received in-principle approval from the stock exchanges for listing of all the pre-bonus securities issued by the listed entity excluding the Employee Stock options (ESOPs) and convertibles shares/ warrants. Majority of commentators (11 out of 12) have agreed to the proposal.
- ii. One commentator while not agreeing to the above proposal has recommended that instead of the proposed change, issuer may be mandated to include confirmation in the Board outcome / notice to shareholders regarding compliances related to previous issuances.

Analysis – On perusal of comment it is noted that the commentator agrees with the need to address underlying issue but his suggestion would not adequately address the issue.

- iii. 13 commentators have offered specific comments on proposal that Bonus Issuance to shareholders shall be made in the dematerialised form only. Majority of commentators (11 out of 13) have agreed to the proposal.
- iv. One commentator while agreeing to the above proposal, has stated that allotment in dematerialised mode may be made mandatory for

allotments in excess of a particular market value, say Rs. 20,000/Rs. 50,000.

Analysis – The suggestion of issuing physical shares based on a threshold value of holding is practically not possible as it will result in a situation wherein a shareholder may get securities for one bonus issue in dematerialized mode and for another bonus issue in physical mode based on his size of holding in that particular company. Such a situation will create unnecessary confusion for the shareholders and will not achieve the objective of all issuances including bonus issuance in dematerialised form considering the benefits attached to dematerialization of securities.

- v. Two commentator while disagreeing with the above proposal, has stated that SEBI may consider mandating dematerialization of securities held by the public shareholders in a phased manner - before proposing any amendment restricting issuance of bonus shares in physical form.

Analysis – An option is always available to investors to rematerialize the shares post bonus issuance under the Depositories Act. With the proposed change to issue bonus shares in dematerialized mode (already as per present provisions public and rights issue securities can be issued in dematerialized mode only), a step forward is taken towards enabling issuers' bonus securities being issued in dematerialized mode.

4.4. Proposals for consideration of the Board:

- i. It is proposed to amend the ICDR Regulations, to include following requirements in respect of bonus issue:
 - a. In Regulation 293 - A listed issuer shall be eligible to announce its bonus issue only if it has received approval from the stock exchanges for listing and trading of all the securities, excluding options granted to employees pursuant to an employee stock option scheme and convertibles securities, issued by the issuer prior to the issuance of bonus shares.

- b. In Regulation 293, the words “announce its bonus issue and” shall be inserted before the words “issue bonus shares to its members if:”
- c. In Regulation 294 – new clause to be inserted for following requirement - “the allotment of shares in a bonus issue shall be made only in the dematerialised form”.

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

5.1. Existing provisions :

- i. In terms of ICDR Regulations, clause 10 of Part A - Schedule XIII, specifies the terms of participation by Anchor Investors in the Book Building Process. Sub-clause (k) of clause 10 of Part A - Schedule XIII, restricts Lead Managers and its associates from participating as Anchor Investors. The stipulations of clause 10 (k) are as follow:
 “Neither the (i) lead manager(s) or any associate of the lead managers (other than mutual funds sponsored by entities which are associate of the lead managers or insurance companies promoted by entities which are associate of the lead managers or Alternate Investment Funds (AIFs) sponsored by the entities which are associate of the lead manager or a foreign portfolio investor other than individuals, corporate bodies and family offices sponsored by the entities which are associate of the lead manager) nor (ii) any person related to the promoter/promoter group/ shall apply under the Anchor Investors category.”
- ii. Thus, Lead Manager(s) and its associates are restricted from applying under Anchor Investor Category. Exceptions have been made for mutual funds sponsored by entities which are associate of the lead manager or insurance companies promoted by entities which are associate of the lead manager or Alternative Investment Funds (AIFs) sponsored by entities which are associate of the lead manager or a foreign portfolio

investor other than individuals, corporate bodies and family offices, sponsored by entities which are associate of the lead manager.

- iii. Anchor Investors, under ICDR Regulations, mean a QIB who makes an application for a value of at least ten crore rupees in a public issue on the main board made through the book building process.
- iv. Pension Funds with minimum corpus of twenty five core rupees are defined as qualified institutional buyer (QIB) under ICDR Regulations.

5.2. Issue for consideration:

- i. Presently, Pension Funds which are not an associate of the Lead Manager can participate as an anchor investor in the book building process. However, Pension funds sponsored by entities which are associate of the lead manager, do not fall under the exception available under clause 10(k) of Schedule XIII of ICDR Regulations.
- ii. It is noted that an exception has been made for Pension Funds promoted by entities which are associate of the lead manager, for participation as an Anchor Investor in public issue of Real estate investment trusts (REITS). However, similar exceptions have not been provided under ICDR Regulations.
- iii. Pension funds are registered intermediaries under Pension Fund Regulatory and Development Authority (PFRDA) and are duly regulated with defined roles & responsibilities.
- iv. Considering the existing regulatory supervision of PFRDA and an exception already available to pension funds promoted by entities which are associate of the lead manager for participation as an Anchor Investor in a public issue of REITS; clause 10 (k) of Schedule XIII may be amended to allow Pension Funds sponsored by entities which are associate of the Lead Managers, to participate as an Anchor Investor in a public issue, as well.

- v. Further, under the definition of QIB in ICDR Regulations, an insurance company registered with the Insurance Regulatory and Development Authority of India is considered as QIB. Whereas pension fund is defined as 'a pension fund with minimum corpus of twenty five crore rupees' without referring as registered with PFRDA. So, in ICDR Regulations, with respect to pension funds under QIB definition, we may add words "registered with Pension Fund Regulatory and Development Authority (PFRDA)".

5.3. Analysis of Public comments:

- i. 12 commentators have offered specific comments on this aspect.
- ii. All 12 commentators have agreed to the proposal that Pension Funds sponsored by entities which are associate of the Lead Managers, be allowed to participate as an Anchor Investor in a public issue.

5.4. Proposals for consideration of the Board:

- i. It is proposed to amend clause 10 (k) of Part A of Schedule XIII of ICDR Regulations as follows:

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

- ii. Following words may be added in ICDR Regulations at Regulation 2(1)(ss)(ix) after words “a pension fund with minimum corpus of twenty five crore rupees”:

“registered with Pension Fund Regulatory and Development Authority (PFRDA);”

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

6.1. Material contracts and documents for inspection

- i. In terms of ICDR provisions, Issuer Company is required to disclose details regarding time and place at which the material contracts and material documents therein will be available for inspection. Generally, physical copies of material contracts and material documents are made available for inspection at the physical address provided by the issuer company.
- ii. However, during Covid period, Issuers and Lead Managers were advised to also provide access to material contracts and material documents for inspection through online means, since there were restrictions on physical movement. This practice has continued successfully without any challenge as it provides ease of information access to investors. In view of this, it is proposed that the aforesaid requirement of providing online inspection facility may now be incorporated in the regulations to be legal binding for compliance by issuer and Lead Managers, in addition to the existing requirement of making available the physical copies of material contracts and documents for inspection at the physical address the issuer company.

6.2. Providing complete industry report in the list of material documents for inspection

- i. In the draft offer document and offer document under “Industry Overview” section, the Issuer Company provides an overview of the industry by commissioning industry reports from third party agencies.

This industry overview is generally an extract of the report prepared by third party agencies commissioned by the issuer.

- ii. With regard to above, Lead Managers have been instructed to include the full industry report in the list of material documents for inspection, as the same contains information for investors who may be interested in reading the detailed industry report. Accordingly, a need is felt that the aforesaid requirement may be incorporated in the regulations to be legal binding for compliance by the Lead Managers and to ensure that a complete industry report is available for inspection at the physical address of the issuer company as well at the online link provided by Issuer Company.

6.3. Hosting draft offer document and offer document(s) on issuer company website

- i. Presently in terms of ICDR Regulations, draft offer document and offer document are required to be hosted on the websites of SEBI, Stock Exchange(s) and the BRLMs associated with the issue.
- ii. Suggestions have been received that the draft offer document and offer document should also be displayed on the website of the issuer company. It is also noted that some issuers on a voluntarily basis, display their draft offer documents and offer document on their websites, after filing the same with SEBI / stock exchange(s). Hence, a need is felt that this requirement may be incorporated in the regulations mandating all issuers to host draft offer documents and offer documents on their website, as it may be easier for interested investors to locate the same.

6.4. Analysis of Public comments:

- i. 12 commentators have offered comments on this aspect.
- ii. All 12 commentators have agreed to the below mentioned proposals :
 - a. Providing access to material contracts and material documents for inspection through online means.

- b. Hosting the draft offer documents and offer document(s) on website of Issuer Company.
- iii. Majority of commentators (10 out of 12) have also agreed to the proposal of providing complete industry report as part of material documents for inspection both through offline and online modes. Two commentators while disagreeing have stated that providing industry report will increase burden on the company.

Analysis - It may be noted that in terms of ICDR Regulations it is not mandatory to commission industry reports from third party agencies. Hence, only in cases where under “Industry Overview” section, an extract of report by third party agencies is disclosed by the issuer company, issuer shall be required to include such complete industry report as part of material documents for inspection. Such disclosures mitigate the risk of selective disclosure by the issuer.

6.5. Proposals for consideration of the Board:

- i. It is proposed to amend the Schedule VI of ICDR Regulations to include the following requirements with respect to the disclosures made in the offer document:
 - a) Access to material contracts and material documents (as per the list provided in the DRHP/RHP) for inspection to be provided through online means in addition to giving physical inspection at the place disclosed by the issuer company.
 - b) Complete industry report/s whose extract is disclosed in the DRHP/RHP, to be provided as part of material documents for inspection at physical address of the company as well as through online access.
- ii. Regulation 26 (1), Regulation 59C (9), Regulation 72(1), Regulation 124(1), Regulation 187(1), Regulation 246 (4) of ICDR Regulations may be amended to include following requirement:

- a) Hosting the draft offer document(s) / offer document(s) on website of Issuer Company.

7. Incidental amendment – Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 (SBEB & SE 2021), were notified on August 13, 2021, repealing the erstwhile Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 (SBEB 2014).

However, under ICDR Regulation reference made to SBEB 2014 regulations is not updated with reference to SBEB & SE 2021 regulations. Accordingly, it is proposed to replace reference made to “Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014” with “Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021” , at all places under ICDR Regulations.

8. Proposal

- 8.1. The Board is requested to consider and approve the proposals at para 3.5, 4.4, 5.4, 6.5 and para 7 above and related amendments to SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018, as contained in the draft amendments placed at **Annexure IV**.
- 8.2. The Board is requested to authorize the Chairperson to take consequential and incidental steps to give effect to the decisions of the Board.

Annexure - I

Consultation Paper on certain Amendments to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, with the objective of increasing transparency and streamlining certain processes is a publicly available document and same is placed on SEBI website.

Annexure-II

(This has been excised for reasons of confidentiality)

Annexure-III

Companies Act, 2013 and SEBI (ICDR) Regulations, 2018 are publicly available document.

(This shall be notified at a later date)