Review of certain aspects of public issue framework including objects of the issue and monitoring of issue proceeds

1. Objective

1.1. This memorandum seeks approval of the Board to amend SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018 ("ICDR Regulations") relating to framework of public issue, and consequential amendment to applicable SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"), with respect to the following specific aspects of public issue :

i. Objects of the issue,

ii. Offer for Sale (OFS) in Initial Public Offer (IPO) by significant shareholders,

iii. Lock-in of shares for Anchor Investor, and

iv. Enhancing framework for monitoring of issue proceeds.

1.2. Consequent to above, amendments would be required in Regulation 7, Regulation 8, Regulation 41, Regulation 62, Regulation 82, Regulation 104, Regulation 137, Regulation 230 and Regulation 262 of the ICDR Regulations , Schedule XI and Schedule XIII –Part A of the ICDR Regulations, Regulation 32 of LODR Regulations etc.

2. Background

2.1. The primary market is the avenue for resource mobilization and capital formation in the country, as it brings together investors seeking investment opportunities and issuers seeking to mobilize resources to finance their investments / raise capital.

2.2. ICDR Regulations have provisions specifying eligibility requirements for an IPO by an issuer company and also have provisions for various issue related aspects such as, objects of the issue, amount earmarked for general corporate purpose (GCP), minimum promoter contribution, offer for sale requirements, post issue lock-in of shares, allotment and lock-in for anchor investors, appointment of monitoring agency and report of monitoring agency on utilization of issue proceeds etc.

2.3. The current regulatory framework for IPOs dealing with the aforementioned aspects and the issues emerging out of the recent spate of IPOs, particularly with respect to filings by new age technology companies were deliberated at the meeting of the Primary Market Advisory Committee (PMAC).

2.4. It was felt by the PMAC that while disclosures in the offer documents cover specifics related to the particular issuer company and its business model, there is a need to lay down certain additional requirements for compliance by the issuer companies so as to enhance the existing framework. Accordingly, PMAC has made recommendations on certain measures pertaining to objects of the issue wherein funds are raised, inter-alia, for inorganic growth / future acquisition without identifying specific targets and also on the aspect of offer for sale, lock-in for anchor investors, additional compliance requirements on usage of the proceeds of issue, including enhanced monitoring of usage of funds by monitoring agency.

2.5. PMAC recommendations on aforesaid aspects are mainly directed to bring more transparency in the public issuances and at the same time they endeavor to increase the regulatory checks and balances to ensure that issue proceeds are properly utilized and monitored. Thus, the recommendations largely propose to review the public issue framework to cater to emerging trends and challenges.

2.6. At the same time, PMAC felt that any change in the extant public issue framework may have wide ranging implications, hence a detailed deliberation is required on the matter and for this purpose PMAC desired that a public consultation may be carried out on its recommendations before SEBI takes a view in the matter.

2.7. With respect to the recommendations on enhancing the framework of monitoring of utilization of issue proceeds, PMAC suggested that same may not require any public consultation as the same is procedural in nature and is intended for enhancing regulatory framework of supervision over the proceeds of public issue by an issuer Company.

2.8. Accordingly, a discussion paper was placed on the website of SEBI on November 16, 2021 seeking public comments on various proposals made therein based on recommendations of PMAC. The discussion paper is placed at **Annexure-I** for reference

2.9. Since then, comments have been received from 29 entities including individuals, merchant bankers, law firms, trading members, stock exchange, investor associations, and industry associations such as NASSCOM, FICCI etc. on various proposals made in the consultation paper as per the PMAC recommendations. Further, the commentators have made additional suggestions as well. The comments relevant to the consultation paper have been analyzed and tabulated at **Annexure-II**. The following paragraphs (3-6) delve into the existing provisions, issue/concern, recommendations of PMAC, public comments, analysis of public comments and proposals for consideration of the board.

3. Objects of the issue – where the issuer is raising fresh funds for objects without identifying intended acquisition / strategic investment at the time of filing of offer document

3.1. **Existing Provisions**

i. Schedule VI of ICDR Regulations, under section ‘Particulars of the Issue’ provides for descriptive disclosure requirements for objects of the issue covering various objects such as:

a. Loan repayment
b. Investment in a joint venture or a subsidiary or an acquisition
c. Granting loan to an entity other than a subsidiary / group company
d. Long term working Capital
e. Acquisition of land
f. Funding a project / Capex requirements
g. Purchase of property

h. Purchase of plant, machinery/equipment, technology, process etc.

ii. Presently, ICDR Regulations do not prescribe any limits on allocation of fresh issue proceeds for any specific object type. The decision to allocate fresh issue proceeds under various objects is as per the needs of the Issuer Company since details of the objects are to be disclosed by the issuer company in the offer documents, in terms of provisions of ICDR Regulations.

iii. In terms of Regulation 7(2) of ICDR Regulations, the amount for GCP, as mentioned in the offer document shall not exceed 25% of the total amount being raised by the issuer.

iv. In terms of Regulation 41(2) of ICDR Regulations, proceeds raised for GCP, are not required to be monitored by Monitoring Agency.

3.2. **Issue/concerns**

i. In terms of ICDR Regulations, initial public offering can be made by an issuer company for :

a. Fresh issue i.e. to raise fresh capital for the objects defined in the offer document, or

b. Offer for sale (OFS) to public i.e. sale of equity by existing shareholders, or

c. A combined issue of OFS and fresh issue.

ii. For fresh issue portion of initial public offering, Issuer Company is required to state the objects of the issue in the offer documents, such that investors are able to identify and understand the objects for which Issuer Company is raising capital through IPO.

iii. Further, Issuer Company is required to appoint a Monitoring Agency in terms of ICDR Regulations to report periodic usage of proceeds raised as fresh issue.

iv. It is seen that lately in some of the draft offer documents filed by the issuer companies with SEBI, companies are proposing to raise fresh funds for various objects wherein one of the objects is termed as 'Funding of Inorganic Growth Initiatives', which includes future acquisitions, investing in new business initiatives and strategic partnerships by the company without identifying the target acquisition or specific investments proposed to be deployed out of issue proceeds.

v. Mostly, such issuer companies are new age technology companies (NATCs). The rationale for having such an object by NATCs is that NATCs are mostly asset-light organizations which may not require funds that are traditionally required by the companies for objects such as investment in fixed assets / capital expenditure (capex) etc. The growth in such businesses comes from expanding into new micro-markets and adding or acquiring new customers, companies, technology etc. Accordingly, for their primary issuances i.e. for the funds proposed to be raised through fresh issues, such new age technology companies disclose one of the objects in their offer documents under such heads as 'Funding of Inorganic Growth Initiatives', so as cover such futuristic/ contingent need under the said generic objective.

vi. However, raising fund for unidentified acquisition leads to some amount of uncertainty / ambiguity in the IPO objects. Such uncertainties about the objects of the issue increase further in case a major portion of the fresh issue portion is earmarked for such unidentified acquisition, especially given that issuer companies already have flexibility to earmark up to 25% of the fresh issue size under GCP, under the extant regulations.

3.3. **PMAC Recommendation**

i. PMAC, pursuant to deliberations, proposed to prescribe a combined limit of up to 35% of the amount being raised by the issuer as fresh issue, on GCP and such other objects of inorganic growth initiatives where the issuer

Company has not identified its intended acquisition / strategic investment at the time of filing of offer document.

ii. However, such combined limits shall not apply to an issuer company if the proposed acquisition / strategic investment object has already been identified and suitable specific disclosures about such identified acquisitions / investments are made at the time of filing of offer document.

3.4. Public Comments and Analysis

a) <u>Public Comments</u>

i. In all 17 commentators have offered comments with respect to the objects of issue and 7 commentators have agreed to the suggestion that limit should be there for objects where fresh issue is raised for unidentified acquisition. Six commentators have disagreed with the recommendation of placing any such limits. Four commentators have made vague suggestions such as limiting issue size as 5 times of net-worth, determining cap based on future projections to determine cash flow etc.

ii. Out of the 7 commentators agreeing for limiting a specific portion of fresh issue size for unidentified intended acquisition / investment target in the offer document; majority of the commentators have suggested a maximum cap of 25% in terms of % of fresh issue for such objects

iii. Further, 13 commentators have provided their comments on having a combined limit on GCP and for the objects of earmarking funds for unidentified acquisition (Inorganic growth). Out of these majority (9 out of 13) have agreed that a combined limit may be placed on such unidentified objects and GCP together.

b) <u>Analysis</u>

i. Majority of the commentators have agreed that there is a need for limiting a specific portion of fresh issue size for objects where companies have not specifically identified their intended acquisition / investment target in the offer document.

ii. Present regulations already have a concept of GCP which doesn't have to be specifically used for any object identified in the offer document and issuer can allocate up to 25% of issue size under GCP.

iii. The objective of proposed limit is to enable investors to make more informed decision and to incentivize issuer companies to make specific disclosures about the utilization of proceeds raised through public issue.

iv. In view of the above and the comments so received, to meet the intended objective, an issuer having unidentified inorganic growth initiative as one of the objects, should ensure that not more than 25% of the fresh issue size is earmarked for such object.

v. However, to avail the combined limit of not more than 35% of the fresh issue size along with the object of GCP, issuer company may choose to allot 25% thereof towards such unidentified object and remaining 10% for GCP or alternatively it may choose to allot 25% towards GCP and remaining 10% towards unidentified inorganic growth initiative or any other method of allocation of the fresh issue proceeds between these two categories which shall satisfy the above stated two requirements (i.e. not more than 25% of fresh issue is earmarked for an object with unidentified acquisition with a combined limit of up to 35% of fresh issue size being provided for both object of inorganic growth as well as the existing provisions for GCP (GCP shall not exceed 25% of issue size)).

3.5. Proposal for consideration of Board

i. A limit may be prescribed for a specific portion of fresh issue size for objects such as inorganic growth initiatives etc. where, companies have not specifically identified their intended acquisition / investment target in the offer document, to the extent of 25% of the Fresh Issue Size.

ii. Further, it is proposed to prescribe a combined limit of up to 35% of the fresh issue size on GCP and the funds proposed to be earmarked for deployment on such objects of inorganic growth initiatives, where the intended acquisition / strategic investment is unidentified in the objects of the offer.

iii. However such limits shall not apply if the proposed acquisition / strategic investment object has been identified by the issuer company and suitable specific disclosures about such acquisitions / investments are made at the time of filing of offer document.

iv. **ICDR Amendment:**

In section '**General Conditions'** for IPO, insertion of following sub-regulation after Regulation 7(2):

"Regulation 7(3): The amount for general corporate purposes, and such objects where issuercompany has not identified acquisition / investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed thirty five per cent. of the amount being raised by the issuer.

Provided that amount raised for such objects where issuer company has not identified acquisition / investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed twenty five per cent. of the amount being raised by the issuer.

Provided that such limits shall not apply if the proposed acquisition / strategic investment object has been identified and suitable specific disclosures about such acquisitions / investments are made in the draft offer document and the offer document at the time of filing of offer documents.”

Similar amendments may also be carried under Regulation 62, Regulation 104 and Regulation 230, for Rights Issue, Further Public Offer and SME-IPO, respectively.

v. **Implementation:** The aforesaid amendment shall be effective for all the Draft Red Herring Prospectus (DRHPs) that shall be filed on or after the date of the notification in the official gazette.

4. <u>Offer for Sale (OFS) by significant shareholders</u>

4.1. Existing Provisions

i. In terms of Regulation 14 of ICDR Regulation, promoters of the issuer shall hold at least 20% of the post issue capital - Minimum Promoter Contribution (MPC). Further, regulation provides that the requirement of MPC shall not apply in case an issuer does not have any identifiable promoter.

ii. In terms of Regulation 16 of ICDR Regulation,

a) MPC is locked – in for a period of 18 months from the date of allotment in IPO, subject to certain conditions (if conditions are not met lock-in shall be for 3 years).

b) Promoters holding in excess of MPC is locked-in for a period of 6 months from the date of allotment in IPO.

iii. In terms of Regulation 17 of ICDR Regulation, the entire pre-issue capital held by persons other than the promoters shall be locked-in for a period of six months from the date of allotment in the initial public offer. Further, Regulation 17(c) exempts shares held by a venture capital fund or alternative investment fund of category I or Category II or a foreign venture capital investor provided these shares have been held for a period 6 months from the date of purchase.

iv. In terms of Regulation 8 of ICDR Regulations, only such fully paid-up equity shares may be offered for sale to the public, which have been held by the sellers for a period of at least one year prior to the filing of the draft offer document.

4.2. **Issue/concerns**

i. Presently, for offer for sale (OFS) under an IPO, <u>selling shareholders can offer equity shares which have been held by them for a period of at least one year prior to the filing of draft offer document</u>. There is no limitation for such selling shareholders regarding as to how much of their existing pre-issue shareholding can be diluted/offered through OFS in IPO.

ii. In case of companies which have identifiable promoter(s), MPC is applicable for promoters, and promoter(s) are required hold at least 20% of the post issue capital as MPC.

iii. MPC is principally meant to ensure a skin in the game for the promoters to inspire confidence while approaching the public shareholder to raise fresh capital, but in loss making company OFS by existing promoters of his entire remaining stake other than MPC may also dilute the concept of skin in the game as the prospective investors would desire to have promoter with a higher stake in the loss making company post IPO.

iv. In case an issuer company does not have any identifiable promoter, existing shareholders can divest in OFS without any requirement of mandatory MPC. Thus, such selling shareholders, <u>can divest a part or even their entire shareholding in the OFS</u>, as per their desire.

v. It is felt that where an issuer company does not have any identifiable promoter, the existing shareholders who are having significant shareholding, should continue with the company post IPO for a longer period to inspire confidence amongst the investors.

vi. This aforesaid concerns are more profoundly felt for loss making companies coming with IPOs.

4.3. PMAC Recommendation

i. PMAC, pursuant to deliberations on the proposals of a sub-group of PMAC, desired that public consultation may be carried out on the following recommendations:

a) For IPOs by companies where there are no identifiable promoters, divestment of stake by significant shareholders be capped at say 50% of their pre-issue holding, provided :

i. Significant shareholders may be identified as entities holding more than 20% of pre-issue capital of the issuer company.

ii. This capping on OFS shall be applicable only for draft offer documents filed in terms of Regulation 6(2) of ICDR Regulations, 2018 (loss making companies).

b) Further, for such significant shareholders who are selling through OFS in IPO, their remaining post issue shareholding may be locked-in for a period of 6 months from the date of allotment in IPO (this may also be applicable even if significant shareholders are of VCF, AIF – Cat I and II & FVCI, category).

4.4. Public Comments and Analysis

a) <u>Public Comments:</u>

i. In all 19 persons have offered comments with respect to capping of offer for sale by significant shareholders. 14 persons have agreed to the suggestion that there is a need for capping OFS in IPO by significant shareholders (holding more than 20%) of an issuer Company where there is no identifiable promoter and therefore no MPC.

ii. Majority of the commentators (7 out of 12) have agreed that any capping in OFS should be applicable only for loss making companies.

iii. Majority of the commentators (7 out of 12) have agreed that capping on OFS should be up to 50% of the pre-issue holding by significant shareholder.

iv. Majority of the commentators (11 out of 15) have agreed for post issue lock-in of 6 months for significant shareholders (irrespective of category of investors).

b) Analysis:

i. Majority of the comments are in agreement that for IPOs of issuer companies where there is no identifiable promoter and therefore there is no MPC requirement, there shall be a capping on OFS by significant shareholders of such companies (holding more than 20% of pre-issue capital) to the extent of 50% of their pre- issue shareholding, in case of filings made by issuer under regulation 6(2) of the ICDR.

ii. Commentators have also suggested that shareholding of investors for applying capping limit on OFS shall be calculated considering their holding along with persons acting in concert. Also, comments are received to have capping limit on OFS for all companies.

iii. Further, to ensure that shareholders who are above 20% of shareholding before the public issue do not deploy means to go below 20%, just before filing of DRHP [E.g. A significant shareholders reducing holding from 20% to 19% just before filing of DRHP to bypass this provision], it is proposed that on shareholders holding less than 20% of pre-issue capital, an absolute limit may be prescribed for OFS by such shareholders individually, such that their selling in OFS should not exceed 10% of pre-issue capital.

iv. Since, there are serious concerns arising from the possibility of discontinuity by existing shareholders with a loss making issuer company post the public issue and also lack of adequate skin in the game, as is being witnessed from the trend of OFS by the selling shareholders, both from promoter and non-promoter side, it is felt that all pre-issue shareholders in loss making companies including promoters should demonstrate a higher level of skin in the game by continuing with substantial stake in the company post IPO. Accordingly, all shareholders' holding more than 20% pre-issue capital of issuer may be permitted to do OFS in IPO only up to 50% of their pre-issue holding and other shareholders having less than 20% pre-issue capital of issuer may be permitted to do OFS in IPO only up to 10% of pre-issue shareholding of the issuer.

4.5. **Proposal for consideration of Board**

i. Based on the analysis of comments received, it is proposed that :

a) For issues where draft offer document is filed under regulation 6(2) of the ICDR Regulations:

i. shares offered for sale to the public by shareholder(s) holding more than 20% of pre-issue shareholding of issuer based on fully diluted basis [individually or with persons acting in concert], shall not exceed more than 50% of their pre-issue shareholding on fully diluted basis.

ii. shares offered for sale to the public by shareholder(s) holding less than 20% of pre-issue shareholding of issuer based on fully diluted basis [individually or with persons acting in concert], shall not exceed more than 10% of pre-issue shareholding of the issuer on fully diluted basis.

iii. for shareholder(s) holding more than 20% of pre-issue shareholding of issuer based on fully diluted basis [individually or with persons acting in concert], provisions of lock-in as specified under regulation 17 of ICDR

Regulations shall be applicable, and relaxation from lock-in as provided under regulation 17(c) of ICDR Regulations shall not be applicable.

ii. Amendment in line with the aforesaid proposal may be carried under section **“Additional conditions for an offer for sale”** under Regulation 8 of ICDR Regulations.

v. **Implementation:** The aforesaid amendment shall be effective for all the Draft Red Herring Prospectus (DRHPs) that shall be filed on or after the date of the notification in the official gazette.

5. <u>Lock-in for Anchor Investors</u>

5.1. Existing Provisions

i. In terms of provisions of ICDR regulations, Issuer Company can allocate 60% of the QIB portion to anchor investors on discretionary basis, out of which 1/3rd is reserved for mutual funds.

ii. The allotment to anchor investors is done one day prior to issue opening date and such shares are locked-in for a period of 30 days from the date of allotment.

5.2. Issue/concerns

i. The concept of anchor investors was introduced to inspire investors’ confidence in the public issue especially when such anchor investors commit moneys upfront to the issuer and thereby provide an indication of price and also help to improve the price discovery of the issue during IPO as well. Other investors may take cue based on the investment decisions of anchor investors.

ii. Presently, the shares allotted to Anchor Investors are locked in for a period 30 days from the date of allotment. It is felt that a longer lock-in for Anchor

Investors will provide more confidence to other investors. Therefore, there may be a need to review the period of lock-in for anchor investors.

5.3. PMAC Recommendation

i. PMAC, pursuant to deliberations was of the view that instead of increasing lock-in period for all Anchor Investors from 30 days, not less than 50% of the Anchor Book should be given to those Anchor Investors who may be agreeable with 90 days or longer lock-in.

5.4. Public Comments and Analysis

a) <u>Public Comments:</u>

i. 17 persons have provided comments on suggestion related to lock-in for Anchor Investors. 8 out those 17 commentators have agreed and 9 commentators have disagreed with the suggestion to increase lock-in period for Anchor Investors.

ii. Further, 8 out of 16 commentators have agreed with suggestion to have reservation for Anchor Investors who are agreeable to higher lock-in period and 8 commentators have disagreed with this suggestion.

b) <u>Analysis:</u>

i. 16 persons have provided diverse comments on the suggestion to have increased lock-in period for Anchor Investors. Almost similar number of commentators have agreed in comparison to the number of commentators who have disagreed with the suggestion.

ii. Those who have agreed, have suggested different period for higher lock-in ranging from 60 days to 3 years. Similarly are the comments for lock-in for 90 days.

iii. 16 persons have provided diverse comments on the suggestion to have a reservation for Anchor Investors who are agreeable to higher lock-in period, say 90 days or more. Commentators have observed that different categories of anchor investors on basis of different lock-in periods should not be created.

iv. Majority of the commentators who have disagreed with the proposal for higher lock-in or higher reservation of the allotment for anchor investors agreeable for higher lock-in, are mostly Merchant Bankers (MBs) and Law firms. Whereas, it is observed that individuals, investor associations, industry bodies like NASSCOM, FICCI, , have agreed with proposal to have higher lock-in for Anchor Investors / higher reservation for Anchor Investors who are agreeable for higher lock-in.

v. One commentator has also suggested a dual lock-in for all anchor investors, stating that 50% of the allotment should be locked in for a period of 360 days from the date of allotment and remaining 50% should be locked in for 180 days from the date of allotment.

vi. This aforesaid suggestion has some merit and worthy for being considered, however the time period suggested by the person may not be reasonable. It is expected that a dual lock-in on all anchor investors will ensure longer lock-in by Anchor Investors, thereby, providing more confidence to all other investors.

5.5. **Proposal for consideration of Board**

i. Based on the analysis of comments received, it is proposed that for all Anchor Investors, 50% of the anchor allotment shall be locked in for a period of 90 days from the date of allotment and remaining 50% shall be locked in for 30 days from the date of allotment. This will ensure that all Anchor Investors are locked-in for longer period (90 days) partly and at the same they will be able to partly exit after 30 days.

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

"(j) There shall be a lock-in of 90 days on the 50% of the shares allotted to the anchor investors from the date of allotment and a lock-in of 30 days on the remaining 50% of the shares allotted to the anchor investors from the date of allotment."

iii. **Implementation:** The aforesaid amendment shall be effective for all issues that shall open after April 01, 2022.

6. Framework for monitoring of issue proceeds

6.1. Monitoring Agency and reporting on utilization of issue proceeds

Existing Provisions:-

i. In terms of ICDR Regulations, provisions related to appointment of and reporting by Monitoring agency are prescribed under Regulation 41, Regulation 82, Regulation 137, Regulation 262 of ICDR Regulations, for IPO, Rights Issue, Further public offer, SME-IPO respectively. In terms of the provisions :

"(1) If the issue size, excluding the size of offer for sale by selling shareholders, exceeds one hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by a scheduled commercial bank named in the offer document as bankers of the issuer:

Provided that nothing contained in this clause shall apply to an issue of specified securities made by a bank or public financial institution or an insurance company.

(2) The monitoring agency shall submit its report to the issuer in the format specified in Schedule XI on a quarterly basis, till at least ninety five per cent. of the proceeds of the issue, excluding the proceeds raised for general corporate purposes, have been utilised.

(3) The board of directors and the management of the issuer shall provide their comments on the findings of the monitoring agency as specified in Schedule XI.

(4) The issuer shall, within forty five days from the end of each quarter, publicly disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed."

ii. In terms of Regulation 32(6) of LODR Regulations where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency within forty-five days from the end of each quarter.

iii. In terms of Regulation 32(7) of LODR Regulations, where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee <u>on an annual basis</u>, promptly upon its receipt.

6.2. **<u>General Corporate Purpose (GCP) Amount</u>**

Existing Provisions:-

i. Issuer Companies are permitted to specify certain portion of the fresh issue portion as general corporate purpose (GCP) which cannot exceed 25% of the fresh issue. Regulation 2 (1) (r) of ICDR Regulations defines GCP as:

"general corporate purposes" include such identified purposes for which no specific amount is allocated or any amount so specified towards general corporate purpose or any such purpose by whatever name called, in the draft offer document, draft letter of offer, or the offer document:

Provided that any issue related expenses shall not be considered as a part of general corporate purpose merely because no specific amount has been allocated for such expenses in the draft offer document, draft letter of offer or the offer document;"

ii. In terms of Regulation 7(2) of ICDR Regulations, the amount for GCP, as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the issuer and in terms of Regulation 41(2) of ICDR Regulations, proceeds raised for GCP, are not required to be monitored by Monitoring Agency.

6.3. **Issue/concerns**

<u>Monitoring Agency and reporting on utilization of issue proceeds:</u>

i. As per the present framework, issuer can appoint either a public financial institution or a scheduled commercial bank named in the offer document as bankers of the issuer, as a Monitoring Agency to monitor the utilization of issue proceeds.

ii. Since, public financial institution and scheduled commercial bank are entities which are not under regulatory purview of SEBI, it is felt that it will be better suited if role of Monitoring Agency is assigned to an entity regulated by the Board.

iii. Reporting by Monitoring Agency is required only till 95% of the proceeds of the issue are utilized. However, for larger issues even 5% of amount can be substantial, thus, monitoring agency should continue to monitor till 100% of the proceeds is utilized.

iv. As per the current provisions Monitoring Agency report requires to include description of the objects stated in offer document separately, as per the format specified in Schedule XI of ICDR. It is observed that issuers are stating the objects in offer documents, which sometimes also includes description of sub-heads under each of the objects. Thus, it is felt that the format of the report should mandate Monitoring Agency to cover item by item description for all the objects and all the sub-heads (if any) under such objects as stated in the offer document separately. Further, Monitoring

Agency shall also make disclosure regarding the source of information / certifications considered by them for preparation of their report.

v. Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on an annual basis. It is felt that Audit Committee shall review monitoring agency report on a more frequent basis than annually.

<u>GCP Monitoring:-</u>

vi. It is seen that issuer companies are coming up with issues which are very large in size. Thus, with larger issue size, GCP amount also becomes very substantial in terms of absolute numbers. For e.g. in a Rs. 10,000 crore fresh issue, Issuer Company can have Rs. 2,500 crore earmarked under GCP.

vii. As per present requirements under ICDR Regulations, usage of GCP amount is not covered in the monitoring agency report. Given the large size of IPOs, it is felt that there is a need to provide adequate information about the utilization and monitoring of such a large portion of issue proceeds, earmarked under GCP. Thus, in order to ensure greater accountability for the issuer company and bring transparency on usage of GCP proceeds raised through IPO, there is a need for monitoring of GCP and disclosure of utilization of funds so earmarked for GCP as an object of the public issue.

6.4. PMAC Recommendation

i. PMAC recommended that an entity regulated by SEBI may only be assigned role of Monitoring Agency to monitor the utilization of issue proceeds. Accordingly, PMAC recommended that Credit Rating Agencies (CRAs) registered with the Board, be permitted to act as Monitoring Agency.

ii. PMAC recommended that monitoring should continue till 100% of the amount is utilized.

iii. PMAC recommended that format of Monitoring Agency report shall cover item by item description for all the objects as well as for the sub-heads (if any) stated in the offer document separately. Further, the format of Monitoring Agency report shall cover disclosure regarding source of information / certifications considered by Monitoring Agency for preparation of its report.

iv. PMAC recommended that the Audit Committee shall review monitoring agency report on a quarterly basis instead of annually. Accordingly, monitoring agency report shall be placed before audit committee on quarterly basis, promptly upon its receipt.

v. PMAC proposed that the issue proceeds earmarked under GCP may also be brought under monitoring. The utilization of GCP amount by the issuer company may need to be disclosed in the quarterly Monitoring Agency report.

vi. With respect to recommendations on enhancing framework of monitoring of issue proceeds, PMAC suggested that same may not require any public consultation as same is procedural and is for enhancing regulatory framework of supervision. Public comments were sought only for suggestion related to monitoring of GCP amount.

6.5. Public Comments and Analysis

a) <u>Public Comments:</u>

i. 19 entities have provided comments on monitoring of GCP

ii. Majority of the commentators (13 out of 19) have agreed that there is a need for monitoring of GCP and continual disclosures of the utilisation of the funds so raised.

b) Analysis:

i. One disagreeing commentator has suggested that companies should be encouraged to make voluntary disclosure for utilization of GCP amount.

ii. Monitoring of GCP amount will bring more transparency of utilization of issue proceeds and shall ensure greater accountability of issuer.

6.6. **Proposal for consideration of Board**

i. It is proposed that Credit Rating Agencies (CRAs) registered with the Board ,shall henceforth be permitted to act as Monitoring Agency instead of Scheduled Commercial Banks (SCBs) and Public Financial Institutions (PFI).

ii. The monitoring agency shall submit its report to the issuer in the format specified in Schedule XI on a quarterly basis, till entire hundred per cent. of the proceeds of the issue have been utilised.

iii. It is proposed that GCP shall also be brought under ambit of monitoring agency report and details of utilization of GCP amount shall be provided by the issuer company for reporting and disclosures in monitoring agency report. Further, reference in ICDR that monitoring report is excluding the proceeds raised for GCP may be omitted.

ICDR Amendment: Regulation 41, Regulation 82, Regulation 137, Regulation 262 of ICDR Regulations, may be amended for IPO, Rights Issue, Further public offer, SME-IPO, respectively may be amended for aforesaid proposals.

Format of Monitoring Agency report as specified in Schedule XI of ICDR Regulations, shall cover item by item description for all the objects and for sub-heads (if any) stated in the offer document separately. Further, format of Monitoring Agency report shall cover disclosure regarding source of information / certifications considered by Monitoring Agency for preparation of report.

iv. **LODR Amendment**: It is proposed that Regulation 32 (7) of LODR Regulations, may be amended and requirement to place monitoring agency report before audit committee may be amended from “on an annual basis” to “on a quarterly basis”.

v. **Implementation:** The aforesaid amendment shall be effective for all the Draft Red Herring Prospectus (DRHPs) that shall be filed on or after the date of the notification in the official gazette.

7. Proposal

The Board is requested to consider and approve the proposals at para 3.5, 4.5, 5.5, 6.5 and related amendments to SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018, and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The Board is requested to authorize the Chairman to take consequential and incidental steps to give effect to the decisions of the Board as contained in the draft placed at **Annexure III**.

Annexure - I

Discussion paper on 'Review of certain aspects of Public issue framework under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018' is a publicly available document and same is placed on SEBI website.

Annexure-II

(This has been excised for reasons of confidentiality)

Annexure-III

I. Amendments to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), 2018 notified on Jan 14, 2022. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022, is a publicly available document and same is placed on SEBI website.

II. Proposed amendment in Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 :

“in regulation 32, in sub-regulation (7), the words “an annual basis” shall be substituted with the words “a quarterly basis”.”