Relaxation in cooling-off period between Two Qualified Institution Placements (QIPs)

1. **Objective**

   1.1. This memorandum seeks to inform the Board with regard to steps taken on the proposal to amend the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations") in relation to, -

   a) Relaxation with respect to the requirement of minimum 6 months' time gap between 2 consecutive QIP issues.

2. **Relaxation in the requirement of minimum 6 months' time gap between 2 successive QIPs**

Background

2.1 The Board Memorandum on the aforesaid topic was circulated to all the Board Members vide email dated May 19, 2020 for consideration and approval through circulation (**Flag- A**).

2.2 The following was proposed:

Regulation 172(3) of ICDR, 2018 may be amended as follows:

'The issuer shall not make any subsequent qualified institutions placement until the expiry of ~~six months~~ ***two weeks*** *from the date of the prior qualified institutions placement made pursuant to one or more special resolutions'*

2.3 The approval and the comments of the Board members on the above proposal along with SEBI's reply are consolidated at **Flag B**.

2.4 One member 'X'[1] suggested inserting a proviso to Reg. 172(3) that before making the subsequent QIP offer after 2 weeks, in terms of section 42(3) of Companies Act.

2.5 Section 42(3) of Companies Act, 2013 (Cos Act) states:

'No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.'

2.6 Section 42 of the Cos Act pertains to private placement. Since QIP is a form of private placement, companies would invariably have to comply with the various provisions of the Cos Act including section 42(3) of the Cos Act. Thus, there may not be any need to specify the same again amendment. The final proposed amendments to ICDR Regulations are placed at **Flag C.**

2.7 Pursuant to Board approval, the amendments to ICDR Regulations are in the process of being notified. This memorandum is placed for information of the Board.

[1] Name changed for reasons of confidentiality

Relaxation in cooling-off period between Two Qualified Institution Placements (QIPs)

1. Objective

1.1. This memorandum seeks approval of the Board to amend the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”) in relation to, -

a) Relaxation with respect to the requirement of minimum 6 months’ time gap between 2 consecutive QIP issues.

2. Relaxation in the requirement of minimum 6 months’ time gap between 2 successive QIPs

Background

2.1 Presently in terms of Reg. 172(3) of ICDR Regulations, an issuer cannot make a subsequent QIP until the expiry of 6 months from the date of previous QIP. SEBI has been receiving requests from issuer companies seeking exemption / waiving off this requirement of 6 months’ cooling-off period between two QIP issues to facilitate meeting their urgent need of funds.

Recommendation of Primary Market Advisory Committee (PMAC)

2.2 The proposal was placed for deliberation in the PMAC meeting held on January 17, 2020. To address concerns of the issuer companies and to support the raising of capital, following option was put forward for consideration:

Relaxation may be provided for successive QIPs within 6 months of previous QIP issue, in cases where terms of placement for the subsequent tranches/issue are disclosed upfront in the special resolution.

The committee suggested that SEBI may seek public comments on the above proposal, and thereafter the matter may be brought back to PMAC for further deliberation.

3. <u>Public Consultation</u>

3.1 As recommended by PMAC, a discussion paper was placed on the website of SEBI on March 16, 2020 seeking public comments on the proposal till April 30, 2020 **(Annexure I)**.

3.2 Comments were received from 14 entities including merchant bankers, stock exchanges and individuals (placed at **Annexure-II).**

3.3 The Summary of the comments is as follows:

3.3.1 Majority of the commentators were in agreement with the proposal to either eliminate or reduce the existing time gap requirement of 6 months between two QIP issues as it may benefit issuers who are in dire need of quick funds.

3.3.2 One commentator suggested that there should be a minimum cooling off period of two weeks since ICDR Regulations on QIP rely on the average of weekly high and low closing prices of equity shares during two weeks preceding the relevant date to determine the floor price of a QIP issue. Such cooling off period may enable the market to factor in the previous QIP and aid in determination of floor price and fair market price of the equity of the issuer. Also, there were suggestions of a minimum cooling-off period of 1 month and 3 months, and also based on market capitalization.

3.3.3 As regards terms of placement, most commentators were of the opinion that upfront disclosure of terms of future QIP issues in the current QIP's shareholders' resolution may be difficult to achieve given that majority of these factors are commercial in nature, and are typically finalized close to the fund requirements of the issuer. Even if the issuers were to disclose upfront, such disclosures may only be limited to the extent of stating the issuers' intent to raise money in tranches, maximum amount that may be raised in one or more tranches, and/or the maximum no. of securities that may be issued in one or more tranches.

3.3.4 One commentator suggested issuers may raise money in multiple tranches relying on the same special resolution. He stated that since SEBI has express authority under Section 24(1) of the Companies Act, 2013 to make regulations on issue of securities by listed companies, SEBI may change regulations to allow QIPs through tranches and may also discuss with the Ministry of Corporate Affairs (MCA) for issuing a clarification or amendment to Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("PAS Rules") recognizing this exception for QIPs by listed companies in line with the regime for issue of non-convertible debentures.

3.3.5 Another suggested that each QIP issuance should be treated distinct from the previous QIP issuance, i.e. An issuer should be permitted to undertake a subsequent QIP issue and not a subsequent QIP 'tranche', and a separate special resolution should be required for each QIP issuance. Adopting a tranche-based issuance mechanism may lead to concerns regarding amendment of Section 42 of Companies Act, 2013 read with Rule 14 of the Companies PAS Rules, which pertains to Private Placements and hence applicable to QIPs.

4. Further Deliberation by PMAC

Considering the various comments received on the discussion paper, the following points were placed before PMAC for further deliberation:

4.1 Easing the restriction of 6 months' cooling-off period between two QIPs will facilitate listed entities who are in dire need of funds to quickly access capital market funds as and when the need arises. A minimum cooling-off period of two weeks may be accepted as it would help in determination of floor price of a QIP issue as well as provide the time for the market to factor in the previous QIP issue.

4.2 The suggestion that 'A separate special resolution should be required for each QIP issuance' appears to be in line with the Companies PAS Rules.

4.3 Pursuant to further deliberations in PMAC by circulation, the minutes were approved on May 12, 2020. The final recommendations of PMAC are as follows:

a) The 6 months' cooling-off restriction between two QIPs may be dispensed. A subsequent QIP may be initiated after expiry of two weeks from the date of the previous QIP.

b) There were two distinct views on the need for separate resolutions for the subsequent QIPs, PMAC recommends that SEBI should request MCA to issue the necessary clarifications.

5. <u>Proposal</u>

5.1 On the basis of above, following proposals are put up before the Board through circulation

5.1.1 On the basis of PMAC's recommendations, SEBI has written to MCA on the point 4.3 (b) requesting MCA to issue necessary clarifications in this regard. With regard to 4.3 (a), the following is proposed:

Regulation 172(3) of ICDR, 2018 may be amended as follows:

'The issuer shall not make any subsequent qualified institutions placement until the expiry of ~~six months~~ ***two weeks*** *from the date of the prior qualified institutions placement made pursuant to one or more special resolutions'*

5.2 The Board is requested to consider and approve the above proposal and the draft amendment in the ICDR Regulations and authorize the Chairman to take consequential and incidental steps to give effect to the decisions of the Board.

Flag B

(This has been excised for reasons of confidentiality)

Annexure -1

(Discussion Paper available on SEBI website)

Annexure – II

(This has been excised for reasons of confidentiality)

FLAG C

THE GAZETTE OF INDIA

EXTRAORDINARY

PART – III – SECTION 4

PUBLISHED BY AUTHORITY

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the , 2020

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2020

No. …………………….. ─ In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2020.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018,-
    I. in regulation 172, in sub-regulation (3) for the words “six months” the words “two weeks” shall be substituted.

AJAY TYAGI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Footnotes:

1. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 was published in the Gazette of India on September 11, 2018, vide notification No. SEBI/LAD-NRO/GN/2018/31.

2. The Principal Regulation was subsequently amended on -

   (a) December 31, 2018 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018, vide notification No. SEBI/LAD-NRO/GN/2018/57.

   (b) March 29, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/05.

   (c) April 5, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/08.

   (d) July 29, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/29.

   (e) September 23, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/35.

(f) December 06, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/42.

(g) December 26, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Sixth Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/47.

(h) January 01, 2020 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Seventh Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2020/01.

(i) May 08, 2020 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2020, vide notification No. SEBI/LAD-NRO/GN/2020/11.

(j) April 17, 2020 by the Securities and Exchange Board of India (Regulatory Sandbox) (Amendment) Regulations, 2020 vide notification No. SEBI/LAD-NRO/GN/2020/10.

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