

COVID-19: Temporary Easing of SEBI Fund-raising Rules

With a view to facilitate fund-raising from the capital markets in the wake of the current COVID-19 pandemic, the Securities and Exchange Board of India (“SEBI”) has decided to grant certain relaxations from the provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended (the “ICDR Regulations”), to public issues (both initial and further public offerings) and rights issues.

The relaxations, which are contained in two separate SEBI circulars each dated April 21, 2020, essentially relate to (i) the validity of the SEBI observations, (ii) the requirement to file a fresh draft offer document in case of change in issue size and (iii) certain conditions applicable to rights issues.

These relaxations are expected to reduce deal timelines and ease the compliance requirements for fund-raising from the capital markets.

VALIDITY OF THE SEBI OBSERVATIONS

Under the ICDR Regulations, the observations issued by the SEBI on the draft offer document (in the case of public issues) and the draft letter of offer (in the case of rights issues) are valid for a period of 12 months, i.e., a public or rights issue must open within 12 months of the date of the SEBI observations, otherwise a re-filing of the draft offer document is required, which results in payment of additional fees, a fresh review process by the SEBI and delays in the timeline. While granting a one-time relaxation from this requirement, the SEBI circular provides that if the validity of the SEBI observations for any public issue or rights issue has expired or will expire between March 1, 2020 and September 30, 2020, such validity will be extended by six months from the date of expiry. This relaxation is subject to the condition that the book running

lead managers to the issue (“**BRLMs**”), while submitting the updated offer document to the SEBI, provide an undertaking confirming compliance with Schedule XVI of the ICDR Regulations relating to changes in the offer document requiring filing of an updated/fresh offer document.

Accordingly, issuers whose SEBI observations have expired (i.e., the 12-month validity period has ended) or will expire between March 1, 2020 and September 30, 2020 have been given a dispensation from filing a fresh draft offer document upon expiry of the 12-month period and a further period of six months to open or launch their public or rights issue.

CHANGE IN ISSUE SIZE

Schedule XVI of the ICDR Regulations requires a fresh filing of the draft offer document with the SEBI in the event any specified material changes occur after the initial filing, including any increase or decrease in the fresh issue size by more than 20%. Pursuant to the SEBI relaxation, in view of the uncertain market conditions, an issuer has been permitted to increase or decrease the fresh issue size by up to 50% (instead of 20%) without triggering the requirement to re-file the draft offer document, subject to the following conditions: (i) the absence of any change in the objects of the issue, (ii) the BRLMs providing an undertaking regarding firm arrangements of finance to the extent of 75% of the stated means of finance having been made by the issuer for a specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public or rights issue or existing identifiable internal accruals, and (iii) the BRLMs ensuring that appropriate changes are made to the draft offer document and an addendum in this regard is made public.

The SEBI circular extends this relaxation to public and right issues that open or launch before December 31, 2020. Changes up to 50% in the secondary or offer for sale component were already permitted under the ICDR Regulations; with the above relaxation in place, issuers proposing to tap the capital markets before December 31, 2020 will be permitted to change both the fresh issue and offer for sale components to the extent of 50% without triggering the re-filing requirement.

CONDITIONS APPLICABLE TO RIGHTS ISSUES

For rights issues (other than issuance of warrants) opening on or prior to March 31, 2021, the following relaxations have been made:

Relaxation of eligibility conditions for fast-track rights issues:

A fast-track rights issue means that the issuer can launch an offering without a SEBI review process. This reduces the timeline and the following eligibility conditions for a fast-track rights issue have been relaxed:

- (i)** Minimum listing requirement has been reduced from three years to 18 months.
- (ii)** Average market capitalization requirement has been reduced from INR 250 crore (INR 2.5 billion) to INR 100 crore (INR 1.0 billion).
- (iii)** Look-back period for compliance with the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended, has been reduced from three years to 18 months.
- (iv)** The condition regarding absence of any pending show-cause notices or prosecution proceedings initiated by the SEBI against the issuer, its promoters or whole-time directors has been modified to allow for (a) show-cause notices issued by the SEBI in adjudication proceedings or (b) prosecution proceedings initiated by the SEBI, against the issuer or its promoters, directors or group companies, if necessary disclosures in relation to such matters, together with any potential adverse impact on the issuer, are made in the letter of offer.
- (v)** The condition that the issuer or its promoter, promoter group or director should not have settled any alleged violation of securities laws through the consent or settlement mechanism with the SEBI in the last three years has been modified to stipulate that in the event there has been such a settlement, the issuer or its promoter, promoter group or director has fulfilled the settlement terms or adhered to the directions of the settlement order.
- (vi)** The look-back period for confirming that the equity shares of the issuer have not been suspended from trading has been reduced from three years to 18 months.
- (vii)** The issuer is permitted to have audit qualifications in respect of any of the financial years for which the issuer's financial statements are disclosed in the letter of offer as long as adjustment for the impact of audit qualifications is made in the restated financial statements and if the impact of the qualifications on the financials cannot be ascertained, the letter of offer is required to include appropriate disclosure in this regard.

Relaxation of minimum subscription requirement:

The minimum subscription requirement has been relaxed to 75% of the offer (from 90%). If the rights issue is subscribed between 75% and 90%, it will be considered successful if, of the total funds raised, at least 75% is utilized for objects other than general corporate purposes.

Relaxation in minimum threshold for filing draft letter of offer and compliance with certain rights issue conditions:

The minimum threshold for compliance with certain conditions for rights issue under the ICDR Regulations has been temporarily raised from INR 10 crore (INR 100 million) to INR 25 crore (INR 250 million).

While the above temporary relaxations issued by the SEBI are a welcome measure and will provide greater flexibility and ease to issuers in accessing the capital markets, given the current uncertainty surrounding the COVID-19 pandemic and prevailing market conditions, it is unclear whether deal activity will increase in the near future.

*This update has been authored by **Juhi Singh** (Partner), she can be reached on jsingh@snrlaw.in for any questions. This update is intended only as a general discussion of issues and is not intended for any solicitation of work. It should not be regarded as legal advice and no legal or business decision should be based on its content.*

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