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## Revised Framework for Issue and Listing of Non-Convertible Securities

### Introduction

Securities and Exchange Board of India (“SEBI”) issued a circular dated October 10, 2022 (“**EBP Circular 2022**”) replacing the erstwhile Chapter VI (*Electronic Book Provider Platform*) of Operational Circular for Issue and Listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper, dated August 10, 2021 (“**Operational Circular**”). Chapter VI of the Operational Circular (both under the erstwhile as well as the existing regime) stipulates the issuances which must be made through electronic book provider (“EBP”) platform, the eligible participants, obligations of various entities, provision to the issuer to withdraw offers, the process of bidding and allotment, etc. The provisions contained in the EBP Circular 2022 have come into effect from January 1, 2023.

### Key changes- A snapshot:

#### Flexibility of investors to bid on debt instruments with pre agreed coupon/ yield components and recognition of the concept of ‘price’:

- In a significant departure from the erstwhile regime, the Operational Circular now recognizes bids with pre-determined/negotiated coupon components. This is especially critical for negotiated trades where the coupon of the instrument has already been pre-agreed between the issuer and a prospective investor and the issuer is not looking to use the EBP platform for coupon discovery.
- In this process, the ‘price’ of the instrument which has now been formally recognized as a distinct component is discovered during the bidding process. The price of an instrument is the incremental amount that an investor is willing to pay above the par value of the instrument to get an edge over other potential investors in the EBP process.
- Such mechanism also enables the issuers to gauge the market demand with respect to the issuance as well as

enables them to discover the larger investor sentiment based on the ‘price’ outside the par value of the instrument.

- An illustrative example for a proposed issuance based on this price discovery mechanism (uniform/ multiple yield allocation) is more particularly described in Section B below.

#### Priority of coupon/ yield/ price over time

- Under the erstwhile Operational Circular, an allocation could *only* be made on *yield time priority basis* i.e. the bid with the higher yield would be given preference and where two or more bids contain the same yield, the one which is prior in time would have been given preference over the other competing bids.
- Pursuant to the EBP Circular 2022, an issuer who does not intend to discover coupon through the EBP process can select allocation to be made on *price time priority basis*. Where an issuer intends to discover coupon through the EBP process, the EBP issuance will be set up on *yield time priority basis*.
- If two or more bids have the same coupon/ price/ spread **and** time, the allotment is now required to be done on a ‘pro-rata’ basis.

#### Anchor investor

- Flexibility has now been given for investments to be made by anchor investors in order to help issuers gauge demand and get assurance from specific potential investors on subscriptions.
- Discretion of the issuers to select ‘anchor investor’ who will subscribe to the ‘anchor portion’. The issuer is required to disclose the details of the ‘anchor investor’ and the ‘anchor portion’ to the EBP along with the placement memorandum and the term sheet.
- ‘Anchor portion’ cannot exceed 30% of the base issue size.



# Client Update

- There is no bidding for anchor portion on the EBP platform.
- Anchor investor can also bid for non-anchor portion of the base issue size and the green shoe portion wherein pricing and settlement of such investment in the debt securities shall be determined in accordance with the EBP mechanism, as more particularly described in Section B below.
- In case of non-fulfilment of pay-in obligations by allottees and anchor investors, such allottees and anchor investors will be debarred from accessing the bidding platform across all EBPs for a period of 30 days from the date of such default.

## Other key changes

- **Reduction in thresholds for applicability:**
  - Issuance of listed debt securities of or above INR 50 crores (including green shoe option or any shelf issue of listed debt securities consisting of one or more tranches) in a financial year on private placement basis to be undertaken by way of an EBP mechanism (as compared to INR 100 crores pursuant to the erstwhile Operational Circular).
  - Issuances of debt securities on private placement basis, irrespective of issue size, by issuers who are in existence for less than three years, will continue to be required to be undertaken through the EBP mechanism (as was stipulated under the erstwhile regime).
- **Enhancement of bidding limits through arranger:**
  - The EBP Circular 2022 has increased the amount that can be bid through an arranger to INR 100 crore, or 5 % of the base issue size (whichever is lower), from the earlier limit of INR 15 crore.
  - The arranger can, however, bid for multiple eligible participants subject to the above limits. However, foreign portfolio investors may bid through their custodians.
  - The EBP Circular 2022 has prescribed that if the clients of an arranger fail in their pay-in obligations in three instances across all EBPs, then such an arranger shall be debarred from accessing the bidding platform on any EBPs for a period of seven days from the date of the third or subsequent default.
- **Fat Finger Errors:** The EBP Circular 2022 has imposed certain obligations on the EBP including *inter alia* to (a) ensure that the EBP platform does not provide any preferential access to any bidder and (b) provide a facility to the eligible participants to define the limits/ range, within which quotes may be placed on the EBP platform to avoid 'fat finger'

errors. The EBP Circular 2022 requires a confirmation to be provided by eligible participant to the EBP that eligible participant is not using any software, algorithm, bots or other automation tools, which would give unfair access for placing bids on the EBP platform.

- **Limit on green shoe option:** The EBP Circular 2022 has restricted the size of the 'green shoe option' (i.e. over subscription clause) up to five times the base issue size. Prior to this amendment, for privately placed issuances, the issuer was only required to specify a range within which such green shoe option may be retained, with no specified limit on the total range.

## Modifications in bidding, allotment and settlement process:

### Basis of entering bid

- Earlier the basis of entering bids was coupon/ yield in basis points i.e., up to four decimal points.
- The EBP Circular 2022 has now introduced the manner of entering bid in (i) price; or (ii) coupon (in %), up to four decimal points; or (iii) spread in basis points (bps).

### Bidding Process

As mentioned above, pursuant to the EBP Circular 2022, the bidding process has now been truncated into two scenarios:

- *firstly* the coupon being made disclosed upfront by the issuer (in which case, the bids are allocated based on the price discovered during the bidding process) where such allocation shall be made on a price and time priority; and
- *secondly*, where the coupon is subject to the discovery during the bidding process, an allocation shall be made on the yield and time priority. Note that this is a departure from the earlier framework, since under the previous Operational Circular, the allocation could *only* be made on yield time priority basis i.e. the bid with the higher yield would be given preference and where two or more bids contain the same yield, the one which is prior in time would have been given preference over the other competing bids.

### Modification of Bids

Pursuant to the EBP Circular 2022, the SEBI has clarified that bidders shall be allowed to modify their bids in the last ten minutes of the bidding period for (a) downward revision of coupon or spread or (b) upward modification for price and/ or (c) upward revision in terms of bid size. In the earlier regime, such modification of bids was only allowed for improvement of coupon/ yield and upward revision in terms of the bid size.



## Illustration

To clarify the regulatory change in a 'price' discovery mechanism, please see below, a tabular summary setting out an illustration for the pricing and settlement of an issuance of debt securities consisting of an anchor portion where the issuer has disclosed the coupon upfront with the following factual details:

<b>Total Base Issue (INR Crs.)</b>		<b>Green Shoe (INR Crs.)</b>		<b>Total Issue Size (INR Crs.)</b>
100	+	400	=	500

Details of the Deal		
<b>Coupon Specified</b>	8%	<b>Type of Bidding:</b> Price based (Discovery of Price in Non-Anchor portion)
<b>Anchor Portion</b>	Total Anchor: INR 30 Crs. Anchor A: INR 10 Crs. Anchor D: INR 20 Crs.	<b>Non-Anchor Portion (for bidding):</b> INR 470 Crs.

### During Bidding, Anchor A participates in Bidding of Non-Anchor portion:

Bidder	Bid Price (INR)	Quantum (INR Crs.)
A	100.01	350
B	99.99	200
C	100.02	200

(Please note names of Bidders are masked during the Bidding Session)

### Once bidding is over:

Bidder	Bid Price (INR)	Quantum (INR Crs.)	Cumulative (INR Crs.)
C	100.02	200	200
A	100.01	350	550
B	99.99	200	750

Issue Acceptance from the Bidding of Non-Anchor Portion: INR 470 Crs. (entire Non-Anchor Portion)

### Uniform Yield Allotment

Allottee details	Allocated Price (INR)	Allocated Amount (INR Crs.)	Settlement Value (INR)
A (Anchor)	100.01	10	10,00,10,000
D (Anchor)	100.01	20	20,00,20,000
C (Non-Anchor)	100.01	200	200,02,00,000
A (Non-Anchor)	100.01	270	270,02,70,000
<b>Total</b>		<b>500</b>	<b>500,05,00,000</b>

### Multiple Yield Allotment

Allottee Details	Allocated Price (INR)	Allocated Amount (INR Crs.)	Settlement Value (INR)
A (Anchor)	100.00	10	10,00,00,000
D (Anchor)	100.00	20	20,00,00,000
C (Non-anchor)	100.02	200	200,04,00,000
A (Non-anchor)	100.01	270	270,02,70,000
<b>Total</b>		<b>500</b>	<b>500,06,70,000</b>



## Takeaways from the above illustration:

- **Assured investment for anchor investors:** In the above illustration, a bidder (being an anchor and investing in both anchor and non-anchor capacities), has an assured investment to the extent of the anchor size not exceeding 30% of the base issue size.
- **Price discovery for anchor portion:** With the coupon/yield having been crystallised upfront, the pricing for the anchor portion is dependent on the cut-off price discovered during the bidding process. To clarify, while the anchor is guaranteed the allotment of the anchor portion, in a bid where the issuer intends to discover the coupon on the EBP, the coupon to be paid on the anchor portion is also decided basis the coupon rate discovered on the EBP. This could prove to be a risk for the anchor investor as the coupon for the anchor portion could end up being lower than the coupon the anchor has quoted for the non-anchor portion (depending on if the coupon quoted by other bidders is lower) but the anchor would still be bound to fund the anchor portion at such lower rate of coupon.
- **Price discovery for non-anchor portion:** For the non-anchor portion, the pricing and settlement is based on the allocation mechanism i.e., uniform yield or a multiple yield allocation.
- **Benefits of uniform yield allocation:** In a uniform yield allotment, all successful investors get their quota of the issue allotted at the cut off price (which may be higher than the price quoted by such an investor, including the anchor investor in respect of their anchor portion).

- **Implications of multiple yield allocation:** In a multiple yield allotment, successful investors get allotted their quota at the price they have quoted. However, there could be a situation where an anchor investor's price for the anchor portion ends up being different from the price for their non anchor portion for the same instrument.

## Implications

The EBP Circular 2022 seeks to address issues raised by several market participants including *inter alia* applicability of the electronic book building mechanism for debt issuances below prescribed thresholds, investments made by anchor investors, investments through arrangers (both proprietary and otherwise), the bidding process, allotment and settlement process (where the coupon may or may not be specified by the issuer) and general technological issues ensuring that allocations are made to the 'best bids' placed pursuant to an electronic bidding mechanism. The review of the Operational Circular by SEBI was long overdue especially in the context of the issues faced by the stakeholders due to the '*fastest finger first*' style of allocation on the EBP platform. Accordingly, the book-building process has been modified to ensure that the allocations are based on the 'best bid' rather than the bidder with the best technology for placing the fastest bid. The EBP Circular 2022 prioritizes and gives due recognition to allotment based on better pricing. In addition, the introduction of 'anchor investor' and 'anchor portion' further assures investors and issuers, a minimum allocation in the base issue size for negotiated trades without compromising the goal of effective price discovery mechanism.

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