

**Consultation paper on introducing framework of Schemes of
Arrangement for entities that have listed only debt securities/**

NCRPS'

A. Background

- i. Chapter XV of the Companies Act, 2013 deals with compromises, arrangements and amalgamations by any entity desirous of entering into a compromise or arrangement with its members or creditors.
- ii. The '*arrangements*' referred here relate to amalgamation, merger, demerger, etc. which are different from those filed under the Insolvency and bankruptcy code inasmuch that the former relates to restructuring of companies as opposed to the latter which pertains to bankruptcy resolution.
- iii. Presently, for schemes of arrangement involving merger, amalgamation etc., certain safeguards are available in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations, hereinafter) to protect the interest of investors of the entities with listed specified securities (defined as equity shares and convertible securities). Some of these provisions are as follows:
 1. Regulation 11 of the Listing Regulations, inter-alia, provides that any scheme of arrangement/ amalgamation/ merger/ reconstruction/ reduction of capital etc. to be presented to any Court or Tribunal should not in any way violate, override or limit the provisions of the securities laws or requirements of the Stock Exchange(s).
 2. Regulation 37 of the Listing Regulations provides that entities that have listed specified securities and are desirous of undertaking schemes of arrangement or are involved in schemes of arrangement, shall file the draft schemes of arrangement with

Stock Exchange(s) for obtaining No-Objection Letter, before filing them with any Court or Tribunal. This may also involve restructuring of listed debt of the entities.

3. Regulation 94 of the Listing Regulations requires the Stock Exchange(s) to forward such draft schemes to SEBI for comments. Further, the Stock Exchange(s), shall suitably incorporate comments of SEBI, before issuing the No-Objection Letter to the listed entity.
 4. SEBI has also issued related circulars on schemes of arrangement detailing requirements including documents to be submitted to the Stock Exchange(s), disclosures to be made in the schemes of arrangement by entities that have listed specified securities, etc.
- iv. While such stipulations exist for entities with listed specified securities, no separate framework is prescribed for entities with only listed debt securities¹ (debt securities)/ Non-convertible redeemable preference shares (NCRPS') under SEBI (Issue and listing of Non-Convertible securities) Regulations, 2021 (NCS Regulations).
- v. Moreover, under the Listing Regulations, while draft schemes of arrangement involving entities with listed specified securities get filed with the Stock Exchange(s) and are sent to SEBI for comments, those involving entities with only listed debt securities/ NCRPS' are not mandated to be filed with the Stock Exchange(s).
- vi. While an entity with only listed debt securities/ NCRPS' may, on a voluntary basis, file its scheme of arrangement with the relevant Stock Exchange(s), there is no mandate requiring the Stock Exchange(s) to

¹ Regulation 2(k) of the SEBI (Issue and listing of Non-Convertible securities) Regulations, 2021 defines debt securities as "non-convertible debt securities with a fixed maturity period which create or acknowledge indebtedness and includes debentures, bonds or any other security whether constituting a charge on the assets/ properties or not, but excludes security receipts, securitized debt instruments, money market instruments regulated by the Reserve Bank of India, and bonds issued by the Government or such other bodies as may be specified by the Board";

send the same to SEBI for comments, even where such scheme of arrangement is filed with the Stock Exchange(s).

- vii. In the past, when few cases of schemes of arrangement were voluntarily filed with SEBI by entities with only listed debt securities, SEBI had guided them to comply with provisions of Regulation 59 of the Listing Regulations.
- viii. Regulation 59 of the Listing Regulations requires companies with listed non-convertible securities to comply with certain formalities before making material modifications to the structure of listed debt securities/ NCRPS' in terms of coupon/ dividend, redemption or otherwise. This, *inter-alia*, requires the listed entity to obtain the approval of its board of directors, the Debenture trustee, debenture holders and relevant Stock Exchange(s), prior to restructuring its listed debt securities/ NCRPS'. However, this does not cover schemes of arrangement, where restructuring is undertaken under Chapter XV of the Companies Act, 2013.
- ix. In view of the aforesaid, it is felt that to protect the interest of holders of debt securities/ NCRPS' and to guide such listed entities through a procedural framework, there is a need for a specific provision in the Listing Regulations, to provide for schemes of arrangement under Chapter XV of the Companies Act, 2013 for entities that have listed only debt securities/ NCRPS'.
- x. The matter was also discussed by the Corporate Bonds and Securitization Advisory Committee (CoBoSAC) of SEBI, wherein the Committee members agreed that the matter requires regulatory intervention.

B. Need for a framework

- i. As on February 28, 2022, approx. 700 entities have listed only debt securities and have outstanding debt securities listed on the Stock Exchange(s).

- ii. When a listed issuer undergoes restructuring, it impacts investors, irrespective of the security invested in. Hence a holder of debt securities/ NCRPS' is impacted as much as a holder of specified securities; this necessitates affording a similar protection to the former.
- iii. Based on discussions with a few issuers of listed debt securities/ NCRPS' who, in the past, have been involved in schemes of arrangement, it is gathered that a framework in this regard would be immensely beneficial. It would not only bring clarity to the applicable procedures but may also save legal costs for the entity.

C. Proposal

- i. It is proposed to bring about a regulatory framework providing for schemes of arrangement for only debt listed entities in the Listing Regulations. The regulatory framework for filing and processing would be on the same lines as for entities that have listed specified securities, where SEBI offers comments on the schemes of arrangement. Further, these stipulations would not be applicable to a restructuring proposal approved as part of a resolution plan by the Tribunal under section 31 of the Insolvency Code.
- ii. The listed entity shall file the draft schemes of arrangement with Stock Exchange(s) for obtaining No-Objection Letter (NOL):
 - a. before filing with any Court or Tribunal in case of listed entities that are only debt listed and have raised money by way of a public issue of debt securities/ NCRPS' or;
 - b. at the time of filing them with any Court or Tribunal in case of listed entities that are only debt listed and have raised money only by way of private placements of debt securities/ NCRPS'.

- iii. The proposed period for processing schemes filed by entities that have listed only debt securities/ NCRPS' and have raised money only by way of a private placement of debt securities/ NCRPS' is proposed to be co-terminus with the filing period of schemes filed with any Court or Tribunal.
- iv. The entities that have listed debt securities/NCRPS' by way of a public issue, however, shall comply with the stipulations as to filing and processing in a manner similar to that of schemes filed by entities with listed specified securities before any Court or Tribunal.
- v. Stock Exchange(s) shall forward the draft scheme of arrangement received from the listed entity along with No-Objection to SEBI.
- vi. SEBI shall provide comments on the draft scheme, which shall be in relation to the listed debt securities/NCRPS' of such entities to the Stock Exchange(s) pursuant to which the Stock Exchange(s) shall issue No-Objection Letter (NOL) to the listed entity, incorporating the comments received from SEBI. While processing the draft scheme, SEBI may seek clarifications from any person relevant in this regard including the listed entity or the stock exchange(s) and may also seek an opinion from an Expert such as Practicing Company Secretary, Practicing Chartered Accountant, Lawyer, etc.
- vii. The proposed detailed requirements and procedure of filing schemes with Stock Exchange(s) along with processing of the same by SEBI are placed at Annex-I to V.
- viii. The validity of the NOL shall be six months from the date of issuance. Upon receipt of the NOL from the Stock Exchange(s), the listed entity shall ensure that the same is submitted immediately, but not later than 2 working days from such receipt, to the Court or Tribunal to avoid any delay.

ix. The detailed timelines are proposed below:

Table 1: For entities that are only debt listed and have raised money by way of a public issue of debt securities/ NCRPS'	
Sr. No.	Particulars
1	The listed entity will file the draft scheme along with other documents to Stock Exchange(s) and fees as prescribed by SEBI for obtaining No-Objection Letter before filing such scheme with any Court or Tribunal.
2	Stock Exchange(s) shall forward such draft scheme to SEBI within 3 working days from the date of receipt of the draft scheme.
3	<p>I. Stock Exchange(s) shall endeavour to :</p> <ul style="list-style-type: none"> • complete the process within 30 calendar days from date of receipt of draft scheme and • Submit No-Objection on draft scheme to SEBI within 7 working days from date of receipt of comments/ satisfactory reply on clarifications* from a registered valuer or the statutory auditors /listed entity as applicable. <p>II. Stock Exchange(s) shall send first set of queries, seeking clarifications, if any, from registered valuer or the statutory auditors /listed entity as applicable within 10 working days from date of receipt of draft scheme.</p>
4	SEBI shall provide comments on the draft scheme to the Stock Exchange(s) within 30 calendar days from date of receipt of No-Objection Letter from the Stock Exchange(s) or comments/clarifications received from the expert /listed entity, whichever is later.
5	Stock Exchange(s) shall issue No-Objection Letter to the listed entity within 7 calendar days from the date of receipt of comments from the Board after incorporating the same in the No-Objection Letter.

Table 2: For entities that are only debt listed and have raised money only by way of a private placement of debt securities/ NCRPS'	
Sr. No.	Particulars
1	Entity will submit the draft scheme along with other documents to Stock Exchange(s) and fees as specified by SEBI for obtaining No-Objection Letter at the time of filing such scheme with any Court or Tribunal.
2	Stock Exchange(s) shall forward such draft scheme to SEBI within 2 working days from the date of receipt of the draft scheme.
3	Stock Exchange(s) shall submit No-Objection on draft scheme to SEBI within 15 working days from the date of receipt of draft scheme.
4	SEBI shall provide comments on the draft scheme to the Stock Exchange(s) within 15 working days from the date of receipt of No-Objection or comments/ satisfactory reply on clarifications received from the expert /listed entity as applicable, whichever is later.
5	Stock Exchange(s) shall issue No-Objection Letter to the listed entity within 2 working days from the date of receipt of comments from the Board after incorporating the same in the No-Objection Letter.

D. Public Comments

Public comments are invited for the proposed framework for Schemes of Arrangement for entities that have listed only debt securities/ NCRPS'. The comments/ suggestions may be provided as per the format given below:

Name of the person/entity proposing comments:			
Name of the organization (if applicable):			
Contact details:			
Category: whether market intermediary/ participant (mention type/ category) or public (investor, academican etc.)			
Sr. No.	Issues	Proposals/ Suggestions	Rationale

Kindly mention the subject of the communication as, “Comments on Consultation paper on introducing framework for Schemes of Arrangement for entities that have listed only debt securities/ NCRPS’.

Comments as per aforesaid format may be sent to the following, latest by June 19, 2022 (within 30 calendar days from date of publication of this consultation paper on SEBI website) through the following modes:

- a. By email to: pradeepr@sebi.gov.in; chaitalik@sebi.gov.in; and kirand@sebi.gov.in or
- b. By post to the following address:

*Pradeep Ramakrishnan,
General Manager,
Department of Debt & Hybrid Securities
Securities and Exchange Board of India,
SEBI Bhavan, C4-A, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400051*

Issued on: May 20, 2022