Facilitating ease of doing business for listed and to be listed entities - Amendments to SEBI (ICDR) Regulations, 2018 & SEBI (LODR) Regulations, 2015.

1. Objective

1.1. This memorandum seeks approval of the Board for facilitating ease of doing business for listed and to be listed entities through amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations**" or "**ICDR**") and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**" or "**LODR**") with respect to the following:

1.1.1. ICDR Regulations:

i. Inclusion of equity shares received on conversion of fully paid-up Compulsory Convertible Securities and depository receipts for the purpose of Minimum Promoters' Contribution.

ii. Inclusion of non-individual shareholders and Promoter group entities towards Minimum Promoters' Contribution.

iii. Thresholds for increase or decrease in issue size triggering fresh filing of draft offer documents.

iv. Flexibility to extend the bid/offer closing date on account of force majeure events by minimum one day.

v. Review of requirement of 1% security deposit in public/rights issue of equity shares.

1.1.2. LODR Regulations:

i. Applicability of the provisions of the LODR regulations on the basis of average market capitalization.

ii. Filling up of vacancies of key managerial personnel.

iii. Timeline for prior intimation of board meetings.

iv. Gap between meetings of the Risk Management Committee.

2. Background

2.1. An 'Expert Committee to facilitate ease of doing business and harmonization of ICDR and LODR Regulations' ("**Expert Committee**" or "**Committee**") was set

up to inter-alia review the ICDR and LODR Regulations from the point of view of facilitating ease of doing business.

2.2. Further, SEBI, pursuant to its press release dated October 4, 2023, invited suggestions from the public and regulated entities ("**stakeholders**") to simplify, ease and reduce the cost of compliance under various SEBI regulations, including ICDR & LODR Regulations.

2.3. Based on deliberations, the Expert Committee submitted a report containing interim recommendations for facilitating ease of doing business under ICDR & LODR Regulations.

2.4. A consultation paper and an addendum, dated January 11, 2024 & dated February 02, 2024, respectively (Consultation Paper and the Addendum to be referred to as '**the Consultation Paper**' in this Board Memorandum), were placed on the SEBI website seeking public comments on the interim recommendations of the Expert Committee. The Consultation Paper is annexed to this Board Memorandum (**Annexure I)**.

2.5. In response to the aforesaid Consultation Paper, comments were received from 30 entities including listed entities, law firms, industry bodies, Professionals / Professional firms and general public. The recommendation-wise compilation of public comments received is placed at **Annexure II**.

2.6. The comments received from the public were discussed in the Expert Committee. After deliberations, the Committee noted that most of the public comments received were in favour of the interim recommendations. Some commenters while agreeing with the recommendations have given additional suggestions. The Committee accepted one such suggestion and has made an additional recommendation with respect to Minimum Promoter Contribution.

2.7. The existing regulatory provisions, stakeholder suggestions, interim recommendations of the Committee, public comments & analysis and the final proposal to the Board are discussed in detail in the following paragraphs.

3. <u>Facilitating ease of doing business under the ICDR Regulations</u>

3.1. **Inclusion of equity shares received on conversion or exchange of fully paid-up Compulsory Convertible Securities and depository receipts for the purpose of Minimum Promoters' Contribution**

3.1.1. **Existing Provisions**

3.1.1.1. In terms of Regulation 14 of ICDR, the promoters of the issuer shall hold at least twenty percent of the post-issue capital towards the minimum promoters' contribution ("MPC") under lock-in.

3.1.1.2. In terms of Regulation 8 of ICDR, equity shares arising out of the conversion of fully paid-up compulsorily convertible securities held for a period of at least one year before draft red herring prospectus ("DRHP"), are considered eligible for offer for sale ("OFS").

3.1.1.3. In terms of Regulation 15 of ICDR, dealing with provisions regarding securities ineligible for MPC, equity shares arising out of the conversion of fully paid-up compulsorily convertible securities that were acquired in the preceding one year prior to the filing of DRHP, are considered ineligible for MPC.

3.1.2. **Suggestions received from stakeholders**

3.1.2.1. Equity shares acquired pursuant to the conversion of convertible securities that have been held for a period of at least one year prior to the date of filing the DRHP should also be eligible for minimum promoters' contribution.

3.1.3. **Recommendations of the Expert Committee**

3.1.3.1. Equity shares arising pursuant to the conversion of fully paid-up, compulsorily convertible securities that have been held for a period of at least one year prior to the filing of the DRHP should be eligible for minimum promoters' contribution. However, the compulsorily convertible securities should be converted into equity shares prior to the filing of the red herring prospectus ("RHP"). This is based on the rationale that since the fully paid up convertible securities had been held for a period of at least one year prior to the filing of the DRHP,

the capital had been in existence like in case of equity shares held for one year at the time of DRHP.

3.1.4. **Public Comments on recommendations and Analysis**

3.1.4.1. 16 commentators have offered comments on the proposal. The responses with respect to the proposal are tabulated below:

Proposal	Agree	Partially agree	Disagree	Total	Agree / Partially agree %
Whether equity shares received upon conversion of fully paid-up compulsory convertible securities held for a period of at least 1 year prior to filing of DRHP should be eligible for MPC?	11	5	0	**16**	**100%**

Detailed analysis of the aforementioned comments from public is placed at **Annexure III**.

3.1.4.2. The commentators have agreed to the proposal stating that in case of fully paid up compulsorily convertible securities held for a period of one year prior to DRHP, the capital had been in existence like in case of equity shares held for one year. Therefore, equity shares received on conversion of such convertibles should be considered eligible for MPC like they are considered eligible for OFS.

3.1.4.3. Majority of the commenters have agreed with the recommendations of the Expert Committee.

3.1.5. **Proposal for consideration of the Board**

3.1.5.1. It is proposed to amend ICDR to include equity shares arising pursuant to the conversion of fully paid-up, compulsorily convertible securities that have been held for a period of at least one year prior to the filing of the DRHP eligible for MPC.

3.2. Non-individual shareholders and Promoter group entities to be permitted to contribute towards Minimum Promoters' Contribution without being identified as a promoter

3.2.1. Existing Provisions

3.2.1.1. In terms of Regulation 14 of ICDR, the promoters of the issuer shall hold at least 20% of the post-issue capital towards the MPC.

In case the post-issue shareholding of the promoters is less than 20%, alternative investment funds (AIF), foreign venture capital investors (FVCI), scheduled commercial banks (SCBs), public financial institutions (PFIs), insurance companies registered with Insurance Regulatory and Development Authority of India are permitted to meet shortfall in MPC up to maximum of 10% without being identified as promoter(s).

The requirement of MPC shall not apply in case an issuer does not have any identifiable promoter.

3.2.2. Suggestions received from stakeholders

3.2.2.1. It was suggested that any public non-individual shareholder who would continue to hold at least 5% of the post-offer equity share capital should be permitted to meet the shortfall in the minimum promoters' contribution.

3.2.3. Recommendations of the Expert Committee

3.2.3.1. It was deliberated that companies promoted by entrepreneurs often have several rounds of funding prior to listing of their equity shares on the stock exchanges. In such situations, the promoters' holding may fall short of the minimum promoter contribution i.e., 20% of the post-offer equity share capital. While ICDR permits certain categories of investors to contribute equity shares held by them towards the shortfall in the MPC, further flexibility could be provided.

3.2.3.2. It was recommended by the Expert Committee that any non-individual shareholder holding 5% or more of the post-issue equity share capital

should be permitted to contribute towards the shortfall in MPC, subject to the existing maximum cap of 10%, without being identified as a promoter. These shareholders could include entities like body corporates, private companies, partnerships, LLPs, etc.

3.2.4. **Public Comments on recommendations and Analysis**

3.2.4.1. 18 commentators have offered comments on the proposal. The responses with respect to the proposal are tabulated below:

Proposal	**Agree**	**Partially agree**	**Disagree**	**Total**	**Agree / Partially agree %**
Whether non-individual shareholders should be permitted to contribute towards shortfall in MPC to the extent of 10%, without being identified as a promoter?	7	8	3	**18**	**83%**

Detailed analysis of the aforementioned comments from public is placed at **Annexure III**.

3.2.4.2. Majority of the commenters have agreed / partially agreed with the recommendations of the Expert Committee.

3.2.4.3. Commentators while agreeing with the proposal also made few additional suggestions. Based on the suggestions received in these public comments the Committee made the following additional recommendation:

Suggestion received to consider promoter group shareholding for MPC was discussed and the Expert Committee was of the view that permitting promoter group entities to contribute for MPC will widen the scope for the promoter to meet the shortfall in MPC.

In terms of present provisions of ICDR, promoter and promoter group have separate definitions and promoter group inter alia includes immediate relative of the promoter i.e. spouse, parent, sibling or child of the person or spouse and also include certain non-individual entities like body corporates where promoter or its immediate relative

hold more than 20% equity shares etc.

Under ICDR, requirement to comply with MPC is only on the promoter(s) and as per present provisions, promoter group entities are not permitted to contribute for MPC. Therefore, this suggestion can be accepted to provide flexibility to meet MPC shortfall and promoter group entities (individual or non-individual) other than the promoter(s) may be considered as permitted category of shareholders, to meet the shortfall in MPC, without being identified as promoter(s).

3.2.5. **Proposal for consideration of the Board**

3.2.5.1. It is proposed that following shareholders may also be allowed to contribute to meet the shortfall in MPC, subject to existing maximum of 10% of the post-issue capital without being identified as promoter(s):

- any non-individual public shareholder holding at least 5% of the post-issue capital
- any entity (individual or non-individual) forming part of promoter group other than the promoter(s).

3.3. <u>**Thresholds for increase or decrease in issue size triggering fresh filing of draft offer document**</u>

3.3.1. **Existing Provisions**

3.3.1.1. Paragraph (1)(f) of Schedule XVI of ICDR prescribes changes post filing of draft offer document that would require a fresh filing of a draft offer document, as follows:

- <u>In case of a fresh issue</u>: any increase or decrease in the estimated issue size by more than 20% of the estimated issue size; or
- <u>In case of an offer for sale</u>: any increase or decrease in either the number of shares offered for sale or the estimated issue size, by more than 50%;or
- <u>In case of an issue comprising of both fresh issue and offer for sale</u>: the respective limits as above shall apply.

3.3.2. **Suggestions received from stakeholders**

3.3.2.1. Clarify the term "estimated issue size" in a fresh issue, in the context of the size of the initial public offering disclosed in Rupee terms.

3.3.2.2. Consider that the increase or decrease in the size of the offer for sale should be based on only one of the following criteria (and not both), i.e. either of (a) estimated issue size; or (b) the number of securities, as disclosed in the DRHP.

3.3.3. **Recommendations of the Expert Committee**

3.3.3.1. The "estimated size of the issue" for a fresh issue is based on the Rupee value of the size of the issue, as disclosed in either the DRHP or the cover letter filed with the SEBI at the time of filing the DRHP. It can be clarified that size of the issue will be measured in Rupee terms.

3.3.3.2. In order to facilitate ease of doing business and to provide greater flexibility, the offer for sale (OFS) size can be based on either the estimated issue size (in Rupee value) or the number of shares, as disclosed in the DRHP, and not on both criteria.

Illustration: Presently, in terms of ICDR provisions, an issuer is required to make a fresh filing of the draft offer document when there is a change in the offer for sale by more than 50%, based on either criteria i.e. the number of shares offered for sale or the estimated issue size of the OFS.

To illustrate, assume an issue where the issuer has disclosed in the DRHP that the selling shareholder intends to make an OFS of 1 crore equity shares. In this case, let us assume that the issuer has paid fees expecting an issue size (involving only an OFS) of Rs. 1,000 crore (1 crore shares X Rs. 1000 per share). The issue size in rupee terms is not disclosed in DRHP. Now, if there is a scenario where due to change in market conditions, the demand for the issue reduces and share price expectations goes down from Rs.1000 to Rs. 700 and the issuer / selling shareholder also wants to reduce the number of shares in OFS by 30% (i.e., to 70 lakh shares), the issue size in rupee

terms reduces to Rs 490 crore. Thus, the issuer will then technically not able to comply with the relevant ICDR provision as issue size would get reduced by 51% in Rupee terms due to reduction in OFS size by 30% in terms of no. of shares. The following table illustrates change in issue size due to change in pricing and reduction in OFS size (in terms of no. of shares):

	OFS as per DRHP	**Revised OFS**
Expected price per share (A)	Rs 1000/-	Rs 700/-
No. of shares proposed to be offered in OFS (Issue size is in terms of number of shares) (B)	1 Cr.	70 lakh
Issue size in terms of Rs. (A*B)	1000 Cr.	490 Cr.
Difference from DRHP (in terms of no. of shares being offered)	NA	30%
Difference from DRHP (in terms of issue of size in Rs.)	NA	51%

Therefore, the proposal is to apply ± 50% change in OFS based on only one of the criteria (either issue size in number of shares or issue size in rupees) as disclosed in DRHP.

3.3.4. **Public Comments on recommendations and Analysis**

3.3.4.1. 16 commentators have offered comments on the proposal. The responses with respect to the proposal are tabulated below:

Proposal	**Agree**	**Partially agree**	**Disagree**	**Total**	**Agree / Partially agree %**
Whether the thresholds for increase or decrease in issue size which mandate re-filing of draft offer documents should be considered as follows: (a) In case of fresh issue - in terms of rupee value (b) In case of OFS - In terms of either number of shares or issue size (in rupee value) as disclosed in DRHP	12	3	1	**16**	**94%**

Detailed analysis of the aforementioned comments from public is placed at **Annexure III**.

3.3.4.2. Majority of the commenters have agreed with the recommendations of the Expert Committee.

3.3.5. **Proposal for consideration of the Board**

3.3.5.1. It is proposed to amend Schedule XVI of ICDR Regulations as follows:

- For estimated issue size it is proposed to state that estimated issue size will be in Rupee value.
- For offer for sale it is proposed to include that any increase or decrease shall be considered in either the number of shares offered for sale or the estimated issue size (in Rupee value), based on only one of the criteria as disclosed in the draft offer document.

3.4. **Flexibility to extend the bid/offer closing date on account of force majeure events by minimum one day instead of present requirement to extend by minimum three days**

3.4.1. **Existing Provisions**

3.4.1.1. In terms of Regulations 46 of ICDR, in case of force majeure, banking strike or similar circumstances, the issuer may, for reasons recorded in writing, extend the bidding (issue) period, for a minimum period of three working days, subject to maximum period of 10 days.

3.4.1.2. Similar requirement is also prescribed under Regulation 142, 203, 266 and paragraph (9) of Schedule XIII ICDR.

3.4.2. **Suggestions received from stakeholders**

3.4.2.1. Currently, ICDR permits issuer companies to extend the bidding period disclosed in the offer document for a minimum period of three working days in case of force majeure events, banking strike or similar circumstances.

It is suggested that the minimum period for extension should be reduced to one working day in case of force majeure events, banking strike or similar circumstances.

3.4.3. **Recommendations of the Expert Committee**

3.4.3.1. ICDR mandates that in case of revision in the price band, bidding period shall be extended for a minimum period of three working days. The rationale in such cases is to allow investors absorb the information regarding new price band and make an informed decision.

3.4.3.2. However, in case of force majeure/ banking strike, there is no change in price band. Mandating extension of bidding period by minimum three working days in such scenarios would result in locking substantial funds for additional time. Thus, it may not be a fit scenario to mandate extension by minimum three working days in force majeure events/ banking strike.

Accordingly, it is recommended that Issuer companies shall be permitted to extend the issue period, depending on the circumstances, by minimum one working day in case of force majeure events, banking strike or similar unforeseen circumstances.

3.4.4. **Public Comments on recommendations and Analysis**

3.4.4.1. 17 commentators have offered comments on the proposal. The responses with respect to the proposal are tabulated below:

Proposal	**Agree**	**Partially agree**	**Disagree**	**Total**	**Agree / Partially agree %**
Whether flexibility can be provided to extend the bid/offer closing date on account of force majeure events by minimum one working day instead of present requirement to extend by minimum three working days?	14	3	0	**17**	**100%**

Detailed analysis of the aforementioned comments from public is placed at **Annexure III**.

3.4.4.2. Majority of the commenters have agreed with the recommendations of the Expert Committee.

3.4.5. **Proposal for consideration of the Board**

3.4.5.1. It is proposed that in case of force majeure, banking strike or similar unforeseen circumstances, the issuer may be permitted to extend the

issue period, depending on the circumstances, by minimum one working day instead of minimum three working days as required presently.

3.5. **Review of requirement of 1% security deposit in public/rights issue of equity shares as prescribed under ICDR Regulations**

3.5.1. **Existing Provisions**

3.5.1.1. In terms of the Regulation 38, 80, 135, 197 and 259 of ICDR, for public issues (including SME issues) and rights issues, an issuer is required to deposit with the designated stock exchange, an amount calculated at the rate of 1% of the issue size available for subscription (security deposit). This security deposit amount is refundable or forfeitable in the manner specified by the Board.

3.5.2. **Suggestions received from stakeholders**

3.5.2.1. It was suggested that the requirement of 1% security deposit for public/rights issues may be done away with.

3.5.3. **Recommendations of the Expert Committee**

3.5.3.1. The requirement of 1% security deposit was put in place for public/rights issues so that an issuer resolves investor complaints relating to the transaction such as for refund of application money, allotment of securities and dispatch of certificates. However, considering various reforms and present framework for public/rights issue such as application through ASBA, UPI mode of payment, mandatory allotment in demat etc., the issues relating to post-issue investor complaints regarding refund of application money, non-dispatch of certificates does not arise.

3.5.3.2. Further, from the data it is observed that average number of complaints have reduced post implementation of T+3 listing in IPOs. Also, it is observed that majority of complaints are regarding delay in unblocking of ASBA funds by SCSBs, for which SEBI vide circular dated March 16, 2021 has already prescribed a mechanism to deal with such complaints.

3.5.3.3. The requirement of 1% security deposit imposes cost on the issuers and doing away with the requirement will result in ease of doing business and reduce the cost of compliance for issuers accessing the primary market.

3.5.4. **Public Comments on recommendations and Analysis**

3.5.4.1. Three commentators have offered comments on the proposal. The responses with respect to the proposal are tabulated below:

Proposal	Agree	Partially agree	Disagree	Total	Agree / Partially agree %
Whether the requirement of 1% security deposit in public/rights issue of equity shares as prescribed under ICDR Regulations should be removed?	3	0	0	**3**	**100%**

3.5.4.2. All commenters have agreed with the recommendations of the Expert Committee.

3.5.5. **Proposal for consideration of the Board**

3.5.5.1. It is proposed that 1% Security deposit requirement for public issue and rights issue may be done away with.

4. Facilitating ease of doing business under the LODR Regulations

4.1. Applicability of the regulations on the basis of market capitalization

4.1.1. **Existing provisions:** In terms of regulation 3(2) of the LODR Regulations, the provisions which become applicable to a listed entity on the basis of market capitalization criteria (ranking) shall continue to apply even if the market capitalization of the listed entity falls and remains below the applicability threshold.

4.1.2. **Suggestions received from stakeholders:**

4.1.2.1. Applicability of the regulations should not be based on a single day's market capitalization (currently calculated as on 31st March).

4.1.2.2. There should be a sunset clause to reduce the burden on companies

whose market capitalization falls and continues to remain below the threshold.

4.1.2.3. In case a company is listed on multiple exchanges, the highest ranking in terms of market capitalization on any one of the exchanges should be considered for the purpose of applicability of the regulations.

4.1.3. **Recommendations of the Expert Committee:**

4.1.3.1. **Average market capitalization:**

4.1.3.1.1. Instead of calculating the ranking based on market capitalization of entities as on 31st March, it is recommended to consider 31st December as the cut-off date and determine the ranking on that date based on average market capitalization figures of listed entities during the preceding 6 months (July 1 to December 31).

4.1.3.1.2. The rationale for determination of the ranking on 31st December is to provide a time period of three months (or beginning of immediate next financial year[1], whichever is later) before the relevant provisions of the LODR Regulations (market capitalization based compliance requirements) become applicable to a listed entity for the first time or after an interim break period.

4.1.3.1.3. As regards the time required for reporting of BRSR (or assurance under BRSR Core), it is recommended that every listed entity, to which reporting requirements become applicable for the first time on the basis of its ranking as on December 31st or after an interim break, shall be required to put in place systems and processes to capture the data to be reported within a period of three months from December 31st (or the beginning of the immediate next financial year, whichever is later) and thereafter a glide path of one year may be provided for BRSR reporting (or assurance under BRSR Core) in the Annual Report. For example, a listed entity entering the top 1000 list for the first time

[1] *Relevant for few companies following a financial year different from April – March.*

on December 31, 2024 will be required to put in place systems and processes for the purposes of BRSR by April 1, 2025 and shall be required to disclose BRSR in the Annual Report of the Financial Year 2025-26 (to be prepared for the AGM to be held on or before September 30, 2026).

4.1.3.2. **Highest ranking on the basis of market capitalization across Stock Exchanges**

4.1.3.2.1. In case a listed entity has equity shares listed on more than one recognized stock exchange, then the highest ranking in any one of the recognized stock exchange(s) shall be considered for the purpose of determining the applicability of market capitalization based provisions.

4.1.3.3. **Sunset clause for compliance with the provisions applicable on the basis of market capitalization:**

4.1.3.3.1. If the market capitalization of a listed entity falls such that its ranking remains outside the applicability range for three consecutive years, then the listed entity need not comply with such provisions of the regulations that are not applicable to it due to its new ranking.

4.1.3.3.2. It is also clarified that such provisions would become applicable to the listed entity in future if its ranking or market capitalization changes resulting in the entity entering into the list of top 100/250/1000/2000, as the case may be, prepared by the Stock Exchanges on December 31 of any subsequent calendar year.

4.1.4. **Public Comments on recommendations and Analysis:**

4.1.4.1. The responses to the questions posed in the Consultation Paper with respect to the aforestated recommendations are tabulated below:

Question	Agree	Partially agree	Disagree	Total	Agree / Partially agree %
Whether the applicability of relevant provisions (please see table at para 1.3.1 of the Report) of the LODR Regulations should be based on average market capitalization of 6 months instead of the current requirement of single day's market capitalization?	11	11	1	**23**	**96%**
Whether listed entities should get atleast 3 months' time for first time compliance (or compliance after an interim break (please see foot note 2 at page 7 of the Report)) with relevant provisions becoming applicable on the basis of market capitalization?	17	6	0	**23**	**100%**
Whether you agree with the time period proposed for first time reporting (or reporting after an interim break) of BRSR & assurance under BRSR Core?	20	2	0	**22**	**100%**
Whether the highest ranking of the listed entity across stock exchanges should be considered for determining the applicability of relevant provisions of the LODR (market capitalization based compliance requirements)?	17	3	3	**23**	**87%**
Whether a sunset clause of 3 years should be introduced for cessation of applicability of relevant provisions due to fall in market capitalization (or ranking) of the listed entity resulting in the entity remaining below the applicability threshold?	12	7	4	**23**	**83%**

4.1.4.2. A detailed analysis of these comments from the public is placed at **Annexure V**. Majority of the commenters have agreed with the recommendations of the Expert Committee.

4.1.4.3. Average market capitalization:

4.1.4.3.1. Some commenters have suggested to consider the first 6 months' of the financial year while others have suggested taking 12 months' average market capitalization to remove the effect of seasonal fluctuations in the price of a scrip.

4.1.4.3.2. While the price of the scrip of a listed entity may exhibit seasonal fluctuations due to various reasons which in turn impacts the market capitalization, the ranking of a listed entity normally does not exhibit such seasonal variations over a period of time. Therefore, the proposal to have the list based on average market capitalization for a period of 6 months would minimize the impact of changes to the rank of a listed entity, if any, due to variations in the market capitalization.

4.1.4.3.3. The Committee had recommended 6 months' average from 1st July to 31st December as the list is proposed to be prepared on 31st December of every calendar year. Therefore, it would be more appropriate to consider the average market capitalization of the last 2 quarters of the calendar year instead of the earlier quarters. Any time period of more than 6 months' would be too long and may not actually reflect the latest standing of the listed entity in the markets.

4.1.4.4. Sunset clause:

4.1.4.4.1. Few commenters have suggested faster applicability of the sunset provisions (i.e., within 1 or 2 years of fall in the ranking).

4.1.4.4.2. At present, the provisions of the LODR Regulations that become applicable on the basis of market capitalization continue forever (till it remains listed) even if the market capitalization of the listed entity falls and remains below the applicability threshold. The Committee recommended a sunset clause of 3 consecutive years of the ranking remaining outside the applicability threshold for the sunset clause to kick-in. The period of 3 years is consistent with sunset clause prescribed in the LODR for cessation of applicability of the corporate governance provisions to listed entities with paid-up capital and net worth below the thresholds. Further, investors with a reasonable investment horizon of 3 years should have the benefit of continuity in disclosures.

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

It is proposed to amend the LODR Regulations to the following effect:

4.1.5.1. Introduce the concept of average market capitalization (July to December) to determine the applicability of relevant provisions of the LODR Regulations.

4.1.5.2. Provide 3 months' time for first time compliance with relevant provisions and compliance becoming applicable after an interim break.

4.1.5.3. Additional time for first time reporting (and after an interim break) of

BRSR and assurance under BRSR Core

4.1.5.4. Introduction of sunset clause of 3 years for cessation of applicability of relevant provisions of the LODR Regulations which are based on market capitalization.

4.2. Filling up of vacancies of key managerial personnel

4.2.1. **Existing provisions:** Any vacancy in the office of Key Managerial Personnel (KMPs viz., MD / CEO, Whole-time Director, Manager, CFO) of a listed entity has to be filled up at the earliest and in any case not later than 3 months from the date of such vacancy.

4.2.2. **Suggestions received from stakeholders:**

4.2.2.1. More time may be provided to fill up the vacancy of KMPs as it is difficult to find a replacement within 3 months.

4.2.2.2. The time involved in obtaining regulatory approvals for appointments need to be excluded from the timeline of 3 months.

4.2.3. **Recommendations of the Expert Committee:** The Committee recommended that the time limit for filling up of vacancy of key managerial personnel which involves obtaining approvals of regulatory or government or statutory authorities should be increased from 3 months to a maximum of 6 months under regulations 26A(1) & (2) of the LODR Regulations. However, the Committee also emphasized that listed entities need to initiate the process for seeking such approvals at the earliest so as to ensure timely compliance.

4.2.4. **Public Comments on recommendations and Analysis:**

4.2.4.1. The responses to the questions posed in the Consultation Paper with respect to the aforestated recommendations are tabulated below:

Question	Agree	Partially agree	Disagree	Total	Agree / Partially agree %
Whether the time limit for filling up of vacancy of key managerial personnel requiring approvals of regulatory / government / statutory authorities should be increased from 3 months to 6 months?	10	10	6	26	**77%**

4.2.4.2. Detailed analysis of these comments from public is placed at **Annexure V**. Most of the commenters have either agreed or partially

agreed with the recommendations.

4.2.4.3. Commenters have suggested that the timeline for filling up the vacancy of KMPs should be increased from 3 months to 6 months for all listed entities irrespective of the fact whether regulatory or statutory or government approvals are required.

4.2.4.4. In listed entities where approval of external authorities is not required, the board of directors are authorized to fill up such vacancies. Further, the regulations also permit listed entities to fill up such vacancies on an interim basis subject to compliance with the provisions of law. Therefore, the suggestion to extend the timeline for all listed entities may not be accepted.

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

It is proposed to amend the LODR to provide an extended timeline to fill up vacancies of KMPs requiring approval of regulatory or statutory or government authorities i.e., within a period of 6 months from the date of such vacancy.

4.3. Timeline for prior intimation of board meetings

4.3.1. **Existing provisions:** Regulation 29 of the LODR requires a listed entity to give prior intimation to stock exchanges about the meetings of its board of directors in which certain types of proposals are to be considered viz., financial results, buyback of securities, fund raising, alteration of nature of securities, date of payment of interest or redemption etc. The timeline for giving prior intimation varies from two working days to a maximum of 11 working days.

4.3.2. **Suggestions received from stakeholders:**

4.3.2.1. To shorten the timeline for disclosure of prior intimation for board meetings which are to consider (i) financial results or (ii) any alteration in the nature / rights / privileges of securities or (iii) any alteration in the date of payment of interest or redemption of debentures or bonds, in order to align it with the requirements for debt securities.

4.3.2.2. Five days and 11 working days can be reduced to two working days as the markets have matured.

4.3.2.3. Borrowings / short-term borrowings (especially commercial papers) which do not involve issuance of any security may be excluded from the mandatory prior intimation requirements for fund raising.

4.3.3. **Recommendations of the Expert Committee:**

4.3.3.1. For maintaining uniformity, the timeline for prior intimation of board meetings may be harmonized to two working days for all types of events enumerated in regulation 29. Considering today's digital age and technological advancement where dissemination of information is fast and is absorbed quickly by the markets, prior intimation of two working days would be reasonable.

4.3.3.2. Regulation 29(1)(d) may be modified to clarify that prior intimation would be required only for such type of fund-raising proposals that involve issue of securities and for determination of issue price. It is also suggested to exclude issuance of security receipts, securitized debt instruments & money market instruments from the requirements of prior intimation under regulation 29(1)(d) of the LODR Regulations as these are distinct instruments which may have little or no impact on the rights and privileges of other security holders of the listed entity.

4.3.3.3. Prior intimation for determination of issue price (two working days in advance) may not be required for a qualified institutions placement (QIP) issue.

It may be noted that Regulation 29(1)(d) of the LODR inter-alia requires prior intimation of board meeting for fund raising through QIP (1st intimation) and also for determination of issue price (2nd intimation). While it is suggested to retain the 1st intimation on fund raising through QIP, the subsequent intimation for determination of issue price is proposed to be done away with, as the floor price for a QIP is as per pricing guidelines prescribed in the ICDR Regulations. An illustration of the intimations given for QIP under the LODR is given below:

Illustration

Company	Prior intimation of board meeting for fund raising (1st intimation)	Board meeting approving fund raising through QIP	Date of Board Meeting to open the issue (Relevant date under ICDR for floor price)	Issue opening date	Issue Closing date	Date of intimation under Reg.29(2) for fixation of issue Price (2nd intimation)	Date of Fixation of issue price (after 2 clear working days from 2nd intimation)
XYZ	12/09/2023	15/09/2023	21/11/2023	21/11/2023	24/11/2023	21/11/2023	24/11/2023

From the table above, it may be noted that the second intimation for determination of issue price does not add any value to the information already available to the markets as the floor price is as per guidelines prescribed in the ICDR Regulations (relevant date is the date of the meeting in which the board of directors or the committee of directors duly authorized by the board decides to open the proposed issue). The issue is being kept open for two working days for determination of issue price because of the requirement of 2nd intimation under the LODR. Therefore, it is proposed to be done away with.

4.3.4. **Public Comments on recommendations and Analysis:**

4.3.4.1. The responses to the questions posed in the Consultation Paper with respect to the aforestated recommendations are tabulated below:

Question	Agree	Partially agree	Disagree	Total	Agree / Partially agree %
Whether the timeline for prior intimation of board meetings scheduled to consider different matters (under regulation 29 of LODR) be harmonized to 2 working days?	21	3	1	25	**96%**
Whether prior intimation for fund raising under regulation 29(1)(d) of the LODR be restricted only for fund-raising involving issue of securities?	22	1	1	24	**96%**
Whether the requirement of prior intimation for determination of issue price for qualified institutions placement done in compliance with the ICDR Regulations be dispensed with?	23	0	0	23	**100%**

4.3.4.2. Detailed analysis of the aforementioned comments from public is placed at **Annexure V**. Majority of the commenters have agreed with the recommendations of the Expert Committee.

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

It is proposed to amend the LODR Regulations to give effect to the following:

4.3.5.1. The timeline for prior intimation of board meetings for all types of events enumerated therein shall be two working days. This shall provide flexibility to listed entities to schedule board meetings and reduce the uncertainty / volatility in the price movement of the scrip in anticipation of the outcome of the board meeting.

4.3.5.2. Prior intimation would be required only for such type of fund-raising proposals that involve issue of securities and for determination of issue price.

4.3.5.3. Prior intimation shall not be required for determination of issue price for fund raising done through qualified institutions placement in compliance with the ICDR Regulations. This shall enable listed entities to raise funds quickly through a QIP and also ensure faster allotment of shares for the investors.

4.4. <u>Gap between meetings of the Risk Management Committee</u>

4.4.1. **Existing provisions:** The Risk Management Committee (currently mandatory for top 1000 listed entities) shall meet twice a year and the meetings shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings.

4.4.2. **Suggestions received from stakeholders:**

4.4.2.1. The requirement that the gap between two meetings shall not be more than 180 days is eventually causing listed entities to hold more than 2 meetings in a year in certain scenarios. [For example, a listed entity holding the meeting of RMC on 1st April 2023 and the next meeting on 1st October 2023 has to necessarily hold another meeting on 30th March 2024 in order to ensure that the gap between two consecutive meetings is not more than 180 days. In this case, the listed entity has to conduct 3 meetings in a year as against the regulatory requirement of 2 meetings in a year]. Therefore, it may be

modified to 2 meetings in a financial year or to be held on a half-yearly basis.

4.4.3. **Recommendations of the Expert Committee:** The Committee recommended that the maximum gap between the meetings of risk management committee may be increased to 210 days.

4.4.4. **Public Comments on recommendations and Analysis:**

4.4.4.1. The responses to the questions posed in the Consultation Paper with respect to the aforestated recommendations are tabulated below:

Question	**Agree**	**Partially agree**	**Disagree**	**Total**	**Agree / Partially agree %**
Whether the maximum permitted gap between two consecutive meetings of risk management committee be increased from 180 days? If yes, what should be the maximum permitted gap between consecutive meetings of the risk management committee?	15	5	4	24	**83%**

4.4.4.2. Detailed analysis of the aforementioned comments from public is placed at **Annexure V**. Majority of the commenters have agreed with the recommendations of the Expert Committee.

4.4.4.3. Few commenters have suggested to do away with the provision of maximum gap between the meetings of the risk management committee.

4.4.4.4. The Expert Committee deliberated on the comments received from public. Considering the importance of risk management for listed entities, the Expert Committee noted that it is imperative for the risk management committee to meet regularly and therefore did not agree with the suggestion to do away with the provision of maximum gap between the meetings of the risk management committee.

4.4.4.5. It may also be noted that the Expert Committee's proposition of 210 days addresses the practical difficulties faced by listed entities while ensuring that the gap between the meetings is not too long and unreasonable.

4.4.5. **Proposal for consideration of the Board:** It is proposed to increase the

maximum permitted gap between the meetings of the risk management committee from 180 days to 210 days.

5. Proposed amendments to the ICDR and LODR Regulations

5.1. The proposals mentioned at paragraphs 3.1.5, 3.2.5, 3.3.5, 3.4.5 & 3.5.5 above require amendments to the ICDR Regulations and the proposals mentioned at paragraphs 4.1.5, 4.2.5, 4.3.5 & 4.4.5 above would require amendments to the LODR Regulations. The proposed amendments to ICDR and LODR Regulations are placed at **Annexure IV** and **Annexure VI**, respectively.

6. Proposal to the Board

6.1. The Board is requested to consider and approve the proposals mentioned above at paragraph 5 above and the proposed amendments to the ICDR and LODR Regulations.

6.2. The Board is also requested to authorize the Chairperson to take consequential and incidental steps to give effect to the decisions of the Board.

Encl.:

1. Annexure I – Consultation Paper (*Available on SEBI website*)
2. Annexure II – Public Comments (*Excised for reasons of confidentiality*)
3. Annexure III – Analysis of Public Comments with respect to Interim Recommendations on the ICDR Regulations
4. Annexure IV – Amendments to the ICDR Regulations (*This shall be notified at a later date*)
5. Annexure V – Analysis of Public Comments with respect to Interim Recommendations on the LODR Regulations
6. Annexure VI – Amendments to the LODR Regulations (*This shall be notified at a later date*)

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Annexure III

ANALYSIS OF PUBLIC COMMENTS WITH RESPECT TO INTERIM RECOMMENDATIONS ON THE ICDR REGULATIONS

1. **Inclusion of equity shares received on conversion or exchange of fully paid-up Compulsory Convertible Securities and depository receipts for the purpose of Minimum Promoters' Contribution:**

1.1. 16 commentators have offered comments on the proposal. 11 out of 16 commentators have agreed to the proposal that equity shares received pursuant to conversion of fully paid up compulsory convertible securities should be considered for MPC since the capital had been in existence like in case of equity shares held for one year at the time of DRHP and this flexibility should be for all categories of investors eligible for MPC.

1.2. Five commentators have partially agreed to the proposal and while agreeing have made following suggestions:

- Securities should be converted at the time of DRHP
- Conversion should be mandated after filing of DRHP but before filing of UDRHP.
- Every converted shares to be mandatory placed under lock-in.

1.3. Analysis: Majority of the commentators while agreeing to the proposal have suggested that conversion should be mandated after filing of DRHP but before RHP. Commentators have provided rationale that the ability for a shareholder to convert the securities should be closer to the launch of IPO as this provides flexibility to shareholders in case the IPO is not pursued further (due to market or other conditions).

Under the present ICDR Regulations, in case of offer for sale (OFS) the conversion or exchange is required be completed prior to filing of the offer document (i.e. red herring prospectus in case of a book built issue and prospectus in case of a fixed price issue). Hence, in respect to equity shares acquired pursuant to conversion or exchange of fully paid up compulsory convertible securities, same provisions as prescribed for OFS may be considered for MPC.

2. Non-individual shareholders to be permitted to contribute towards Minimum Promoters' Contribution without being identified as a promoter

2.1. 18 commentators have offered comments on the proposal. Seven commentators out of 18 have agreed to the proposal, eight commentators have partially agreed to the proposal and three commentators have not agreed to the proposal.

2.2. Eight commentators who have partially agreed to the proposal have made following suggestions while agreeing to the proposal:

- Contribution by permitted entities for MPC may be capped to 5%.
- Such contribution may not be subject to lock-in.
- The requirement of at least 5% shareholding for contribution may be dispensed.
- Instead of 5% limit may be reduced to 1%.
- 5% capital may be considered pre-offer instead of post-offer.
- Individual shareholders should also be permitted.
- Shareholders who form part of promoter group should also be permitted.

2.3. Three commentators who have not agreed to the proposal have provided following comments:

- Without responsibilities no such contribution may be contemplated.
- Define public non-individual shareholders and category of investors that can be part of it.
- If no entity or individual holds 20% or more post-offer equity capital or the right to appoint majority of its Board, such an issuer should be categorized as a company with no identifiable promoters.

2.4. Analysis: While the majority of the commentators have agreed to the proposal, the suggestions/ view of commentators who have dissented or partially agreed were discussed in the Committee. Based on the discussion following points have emerged:

- Presently under ICDR Regulations, in case the post-issue shareholding of the promoters is less than twenty per cent. other permitted shareholders can contribute to MPC up to 10%. The present proposal was to provide

flexibility to the issuer by expanding permitted shareholders category eligible to contribute for MPC. Reducing present limit of MPC contribution by permitted shareholders to 5% from existing 10%, shall not be ease of doing business for issuer.

- MPC as a concept means twenty per cent. of the post-issue capital held by promoters or other permitted shareholders shall be locked-in for a period of 18 months / 3 years (as applicable) from the date of allotment in the initial public offer. Therefore, the suggestion that such contribution may not be subject to lock-in cannot be accepted as it is contrary to MPC concept.

- The proposal is to provide flexibility to address situations where founders'/ promoters' holdings gets diluted over a period of time and the existing equity share capital is mostly held by private equity or entities which are not eligible to contribute for MPC under ICDR, and thus the issuer company faces difficulties to comply with MPC requirement.

  While considering non-individual shareholders, 5% threshold is kept to ensure that shareholders having significant equity share capital in the issuer are permitted to provide for MPC, as this will ensure that such shareholders continues to remain invested in the company post listing and shall provide comfort to public investors that pre-IPO investors having significant holding continue with the company post listing. Hence, reducing or dispensing this 5% threshold for non-individual shareholders may not be accepted.

  Since, MPC requires lock-in of shares post listing (18 months / 3years, as the case may be), shareholders other than the promoters who contribute to MPC continues to stay invested with the company for a longer period (all pre-IPO shareholding is otherwise locked in for 6 months). Thus, such non-individual shareholders bear this additional lock-in when they give their shares for MPC.

- Commentators while agreeing with the proposal also made few additional suggestion. Suggestion received to consider promoter group shareholding for MPC was discussed and the Expert Committee was of the view that permitting promoter group entities to contribute for MPC will widen the scope for the promoter(s) to meet the shortfall in MPC.

  In terms of present provisions of ICDR, promoter and promoter group have separate definitions and promoter group inter alia includes immediate relative of the promoter i.e. spouse, parent, sibling or child of the person or spouse and also include certain non-individual entities like body corporates where promoter or its immediate relative hold more than 20% equity shares etc.

  Under ICDR, requirement to comply with MPC is only on the promoter(s) and as per present provisions, promoter group entities are not permitted to contribute for MPC. Therefore, this suggestion can be accepted to provide flexibility to meet MPC shortfall and promoter group entities (individual or non-individual) other than the promoter(s) may be considered as permitted category of shareholders, to meet the shortfall in MPC, without being identified as promoter(s).

- Instant proposal is to provide flexibility for such issuers where the issuer has identifiable promoter and they do not have sufficient equity share capital for MPC. However, in cases where issuer does not have identifiable promoters the requirement for MPC does not arise and the issuer is permitted to do IPO under ICDR without any requirement of MPC.

3. <u>Thresholds for increase or decrease in issue size triggering fresh filing of draft offer document</u>

3.1. 16 commentators have offered comments on the proposal. 12 out of 16 commentators have agreed to the proposal, three commentators have partially agreed to the proposal and one commentator has not agreed to the proposal.

3.2. One commentator has disagreed to the proposal and has mentioned that if the size of the fresh issue has been disclosed in the draft offer documents in terms of number of shares, flexibility should be allowed for considering the number of shares for determining thresholds for change.

3.3. Analysis: Since issue proceeds to be received for fresh issue are linked with the objects of the issue, any increase / decrease in amount shall have an impact on the objects disclosed in the offer document. Even if the fresh issue has been disclosed in the draft offer documents in terms of number of shares, the issuer is required to disclose issue size in terms of rupee value under the objects of the issue section and utilization of this amount under objects.

3.4. Given the fact that the objects of the issue are likely to get impacted only based on the amount raised and has no linkage with the number of shares being offered, it is more appropriate that in case of fresh issue, change in estimated issue size is considered based on amount (in Rupee value).

4. Flexibility to extend the bid/offer closing date on account of force majeure events by minimum one day instead of present requirement to extend by minimum three days

4.1. 17 commentators have offered comments on the proposal. 14 out of 17 commentators have agreed to the proposal. Three commentators have partially agreed to the proposal and while agreeing have made following suggestions:

- Flexibility should be provided to issuer company to extend the offer “up to 3 working days”
- Considering the efforts and logistics, it may be considered to extend the closing date by minimum 2 working days.
- There should be a linkage to force majeure event.

4.2. Analysis: Under proposed recommendation, issuer is provided with flexibility to extend the issue period, depending on the circumstances, by minimum one working day instead of minimum three working days (present requirement

under ICDR), in case of force majeure events, banking strike or similar circumstances.

Therefore, issuer has flexibility to decide the period for which issuer wants to extend the closing date of issue period, subject to the total bidding/issue period not exceeding ten working days, as regulations does not restricts same. So in case the issuer want to extend the issue period by two or more days (up to ten days), depending on the circumstances, issuer is permitted to do so.

5. **Review of requirement of 1% security deposit in public/rights issue of equity shares as prescribed under the ICDR Regulations**

5.1. Three commentators have offered comments on the proposal and all three commentators have agreed to the proposal that SEBI should do way with 1% security deposit for public issue and rights issue.

5.2. No comments have been received specifically on the question whether security deposit requirement may be done away with for both main board issues and SME issues or only for main board issues.

5.3. Analysis: As dispensing with the requirement of security deposit will reduce cost burden on the issuer, it is felt that smaller issuers coming to market will be benefitted more by this relaxation compared to the larger issuer having access to capital. Therefore, proposal to do away with requirement of security deposit may be considered for all issue types i.e. for main board and SME issues.

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Annexure V

ANALYSIS OF PUBLIC COMMENTS WITH RESPECT TO INTERIM RECOMMENDATIONS ON THE LODR REGULATIONS

1. **Applicability of the regulations on the basis of average market capitalization:**
   While majority of the commenters have agreed with the recommendations of the Committee, some of the commenters who have partially agreed or disagreed have made the following comments / suggestions:

1.1. **Introduction of average market capitalization**:

1.1.1. Suggest increasing the period to 1 (one) year since a very good quarterly result or two could lead to short term surge in share prices and may breach the threshold of market capitalization.

1.1.2. There are some business which are seasonal in nature and their market cap can get affected and varies in different quarters. Q1 and Q2 will be more appropriate to calculate average market capitalization of the entities.

1.1.3. Timeframe of one year (January – December) would provide more accurate market position as compared to 6 months and provide additional time for the Company to stabilize due to impact caused by unavoidable circumstances.

1.1.4. It is suggested that in case of newly listed entities (which have not completed 6 months, as aforesaid), the name of such entities may not be included in the list prepared by stock exchanges.

1.2. **3 months' time for first time compliance or compliance becoming applicable after a break**

1.2.1. Recommend to provide an initial 3 months' period with a provision to seek extension for a further period of 3 months.

1.2.2. Suggest that the compliance timelines should be case specific. For example, appointment of directors, including woman director, often require a long drawn process for search of suitable candidate. In the event if the intent is to provide a uniform compliance timeline, 6 (six) month time frame would be more reasonable for listed entity to ensure effective compliance and not just the compliance for namesake.

1.2.3. For first time compliances, 3 months' time is adequate time to ensure compliance. However, companies getting interim break need not get 3 months' period as they have already complied with the provisions before, and have familiarity with the provisions.

1.3. Time period for first time reporting of BRSR

1.3.1. Give 6 months' time for first time reporting of BRSR.

1.4. Highest ranking across exchanges

1.4.1. The ranking should be linked to highest market cap of listed companies instead of ranking assigned by a particular Stock Exchange.

1.4.2. Ideally, it should be based on the ranking of the stock exchange which has highest trading volume recorded during the said period.

1.4.3. The highest ranking should be considered according to designated stock exchange. And for this change we have to consider making amendment with regard to designating a stock exchange for a company/ listed entity and not for the specific issue made by the company. And committee may consider to make provision that company may change or have the flexibility to change the designated stock exchange if required, after application and procedure laid down by the stock exchanges.

1.5. Sunset clause

1.5.1. Would recommend to include 1 year as sunset clause, for cessation of applicability of relevant provisions due to fall in market capitalization (or ranking) of the listed entity.

1.5.2. Sunset clause should be restricted to 2 years for cessation of applicability of the relevant provisions.

1.5.3. It is suggested that such requirement may continue to be applicable only for 2 years post the market capitalization falls below the threshold. It is not reasonable for the company to continue to ensure compliances for 3 years, even when the market capitalization continues to be lower than threshold.

1.5.4. Simply stated - exit is after 3 years and entry is immediate after 3 months. In spirit the above proposed changes appear good in intention, but practically this may complicate monitoring of compliance and may yield

limited benefits. Better to have the earlier clause - once applicable always applicable.

1.5.5. A universal clause of 2 years should be introduced for applicability and cessation of relevant provisions of the LODR.

1.6. **Analysis:** Our analysis of the aforesaid comments are as follows:

1.6.1. **Introduction of average market capitalization:**

1.6.1.1. While most of the commenters have agreed with the recommendation on introducing average market capitalization instead of a single day's market capitalization for determining the applicability of relevant provisions of the LODR Regulations, suggestions mentioned above are with respect to the manner of calculation of the average market capitalization. Some commenters have suggested to consider the first 6 months' of the financial year while others have suggested taking 12 months' average market capitalization to remove the effect of seasonal fluctuations in the price of a scrip.

1.6.1.2. While the price of the scrip of a listed entity may exhibit seasonal fluctuations due to various reasons which in turn impacts the market capitalization, the ranking of a listed entity normally does not exhibit such seasonal variations over a period of time. Therefore, the proposal to have the list based on average market capitalization for a period of 6 months would minimize the impact of changes to the rank of a listed entity, if any, due to variations in the market capitalization.

1.6.1.3. The Committee had recommended 6 months' average from 1st July to 31st December as the list is proposed to be prepared on 31st December of every calendar year. Therefore, it would be more appropriate to consider the average market capitalization of the last 2 quarters of the calendar year instead of the earlier quarters.

1.6.1.4. Further, a time period of more than 6 months' would be too long and may not actually reflect the latest standing of the listed entity in the markets. Therefore, an average market capitalization of 6 months from 1st July to 31st December is deemed appropriate and accordingly, no changes are proposed.

1.6.1.5. The suggestion to exclude newly listed entities from the list to be prepared by Stock Exchanges may not be accepted as compliance requirements need to be applicable to a listed entity on the basis of its size. It is clarified that ranking of such entities will be based on the average market capitalization of the listed entity during the period for which it was listed. It would not be appropriate to exclude a large newly listed entity from the said compliance requirements merely because of the fact that the entity got listed recently. It is also observed that most of the companies that come up for listing plan and anticipate well in advance and ensure compliance with appropriate provisions from the 1st day of listing. Therefore, no changes are proposed.

1.6.2. **3 months' time for first time compliance or compliance becoming applicable after a break**

1.6.2.1. Most of the commenters have agreed with the recommendation on providing 3 months' time for first time compliance and compliance becoming applicable after an interim break. Some commenters have suggested extending the timeline to 6 months.

1.6.2.2. It may be noted that for provisions relating to filling up vacancies of Directors / re-constitution of a committee etc., the timeline in normal circumstances is 3 months. With respect to other disclosures and obligations like Dividend Distribution Policy, Rumour Verification, systems and processes for BRSR etc., the suggested timeline of 3 months' is reasonable and an improvement over the existing scenario in which companies have to ensure immediate compliance (i.e., from April 1 on the basis of the market capitalization as on 31st March).

1.6.3. **<u>Time period for first time reporting of BRSR</u>**

1.6.3.1. Almost all the commenters have agreed with this recommendation. It may be noted that listed entities would get atleast 3 months' time for putting in place the systems and processes for capturing data and the reporting would happen at the end of the financial year. Therefore, listed entities do get adequate time for first time reporting of BRSR in their Annual Reports.

1.6.4. **<u>Highest ranking across exchanges</u>**

1.6.4.1. While most of the commenters have agreed with the recommendation, some of them have suggested other alternatives. The alternatives include taking highest market capitalization (instead of ranking), ranking on the exchange with the highest trading volume, ranking on designated stock exchange etc. It is noted that the suggestions may lead to further complications while providing little or no actual benefits to listed entities. Therefore, no changes are proposed to the recommendation.

1.6.5. **<u>Sunset clause</u>**

1.6.5.1. While most of the commenters have agreed with the recommendation on introducing a sunset clause to reduce the burden on listed entities, some of them have suggested faster applicability of the sunset provisions (i.e., within 1 or 2 years of fall in the ranking).

1.6.5.2. At present, the provisions of the LODR Regulations that become applicable on the basis of market capitalization continue to remain applicable till the entity is listed even though the market capitalization of the listed entity may fall and remain below the applicability threshold. The Committee recommended a sunset clause of 3 consecutive years of the ranking remaining outside the applicability threshold for the sunset clause to kick-in. The period of 3 years is consistent with sunset clause prescribed in the LODR for cessation of applicability of the corporate governance provisions to listed entities with paid-up capital and net worth below the thresholds.

1.6.5.3. The period of 3 years would be an appropriate timeframe to determine if the fall in the ranking of a company is ‘consistent’ or not. This ensures that the applicability and sunset of relevant provisions to a particular listed entity do not get triggered often which may lead to complexity and confusion both for the listed entity and the investors. Further, investors with a reasonable investment horizon of 3 years should have the benefit of continuity in disclosures.

2. <u>Filling up of vacancies of key managerial personnel:</u>

2.1. While most of the commenters have either agreed or partially agreed with the recommendation, some of the commenters have made the following comments / suggestions:

2.1.1. The appointment of KMPs is contingent on a third-party approval (in this case being a regulatory, government or statutory authority) which cannot be forced by the listed entity to adhere to the timelines.

2.1.2. In cases where the approvals are not granted by regulatory / government / statutory authorities, timeline should be 6 months’ from rejection of application by the concerned authority.

2.1.3. It may be increased to 6 months for all companies irrespective of any regulatory approval is required or not, to maintain consistency across the industries. Further Regulation 6(1A) of LODR Regulations may also be modified accordingly to increase the timeline of filling the vacancy.

2.1.4. Considering that the CEO/MD/WTD/CS holds a senior position, a timeline of 3 months to fill the vacancy may not be feasible. The process around identification, selection, nomination and appointment of CEO/MD/WTD/CS typically involves interviews, NRC review and recommendation and Board. Such senior personnel may also have to comply with notice period requirements/ gardening leave provisions of the current employer. All of these would add to the overall timelines for appointment. Further, such persons may also wish to have a break prior to joining a new organization. However, this 6 months’ time limit may be extended to all the Companies and hence, we recommend to continue with the time period for such appointments, as "within six months from the date of such vacancy". This

would be in line with the current requirement under the Companies Act, 2013.

2.1.5. The period of filling vacancy be increased from 3 months to 6 months for vacancy arising out of the unplanned occurrences (demise or unplanned resignations).

2.1.6. There should be proper succession planning to ensure timely appointment in case of any vacancy. Further, extension only in case of regulatory approvals is not a welcome move.

2.1.7. Time limit should not be increased from 3 months to 6 months. There should be a robust succession planning in the company to fill the vacancy of key managerial personnel. 3 months is a sufficient time period to fill the vacancy of KMP along with obtaining regulatory / government / statutory authorities.

2.2. **Analysis:**

2.2.1. Many commenters have suggested that the timeline for filling up the vacancy of KMPs should be increased from 3 months to 6 months for all listed entities irrespective of the fact whether regulatory or statutory or government approvals are required. In this context, the rationale given by the Expert Committee for this recommendation needs to be noted.

2.2.2. Listed entities in certain sectors like banking, insurance, telecommunication etc. need approval of the sectoral regulators for appointment for new KMPs. As timely approvals in such cases is not within the control of the listed entity, the Committee recommended an extended timeline of 6 months for filling up such vacancies. In other listed entities, the board of directors are authorized to fill up such vacancies. Further, the regulations also permit listed entities to fill up such vacancies on an interim basis subject to compliance with the provisions of law. Therefore, the suggestion to extend the timeline for all listed entities is not acceptable. Further, unplanned vacancies may also be filled up on an interim basis if the listed entity is unable to find a suitable candidate within a period of 3 months.

2.2.3. As far as those cases where regulatory, statutory or government approvals are required, some commenters have suggested that the timelimit of 6 months should be for making an application to the appropriate authority. The Expert Committee has provided the rationale for keeping a maximum timelimit of 6 months to fill up such vacancies. The Committee had reasoned that there needs to be an outer timeline for such an exemption so that compliance with the regulations does not become a casualty and detrimental to the interests of the listed entity and its shareholders. Further, section 203 of the Companies Act, 2013 also prescribes a maximum timelimit of 6 months to fill up the vacancy of KMP. Therefore, no changes are proposed to the said recommendation.

3. Timeline for prior intimation of board meetings

3.1. **Harmonization of the timeline**: The commenters who have partially agreed or disagreed have made the following comments:

3.1.1. There should be a harmonization for giving intimation to the Exchange. But instead of 2 days it should be 7 days as the Companies Act, 2013 requires that notice of board meetings should be given 7 days prior, the same can be published on Stock Exchanges as it will reduce duplicity and save time. Also, the shareholders, will be updated in due time for the important information.

3.1.2. Limited time for taking an Independent Judgement for Board of Directors - Accorded to Section 166 of the Companies Act, 2013 imposes an obligation on all the directors of a company to exercise their duties with due and reasonable care, skill and diligence while imposing board meeting harmonizes the timeline to two working days, making it difficult for the board to make independent decisions. Therefore, the time line for prior intimation of board meeting schedule for different matters be harmonized to 5 days instead of 2 working days.

3.2. **Fund-raising involving issue of securities**:

3.2.1. We suggest that following matters shall also be excluded for intimation:

3.2.1.1. funds raising through overdraft facility, credit facility from Bank, bank loan etc.

3.2.1.2. Issuance of securities under SWAP arrangement.

3.2.2. Kindly consider to put a cap limit on borrowings, i.e. "Borrowings/ short term Borrowings upto 5/10/25 Crore may be excluded from the mandatory prior intimation requirements". When the company will borrow the large amount it affects on financial of company on account of 'Finance cost' for which company should be compelled to inform the shareholders. Example: If the company is availing short term borrowing of Rs.80 Crores @ 10% int.p.a., i.e. Rs.8 Crores which will give significant effect in the books of accounts.

3.3. **Doing away with the requirement of prior intimation for determination of issue price in a QIP**: No adverse comments received.

3.4. **Analysis:**

3.4.1. **Harmonization of the timeline for prior intimation:**

3.4.1.1. Most of the commenters have agreed with the suggestion to harmonize the timelines for prior intimation of board meetings considering various items specified in regulation 29.

3.4.1.2. Some commenters seem to have mistook the aforesaid recommendation to shortening of the timeline for notice of board meeting which is specified in the Companies Act, 2013 and the rules made thereunder. It is clarified that the proposal is in respect of intimation of a scheduled board meeting to the stock exchanges and not to the directors. The requirement of 7 days' notice to the directors of a company for a board meeting as specified in section 173 of the Companies Act, 2013 would continue to be applicable. Further, a longer timeline of prior intimation (i.e., 7 days as suggested above) also creates unnecessary volatility in the market which may be against the interest of the investors. Therefore, no changes are proposed to the recommendation.

3.4.2. **Fund-raising involving issue of securities:**

3.4.2.1. Most of the commenters have agreed with the recommendation on clarification to regulation 29(1)(d).

3.4.2.2. The intention behind regulation 29 of the LODR Regulations is inter-alia to make the shareholders of a listed entity aware of proposals / events which may affect their rights and privileges. Fund raising not involving issue of securities do not affect shareholder rights and accordingly should not fall under the ambit of regulation 29(1)(d) of the LODR.

3.4.2.3. Intimation of borrowings in the normal course of business may not add any value to the shareholders but may result in informational overload. It may also be noted that any material loan agreement not in the normal course of business has to be disclosed by the listed entity under para B of part A of schedule III of the LODR Regulations. Therefore, no changes are proposed to the recommendation.

3.4.3. **Doing away with the requirement of prior intimation for determination of issue price in a QIP**: All the commenters have agreed with the recommendation and therefore, no changes are proposed.

4. <u>Gap between meetings of the Risk Management Committee</u>

4.1. The commenters who have partially agreed or disagreed have made the following comments:

4.1.1. Given the committees have flexibility to organise a meeting earlier than the regulatory timelines, we suggest the maximum permitted gap should be increased to one year (to align with the requirements for other committees like Stakeholder Relationship Committee and Nomination and Remuneration Committee).

4.1.2. Prescribing a maximum time gap between 2 committee meetings for Risk Management Committee limits the flexibility for the companies to schedule the meetings. Since the intent is to have atleast one meeting in each half of the year, the requirement could be so framed to ensure compliance with the law in letter and spirit.

4.1.3. It is suggested to relax this requirement for Government PSUs.

4.1.4. Extension of timeline is not required; proper planning may be done to avoid defaults and ensure compliance.

4.1.5. LODR provides for conducting at least two Risk Management Committee meetings in year. The listed entities should conduct more meetings and not just the number of meetings which ticks the compliance box. In case, the company only plans to conduct two meetings, then they may be conducted in such a manner that the time gap of 180 days is not violated.

4.2. **Analysis:**

4.2.1. The intention of the regulations is to have atleast 2 meetings of the risk management committee in a year and the maximum gap requirements were introduced to ensure that the committee meets once in every 6 months.

4.2.2. Considering the importance of risk management for listed entities, it is imperative that the said committee meets regularly and therefore, the suggestion to do away with the maximum gap requirements may not be accepted. The Expert Committee's proposition addresses the practical difficulties faced by listed entities while ensuring that the gap between the meetings is not too long and unreasonable.

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