

Monitoring of utilization of issue proceeds raised through Preferential Issue & Qualified Institutions Placement (QIP) Issue, in terms of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

1. Objective

1.1. This memorandum seeks approval of the Board to amend SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018 (“ICDR Regulations”) in respect of provisions relating to Preferential Issue and QIP Issue, and consequential amendment to applicable SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”), with regard to the following specific aspects of Preferential Issue and QIP Issue:

- i. Introducing monitoring of utilization of issue proceeds for preferential issue of size exceeding Rs. 100 crore, and for preferential issue of shares of companies having stressed assets.
- ii. Introducing monitoring of utilization of issue proceeds for QIP issue of size exceeding Rs. 100 crore, excluding the size of offer for sale by selling shareholders.

2. Background

2.1. ICDR Regulations requires appointment of and reporting by Monitoring Agency for public issue, if the issue size exceeds one hundred crore rupees (excluding the size of offer for sale by selling shareholders).

2.2. Provisions related to appointment of and reporting by Monitoring Agency are prescribed under various regulations of ICDR Regulations, for Initial Public Offer (IPO), Rights Issue, Further Public Offer (FPO), SME-IPO.

2.3. In terms of the existing provisions relating to Monitoring Agency the following requirements have been stipulated:

- a. the issuer is required to make arrangements for monitoring of the use of proceeds of the issue by a credit rating agency registered with the Board.
- b. the monitoring agency to submit report to the issuer in the format specified in Schedule XI of ICDR Regulations on a quarterly basis, till 100% of the proceeds of the issue have been utilized.
- c. the board of directors and the management of the issuer shall provide their comments on the findings of the monitoring agency as specified in Schedule XI.
- d. the issuer shall, within forty five days from the end of each quarter, publicly disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed.

2.4. It may be noted that for public and rights issue, SEBI in its Board Meeting held on December 28, 2021, inter alia approved the amendment to ICDR Regulations, to permit monitoring of issue proceeds in public and rights issue by a credit rating agency (CRA) registered with the Board in place of a public financial institution or by a scheduled commercial bank as prescribed earlier (this was made applicable from the date of notification of aforementioned amendment i.e. from Jan 14, 2022, onwards).

2.5. In this regards, data pertaining to Preferential Issue and QIP Issue was analyzed for last one financial year and current financial year till May, 2022, which revealed that the issuer companies have raised as much as Rs. 91,517 crores through Preferential Issue and Rs. 32,397 crores through QIP Issue, during the said period. Therefore a need was felt for introducing a framework for monitoring of issue proceeds for Preferential Issue and QIP Issue by CRAs on similar lines as in the case of IPO and rights issue and the issue was deliberated in the meeting of the Primary Market Advisory Committee (PMAC)

on the principle that all form of fund mobilization should be monitored for transparency and accountability.

2.6. It is also noted that as regards the preferential issue of shares by companies having stressed assets, there are existing provisions in ICDR Regulations to monitor the issue proceeds as per which the issuer is required to make arrangements for monitoring the use of proceeds of such preferential issue by a public financial institution or by a scheduled commercial bank, which is not a related party to the issuer. This provision also needs to be aligned with the extant monitoring framework for proceeds of IPO and rights issue, apart from bringing the preferential issue and the QIP issue under such framework

2.7. During the deliberations of PMAC it was suggested that the instant matter may not require any public consultation as a proposal to modify /strengthen the monitoring framework pertaining to issue proceeds will be only procedural in nature and will be intended for enhancing the existing regulatory framework of supervision over the use of proceeds of Preferential Issue and QIP Issue, primarily in the interest of the investors in the securities market.

3. Introduction of monitoring of utilization of issue proceeds by Monitoring Agency for Preferential Issue & QIP Issue:

3.1. Existing provisions:

Preferential Issue:

- i. Regulation 163 of ICDR Regulations inter alia requires the issuer to disclose objects of the preferential issue in the explanatory statement to the notice for the general meeting proposed to be convened for passing a special resolution.
- ii. Regulation 164A requires engagement of a monitoring agency to monitor the proceeds of preferential issue in case of preferential issue of shares of companies having stressed assets. The issuer is required to make arrangements for monitoring the use of proceeds of the issue by a

public financial institution or by a scheduled commercial bank, which is not a related party to the issuer.

QIP Issue:

- i. Regulation 175 of ICDR Regulations states that the qualified institutions placement shall be made on the basis of a preliminary placement document and placement document, which shall contain all material information, including those specified in the Companies Act, 2013, if any and disclosures as specified in Schedule VII of ICDR Regulations.

Schedule VII among other things inter alia requires issuer to disclose:

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Use of proceeds:

- (a) purpose of the placement;
- (b) break-up of the cost of the project for which the money is being raised;
- (c) means of financing for the project;
- (d) proposed deployment status of the proceeds at each stage of the project.

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LODR Regulations:

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

- ii. In terms of Regulation 32(7) of LODR Regulations, where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the report of such agency shall be placed before the audit committee on a quarterly basis, promptly upon its receipt. For the purpose of sub-regulations 32(6) and 32(7), “monitoring agency” shall mean the monitoring agency as specified in

the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

- iii. In terms of Schedule II Part C para A(6) of LODR Regulations, the role of the audit committee shall inter alia include reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the board to take up steps in this matter;

3.2. Issues for consideration and our comments:

- i. In terms of the ICDR Regulations, issuers are required to disclose the objects for which proceeds are to be raised through public and rights issue. Similar disclosures are required in explanatory statement to the notice for the general meeting proposed to be held for passing the special resolution for preferential issue. Similarly, in QIP issue such disclosures are made in the placement document.
- ii. Shareholders of the company have a right to know the status of the deployment/ utilization of the funds raised by the company as against the disclosure of the objective of the fund raise. Monitoring of 100% of the issue proceeds by Credit Rating Agencies (CRA) is required for all public and rights issue above Rs100 crore. On similar lines, there is a need to lay down additional requirements to enhance the existing monitoring framework of preferential issue and also for monitoring of issue proceeds of QIP issue.
- iii. There could be a differing opinion that preferential allotment and QIP are not made to general public and are done after taking shareholder

approval, hence, there is no need to monitor the proceeds of these issues. However, SEBI is of the view that:

- a. Existing shareholders have agreed to be diluted based on proposed use of funds. If funds are misused they would be adversely impacted.
 - b. Investment from institutions such as Mutual Funds, Insurance Companies and Banks is also public money, hence the interest of these investors also needs to be protected from misuse of funds.
- iv. Information for preferential issue and QIP issue during last one financial year and current financial year till May, 2022, is given below:

Issue Type	Total issues	Issue Size (In Rs. crore)	Issues above Rs. 100 crore	Issues above Rs. 1000 crore
Preferential Issue	430	91,517	66	19
QIP Issue	31	32,397	28	11
Total	461	1,23,914	94	30

- v. It can be seen from the above that out of the 430 preferential issues, 66 preferential issues were of size above Rs 100 crore and out of 31 QIPs, 28 issues were of size above Rs 100 crore. Further, out of these preferential and QIP issuances, each of 19 preferential issues and 11 QIP issues respectively was above Rs 1000 crore in size.
- vi. It was observed that issue proceeds raised through preferential issue and QIP issue, were for various objects such as investment in the company / project, capital expenditure (capex), working capital, repay / retire debt etc. These objects were found to be similar to those observed in offer documents for public issue and rights issue as well.
- vii. Therefore, given that objects for which funds are raised by the issuer companies, in case of preferential issue and QIPs, are observed to be of similar nature as in case of public issues and further as observed from the above cited data that issuer companies are raising large amounts of

money from contested investors through preferential issue and QIPs, it is felt appropriate that monitoring of issue proceeds may also be mandated for preferential and QIP issues of size exceeding Rs. 100 crore, in the same manner as applicable for public issues (IPOs and Rights Issue).

- viii. It may be noted that the requirement for monitoring the use of proceeds in public issues is applicable for issue size exceeding Rs.100 crore after excluding the size of offer for sale by selling shareholders. Offer for sale by selling shareholders is excluded for monitoring purpose, as these proceeds are not received by Issuer Company and goes to selling shareholders. Similarly, in a QIP issue monitoring requirement shall be mandated for issue size exceeding Rs. 100 crore after excluding the size of offer for sale by selling shareholders.
- ix. As regards, monitoring of issue proceeds for preferential issue by companies having stressed assets the extant provisions pertaining to the same may also be aligned with the monitoring requirements as applicable for public issues of IPO and rights issue and accordingly, Credit Rating Agencies registered with the Board shall be permitted to act as Monitoring Agency in place of a public financial institution or a scheduled commercial bank.
- x. Consequential amendments in LODR Regulations are also required to be made under Regulation 32(6), Regulation 32 (7) and Schedule II Part C para A(6) to replace words “public or rights issue” with words “public issue or rights issue or preferential issue or qualified institutions placement”.

3.3. PMAC Recommendation:

- i. PMAC has recommended the proposal to introduce monitoring of issue proceeds by CRAs in preferential issue & QIP issue of size exceeding Rs. 100 crore and align the preferential issue & QIP issue monitoring

requirements as applicable in public issues based on the principle that any infusion of funds in the company needs to be monitored.

3.4. Proposal for consideration of the Board:

- i. It is proposed to introduce monitoring of issue proceeds by CRAs in preferential issue & QIP issue of size exceeding Rs. 100 crore and align the monitoring requirements as applicable for public issues.
- ii. In this regard amendments are proposed in Chapter V – Preferential Issue and Chapter VI – Qualified Institutions Placement, of ICDR Regulations for following:
 - a. Mandating monitoring of issue proceeds by CRAs in case of preferential issue of size exceeding Rs. 100 crore and aligning the monitoring requirements as applicable for public issue as given under para 2.3 above.
 - b. Replacing public financial institution / scheduled commercial bank by CRAs as Monitoring Agency for preferential allotment in case companies having stressed asset and aligning the monitoring requirements as applicable for public issue.
 - c. Introducing monitoring of issue proceeds by CRAs in case of QIP issue of size exceeding Rs 100 crore excluding offer for sale by selling shareholders and aligning the monitoring requirements as applicable for public issue as given under para 2.3 above.
- iii. It is proposed to make consequential amendments in LODR Regulations under Regulation 32(6), Regulation 32 (7) and Schedule II Part C para A(6) to replace words “public or rights issue” with words “public issue or rights issue or preferential issue or qualified institutions placement”.

- iv. The aforesaid amendment may be made effective for all the preferential issue and qualified institutions placement where the Board of Directors (BoD) of the issuer approve such issue after the date of the notification of this amendment in the official gazette.

4. Proposal

4.1. The Board is requested to consider and approve the proposals at para 3.4 above and related amendments to SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018, and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as contained in the draft amendments placed at **Annexure I**.

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

Annexure - I

(This shall be notified at a later date)