Securities Law Update

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Accessing the Public Markets in a Pandemic

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Background

The Securities and Exchange Board of India ("**SEBI**") has issued circulars dated April 21, 2020 introducing temporary relaxations in the provisions related to Rights Issues ("**Circular I**") as contained in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**SEBI ICDR Regulations**") and extending the validity of regulatory approval for launching initial public offering and rights issue by six months, and granting the flexibility to change the fresh issue size ("**Circular II**" and together with Circular I, "**SEBI Circulars**") in the wake of coronavirus pandemic. These steps came following the representations from various industry bodies and market participants for easing of conditions relating to raising of funds from the securities market amidst the impact of the COVID-19 pandemic.

Circular - I

Temporary Relaxations – easing Rights Issue norms for fund raising

The measures introduced by SEBI are aimed at expanding the number of listed entities that are eligible for raising funds through fast track rights issuances by reducing the time involved and providing greater flexibility in fund raising, apart from easing compliance requirements. SEBI in its circular has clearly mentioned that these relaxations are only applicable to Rights Issue and are not applicable for issuance of warrants. Further, these are applicable to Rights Issue that open on or before March 31, 2021.

Following are the relaxations provided by SEBI in relation to Rights Issue:

- *Speeding up the Fast Track*

  Relaxation in relation to the eligibility conditions related to Fast Track Rights Issues as provided under Regulation 99 of SEBI ICDR Regulations have been introduced as follows:

Regulation	Brief Context	Existing Norm	Revised Norm (Temporary Measure)
99 (a)	Minimum Period for listing	Equity shares of the issuer are required to be listed on any stock exchange for a period of at least three years immediately preceding the reference date	This requirement related to period of listing of equity shares of the issuer for at least three years has been reduced to 18 months only
99 (c)	Minimum average market capitalisation of Public Shareholding of the Issuer	The issuer should have at least ₹ 250 crore of average market capitalisation of Public Shareholding	This requirement of average market capitalisation of Public Shareholding has been reduced to ₹ 100 crore

Regulation	Brief Context	Existing Norm	Revised Norm (Temporary Measure)
99 (f)	Compliance to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Listing Regulations**")	The requirement for an issuer to comply with the Listing Regulations is for a minimum period of three years	The period of three years has been reduced to 18 months only
99 (h)	Show cause notices or prosecution proceedings initiated by SEBI and pending against the Issuer or its promoter or whole-time director(s) as on the reference date	There should be no show cause notice(s) that has been issued or a prosecution proceeding by SEBI, whether initiated or pending, against the issuer/ promoter/whole-time director as on the reference date	Show cause notices which are under adjudication proceedings have been excluded from this requirement Further, in case show cause notice(s) has been issued by SEBI in an adjudication proceeding or a prosecution proceeding has been initiated by SEBI, then necessary disclosures in respect of such action(s) along-with its potential adverse impact on the issuer shall be made in the letter of offer
99 (i)	Settlement of any alleged violation of securities law through the consent or settlement mechanism	The issuer/promoter/ promoter group of the issuer, should not have settled any alleged violation of securities laws through the consent or settlement mechanism with SEBI during three years immediately preceding the reference date	The language of this regulation has been revised to ease the requirement, now the issuer/promoter/promoter group of the issuer, should have fulfilled the settlement terms or adhered to the directions of the settlement order(s) in case where it has settled any alleged violation of securities laws through the consent or settlement mechanism with SEBI
99 (j)	Suspension of Trading as a disciplinary measure	During the last three years immediately preceding the reference date there should not have been an instance where the equity shares of the issuer have been suspended from trading as a disciplinary measure	The period has been narrowed to 18 months in this requirement
99 (m)	Audit Qualification	A strict requirement of no audit qualification on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed in the letter of offer	The requirement has been eased wherein; In case there is an audit qualification in relation to any of the financial years for which the accounts are disclosed in the letter of offer, the issuer will be required to provide the restated financial statements adjusting the impact of such qualifications; Further, in case the impact of the qualifications cannot be ascertained then such a scenario has to be disclosed appropriately in the letter of offer.

- *Minimising the Minimum Subscription and Minimum Threshold*

  Easing out the rigidity and providing greater flexibility in fund raising, the threshold for minimum subscription requirements for a rights issue has been reduced to 75% from 90% of the offer size. However, this is subject to a condition wherein if the issue is subscribed within 75% to 90% (a successful issue) then out of the funds raised, at least 75% of the issue size shall be utilised for the objects of the issue other than general corporate purpose.

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Further, to ease compliance requirements and also to lessen the time involved, the listed entities raising funds up to ₹ 25 crore in a rights issue will not be required to file draft offer document. The existing threshold in this regard is of ₹ 10 crore.

Circular – II

Regulatory Framework

SEBI ICDR Regulations prescribe the regulatory framework for opening of the public issue/ rights issue post issuance of observations by SEBI. According to SEBI ICDR Regulations, a public issue/rights issue may be opened within 12 months from the date of issuance of the observations by SEBI.

Relaxations Granted

Following are the relaxations provided by SEBI vide Circular-II:

- *Extension of SEBI's observations' validity*
  The Circular-II provides a six months' extension in terms of validity of the observations issued by SEBI which have expired or will expire between March 1, 2020 and September 30, 2020, from the date of expiry of such observations. This is subject to an undertaking confirming the compliance with Schedule XVI of the SEBI ICDR Regulations, to be provided by the issue's lead manager.

- *Change in the fresh issue size*
  Further, as reiterated in the Circular-II, there is a requirement of fresh filing of the draft offer document with SEBI, if there is any increase or decrease in the estimated issue size by more than 20 per cent of the estimated issue size. However, SEBI has granted a relaxation in terms of change in the fresh issue component of the estimated issue size, for issues (initial public offers/rights issues/further public offers) opening before December 31, 2020. An issuer has been permitted to increase or decrease the fresh issue size by up to 50 per cent of the estimated issue size without being required to file a fresh draft offer document. This is subject to compliance with the following conditions: (i) the objects of the issue shall remain unchanged; (ii) the lead manager to the issue shall provide an undertaking in relation to the draft offer document being compliant with the provisions of Regulation 7(1)(e) of the SEBI ICDR Regulations; and (iii) all appropriate changes are made to the relevant sections of the draft red herring prospectus and an addendum with respect to such changes shall be made public.

In the view of the effect of the COVID-19 pandemic, SEBI has granted the above-mentioned relaxations vide the SEBI Circulars in order to instil lucidity and flexibility in fund raising and to avoid panic in the market.

Please feel free to address any further questions or request for advice to:

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