

Consultation paper for review of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

1. Objective:

The objective of this consultation paper is to seek comments on the changes proposed in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred as LODR Regulations) with respect to listed companies which have listed its Non-convertible debt securities (NCDs) or Non-convertible redeemable preference shares (NCRPS) or both.

2. Introduction:

LODR Regulations were notified on September 02, 2015. The said Regulations, *inter-alia*, provide for principles governing various disclosures and obligations of listed entities. Chapter V of the said Regulations lays down obligations of listed entity which has listed its NCDs or NCRPS or both, whereas Chapter VI casts obligations on listed entity which has listed its specified securities and either NCDs or NCRPS or both. Also, Regulation 63 of Chapter VI prescribes that all provisions of chapter IV and certain Regulations of Chapter V shall apply to entities which have listed both its specified securities as well as NCDs and/or NCRPS.

It has been proposed to review the SEBI LODR regulations for the reasons as mentioned below:

- 2.1. SEBI is in receipt of feedback and representations, from various stakeholders across the market, expressing difficulties in complying with various provisions of SEBI LODR Regulations, some of which are reportedly repetitive, unwarranted and also cumbersome to comply with. It is felt that keeping this in view, a review is necessary in order to ensure ease of compliance on the part of the issuers who have listed their debt securities.
- 2.2. Further, in recent years there has been a spate of incidents regarding non-compliance with the SEBI LODR Regulations by the issuers of debts securities.

Therefore, in order to ensure safeguard of interest of investors, a need has been felt to review and strengthen the SEBI LODR Regulations wherever necessary pertaining to NCDs and NCRPS.

3. Review of LODR Regulations:

The provisions which are proposed to be reviewed in this paper are as under:

3.1. Intimation to stock exchange(s):

3.1.1. Current requirement :

3.1.1.1. **Regulation 50(1):** Listed entity shall give prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest and redemption amount is payable on debentures, bonds and redeemable shares.

3.1.1.2. **Regulation 50(2):** Listed entity shall, prior to issuance of NCDs or NCRPs, intimate the stock exchange(s) about its intention to raise funds through these securities which it proposes to list either through a public issue or on private placement basis. Further, the above intimation may be given prior to the meeting of board of directors wherein the proposal to raise funds through these securities shall be considered.

3.1.1.3. **Regulation 50(3):** Listed entity shall intimate to the stock exchange(s), at least two working days in advance of the meeting of its board of directors, at which the recommendation or declaration of issue of NCDs or any other matter affecting the rights or interests of holders of NCDs/NCRPs is proposed to be considered.

3.1.2. Changes proposed:

Regulation 50(1): The provisions with respect to the intimation under Regulation 50(1) is proposed to be deleted and instead these requirement may be incorporated as part of Regulation 57 which provides for other submissions to stock exchange(s). It is proposed to insert the following provision under Regulation 57:

Regulation 57(4): A listed entity shall within 5 working days prior to the beginning of the quarter provide details for all the non-convertible debt



securities and/or non-convertible redeemable preference shares for which interest/dividend shall be payable or redeemable during the quarter.

Regulation 57(5): The listed entity shall within 2 working days from end of the quarter provide a certificate confirming about payment of interest or dividend or principal obligations for NCDs/ NCRPS which were due as per Regulation 57(4).

The listed entity shall also intimate complete list of non-payment of interest or dividend or principal obligations for NCDs/ NCRPS which were due as per Regulation 57(4) and all such dues for the period before.

Rationale: It has been pointed out by the market participants that due dates of payment of interest and redemption of principal are part of Information memorandum circulated to investors as this document is submitted to the stock exchanges at the time of listing. Further, certain listed entities, particularly, the finance companies have multiple tranches of securities outstanding at any particular point of time. Therefore, it would be cumbersome for them to provide separate intimation for each of the tranches under Regulation 50(1). Also repeated intimation by the listed entity, to the stock exchange, about its intention to raise funds through NCDs or NCRPS, prior to every meeting of the board of directors makes the compliance process very cumbersome for such listed entities.

- 3.1.2.1. **Regulation 50(2):** It is proposed to delete this Regulation and make the provisions of this Regulation more inclusive and make it a part of disclosures to be made under Regulation 51.

Rationale: It is felt that disclosure under this Regulation may not be of much relevance to the debt holders and/or preference shareholders.

- 3.1.2.2. **Regulation 50(3):** It is proposed to delete this Regulation and make the provisions of this Regulation as part of disclosures to be made under Regulation 51.

Rationale: This would ease compliance on the part of the issuers, without compromising on the availability of information to the investors.



3.2. Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information:

3.2.1. Current requirement :

3.2.1.1. **Regulation 51(1) and Regulation 51(2)**: Regulation 51(1) and (2) read with Part B of schedule III to the LODR Regulations provides that the listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend or redemption of NCRPS or NCDs. The detailed list of such events/ information has been provided in Part B of Schedule III of LODR Regulations.

3.2.2. Changes proposed:

The disclosures, as inserted in Part B of Schedule III of LODR Regulations are proposed to be carried out in the following manner:

3.2.2.1. The listed entity shall first disclose to stock exchange(s) of all events, as specified in revised Part B of Schedule III, or information as soon as reasonably possible but not later than the time indicated for the specific events.

Provided that in case the disclosure of occurrence of the event or information is made after the specified time for the intimation, the listed entity shall, along with such disclosures provide explanation for delay.

3.2.2.2. The listed entity shall, with respect to disclosures referred to in this Regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.

3.2.2.3. The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information

Provided that the stock exchange(s) shall disseminate information and clarification as soon as reasonably practicable.

3.2.2.4. The listed entity suo moto, may confirm or deny any reported event or information to stock exchange(s).

3.2.2.5. The listed entity may disclose on its website all such events or information which has been disclosed to stock exchange(s) under this Regulation, and such disclosures may be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.

Disclosure of events or Information: NCDs/NCRPS

3.2.2.6. **A. The following shall be events/information which shall be disclosed by the listed entity without any application of guidelines of materiality as soon as reasonably possible but not later than twenty four hours from occurrence of event or information :-**

- (1) Any delay or expected delay in payment of interest or dividend according to due date/pre-agreed date;
- (2) Any delay or expected delay in repayment /redemption of principal amount according to due date/pre-agreed date;
- (3) Any default or expected default in payment of interest or dividend according to due date/pre-agreed date;
- (4) Any default or expected default in payment of principal amount /redemption according to due date/pre-agreed date;
- (5) Details of any letter or comments made by debenture trustees regarding payment/non-payment of interest on due dates, payment/non-payment of principal on the due dates or any other matter concerning the security, listed entity and /or the assets along with its comments thereon, if any;
- (6) Any proposal or action that shall adversely affect payment of interest on non-convertible debt securities or payment of dividend on non-convertible redeemable preference shares;
- (7) Any proposal to change or any change in terms including rights or privileges or nature or form of non-convertible debt securities or non-convertible redeemable preference shares including any such proposal with any investor(s)/lender(s);



- (8) Any proposal or action for changing the terms of issue or redemption or both;
- (9) Any proposal or action with respect to exercising call/put option (right to redeem) or any similar option by the listed entity;
- (10) Any proposal or action of listed entity which shall result in the redemption, conversion, cancellation, retirement in whole or in part of any non-convertible debt securities or reduction, redemption, cancellation, retirement in whole or in part of any non-convertible redeemable preference shares;
- (11) Periodic rating obtained from credit rating agency or any revision in the rating or any expected revision in rating;
- (12) Delay or failure to create charge on the assets within the stipulated time for non-convertible debt securities;
- (13) Any attachment or prohibitory orders restraining the listed entity from transferring non-convertible debt securities or non-convertible redeemable preference shares;
- (14) Any proposal to change or change or breach of any covenants under the terms of NCDs and/or NCRPS;
- (15) Any proposal or action for forfeiture of unclaimed interest or dividend or principal amount or forfeiture of any non-convertible debt securities and/or non-convertible redeemable preference shares;
- (16) Any proposal to change or change of Debenture trustee or Credit rating agency or Registrar and Share Transfer Agent;
- (17) Initiation or status update with respect to reference to NCLT under the Insolvency and Bankruptcy Code 2016;
- (18) Any proposal for borrowings to be made through issuance of NCDs and/or NCRPS, other debt instruments viz. term loans, commercial papers, external commercial borrowings, Foreign currency convertible borrowings, medium term note programme, rupee denominated offshore bonds or any other mode of borrowings;
- (19) Intimation in advance of the meeting of its board of directors, at which the recommendation or declaration of issue of NCDs or any other matter affecting the rights or interests of holders of NCDs/NCRPs is proposed to be considered and also outcome of such meetings.
- (20) In case where an event occurs or an information is available with the listed entity, which has not been indicated in Part B of Schedule III, but



which may be material, the listed entity is required to make adequate disclosures in this regard.

Explanation.- For the purpose of this part, 'default' shall mean non-payment of interest or dividend or principal amount or redemption amount in full on the pre-agreed date and shall be recognized at the first instance of delay in servicing of any interest or dividend or principal or redemption.

B. The provisions mentioned at Paragraph A(1), A(6), A(7), A(9), A(10), A(12) of Part A of Schedule III shall also be applicable to listed entities which have listed their NCDs or NCRPS without application of materiality.

C. Disclosures as per Paragraph B of Part A of Schedule III after application of materiality as determined in terms of Regulation 30(4) of LODR in so far as they have a bearing on payment of interest or dividend or principal amount or redemption.

Rationale: The disclosure of information having bearing on performance/ operation of listed entity and/or price sensitive information needs a review because an event which may be material on its own need not necessarily be material event/information even though it may be price sensitive. The above disclosures shall not only ensure alignment with listed entities who have listed their specified securities but will also provide a defined timeline for disclosure of material event/information. It would also help in ensuring timely availability of crucial information to all the stakeholders regarding NCDs/NCRPS which may affect the investment decisions/interests of the investors.

3.3. Financial Results:

3.3.1. Current requirement :

3.3.1.1. **Regulation 52(4)**: The listed entity, while submitting half yearly/ annual financial results, shall, inter-alia , disclose the following line items along with the financial results:

- (a) credit rating and change in credit rating;
- (b) asset cover available in case of non-convertible debt securities,;
- (c) debt-equity ratio;



(d) previous due date for the payment of interest/ dividend for NCRPS/repayment of principal of NCRPS /NCD and whether same is paid or not;

(e) next due dates for the payment of interest/ dividend for NCRPS/repayment of principal of NCRPS /NCD and whether same has been paid or not.

3.3.1.2. **Provisos to Regulation 52(4):** The first proviso to Regulation 52(4) provides that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the Reserve Bank of India, unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

Second proviso to Regulation 52(4) requires that the provision of this Regulation shall not be made applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

3.3.1.3. **Regulation 52(6) (e):** Regulation 52(6) (e) provides that the listed entity which has listed its non-convertible redeemable preference shares shall, inter-alia, make additional disclosures such as breach of any covenants under the terms of the non-convertible redeemable preference shares.

3.3.2. **Changes proposed:**

3.3.2.1. **Regulation 52(4):** It is proposed to remove requirements of 52(4)(a), (d) and (e).

Rationale: It is felt that requirement to disclose credit rating and change in credit rating is not a financial requirement and need not be provided along with the financial statements. The change in credit rating needs to be disclosed to stock exchange under Regulation 51 as it a material information.

Feedback has also been received from the market participants that the disclosures required under Regulation 52(4) (a), (d) and (e) have to be given series wise and considering that the issuers have numerous series of listed ISINs



outstanding at a given point of time, the disclosures sought under the aforesaid clauses cannot be provided as a line item Further, due dates for payment of interest/ dividend/repayment of principal of NCRPS /NCD is already required to be intimated in terms of Regulation 50 and whether the payment has been made or not is required to be intimated in terms of Regulation 57(1). Therefore, the requirements under Regulation 52(4)(d) & (e) are proposed to be deleted.

3.3.2.2. **Deletion of first and second proviso to Regulation 52(4)**: It is proposed to delete the first and second proviso related to requirements of this Regulation.

Rationale: SEBI vide circular dated August 10, 2016 has provided that banking companies and insurance companies shall follow the formats as prescribed under their respective Acts/Regulations as specified by their Regulators and therefore the provisos are proposed to be deleted.

3.3.2.3. **Disclosure of Regulation 52(6) (e) under Schedule III**: It is proposed to include the disclosure with respect to breach of covenants under the terms of issuance of NCDs and /or NCRPS under Schedule III disclosures.

Rationale: It is felt that the disclosure required under Regulation 52(6)(e) is material information affecting the rights of investors and should be provided for both NCDs and NCRPS under schedule III read with Regulation 51.

3.4. **Utilisation of funds**:

3.4.1. **Current requirement**:

Regulation 52(7) requires that the listed entity shall submit to the stock exchange on a half yearly basis along with the half yearly financial results, a statement indicating material deviations, if any, in the use of proceeds of issue of NCDs and NCRPS from the objects stated in the offer document.

Regulation 56(1)(a) *inter alia* provides that the listed entity shall forward a copy of certificate from the listed entity's auditors in respect of utilisation of funds during the implementation period of the project for which the funds have been raised.

3.4.2. Changes proposed:

With regard to intimation for material deviation in the use of proceeds, it is proposed that the same may be required to be submitted quarterly. Further, requirement of submission of auditor's certificate in respect of utilization of funds, as required under Regulation 56(1) is proposed to be deleted and instead incorporated as a part of Regulation 52(7).

Rationale: Material deviations in the use of proceeds is a serious issue and needs to be intimated more frequently than the instant provision. Accordingly, it has been proposed to reduce the timeline for such intimation from half yearly to quarterly. Further, the proposal of deleting the requirement of submission of auditor's certificate in respect of utilization of funds in terms of Regulation 56(1) and making it a part of Regulation 52(7), would result in coherence in respect to submissions related to use of proceeds.

3.5. Annual Report:

3.5.1. Current requirement:

3.5.1.1. **Regulation 53:** Regulation 53 provides for the disclosures to be made in the Annual Report by the listed entities which has listed its NCDs and/or NCRPS. However, it does not provide the time line for submission of the same to Stock Exchanges.

3.5.1.2. **Regulation 58(1):** Regulation 58(1) provides that the listed entity shall send the following documents:

(a) Soft copies of full annual reports to all the holders of NCRPS who have registered their email address(es) for the purpose;

(b) Hard copy of statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of NCRPS who have not so registered;

(c) Hard copies of full annual reports to those holders of NCDs/ NCRPS, who request for the same.

(d) Half yearly communication as specified in sub-regulation (4) and (5) of regulation 52, to holders of NCDs/ NCRPS.

3.5.1.3. **Regulation 56 (1):** Regulation 56(1) provides that the listed entity shall promptly provide a copy of the annual report to the Debenture Trustee.

3.5.2. **Changes proposed:**

3.5.2.1. **Regulation 53:** It is proposed that listed entities who have issued NCDs and/or NCRPS shall submit the annual report to the stock exchange and Debenture Trustees within twenty one days of it being approved and adopted in the AGM as per companies Act, 2013.

Rationale: Regulation 53 does not specify any time limit for submission of annual report whereas Regulation 34 of the LODR Regulations provides that the listed entity issuing equity shares and specified securities shall submit the annual report to the stock exchange within twenty one days of it being approved and adopted in the AGM as per companies Act, 2013. Therefore, in order to ensure parity across all listed issuers, it is proposed to define a timeline under Regulation 53 to make the conditions uniform for submission of the annual report to the stock exchanges.

It is proposed that all the provisions pertaining to submission of Annual report may be provided under one Regulation. Hence, the requirement with respect to submission of annual report to Debenture Trustee is proposed to be made a part of Regulation 53.

3.5.2.2. **Regulation 58(1):**

It is proposed that the Soft copies of annual reports required to be sent to the holders of non-convertible preference share who have registered their email address(es) for the purpose shall also be sent to the email addresses available in depository account information. The same is proposed to be incorporated as part of Regulation 58(1)(a). Further, Regulation 58(1) (b), (c) & (d) are proposed to be deleted.



Rationale: As per provisions of Companies act, all holders whose email id is available with depositories may be provided only soft copy of Annual Report. Thus the same is proposed to be streamlined.

Further, it is felt that the documents required in terms of Regulation 58(1) are relevant to the holders of equity shares of a company and may not be required to be sent to holders of NCDs/ NCRPS in hard copy.

Moreover, as per Regulation 52(4) and Regulation 52(8), the financial results of the company along with other relevant information is already available in the public domain via the stock exchange website, newspapers etc. Therefore the Regulation 58(1) (b), (c) & (d) are proposed to be deleted.

3.6. **Credit Rating:**

3.6.1. **Current requirement :**

Regulation 55: Regulation 55 provides that each rating obtained by the listed entity with respect to NCDs shall be reviewed at least once a year by a credit rating agency registered by the Board.

3.6.2. **Changes proposed:** It is proposed that the credit rating assigned to NCRPS shall also be reviewed once a year under Regulation 55.

Rationale: The proposed change would align the requirement of review of rating of NCDs with that of NCRPS.

3.7. **Documents and Intimation to Debenture Trustees:**

3.7.1. **Current requirement :**

Regulation 56(1): Regulation 56(1) of the LODR Regulations *inter-alia* provides that the listed entity shall promptly forward to the Debenture Trustee the following documents:

- (a) a copy of the annual report at the same time as it is issued along with a copy of certificate from the listed entity's auditors in respect of utilisation of funds



during the implementation period of the project for which the funds have been raised.

- (b) a copy of all notices, resolutions and circulars relating to-
 - (i) new issue of NCDs at the same time as they are sent to shareholders/ holders of NCDs;
 - (ii) the meetings of holders of NCDs at the same time as they are sent to the holders of NCDs or advertised in the media including those relating to proceedings of the meetings;
- (c) intimations regarding :
 - (i) any revision in the rating;
 - (ii) any default in timely payment of interest or redemption or both in respect of the NCDs;
 - (iii) failure to create charge on the assets;
- (d) a half-yearly certificate regarding maintenance of hundred percent asset cover in respect of listed NCDs, by either a practicing company secretary or a practicing chartered accountant, along with the half yearly financial results:

3.7.2. **Changes proposed:**

3.7.2.1. **Regulation 56(1):** It is proposed that the listed entity shall forward the material information/documents as disclosed under Part B of Schedule III of Regulation 51 in so far as much it relates to interest, principal, issue and terms of NCDs, rating, creation of charge on the assets, notices, resolutions and meetings of holders of NCDs, to the debenture trustee at the same time as it has intimated to the stock exchange.

Rationale: The proposal has been made to rationalize the requirement of reporting of material event/ information. Further, disclosure of material information/documents related to interest, principle, issue of NCDs, rating, creation of charge on the assets, notices, resolutions and meetings of holders of NCDs, to the debenture trustee at the same time as it has been intimated to the stock exchange, would ease compliance on part of issuers.

Further, the submission of half yearly certificate regarding maintenance of asset cover to debenture trustee in terms of Regulation 56(1)(d) would be a

duplication as the said information is noted by the trustee under Regulation 52(5). Hence, the same is proposed to be deleted.

Thus Regulation 56(1) (a), (b), (c) & (d) are proposed to be deleted.

3.8. Other submissions to stock exchange(s):

3.8.1. Current requirement :

Regulation 57(1): Regulation 57(1) provides that the listed entity shall submit a certificate to the stock exchange within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the non-convertible debt securities stating the fact about non-payment along with the reasons for the same.

Changes proposed: The listed entity shall submit a certificate to the stock exchange within two days of the interest or principal or both becoming due in case of non-payment of such interests or principal obligations or both in respect of the non-convertible debt securities.

Rationale: It has been observed that listed entities are submitting certificates to the stock exchanges under Regulation 57(1) only when they have made timely payment of their debt obligations and not otherwise. However, the legislative intent of the provision is that disclosures have to be made to the stock exchanges irrespective of payment being made by the listed entity. Therefore intimation regarding non-payment of interest or dividend or principal obligations will also emphasize the submission of material information under Regulation 51.

3.9. Structure of NCDs and NCRPS:

3.9.1. Current requirement :

Regulation 59(1) and Regulation 59(2): Regulation 59 (1) and (2) provides that the listed entity shall not make material modification without prior approval of the stock exchange(s) where the NCDs/ NCRPS are listed. Also, such approval shall be taken only after:

- i. Approval of board of directors and debenture trustee in case of NCDs and ;



- ii. Complying with provisions of Companies Act, 2013 including approval of the consent of requisite majority of holders of that class of securities.

3.9.2. **Changes proposed:** It is proposed that the listed entity shall not make any material modification without obtaining consent in writing of the holders of not less than three-fourths, by number, of holders of that class of securities for which modification in structure is proposed. Further, such consent has to be an affirmative one and a mere non response shall not be treated as deemed consent. The consent so received from the prescribed number of holders shall be vetted by the debenture trustee who shall then issue a certificate to the issuer confirming the same. The said certificate shall then be submitted by the listed entity to the stock exchange.

Rationale: The proposed change is to remove ambiguity regarding the process to be followed for making material modification to the structure of NCD and NCRPS. Further, it is felt that such a change would provide adequate safeguards to the interests of investors thus enabling a robust framework for such structural change.

3.10. **Website:**

3.10.1. **Current requirement :**

Regulation 62 of the LODR Regulations provides that the listed entity shall maintain a functional website containing information such as details of business about the listed entity, its financial statements, details about default by issuer to pay interest on or redemption amount; failure to create charge etc. The Regulation further provides that the listed entity has to ensure that the contents of website are correct and updated at any given point of time.

3.10.2. **Changes proposed:** It is proposed that the listed entity shall update any change in the content of its website within two working days from the date of such change in content.

Rationale: This has been proposed to align the requirement of timely updation on website by the issuers of listed debt securities with that required for specified securities in terms of Regulation 46 of LODR Regulations.



3.11. **Applicability of Chapters IV and V:**

3.11.1. **Current requirement :**

Regulation 63(1) and Regulation 63(2): Regulation 63(1) read with Regulation 63(2) provides that an entity which has listed its 'specified securities' and 'non-convertible debt securities' or 'non-convertible redeemable preference shares' or both on any recognized stock exchange, shall be comply with all provisions in Chapter IV of these Regulations and certain provisions of Chapter V including Regulations such as Regulation 50(2), (3), 51, 53, 54, 55 etc.

3.11.2. **Changes proposed:** It is proposed to include Regulation 62 within the ambit of Regulation 63(2) as the disclosures to be made on the website of listed entity are significantly different in case of equity listed and debt listed issuers. Hence, in order to have better availability of information in the public domain, it is proposed that issuers who have listed both their specified securities as well as debt securities would have to comply with Regulation 62.

Rationale: This would ensure better availability of information in the public domain.

4. **Public Comments:**

In light of the above, public comments are invited on the proposals contained in this consultation paper. The comments, may be sent by email or through post, latest by **June 11, 2018**, in the following format:

Details of Responder	
Name ¹ /Organization: ¹ if responding in personal capacity	
Contact number:	
Email address:	

Comments on consultation paper			
Sr. No.	Para No.	Comment/proposed change	Rationale



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While sending email kindly ensure the subject is "Comments on the Consultation paper for review of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015"

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