

Introduction of pre-filing of offer documents as an optional alternative mechanism for the purpose of Initial Public Offer on the Main Board

1. Objective

1.1. This memorandum seeks approval of the Board to introduce an optional alternative mechanism of “pre-filing” of offer document with SEBI in case of Initial Public Offer on the Main Board and in this regard, to amend the provisions of SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018 (“ICDR Regulations”).

2. Background

2.1. Currently an issuer, desirous of coming out with an IPO on the Main Board, is required to go through the following process:

- a) To begin with, the issuer company through the lead manager(s) - SEBI registered Merchant Banker is required to file a draft red herring prospectus (DRHP), with SEBI and Stock Exchanges.
- b) The DRHP containing all the disclosures as specified under Schedule VI of the ICDR Regulations is made available on the websites of SEBI, lead manager(s) (LM), and Stock Exchange for a period of at least 21 days, seeking public comments.
- c) Subsequent to the filing of such a DRHP, an issuer can undertake publicity and marketing activities for its issue in terms of Schedule IX –which prescribes different norms for Public Communications and Publicity Materials for issuers. Research reports are also published based on the information available in the DRHP.
- d) Stock Exchanges are required to provide in-principle approval for listing of securities and intimate the same to SEBI. As part of the review process, SEBI seeks clarification on the DRHP from the LM.

- e) SEBI issues its Observation Letter within 30 days of receipt of satisfactory reply to the clarifications sought or receipt of in-principle approval of Stock Exchange, whichever is later.
- f) An issuer can tap the market within 1 year from the date of the Observation Letter, by filing an updated DRHP incorporating the observations issued by SEBI. SEBI takes note of the changes made to UDRHP.
- g) The issuer proceeds with filing of Red Herring Prospectus (RHP) with Registrar of Companies (RoC). Issuer is required to make price band advertisement after RHP but at least two days before issue opening.
- h) The issue is kept open for a minimum period of 3 days. Upon successful completion of issue, the issuer files prospectus with SEBI and RoC.

Need for an alternative mechanism

2.2. RHP is a document which has already undergone regulatory review, and it incorporates observations of SEBI, as well as updated information including latest financials of the issuer. Generally, issuers open IPO within 3-5 days of filing RHP with RoC. This RHP which is quite comprehensive in information is available for investors only for a maximum period of five days to consume the vast information contained therein before making their investment decisions; whereas the DRHP earlier filed by the issuer giving detailed disclosures on various aspects of the issuer company, is already available for a longer period of time.

2.3. As per the existing practice, issuer exploring the possibility of IPO will have to make disclosure of various sensitive information about its business in the DRHP at a time when there may not be certainty that the IPO would be executed or when it would be executed. There remains an apprehension in the mind of issuer that the peer competitors might take undue advantage of the information disclosed by it in DRHP.

2.4. Issuer who has already received SEBI observation letter may defer their IPO by some months due to volatility in market conditions or some other factors.

Consequently, the feedback received from potential institutional investors during the roadshows loses its recency when the issuer re-approaches the market for its IPO after a time gap.

2.5. In the FY 2018-19, out of 65 DRHP filed with SEBI, only 24 issuers executed their IPOs. Similarly, in the FY 2019-20 a total 33 number of the issuers filed DRHP out of which 23 chose to proceed with their IPO, while in FY 2020-21 31 number of issuers filed DRHP but 25 issuers chose to proceed with the IPOs.

Financial Year	Number IPO offer document filing	Number of Issuers from column 2 who did not proceed with IPO
1	2	3
2018-19	65	41
2019-20	33	10
2020-21	31	6
Total	129	57

2.6. It can be seen from the table above that in the last three financial years 57 number of companies did not access the market despite receiving observation letters from SEBI.

2.7. Globally, it is seen that some jurisdictions such as UK, Canada and US permit pre-filing of the offer document for review by the regulatory authorities. Subsequently, in case the issuers decides to proceed with the offer, the document incorporating changes mandated by the regulator is made available to public. This practice facilitates disclosure of an information rich document for investors to consume at an appropriate time when the issuer is ready to go for listing and at the same time protects the interests of the issuers who want to call off their IPO plans by not unnecessarily publishing its business information much prior to taking a decision as to whether it would or when it would go for listing.

PMAC deliberations and Consultation paper

2.8. Given the aforesaid situation, the possibility to introduce an alternative mechanism of pre-filing was discussed and deliberated in the Primary Market

Advisory Committee (PMAC) of SEBI. PMAC advised that a public consultation may be carried out on this subject.

Accordingly, a consultation paper (**Annexure I**) was placed on the website of SEBI on May 11, 2022 seeking public comments.

2.9. Comments were received from 16 entities including Law Firms, Merchant Bankers, Industry Associations, Stock Exchange and Private Equity. Majority of the commentators i.e. 14 out of the 16 commentators (including industry bodies such as [excised] and [excised]) have agreed to the recommendation that an optional alternative mechanism of “pre-filing” of offer document with SEBI for the purpose of regulatory review may be introduced. The two entities (both Merchant Bankers) that have disagreed with the proposal have stated that an alternative mechanism of pre-filing will have negative implications on overall timelines, costs and process for issuer companies. These concerns were discussed in the meeting of the PMAC where it was clarified that since the LMs shall have visibility of the status of the processing of the document, their concerns on timeliness of processing the offer document will get addressed. Further it was mentioned in the PMAC meeting that the added marginal cost that may be involved in pre-filing would be far outweighed by the substantial benefits which the issuer will derive from the alternative mechanism in terms of protection of its sensitive information and flexibility in hitting the market with proper disclosures as per timing chosen by it. The concerns so raised by the two merchant bankers were thus suitably addressed. Incidentally the said two commentators who had those concerns are members of the PMAC, who were present during the said PMAC meeting during which their concerns were clarified by other members. All public comments relevant to the consultation paper have been analyzed and tabulated at **Annexure-II**.

2.10. After having considered the comments received on the consultation paper, PMAC recommended that SEBI may offer pre-filing as an ‘optional’ alternative mechanism for IPO offer document, along with “testing the waters” (TTW) feature

for limited purpose marketing of the intended issue to only QIBs during the Pre-filing stage. Further, PMAC also recommended to form a sub-group of its members to recommend to SEBI on certain procedural aspects related to operationalizing the alternative mechanism. The recommendations of PMAC sub-group are placed at **Annexure III**.

2.11. Based on the recommendations of the PMAC, public consultation, and recommendations of the sub-group, the proposals on various aspects of “pre-filing of offer document with SEBI in case of Initial Public Offer on the Main Board” followed by analysis of each such proposal with recommendation therein to the Board for consideration, are presented in detail in ensuing paragraphs.

2.12. Before advertizing to upon various aspects of pre-filing in detail, it may be relevant at this stage to present a suitable comparative tabular chart of the different process involved in the existing mechanism of processing of offer documents vis-a-vis the steps to be followed in the proposed pre-filing framework, as under:

2.13. Detailed activity/ step wise analysis of the proposal, as per the above tabular presentation are discussed in the following paragraphs.

Activity	Existing	Pre-filing
Filing of offer documents	1. Filing of DRHP with SEBI. Document available in public domain	1. Filing of Pre-filing draft offer document with SEBI. Document not available in public domain
	2. Receipt of SEBI Observation	2. Receipt of SEBI Observation
	3. Filing of updated draft red herring prospectus (UDRHP) with SEBI (incorporating SEBI’s observations).	3. Filing of updated draft red herring prospectus –I (UDRHP-I) with SEBI (incorporating SEBI’s observations).

Activity	Existing	Pre-filing
	Document not available in public domain	Document is available in public domain
		4. Filing of updated draft red herring prospectus –II (UDRHP-II) with SEBI (incorporating public comments). Document not available in public domain
	4. Filing of RHP with RoC and SEBI	5. Filing of RHP with RoC and SEBI
	5. Issue Opening, Issue Closure	6. Issue Opening, Issue Closure
	6. Filing of Prospectus with SEBI	7. Filing of Prospectus with SEBI
Publicity and Marketing	Permitted from the date of filing of DRHP. Public communication/marketing from the date of board meeting in which the IPO is approved till filing of DRHP shall be consistent with past practices of issuers	Not permitted. Limited marketing permitted (Only for Testing the waters with QIBs). Public communication/marketing from date of board meeting in which the IPO is approved till filing of updated draft offer document (UDRHP-I) shall be consistent with past practices of issuers

Activity	Existing	Pre-filing
<p>Compliance with all ICDR Requirements at the time of filing of draft offer document</p>	<p>DRHP to be in compliance with ICDR Regulations (to the extent applicable)</p>	<p>PDRHP to be in compliance with ICDR Regulations (to the extent applicable) with flexibility/exemption in following until receipt of SEBI's observations.</p> <ol style="list-style-type: none"> 1. Restriction on issuance of new shares/ compulsory convertibles 2. Changes in matters mentioned under Schedule XVI such as change in director, promoter, objects of issue etc without requirement of refiling. <p>Compliance with additional conditions for OFS related to minimum period of one year of holding of equity shares proposed to be offered at OFS and compliance with conditions pertaining to securities which are ineligible to be counted towards minimum promoters contribution to</p>

Activity	Existing	Pre-filing
		be tested at the stage of UDRHP-I.
Validity of SEBI Observation	Issue shall open within 12 months from the date of SEBI Observation	Issue shall open within 18 months from the date of SEBI Observation subject to filing of UDRHP-I within 16 months
Applicability of Schedule XVI	Applicable from the date of filing of DRHP	Applicable from the date of issuance of SEBI Observations on pre-filed document. Change (increase or decrease) in fresh issue size after issuance of SEBI's observation proposed to be permitted to the extent of 50% as against 20% in existing mechanism.

3. Proposals for introduction pre-filing of offer document as an optional alternative mechanism for the purpose of Initial Public Offer on the Main Board.

3.1. Pre-filing as on optional mechanism

Proposal

- i. "Pre-filing" shall be an optional mechanism for issuers contemplating IPO on Main Board.

Analysis

- i. PMAC after considering majority of the public comments received on the consultation paper has recommended introduction of pre-filing of offer document as an optional alternative mechanism for the purpose of Initial Public Offer on the Main Board

Recommendation for consideration of board

- i. An optional alternative mechanism for issuers contemplating IPO on Main Board i.e. Pre-filing of offer document may be introduced.
- ii. A new chapter may be inserted in ICDR Regulations to permit the optional mechanism of pre-filing of offer document and to prescribe matters related to the framework.

3.2. Pre-filing of draft offer document and its content

Proposal

- i. Issuer makes “pre-filing” of offer document with SEBI and Stock Exchanges without making it available for public for an initial scrutiny period only. This document shall contain all disclosures as currently required for filing of DRHP under ICDR Regulations. The pre-filed offer document shall be called pre-filing draft offer document (PDRHP).

Analysis

- i. Initial scrutiny period means, from the date of filing of pre-filing draft offer document (PDRHP) with the Board and Stock Exchanges until the filing of updated draft red herring prospectus-I (UDRHP-I), which will be a public document to be filed by issuer compliant with provisions of ICDR Regulations and after incorporating the observations of SEBI.

Recommendation for consideration of board

- i. Board may consider the aforesaid proposal related to pre-filing of draft offer document (PDRHP) and in the manner as indicated above.

3.3. Filing fees

Proposal

- i. Filing fees shall be paid at the time of “pre-filing” to SEBI and Stock Exchanges.

Analysis

- i. Payment of filing fees to SEBI at the time of pre-filing is similar to existing process payment of filing fees at the time of filing DRHP. However, in the current process, payment of filing fee to stock exchanges is not mandated by SEBI. Accordingly, the recommendation may be modified as under for the consideration of the Board:
“Filing fees shall be paid at the time of pre-filing of offer document to SEBI”

Recommendation for consideration of board

- i. Board may consider the proposal related to filing fees with following changes.
“Filing fees shall be paid at the time of pre-filing of offer document to SEBI”

3.4. Public announcement and marketing

Proposal

- i. Issuer shall make a public announcement merely stating that it has made a pre-filing of offer document with SEBI and Stock Exchanges. The issuer company shall state that pre-filing of offer document need not necessarily mean that the issuer shall undertake IPO. No other details related to issue shall be provided in the public announcement.
- ii. The issuer and lead manager should undertake that they will not conduct any marketing/ advertising campaign which refers to the intended IPO of the issuer nor shall they showcase any key performance indicators of the issuer through any means to public including social media until filing of updated draft red herring prospectus-I (UDRHP-I) or withdrawal of pre-filing draft offer document (PDRHP).

All public communications issued or published in any media including social media during the period commencing from the date of the meeting of the board of directors of the issuer in which the public issue is approved, till the date of filing of UDRHP-I with the Board, shall be consistent with its past practices.

Public communication subsequent to filing of UDRHP-I shall be in compliance with provisions of Schedule IX [Public Communications and Publicity Materials] of ICDR Regulations.

- iii. Testing the waters (TTW) exercise may be permitted during the pendency of PDRHP with SEBI as follows.
 - a. The TTW interaction should be only with Qualified Institutional Buyers (QIB) investors (as defined under the ICDR Regulations).
 - b. The TTW interaction should be limited to information contained in the PDRHP. No information extraneous to the PDRHP should be shared.
 - c. The issuer and merchant bankers should maintain a list of investors that have participated in the TTW exercises undertaken by it.
 - d. There should be a seven working days cooling off period between the last TTW interaction and the filing of the UDRHP.
 - e. LM to indicate closure of TTW to enable SEBI to issue observations

Analysis

- i. Public announcement of filing of PDRHP at the pre-filing stage will allay unnecessary speculations. Further, in order to streamline information at one place, it is desirable that a disclosure shall also be made on the website of Stock Exchange. Accordingly, the proposal may be modified as under: “Issuer shall make a public announcement merely stating that it has made a pre-filing of offer document with SEBI and Stock Exchanges. A disclosure shall also be made on the website of Stock Exchange. The issuer company shall state that pre-filing of offer document need not necessarily mean that the issuer shall undertake IPO. No other details related to issue shall be provided in the public announcement.”
- ii. Under the current mechanism, during the period commencing from the date of the meeting of the board of directors of the issuer in which the public issue is approved, till the date of filing of DRHP (a public document) with SEBI, all public communications of the issuer are required to be consistent with its past practices. So, in the current mechanism, DRHP is the first

public document whereas, in the proposed pre-filing mechanism, UDRHP-1 would be the first public document. Hence, it would be appropriate to permit the issuers to issue public communication consistent with past practices until UDRHP-1, and thereafter adherence to the provisions of Schedule IX shall be made applicable to the issuer from the date of filing of UDRHP-1.

- iii. Globally in jurisdictions such as US and Canada which have permitted pre-filing of offer document for regulatory review, the issuers are allowed to conduct limited marketing of their prospective issue termed as “testing the waters”. The provision in these jurisdictions allows either the issuer, or any person authorized to act on behalf of an issuer, to engage in oral or written communications with potential investors (typically Qualified Institutional Buyers -QIBs) to explore as to whether such investors are harboring any interest in the intended securities offering the issuer. There are some concerns that if the issuer will not be allowed to undertake any form of marketing of its intended issue after making a confidential filing of PDRHP, it would only lengthen the timeline to the point of IPO launch. Hence, in order to ensure pre-filing to be an effective alternative mechanism, it is essential to permit some form of limited marketing (Testing the waters-TTW) at least to Qualified Institutional Buyers so as to gauge investors interest in advance in any potential securities offering by issuer in near future. In order to ensure that TTW is not utilized for full fledged marketing or “jump the gun” before filing a public offer document (UDRHP-I) it is necessary to introduce a cooling off period between the last TTW and the filing of UDRHP-I. A similar cooling off is mandated in Canada.

Recommendation for consideration of board

- i. Board may consider the afore stated proposal related to public announcement and marketing with the following addition:
“A disclosure shall also be made on the website of Stock Exchange.”

3.5. Compliance with ICDR Regulations at the time of pre-filing

Proposal

- i. The issuer has to make suitable disclosure in the PDRHP, with respect to the compliance with Additional conditions pertaining to eligibility of securities that can be offered under OFS (Regulation 8) and also the conditions pertaining to securities which are ineligible for counting towards Minimum Promoters Contribution (Regulation 15). The issuer has to demonstrate in the PDRHP, as to how it is going to comply with the aforesaid conditions at the time of filing UDRHP-I.
- ii. Compliance with Regulation 5(2) of ICDR Regulations pertaining to ineligibility of an issuer to make an initial public offer in case such issuer has any outstanding convertible securities shall be ensured under pre-filing mechanism until issuance of Observations by SEBI.
- iii. The issuer may be permitted to alter the following aspects of the document only till the observations are issued by SEBI on the pre-filed draft offer document (PDRHP):-
 - a. Issuance of new shares to any existing or new investor
 - b. Issuance of convertible securities, provided only those convertibles that are mandatorily and compulsorily convertible into equity shares (including those being sold in the offer for sale) and those convertibles which are permitted to remain outstanding at UDRHP stage but shall have to be compulsorily converted at RHP stage (details to be disclosed in the UDRHP on the maximum number of shares to be issued on conversion)
 - c. All change permissible under Schedule XVI such as change in issue size (fresh issue and/ or offer for sale), change in promoter/ directors, objects , without the requirement of re-filing.

All of the above activities as and when carried on by the issuer during the pendency of PDRHP, shall be suitably updated to SEBI with appropriate

filings. However, after the issuance of the SEBI's observations on the PDRHP, none of the above activities shall be permitted.

It is however proposed that provisions of Schedule XVI should be made applicable from the date of SEBI observations on the PDRHP and in such cases, the limits for permissible change in issue size under Schedule XVI after issuance of SEBI observations may be kept as follows:

1. Fresh Issue = 50%
 2. OFS = 50%
- iv. General Order of SEBI shall be applicable from the date of filing of PDRHP
- v. No publication of research reports be permitted until the public filing of UDRHP-1.

Analysis

- i. The additional conditions for OFS (Regulation 8 of the ICDR Regulations) state that only fully paid-up equity shares may be offered for sale to public which have been held by sellers for a period of at least one year prior to the filing of the draft offer document. Securities ineligible for minimum promoters contribution(Regulation 15 of the ICDR Regulations) include securities acquired during preceding three years for consideration other than cash and by way of revaluation of assets or capitalization of intangible assets, securities issued during the preceding one year at a price lower than price at which IPO is being offered to public, etc. The LM is required to demonstrate at the time of filing of PDRHP as to how the issuer plans to comply with these provisions at the stage of UDRHP-I which would be available in public domain.
- ii. Regulation 5(2) of the ICDR Regulations states that an issuer shall not be eligible to make an IPO if there are outstanding convertible securities which would entitle the holder any option, to receive equity shares, excluding ESOPS. The purpose of this provision is to freeze the capital structure of the issuer before the observations of SEBI are issued in the interest of clarity and benefit of investors Thus, currently an issuer is mandated to issue shares for all convertibles at the time of filing of the

DRHP itself, excluding only those convertibles that shall be compulsorily converted before the date of filing of the Red Herring Prospectus (RHP). A concern with the existing regulatory review process is that companies are forced to explore the possibility of IPO once they file DRHP even if there may not be any certainty that the IPO would be timely executed. In order to be eligible to file a DRHP, all outstanding convertibles are necessarily required to be converted into shares before filing the DRHP. However, in the proposed pre-filing framework, the issuer will have opportunity to comply with the above noted provisions of Regulation 5(2) till the time of receipt of Observations from SEBI (not at the time of filing of PDRHP) which will afford much flexibility to the issuer to freeze its capital structure any time between the date of pre-filing of PDRHP until receipt of SEBI observations i.e. the issuer may not be in compliance with Regulation 5(2) of the ICDR Regulations at the time of pre-filing, however, will have to comply with Regulation 5(2) of the ICDR Regulations before it receives observation from SEBI.

- iii. Since PDRHP is not a public document, certain relaxations can be considered until SEBI issues its observations.
 - a. Regulation 56 of the ICDR Regulations prohibits further issue of fresh capital by an issuer from the time of filing of DRHP until listing of the securities, unless complete disclosure on such issuance has already been made in the DRHP. This provision allows investors a clear view of the possible capital structure both pre and post listing of DRHP to enable them to make an informed investment decision. As discussed under para (ii) above there is a need for providing flexibility to the capital structure of the issuer at the time when the issuer chooses to do non-public pre-filing of its offer document to the Board. Since the PDRHP is not available in public domain, and the fact that TTW shall be made to only QIBs and the PDRHP will not contain offer price details, it may be permissible to allow flexibility in issuance of securities including convertibles till the time of receiving SEBI observations. Since capital structure forms one of

the basis for review by SEBI, changes to capital structure should not be encouraged post issuance of SEBI's observations on the said PDRHP.

- b. Schedule XVI provides details of various changes to the offer document which, if the issuer wants to make in its draft offer document already filed by it, then it would warrant fresh filing of the draft offer document (DRHP) with the Board, along with fees. These vital changes that the issuer may possibly want to make include changes in promoter, changes to more than half of the board of directors, change in issue size (by 20% for fresh issue portion, and 50% in the OFS portion), change in main objects clause etc. However, unlike the DRHP, as PDRHP, will not be available in public domain during the time it is under regulatory review, the sub-group has recommended that a flexibility may be provided to issuer from the applicability of Schedule XVI until the time SEBI issues its observations to it on the PDRHP filed by it.
- c. In the current mechanism, a flexibility to change the fresh issue size has been provided up to 20% of the issue size disclosed in the DRHP. Changes beyond 20% require fresh filing of DRHP. However, in the pre-filing mechanism since the PDRHP is not a public document, affording greater flexibility in change in issue size can be considered. The flexibility in change in OFS size post filing of DRHP in the current mechanism is already available up to 50%. Accordingly, any additional flexibility in respect of fresh issue size may be also brought on par with flexibility allowed to OFS size in the current framework.
- iv. The following general order(s) of SEBI are applicable for an issuer coming out with an IPO.
 - a. SEBI (Framework for Rejection of Draft Offer Documents) Order, 2012
The general order provides for various rejection criteria, based on which draft offer documents filed with SEBI can be rejected.

b. SEBI (Prohibition on Raising Further Capital from Public and Transfer of Securities of Suspended Companies) Order, 2015

The general order prohibits a suspended company, its holding and/or subsidiary, its promoters and directors from issuing any offer document soliciting money from the public for the issue of securities till the suspension is revoked.

c. SEBI(Issuing Observations on Draft offer Documents Pending Regulatory Actions) Order, 2020

The general order deals the with issuance of observations on draft offer document filed with Board in such situations , where an investigation, enquiry adjudication, prosecution, disgorgement, recovery or other regulatory action is pending against the issuer or its promoter(s)/directors(s)/group companies.

The aforesaid general orders essentially pertain to treatment of offer document by SEBI for its review purposes under various circumstances/ situations relating to the status of the Issuer. Currently, these general orders are applicable to the issuers from the time of filing of DRHP. Accordingly, the suggestion to permit applicability of general orders of SEBI to the issuers from the time of filing of PDRHP under the proposed pre-filing framework, may be accepted.

- v. Under the existing regulatory review mechanism for offer documents, research reports are permitted to be published upon filing of DRHP subject to various conditions laid down in Schedule IX such as, the research report shall refer to risk factors and other disclosures made in the DRHP, the research report shall be truthful, fair and not contain any statement, promise or forecast which is untrue or misleading, etc.

In view of the proposal earlier made that only TTW and not full fledged marketing should be permitted to an issuer having Pre-filed its offer document (PDRHP), it is essential to ensure that publication of any

research reports are not permitted during the time the offer document has not come in public domain i.e. until the public filing of UDRHP-I.

Recommendation for consideration of board

- i. In view of the above analysis, the Board may consider the aforesaid proposals related to compliance with ICDR Regulations at the time of pre-filing.

3.6. In-principle approval from Stock Exchanges

Proposal

- i. Stock Exchanges shall give in-principle approval on the pre-filed document.

Analysis

- i. The current mechanism requires that Stock Exchanges provide in-principle approval of the DRHP. Similar practice may also be mandated for the purpose of pre-filing.

Recommendation for consideration of board

- i. In view of above analysis, the Board may consider the proposal related to in-principle approval from Stock Exchanges.

3.7. SEBI to provide observations on the pre-filed offer document and validity period

Proposal

- i. SEBI shall provide its observations on the pre-filed document within 30 days from the receipt of satisfactory reply to the clarification sought from LM/ in-principle approval from stock exchange(s)/ intimation of closure of Testing-the-waters (TTW) whichever is later.
- ii. Validity of observation shall be 18 months

Analysis

- i. An issuer receiving SEBI observations is an important milestone for an issuer and can form one of the basis for launching full fledged marketing for the issue. In view of the recommendation of the sub-group to permit

TTW after pre-filing of PDRHP, it is essential that TTW exercise must be completed by the issuer before receipt of SEBI observations on the PDRHP as TTW meetings should not be improperly used for pre-mature full fledged marketing rather than for the purpose of only assessing as to whether the market would be receptive to its possible offering. Currently, SEBI provides its observations within 30 days of receipt of satisfactory reply to clarifications sought from LM/ receipt of in principle approval from stock exchange. Since, TTW has to be completed before issuance of SEBI's observations, a confirmation may be sought from LMs stating that TTW is no longer being conducted or the issuer has completed its TTW, before SEBI issues its observations.

- ii. Currently the validity of observation letter issued by SEBI on the DRHP is 12 months i.e. an issuer is allowed to open its Public Issue within 12 months from the date of SEBI communicating its observations. Since, PDRHP is not publicly available and no advertisement has been undertaken by the issuer and TTW is expected to be done with only a limited number of QIBs, during the time of pendency of PDRHP and no full fledged marketing is initiated, there is a valid argument that the validity period of SEBI's observations may be extended so as to allow sufficient time to issuers to market their issue. A significant difference between existing process and the proposed pre-filing framework is that under pre-filing mechanism, post receipt of SEBI's observation, UDRHP-1, is required to be available in public domain for a period of minimum 21 days. Subsequent to placing the UDRHP-1 in public domain, the issuer is also required to incorporate necessary changes after taking into account the public comments which it may receive and also incorporate changes pursuant to various other regulatory requirements. Therefore, in order to allow sufficient public exposure of UDRHP-I beyond the minimum 21 days, the proposal w.r.t. validity of observation may be suitably modified as under.

“Validity of observation shall be 18 months subject to filing of UDRHP-1 within 16 months from the date of SEBI’s Observation.”

Recommendation for consideration of board

In view of above analysis, the Board may consider and approve the proposal related to issuance of SEBI’s observations on the pre-filed offer document and validity period of such observation.

3.8. Filing of UDRHP-I in public domain

- i. Pursuant to receipt of SEBI observations, an issuer, if it so desires based on market conditions and its own financial requirements, may decide to pursue undertaking its IPO. For this purpose, the issuer shall file an updated DRHP (UDRHP -I), a public document, incorporating all observations provided by SEBI. UDRHP-I shall be complete in details in all respects.

Analysis

- i. Under the current mechanism, post receipt of SEBI’s observation, based on market conditions and its own financial requirements the issuer decides to proceed with its IPO and accordingly filed UDRHP-I with SEBI at any time suitable to it during the validity period of SEBI’s observation. The UDRHP-I incorporates all the observations provided by SEBI and is complete in all respects. Hence, similar process can be adopted for PDRHP pursuant to SEBI’s observations for the purpose of filing UDRHP-I.

Recommendation for consideration of board

- i. In view of the above analysis, the Board may consider the proposal related to filing of UDRHP-1 in public domain.

3.9. UDRHP-I available for public comments for a period of 21 days

- i. The UDRHP-I shall be available on websites of LMs, stock exchanges and SEBI for a period of at least 21 days for public comments. The issuer and LMs can undertake marketing of the issue only post UDRHP-I filing.

Analysis

- i. In the current regulatory review methodology, public consultation is minimum for a period of 21 days. The draft offer document is required to be hosted on the website of the Board, and stock exchanges. Thus, similar process can be adopted for filing of UDRHP-I pursuant to SEBI's observation on PDRHP.

Recommendation for consideration of board

- i. In view of the above analysis, the Board may consider the proposal related to availability of UDRHP-1 for public comments for a period of 21 days.

3.10. Filing of UDRHP-II and Issue opening

- i. LMs shall, upon expiry of the minimum period of 21 days after the UDRHP-I is placed in the public domain file with SEBI the details of the comments received by them or by the issuer from the public. It shall also submit the consequent changes, if any, that are required to be made in the draft offer document (UDRHP-I). The revised offer document after incorporating various changes pursuant to receipt of public comments or due to any regulatory requirements, shall be termed as UDRHP-II.
- ii. SEBI shall take note of the changes brought into the UDRHP-II such as:
 1. Changes made due to public comments
 2. Changes/ updates made in UDRHP-I due to regulatory requirement (such as incorporation of latest financials, updates in litigations status etc.)
- iii. Pursuant to SEBI taking note of the aforesaid changes in the UDRHP-II, an issuer may file the RHP, a public document, with Registrar of Companies, Stock Exchange(s) and SEBI. The subsequent procedure w.r.t. price band advertisement/issue opening shall remain the same as per the extant provisions of ICDR

Analysis

- i. The aforesaid recommendation is similar to the existing process followed by the issuers before issue opening. Thus, similar process can be adopted

for offer documents (i.e. UDRHP-I and UDRHP-II) arising out of pre-filing of offer document (PDRHP).

Recommendation for consideration of board

- i. In view of above analysis, the Board may consider the proposal related to filing of UDRHP-II and Issue Opening.

4. Proposal

4.1. The Board is requested to consider and approve the following proposal

- i. "Pre-filing" shall be an optional mechanism for issuers contemplating IPO on Main Board.
- ii. Issuer makes "pre-filing" of offer document with SEBI and Stock Exchanges without making it available for public for an initial scrutiny period only. This document shall contain all disclosures as currently required for filing of DRHP under ICDR Regulations. The pre-filed offer document shall be called pre-filing draft offer document (PDRHP).
- iii. Filing fees shall be paid at the time of pre-filing of offer document to SEBI
- iv. Issuer shall make a public announcement merely stating that it has made a pre-filing of offer document with SEBI and Stock Exchanges. A disclosure shall also be made on the website of Stock Exchange. The issuer company shall state that pre-filing of offer document need not necessarily mean that the issuer shall undertake IPO. No other details related to issue shall be provided in the public announcement.
- iv. The issuer and lead manager should undertake that they will not conduct any marketing/ advertising campaign which refers to the intended IPO of the issuer nor shall they showcase any key performance indicators of the issuer through any means to public including social media until filing of updated draft red herring prospectus-I (UDRHP-I) or withdrawal of pre-filing draft offer document (PDRHP).

All public communications issued or published in any media including social media during the period commencing from the date of the meeting of the board of directors of the issuer in which the public issue is approved, till the date of filing of UDRHP-I with the Board, shall be consistent with its past practices.

Public communication subsequent to filing of UDRHP-I shall be in compliance with provisions of Schedule IX [Public Communications and Publicity Materials] of ICDR Regulations.

- v. Testing the waters (TTW) exercise may be permitted during the pendency of PDRHP with SEBI as follows.
 - a. The TTW interaction should be only with Qualified Institutional Buyers (QIB) investors (as defined under the ICDR Regulations).
 - b. The TTW interaction should be limited to information contained in the PDRHP. No information extraneous to the PDRHP should be shared.
 - c. The issuer and merchant bankers should maintain a list of investors that have participated in the TTW exercises undertaken by it.
 - d. There should be a seven working days cooling off period between the last TTW interaction and the filing of the UDRHP.
- vi. LM to indicate closure of TTW to enable SEBI to issue observations
- vii. The issuer has to make suitable disclosure in the PDRHP, with respect to the compliance with Additional conditions pertaining to eligibility of securities that can be offered under OFS (Regulation 8) and also the conditions pertaining to securities which are ineligible for counting towards Minimum Promoters Contribution (Regulation 15). The issuer has to demonstrate in the PDRHP, as to how it is going to comply with the aforesaid conditions at the time of filing UDRHP-I.
- viii. Compliance with Regulation 5(2) of ICDR Regulations pertaining to ineligibility of an issuer to make an initial public offer in case such issuer has any outstanding convertible securities shall be ensured under pre-filing mechanism until issuance of Observations by SEBI.
- ix. The issuer may be permitted to alter the following aspects of the document only till the observations are issued by SEBI on the pre-filed draft offer document (PDRHP):-
 - a. Issuance of new shares to any existing or new investor
 - b. Issuance of convertible securities, provided only those convertibles that are mandatorily and compulsorily convertible into equity shares (including those being sold in the offer for sale) and those

convertibles which are permitted to remain outstanding at UDRHP stage but shall have to be compulsorily converted at RHP stage (details to be disclosed in the UDRHP on the maximum number of shares to be issued on conversion)

- c. All change permissible under Schedule XVI such as change in issue size (fresh issue and/ or offer for sale), change in promoter/ directors, objects , without the requirement of re-filing.

All of the above activities as and when carried on by the issuer during the pendency of PDRHP, shall be suitably updated to SEBI with appropriate filings. However, after the issuance of the SEBI's observations on the PDRHP, none of the above activities shall be permitted.

It is however proposed that provisions of Schedule XVI should be made applicable from the date of SEBI observations on the PDRHP and in such cases, the limits for permissible change in issue size under Schedule XVI after issuance of SEBI observations may be kept as follows:

1. Fresh Issue = 50%
 2. OFS = 50%
- x. General Order of SEBI shall be applicable from the date of filing of PDRHP
 - xi. No publication of research reports be permitted until the public filing of UDRHP-1.
 - xii. Stock Exchanges shall give in-principle approval on the pre-filed document.
 - xiii. SEBI shall provide its observations on the pre-filed document within 30 days from the receipt of satisfactory reply to the clarification sought from LM/ in-principle approval from stock exchange(s)/ intimation of closure of Testing-the-waters (TTW) whichever is later.
 - xiv. Validity of observation shall be 18 months subject to filing of UDHRP-1 within 16 months from the date of SEBI's Observation
 - xv. Pursuant to receipt of SEBI observations, an issuer, if it so desires based on market conditions and its own financial requirements, may decide to pursue undertaking its IPO. For this purpose, the issuer shall file an updated DRHP (UDRHP -I), a public document, incorporating all

observations provided by SEBI. UDRHP-I shall be complete in details in all respects.

- xvi. The UDRHP-I shall be available on websites of LMs, stock exchanges and SEBI for a period of at least 21 days for public comments. The issuer and LMs can undertake marketing of the issue only post UDRHP-I filing
 - xvii. LMs shall, upon expiry of the minimum period of 21 days after the UDRHP-I is placed in the public domain file with SEBI the details of the comments received by them or by the issuer from the public. It shall also submit the consequent changes, if any, that are required to be made in the draft offer document (UDRHP-I). The revised offer document after incorporating various changes pursuant to receipt of public comments or due to any regulatory requirements, shall be termed as UDRHP-II.
 - xviii. SEBI shall take note of the changes brought into the UDRHP-II such as:
 - 1. Changes made due to public comments
 - 2. Changes/ updates made in UDRHP-I due to regulatory requirement (such as incorporation of latest financials, updates in litigations status etc.)
 - xix. Pursuant to SEBI taking note of the aforesaid changes in the UDRHP-II, an issuer may file the RHP, a public document, with Registrar of Companies, Stock Exchange(s) and SEBI. The subsequent procedure w.r.t. price band advertisement/issue opening shall remain the same as per the extant provisions of ICDR
- 4.2. The Board is also requested to consider and approve related amendments to SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018 (**Annexure IV**), and authorize the Chairman to take consequential and incidental steps to give effect to the decisions of the Board.

Annexure I

(Consultation paper available on SEBI Website)

Annexure II

(This has been excised for the purpose of confidentiality)

Framework - PMAC sub-group

1. "Pre-filing" shall be an optional mechanism for issuers contemplating IPO.
2. Issuer makes "pre-filing" of offer document with SEBI and Stock Exchanges without making it available for public for an initial scrutiny period only. This document shall contain all disclosures as required currently under ICDR Regulations.
3. Filing fees to be paid at the time of "pre-filing" to SEBI and Stock Exchanges
4. Compliance with Additional conditions for OFS (Regulation 8) and Securities ineligible for Minimum Promoters Contribution (Regulation 15) can be tested at UDRHP-I provided LM demonstrates how issuer plans to comply at the time of UDRHP-I.
5. Compliance with 5(2) of ICDR shall be ensured until receipt of Observations.
6. Issuer shall make a public announcement merely stating that it has done pre-filing of offer document with SEBI and Stock Exchanges. The issuer company shall state that pre-filing of offer document need not necessarily mean that the issuer shall undertake IPO. No other details related to issue shall be provided in the public announcement.
7. The issuer and lead manager should undertake that it shall not conduct any marketing/ advertising campaign which refers to its intended IPO or showcases any key performance indicators through any means to public including social media until filing of UDRHP-I or withdrawal of PDRHP.
All public communications issued or published in any media including social media during the period commencing from the date of the meeting of the board of directors of the issuer in which the public issue is approved till the date of filing of UDRHP-I with the Board shall be consistent with its past practices.
Public communication subsequent to filing of UDRHP-I shall be in compliance with provisions of Schedule IX [Public Communications and Publicity Materials] of ICDR Regulations.
8. Testing the waters (TTW) may be permitted as follows.
 - i. The TTW interaction should be only with QIB investors (as defined under the ICDR).
 - ii. The TTW interaction should be limited to information contained in the PDRHP. No information extraneous to the PDRHP should be shared. Further, no projections, projected valuations, offer price should be shared.
 - iii. The issuer and merchant bankers should maintain a list of investors that have participated in the TTW.
 - iv. There should be a seven working day cooling off period between the last TTW interaction and the filing of the UDRHP.
 - v. LM to indicate closure of TTW to enable SEBI to issue observations
9. The issuer is permitted following during the time PDRHP is pending with SEBI subject to regular updation to SEBI and Stock Exchange. However, post-receipt of observations on PDRHP they shall not be permitted
 - i. Issue new shares to any existing or new investor
 - ii. Issue convertible securities, provided only those convertibles that are mandatorily and compulsorily convertible into equity shares (including those being sold in the offer for sale) are permitted to remain at UDRHP stage and compulsorily convert at RHP stage (with details in the UDRHP on the maximum number of shares they will convert into)

Framework - PMAC sub-group

- iii. Change the issue size (fresh issue and/or offer for sale) without triggering Schedule XVI.
- iv. Schedule XVI shall be applicable from the date of final SEBI observations on the PDRHP. In case of Pre-filings, the limits for change in issue size under Schedule XVI shall be as follows:
 - a. Fresh Issue = 50%
 - b. OFS = 50%

10. General Order shall be applicable from the date of filing of PDRHP

11. No research permitted until the public filing of UDRHP-1.

12. Stock Exchanges shall provide in-principle approval on the pre-filed document.

13. SEBI shall provide its observations on the pre-filed document within 30 days from the receipt of reply to clarification from LM/ in-principle approval from stock exchange(s)/ intimation of closure of TTW whichever is later.

14. Validity of observation shall be 18 months

15. Pursuant to receipt of SEBI observations, an issuer, if it so desires based on market conditions and its own financial requirements, may decide to pursue undertaking IPO. For this purpose, the issuer shall file an updated DRHP (UDRHP -I), a public document, incorporating all observations provided by SEBI.

16. UDRHP-I shall be complete in all respects.

17. The UDRHP-I shall be available on websites of LMs, stock exchanges and SEBI for period of at least 21 days for public comments. The issuer and LMs can undertake marketing of the issue only post UDRHP-I filing.

18. LMs shall upon expiry of the period of 21 days shall file with SEBI details of the comments received by them or the issuer from public. It shall also submit the consequent changes, if any, that are required to be made in the draft offer document. The document shall be termed as UDRHP-II.

UDRHP II to be filed with SEBI in similar fashion as currently done for other IPO's

19. SEBI shall take note of the changes made to the UDRHP-II:

- i. Changes due to public comments
- ii. Changes/ updates in UDRHP-I due to regulatory requirement (such as incorporation of latest financials, updates in litigations status etc.)

20. Pursuant to SEBI taking note of changes in the UDRHP-II, an issuer may file the RHP, a public document, with Registrar of Companies, Stock Exchange(s) and SEBI. The subsequent procedure w.r.t. price band advertisement/issue opening shall remain the same.

Annexure IV

(This shall be notified at a later date)