

Amendments to the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, to streamline appointment of nominee director, expand the definition of ‘green debt security’ and other miscellaneous matters

1. Objective:

The objective of this memorandum is to amend the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (hereinafter referred to as the ‘NCS Regulations’), providing for the following:

- 1.1 inserting a pre-condition for an issuer company making any issue of listed debt securities, to incorporate suitable provision in its Articles of Association, conferring upon its board of directors, the obligation to appoint the nominee of a SEBI registered Debenture Trustee(s) as a director;
- 1.2 expanding the definition of ‘green debt security’ and incidental matters;
- 1.3 prescribing the time period for which a public issue may be kept open; and
- 1.4 miscellaneous changes.

2. Appointment of Director (as nominated by the Debenture Trustee) by an issuer:

Background:

2.1 Rule 18(3)(e) of the Companies (Share Capital and Debentures) Rules, 2014, inter-alia, reads as under:

‘It shall be the duty of every Debenture Trustee to-

.....

(e) appoint a nominee director on the Board of the company in the event of-

(i) two consecutive defaults in payment of interest to the debenture holders; or

- (ii) default in creation of security for debentures; or
- (iii) default in redemption of debentures.

.....’

2.2 The aforementioned obligation was placed upon Debenture Trustees, as mentioned in Regulation 15(1)(e) of the SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as the ‘DT Regulations’), in order to enhance the oversight of the Debenture Trustee over the issuer, thereby improving the governance in the issuer company.

2.3 However, during the course of discussions of the SEBI Working Group (constituted in November, 2020, to review the regulatory framework for Debenture Trustees), Debenture Trustees submitted that they are facing difficulty in appointing nominee director on the Board of the issuer company, owing to the following reasons:

2.3.1. in the absence of any regulatory mandate, the issuer company delays the appointment of a director nominated by the Debenture Trustee on its Board of Directors; and

2.3.2. eligible candidates express reservations in being appointed as nominee director, citing Section 164(2)(b) of the Companies Act, 2013, as it does not distinguish between executive directors and nominee directors when it comes to disqualification rules.

2.4 Section 164(2)(b) of the Companies Act, 2013, provides as follows:

Section 164. Disqualifications for appointment of director

‘(2) No person who is or has been a director of a company which—

.....

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debenture on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

2.5 The said provision of the Companies Act, 2013, disqualifies a person to become a director in any other company, if the company in which he/ she is a director is in default. Hence, there is a disincentive for any person to accept directorship in a defaulted company, on nomination by a Debenture Trustee.

2.6 The concern of the Debenture Trustees are corroborated by data analyzed with respect to appointment of nominee directors, in the event of default by issuer companies, in the last five Financial Years, for certain Debenture Trustees, as summarized below:

Debenture Trustee	No. of cases wherein nominee director was successfully appointed by Debenture Trustee	No. of cases wherein Debenture Trustee was unable to appoint nominee director
Axis Trustee	0	15
Catalyst Trustee	1	14
IDBI Trusteeship	2	12
SBI Trustee	0	1
Vistra ITCL	0	2

2.7 In order to plug the aforementioned anomaly, pursuant to the recommendation of the SEBI Working Group, the matter was referred to the then Secretary, Ministry

of Corporate Affairs (MCA) vide letter dated August 07, 2020, wherein it was proposed by SEBI that the following proviso may be inserted in Section 164(2)(b) of the Companies Act, 2013:

‘Provided further that, the disqualifications as referred to in clause (b) of the sub-section (2) shall not be applicable to the nominee director appointed pursuant to the nomination by a Debenture Trustee registered with SEBI.’

2.8 It may be noted that the Report of the Company Law Committee (March 2022) dated July 28, 2022, favorably considered the proposal of SEBI, as was mentioned in its paragraph 16.17, which reads as under:

‘Based on representations received from SEBI, the Committee recommended that a new proviso be inserted in Section 164(2) to the effect that the disqualification as referred to in clause (b) shall not apply to the nominee directors appointed pursuant to nomination by the Debenture Trustees registered with SEBI.’

2.9 The said provision is expected to be added to the list of amendments to the Companies Act, 2013, shortly.

Proposal:

2.10 In view of the above, it is proposed that while the recommendations of the Companies Law Committee are yet to come into force to resolve the issue as mentioned in paragraph 2.3.2 above, suitable amendments may be carried out to the NCS Regulations as under:

2.10.1 Insertion of sub-regulation (6) under regulation 23 of the NCS Regulations, providing a pre-condition for an issuer company making any issue of listed debt securities to incorporate suitable provision in its Articles of Association

conferring upon its board of directors, the obligation to appoint as a director, any person nominated by the SEBI registered Debenture Trustee, which shall read as under:

‘23(6) If an issuer is a company, it shall ensure that its Articles of Association require its board of directors to appoint the person nominated by its debenture trustee(s), in terms of clause (e) of sub-regulation (1) of regulation 15 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, as a director on its board of directors:

Provided that the issuer whose debt security is listed, as on the date of publication of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Third Amendment) Regulations, 2022 in the official gazette, shall amend its Articles of Association to comply with this provision, on or before September 30, 2023:

Provided further that the issuer, which is in default of payment of interest or repayment of the principal amount in respect of its listed debt securities, shall appoint the person nominated by its debenture trustee(s), as a director on its board of directors, within one month from the date of receipt of nomination from the debenture trustee or the date of publication of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Third Amendment) Regulations, 2022 in the official gazette, whichever is later.’

2.10.2 Insertion of sub-regulation (6A) under regulation 18 of the NCS Regulations, mandating that the trust deed shall contain provision mandating the issuer company to appoint as a director, any person nominated by its Debenture Trustee, which shall read as under:

'18(6A) The trust deed shall contain a provision, mandating the issuer to appoint the person nominated by its debenture trustee(s), in terms of clause (e) of sub-regulation (1) of regulation 15 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, as a director on its board of directors, at the earliest and not later than one month from the date of receipt of nomination from the debenture trustee(s):

Provided that the issuer whose debt security is listed as on the date of publication of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Third Amendment) Regulations, 2022 in the official gazette, shall amend the trust deed to incorporate the above provision, on or before September 30, 2023.'

3. Expanding the definition of 'green debt security' and incidental matters:

Background:

3.1 Regulation 2(1)(q) of NCS Regulations, defines 'green debt security', which reads as under:

'Green debt security' means a debt security issued for raising funds that are to be utilised for project(s) and/ or asset(s) falling under any of the following categories, subject to the conditions as may be specified by the Board from time to time:

- (i) Renewable and sustainable energy including wind, solar, bioenergy, other sources of energy which use clean technology,
- (ii) Clean transportation including mass/ public transportation,
- (iii) Sustainable water management including clean and/ or drinking water, water recycling,
- (iv) Climate change adaptation,

- (v) Energy efficiency including efficient and green buildings,
- (vi) Sustainable waste management including recycling, waste to energy, efficient disposal of wastage,
- (vii) Sustainable land use including sustainable forestry and agriculture, afforestation,
- (viii) Biodiversity conservation, or
- (ix) a category as may be specified by the Board, from time to time.

3.2 Further, Chapter IX of the SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021 (hereinafter referred to as the 'NCS Operational Circular') (updated as on April 13, 2022), specifies the following with reference to issuers of green debt securities:

- (i) Additional disclosure requirements in the offer document;
- (ii) Continuous disclosure requirements in annual report and financial results;
- (iii) Responsibilities of the issuer.

3.3 The concept of 'green debt security' was introduced under the erstwhile Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as the 'ILDS Regulations'), vide circular dated May 30, 2017¹. At the time of review of the ILDS Regulations, the provisions of the erstwhile circular were subsumed and the definition of 'green debt security' was incorporated as Regulation 2(1)(q) in the NCS Regulations, notified on August 9, 2021, and disclosure requirements were prescribed vide NCS Operational Circular.

3.4 Since 2017, when the framework of green debt securities was laid down by SEBI, there have been multiple events in the sustainable finance space around the world, including the Conference of Parties (CoP) where multiple countries have

¹ The provisions of the said circular were subsumed in Chapter IX of the NCS Operational Circular;

undertaken climate pledges. In view of all these, a review in the Indian context is necessitated.

3.5 Accordingly, an agenda for 'Revising Guidelines on Green Debt Securities (GDS)' was taken up in the Corporate Bonds and Securitisation Advisory Committee (CoBoSAC) in its meeting on February 23, 2022. A sub-committee of CoBoSAC was formed which pursuant to deliberations, inter-alia, recommended aligning the SEBI guidelines with the Green Bond Principles (GBP)² published by International Capital Market Association (ICMA)³ which are also recognized by the International Organization of Securities Commissions (IOSCO).

3.6 Thereafter, a consultation paper dated August 04, 2022 was published on the SEBI website, inviting comments on the following proposals:

3.6.1 to amplify the definition of 'green debt security' on the lines of the green bond principles of the ICMA, by including soil remediation, waste to energy plants etc.;

3.6.2 to introduce the concept of blue bonds;

3.6.3 to revisit the disclosure requirements pertaining to green debt securities; and

3.6.4 to reduce the compliance cost of green bond issuers under SEBI Regulations for bond issuance while not creating any perverse incentives that may lead to 'greenwashing'.

3.7 Comments were received from around 25 entities viz. financial institutions, international regulatory bodies, law firms, academics, Environmental, Social and Governance (ESG) professionals and market experts in the ESG domain. The public comments were broadly in agreement with the proposals mentioned in the

² GBPs are globally accepted standards. Recently, the Government of India issued a Sovereign Green Bond Framework which is aligned with the ICMA's GBPs.

³ ICMA is a not-for-profit association (Verein) under the Swiss Civil Code. ICMA currently has over 620 members active in all segments of international debt capital markets in 65 jurisdictions globally.

consultation paper. Further, certain comments were received requesting SEBI to provide a framework on curbing greenwashing. For a wider reach, SEBI also enlisted the services of Civis⁴, a Non-Governmental organization involved in public policy consultation.

3.8 A table containing our proposals, a summary of the public comments and CoBoSAC's recommendation thereon in its meeting dated November 16, 2022 is enclosed herewith (**Annex - I**).

3.9 CoBoSAC was in agreement with the proposal to include the following categories in the definition of green debt security:

3.9.1 Pollution prevention and control (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention/ minimization, waste reduction, waste recycling and energy/ emission efficient waste to energy), water treatment plants and sectors mentioned under the India Cooling Action Plan⁵.

3.9.2 Circular economy adapted products, production technologies and processes (such as the design and introduction of reusable, recyclable and refurbished materials, components and products, circular tools and services) and/ or eco efficient products.

3.10 CoBoSAC also noted and agreed with the inclusion of three specific sub-categories within the definition of green debt security., viz. 'Blue' bonds, 'Yellow' bonds and 'Transition bonds'. Blue bonds are modes of sustainable finance raised for sustainable maritime sector including sustainable fishing, sustainable

⁴ As per <https://www.civis.vote>, Civis has undertaken projects in collaboration with NITI Aayog, Ministry of Heavy Industries and Public Enterprises, Food Safety and Standards Authority of India, etc.

⁵The India Cooling Action Plan (ICAP) by Ministry of Environment, Forest & Climate Change provides an integrated vision towards cooling across sectors encompassing, inter alia, reduction of cooling demand, refrigerant transition, enhancing energy efficiency and better technology options by 2037-38 through forging synergies with on-going programmes/ schemes of the Government.

water management etc. Yellow bonds are modes of sustainable finance raised for solar energy generation and the associated upstream and downstream industries. Transition bonds refers to securities used for raising funds for transitioning to a more sustainable form of operations.

3.11 On the proposal to include Transition bonds as one of the sub-categories within the definition of green debt security, it was noted by members of CoBoSAC that the said proposal is in line with India's vision to move towards a greener economy by achieving the climate targets determined by India in the Paris Climate Deal in COP 21 in 2015 and again revised at the COP 26 at Glasgow in 2021. However, it was recommended by the members to assign a specific nomenclature/ reference to Transition bonds denoting them as 'GB-T', to enable the potential investors to differentiate Transition bonds from other categories of green debt securities.

3.12 CoBoSAC also suggested including "digital technology" within the definition of green debt security, as utilisation of technology will reduce the usage of paper, promote work from home and aid in curbing emissions. The suggestion was analyzed and it was noted that the said concept is very broad and could cover purchase of any IT product in the name of green technology. This in turn might lead to misuse and consequently may lead to greenwashing. Moreover, the existing definition of 'green debt security' includes, 'renewable and sustainable energy including wind, solar, bioenergy, other sources of energy which use clean technology', and digital technology may not be consistent with this grouping and could lead to misrepresentation. Hence, no additional change in this context may be required.

3.13 Further, disclosure requirements for issue and listing of green debt securities prescribed in Chapter IX of the NCS Operational Circular may be updated in order to align the disclosure requirements to the green bond principles published by ICMA. A summary of the indicative revisions is enclosed herewith as **Annex - II**.

3.14 Further, as the ambit of green debt security is being expanded, there is a necessity to address the concerns relating to greenwashing, for which an advisory is proposed to be issued by way of a circular, covering certain do's and don'ts relating to green debt securities to avoid instances of greenwashing (enclosed herewith as **Annex - III**).

Proposal:

3.15 In view of the above, it is proposed that the extant definition of 'green debt security' given in Regulation 2(1)(q) of NCS Regulations, may be replaced, as under:

'2(1)(q) 'Green debt security' means a debt security issued for raising funds, subject to the conditions as may be specified by the Board from time to time, to be utilised for project(s) and/ or asset(s) falling under any of the following categories:

- (i) renewable and sustainable energy including wind, bioenergy, other sources of energy which use clean technology,
- (ii) clean transportation including mass/ public transportation,
- (iii) climate change adaptation including efforts to make infrastructure more resilient to the impact of climate change, and information support systems, such as climate observation and early warning systems,
- (iv) energy efficiency including efficient and green buildings,
- (v) sustainable waste management including recycling, waste to energy, efficient disposal of wastage,
- (vi) sustainable land use including sustainable forestry and agriculture, afforestation,
- (vii) biodiversity conservation,

- (viii) pollution prevention and control (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention/ minimization, waste reduction, waste recycling and energy efficient or emission efficient waste to energy), and sectors mentioned under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change,
- (ix) circular economy adapted products, production technologies and processes (such as the design and introduction of reusable, recyclable and refurbished materials, components and products, circular tools and services) and/ or eco-efficient products,
- (x) blue bonds, which comprise of funds raised for sustainable water management including clean water, water recycling, sustainable maritime sector including sustainable shipping, sustainable fishing, fully traceable sustainable seafood, ocean energy and ocean mapping,
- (xi) yellow bonds, which comprise of funds raised for solar energy generation and the upstream industries and downstream industries associated with it,
- (xii) transition bonds, which comprise of funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions, and
Explanation: 'Intended Nationally Determined Contributions' refer to the climate targets determined by India under the Paris Agreement at the Conference of Parties 21 in 2015 and the Conference of Parties 26 in 2021, as revised from time to time.
- (xiii) any other category, as may be specified by the Board, from time to time.'

4. Prescribing the time period for subscription in a public issue:

Background:

4.1 Presently, there is no stipulation in the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021 (NCS Regulations), with respect to the duration for

which a public issue of debt securities⁶ or Non-convertible Redeemable Preference Shares (NCRPS),⁷ can be kept open.

4.2 As per analysis of data for issue opening date and issue closing date for the public issue of debt securities in the last 5 financial years⁸, it was observed that out of approx. 122 issuances, the minimum time for which issues were kept open ranged from 1 day to 64 days, with an average of 20 days. The break-up of minimum, maximum and average number of days is provided below:

Financial Year	No. of issuances	Minimum no. of days, issue was open	Maximum no. of days, issue was open	Avg. no. of days, issue was open
2018-2019	25	1	30	17
2019-2020	35	1	31	22
2020-2021	18	2	64	22
2021-2022	28	2	27	19
2022-2023	16	7	27	20
Total	122	-	-	-

⁶ 'Debt securities' have been defined under Regulation 2(1)(k) of the NCS Regulations, as non-convertible debt securities with a fixed maturity period which create or acknowledge indebtedness and includes debentures, bonds or any other security whether constituting a charge on the assets/ properties or not, but excludes security receipts, securitized debt instruments, money market instruments regulated by the Reserve Bank of India, and bonds issued by the Government or such other bodies as may be specified by the Board;

⁷ 'non-convertible redeemable preference share' has been defined under Regulation 2(1)(w) of the NCS Regulations, as a preference share which is redeemable in accordance with the relevant provisions of the Companies Act, 2013 and does not include a preference share which is convertible into or exchangeable with equity shares of the issuer at a later date, at the option of the holder or not;

⁸For FY2022-2023, till September 30, 2022.

4.3 The data was expanded to include public issuances of debt securities from 2008 to September 30, 2022, and the average number of days for which the issues were open is given below:

No. of days public issue was open (range)	No. of such issuances
1	13
2 - 7	45
8 - 14	39
15 - 21	55
22 - 28	65
29 - 42	58
43 - 66	5
Total	280

As can be observed from the above table, more than 50% (i.e. 152 out of 280) of the issuances were open for up to 21 days i.e. approx. 3 weeks.

4.4 In the absence of any specifications, public issue of debt securities is open for just one day or as much as 2 months in some cases. This leads to inefficiency in the price discovery process and causes delays in the listing process, which are avoidable.

4.5 It is pertinent to mention that for specified securities (equity shares and convertibles), the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations), inter alia, provides that a public offer shall be kept open for at least three working days and not more than ten working days⁹.

⁹ See Regulations 46 and 142 of the ICDR Regulations.

In case of a revision in the price band, the issuer shall extend the bidding (issue) period disclosed in the red herring prospectus, for a minimum period of three working days, subject to a maximum of ten working days.

Further, in case of force majeure, banking strike or similar circumstances, the issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the red herring prospectus (in case of a book built issue) or the issue period disclosed in the prospectus (in case of a fixed price issue), for a minimum period of three working days, subject to a maximum of ten working days.

4.6 In view of the above, it was proposed to introduce provisions in the NCS Regulations, prescribing the minimum and maximum time period for which a public issue should be kept open. The proposal was discussed by CoBoSAC members and it was recommended that, in order to maintain uniformity, timelines may be specified for public issue of debt securities and NCRPS, in line with the requirements for specified securities, as prescribed under the ICDR Regulations.

Proposal:

4.7 It is proposed that a timeline of a minimum of three working days and a maximum of ten working days may be prescribed for keeping open a public issue of debt security or NCRPS. Additionally, exceptions to the said timeline may be incorporated for changes in price/ yield and force majeure events, as applicable for specified securities.

4.8 Accordingly, a new Regulation 33A may be inserted in the NCS Regulations, as follows:

'33A. Period of subscription

(1) A public issue of debt securities or non-convertible redeemable preference shares shall be kept open for a minimum of three working days and a maximum of ten working days.

(2) In case of a revision in the price band or yield, the issuer shall extend the bidding (issue) period disclosed in the offer document, for a minimum period of three working days.

Provided that the overall bidding (issue) period shall not exceed the maximum number of days, as provided in sub-regulation (1).

(3) In case of force majeure, banking strike or similar circumstances, the issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the offer document.

Provided that the overall bidding (issue) period shall not exceed the maximum number of days, as provided in sub-regulation (1).'

5. Miscellaneous changes:

5.1 Clarification on regulatory fees for perpetual instruments:

Background:

5.1.1. Regulation 2(1)(x) of the NCS Regulations, defines, 'non-convertible securities' as, 'debt securities, non-convertible redeemable preference shares, perpetual non-cumulative preference shares, perpetual debt instruments and any other securities as specified by the Board';

5.1.2. Clause 3 of Schedule VI to the NCS Regulations, inter alia, prescribes the fees to be paid, to the designated stock exchange at the time of listing of

non-convertible securities (issued on private placement basis) in terms of these regulations. It reads as under:

‘In respect of every private placement of non-convertible securities and Commercial Paper which are listed in terms of these regulations, a non-refundable fee of five thousand rupees shall be paid to the designated stock exchange at the time of listing of such securities.’

5.1.3. Chapter V of the NCS Regulations, provides the general conditions to be complied with by issuers desirous of listing perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments.

5.1.4. As perpetual instruments fall within the definition of ‘non-convertible securities’, regulatory fees are payable at the time of listing of such instruments and are being paid by issuers through stock exchange(s) since notification of the NCS Regulations. However, Chapter V of the NCS Regulations do not specifically mention the same.

Proposal:

5.1.5. In view of the above, it is proposed that in order to bring in clarity, sub-regulation (5) may be inserted in regulation 50 of the NCS Regulations, as given below:

‘The designated stock exchange shall collect a regulatory fee as specified in Schedule VI to these regulations from an issuer of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments at the time of their listing.’

5.2. Clarity on provision for payment of fees for public issues:

Background:

5.2.1. Clause 1 of Schedule VI to the NCS Regulations, inter alia, prescribes the fees to be paid, to the Board along with draft offer document, by the lead manager.

5.2.2. In terms of regulation 13 (1) of the NCS Regulations, the obligation for payment of fees lies upon the issuer which is desirous of making a public issue of debt securities and/ or non-convertible redeemable preference shares, and not on the merchant banker.

Proposal:

5.2.3. In view of the above, it is proposed that in order to bring in clarity, clause 1 of Schedule VI to the NCS Regulations may be replaced, as given below:

‘In respect of every draft offer document filed in terms of these regulations, a non-refundable fee of 0.00025% of issue size, subject to the minimum of twenty-five thousand rupees and maximum of fifty lakh rupees, shall be payable to the Board.’

5.3. Removal of mandate to make an advertisement regarding right to exercise option to recall or redeem, prior to maturity:

Background:

5.3.1. Regulation 15 of the NCS Regulations, inter alia, provides the issuer of non-convertible security, with an option to include the right to recall or right of investor to redeem a security prior to its maturity, in accordance with the

terms of issue and detailed disclosure in this regard having been made in the offer document, including date from which such right is exercisable, period of exercise (which shall not be less than three working days) and redemption amount (including the premium or discount at which such redemption shall take place).

5.3.2. The said Regulation also places an obligation on the issuer to make an advertisement in an English national daily and regional daily, having wide circulation, at the place where the registered office of the issuer is situated, indicating the details of such rights and eligibility of the holders who are entitled to avail such right.

5.3.3. SEBI has received feedback from the market participants that the said requirement adds to the costs of the issuers without any significant benefit to the investors; especially, in light of the fact that the issuer is already required to do the following:

- a. send notice to all the eligible holders of such non-convertible securities and debenture trustee at least twenty-one days before the date from which such right is exercisable (regulation 15(6) of the NCS Regulations);
- b. provide a copy of such notice to the stock exchange(s) where such non-convertible securities are listed, for wider dissemination (regulation 15(7) of the NCS Regulations); and
- c. maintain a functional website and display all notices concerning debt securities on the same (regulation 62 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations)).

Proposal:

5.3.4. In view of the above, it is proposed that the requirement to issue advertisement may be removed, as it would assist in reducing the cost of issuance for the Issuers and increase efficiency.

5.3.5. Further, the mode of sending notice to the investors may be specified, in line with the Listing Regulations; soft copy of the notice to be sent to the holders who have registered their email address(es) either with the listed entity or with any depository; hard copy of the notice to be sent to those holders of non-convertible securities who have not so registered.

5.3.6. Additionally, it may be clarified that the requirement of sending copy of such notice to the stock exchange(s) for wider dissemination would imply, dissemination on stock exchange(s) website.

5.3.7. Hence, Regulations 15(6) and 15(7) of the NCS Regulations, may be amended as follows:

'15 (6) The issuer shall send a notice regarding recall or redemption of non-convertible securities, prior to maturity, to all the eligible holders of such securities and the debenture trustee(s), at least twenty-one days before the date from which such right is exercisable, and the notice to the eligible holders shall be sent in the following manner:

(i) the soft copy of the notice shall be sent to those eligible holders who have registered their email address(es) either with the listed entity or with any depository, and

- (ii) the hard copy of the notice shall be sent to those eligible holders, who have not so registered their email address(es) either with the listed entity or with any depository.

15 (7) The issuer shall simultaneously provide a copy of such notice to the stock exchange(s) where such non-convertible securities of the issuer are listed, for dissemination on their website.'

6. Proposal:

6.1 The Board is therefore requested to:

6.1.1 consider and approve the proposals at paragraphs 2.10, 3.15, 4.7 - 4.8, 5.1.5, 5.2.3 and 5.3.4 - 5.3.7 above and the consequent amendments to the NCS Regulations, as given below:

6.1.1.1 Appointment of Director (as nominated by Debenture Trustee) by an Issuer:

a. A new sub-regulation (6A) may be inserted under regulation 18 of the NCS Regulations, as follows:

'18(6A) The trust deed shall contain a provision, mandating the issuer to appoint the person nominated by its debenture trustee(s), in terms of clause (e) of sub-regulation (1) of regulation 15 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, as a director on its board of directors, at the earliest and not later than one month from the date of receipt of nomination from the debenture trustee(s):

Provided that the issuer whose debt security is listed as on the date of publication of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Third Amendment) Regulations, 2022 in the official gazette, shall amend the trust deed to incorporate the above provision, on or before September 30, 2023.'

- b. A new sub-regulation (6) may be inserted under regulation 23 of the NCS Regulations, as follows:

'23(6) If an issuer is a company, it shall ensure that its Articles of Association require its board of directors to appoint the person nominated by its debenture trustee(s), in terms of clause (e) of sub-regulation (1) of regulation 15 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, as a director on its board of directors:

Provided that the issuer whose debt security is listed, as on the date of publication of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Third Amendment) Regulations, 2022 in the official gazette, shall amend its Articles of Association to comply with this provision, on or before September 30, 2023:

Provided further that the issuer, which is in default of payment of interest or repayment of the principal amount in respect of its listed debt securities, shall appoint the person nominated by its debenture trustee(s), as a director on its board of directors, within one month from the date of receipt of nomination from the debenture trustee or the date of publication of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Third

Amendment) Regulations, 2022 in the official gazette, whichever is later.’

6.1.1.2 Expanding the definition of ‘green debt security’ and incidental matters:

Regulation 2(1)(q) of NCS Regulations, may be replaced with the following:

‘2(1)(q) ‘Green debt security’ means a debt security issued for raising funds, subject to the conditions as may be specified by the Board from time to time, to be utilised for project(s) and/ or asset(s) falling under any of the following categories:

- (i) renewable and sustainable energy including wind, bioenergy, other sources of energy which use clean technology,
- (ii) clean transportation including mass/ public transportation,
- (iii) climate change adaptation including efforts to make infrastructure more resilient to the impact of climate change, and information support systems, such as climate observation and early warning systems,
- (iv) energy efficiency including efficient and green buildings,
- (v) sustainable waste management including recycling, waste to energy, efficient disposal of wastage,
- (vi) sustainable land use including sustainable forestry and agriculture, afforestation,
- (vii) biodiversity conservation,
- (viii) pollution prevention and control (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention/ minimization, waste reduction, waste recycling and energy efficient or emission efficient waste to energy), and sectors

mentioned under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change,

- (ix) circular economy adapted products, production technologies and processes (such as the design and introduction of reusable, recyclable and refurbished materials, components and products, circular tools and services) and/ or eco-efficient products,
- (x) blue bonds, which comprise of funds raised for sustainable water management including clean water, water recycling, sustainable maritime sector including sustainable shipping, sustainable fishing, fully traceable sustainable seafood, ocean energy and ocean mapping,
- (xi) yellow bonds, which comprise of funds raised for solar energy generation and the upstream industries and downstream industries associated with it,
- (xii) transition bonds, which comprise of funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions, and
Explanation: 'Intended Nationally Determined Contributions' refer to the climate targets determined by India under the Paris Agreement at the Conference of Parties 21 in 2015 and the Conference of Parties 26 in 2021, as revised from time to time.
- (xiii) any other category, as may be specified by the Board, from time to time.'

6.1.1.3 Prescribing the time period for subscription in a public issue:

A new regulation 33A may be inserted in the NCS Regulations, as follows:

'33A. Period of subscription

(1) A public issue of debt securities or non-convertible redeemable preference shares shall be kept open for a minimum of three working days and a maximum of ten working days.

(2) In case of a revision in the price band or yield, the issuer shall extend the bidding (issue) period disclosed in the offer document, for a minimum period of three working days.

Provided that the overall bidding (issue) period shall not exceed the maximum number of days, as provided in sub-regulation (1).

(3) In case of force majeure, banking strike or similar circumstances, the issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the offer document.

Provided that the overall bidding (issue) period shall not exceed the maximum number of days, as provided in sub-regulation (1).'

6.1.1.4 Clarification on regulatory fees for perpetual instruments:

A sub-regulation (5) may be inserted under regulation 50 of the NCS Regulations, as given below:

'The designated stock exchange shall collect a regulatory fee as specified in Schedule VI to these regulations from an issuer of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments at the time of their listing.'

6.1.1.5 Clarity on provision for payment of fees for public issues:

Clause 1 of Schedule VI to the NCS Regulations may be replaced, as given below:

‘In respect of every draft offer document filed in terms of these regulations, a non-refundable fee of 0.00025% of issue size, subject to the minimum of twenty-five thousand rupees and maximum of fifty lakh rupees, shall be payable to the Board.’

6.1.1.6 Removal of mandate to make an advertisement regarding right to exercise option to recall or redeem, prior to maturity:

Regulations 15(6) and 15(7) of the NCS Regulations, may be amended as follows:

‘15(6) The issuer shall send a notice regarding recall or redemption of non-convertible securities, prior to maturity, to all the eligible holders of such securities and the debenture trustee(s), at least twenty-one days before the date from which such right is exercisable, and the notice to the eligible holders shall be sent in the following manner:

- (i) the soft copy of the notice shall be sent to those eligible holders who have registered their email address(es) either with the listed entity or with any depository, and
- (ii) the hard copy of the notice shall be sent to those eligible holders, who have not so registered their email address(es) either with the listed entity or with any depository.

15(7) The issuer shall simultaneously provide a copy of such notice to the stock exchange(s) where such non-convertible securities of the issuer are listed, for dissemination on its website.'

6.1.2 Authorize the Chairperson to take necessary steps, wherever necessary with consequential and appropriate changes, as may be required.

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