ISSUANCE OF LISTED NCDS

Have the recent amendments made them simpler or more complicated?

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Why Debt Securities?

As per SEBI NCS Regulations, 2021

"debt securities"

- 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

- NCDs - debt instruments that are issued to raise funds for various purposes, such as expansion, working capital, debt refinancing, etc. They have a fixed maturity period and offer a fixed rate of interest, which is paid out to the debenture holders periodically.

- The choice between NCDs and other types of bonds depends on the investor's risk appetite, investment horizon, and financial goals and are generally opted by investors who are looking for a fixed income stream and do not want to take on too much risk.

- SEBI regulates the issue and listing of NCDs through various regulations and circulars. These regulations are subject to change, so it is important for stakeholders to stay updated on the latest developments in this area.

Regulatory Regime of NCDs

Companies Act, 2013 and rules made thereunder (The Act)

SEBI Regulations

- *SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) and circular issued thereunder*
- *SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) and circulars issued thereunder*
- *SEBI (Debenture Trustees) Regulations, 1993 (DT Regulations) and circulars issued thereunder*

FEMA Rules & Regulations

RBI Directions and Circulars

Need for Amendment

Market Dynamics	*SEBI regulations are influenced by changes in the market, such as new financial instruments or trading practices. As the market evolves, SEBI must adapt its regulations to ensure investor protection and market stability.*
Global Standards	*SEBI is also influenced by global regulatory standards. As India's economy becomes more integrated with the global market, SEBI must align its regulations with international best practices to maintain investor confidence and attract foreign investment.*
Emerging Risks	*SEBI must also stay ahead of emerging risks in the market, such as insider trading or cyber threats. By updating its regulations and provisions, SEBI can mitigate these risks and protect investors.*

Why SEBI is constantly introducing amendments in the Corporate Debt Market?

- *For a developed economy like the US, debt capital markets i.e., bonds or fixed income instruments provide about 77% of total financing (against bank/other sources), making the US debt capital markets largest in the world comprising. As a result, the US market continues to remain the deepest, most liquid, and most efficient.*
- *Corporate bond markets are crucial for any economy and facilitate the transfer of funds from those who seek a return on their assets to those who need capital to expand. They are an integral part of job creation, economic development, and growth.*
- *In India, there is traditional bank dominance and a majority of financing needs are addressed by banking channels in the country. However, since the importance of an efficient bond market is clearly important, SEBI has been making concentrated efforts over a period of time, to deepen and boost the bond market in India.*

Source: Market News: SEBI's Endevours to Deepen the Indian Bond Market

Overview of Amendments

Appointment of Nominee Director

Green Debt Securities

Introduction of GID/KID and Common Disclosures

Online Bond Platforms

Large Corporate Borrowers (LCBs)

HVDLEs

Mandatory Listing of further issue of NCDs

Delisting of NCDs

Other Amendments

Appointment of Nominee Director

Reg. 15(1)(e) of DT Regulations

DT to nominate a director on Board of Issuer, in any of the cases namely, 2 consecutive defaults in payment of interest to the debenture holders; or default in creation of security for debentures; or default in redemption of debentures

Reg. 18(6A) of NCS Regulations (Insertion w.e.f. February 02, 2023)

Trust deed to contain a provision, mandating appointment of nominee director by DT on Board of the Issuer at the earliest and not later than 1 month from the date of receipt of nomination from DT.
Trust deed to be amended by September 30, 2023.

Reg. 23(6) of NCS Regulations (Insertion w.e.f. February 02, 2023)

Issuer to ensure the following:
(i) AOA to have enabling clause for appointment of nominee director
(ii) Amendment of AOA on or before September 30, 2023
(iii) In case of default, appoint nominee director within 30 days from receipt of nomination from DT or date of this amendment, whichever is later

Relaxation for first-time issuers (w.e.f. February 09, 2023)

Provide undertaking to SE stating to comply with the requirement of amendment in AOA for nominee director appointment within 6 months from the date of listing.

SEBI Circular on appointment of Director nominated by DT on Board of Issuer dated July 04, 2023 (w.e.f. July 04, 2023)

- Provide undertaking to DT - in case default occurs, a NED/ID/trustee/member of its governing body shall be designated as ND in consultation with DT, in case of specified issuers. (not being companies):
- governed by different statutes - do not provide for ND appointment
- Require prior approval of the President of India
- principal/charter document does not provide

INTENT

- No regulatory mandate hence leading to delay in appointment
- Unwillingness of candidates due to Section 164(2)(b) of CA, 2013

IMPACT

- Wider scope covering entities other than companies

Source: SEBI Board Meeting Agenda dated December 20, 2022

Debenture trustees' nominees on Corporate Boards: FAQs by Vinod Kothari Consultants

Green Debt Securities

Meaning - Debt security issued for raising funds to utilise for projects/assets falling under specified categories

Amendments

- **Broadening GDS definition** thereby including blue bonds, yellow bonds, transition bonds, pollution prevention and control, etc. *(w.e.f. February 02, 2023)*
- Updates in **Chapter IX** which broadly consists of appointment of third-party reviewer, disclosures in annual report and BRSR, etc. (dated February 06, 2023)*(applicable for issuances on or after April 01, 2023)*
- Introduction of **Chapter IXA** which includes responsibilities of the issuer to avoid occurrences of greenwashing *(February 03, 2023)*

INTENT

- To align with Green Bond Principles issued by International Capital Markets Association
- Increasing scope of sustainable finance in global scenario as well as India
- Interest of issuers in foreign markets due to lack of investors in India and favorable interest rates in overseas market
- significant reputational risk for socially conscious investors due to greenwashing

IMPACT

- Attracting more investors as well as the issuers - expansion of debt market due to new products
- To promote the other types of GDS apart from renewable energy sectors
- Curb Greenwashing

Source: SEBI Consultation Paper dated August 04, 2022
Article on SEBI revises framework for green debt securities by Vinod Kothari Consultants

Introduction of:

- ***General Information Document (GID)***
- ***Key Information Document (KID) and***
- ***Common Disclosures***

(introduced w.e.f. July 03, 2023)

Applicability:

- *Comply or Explain basis - March 31, 2024*
- *Mandatory thereafter*

General Information Document (GID)

- Comprehensive details of the issuer
- Issuance of NCS by private placement
- Filing once only at the time of first issuance
- Validity - 1 year
- GID may indicate size of the issue

Key Information Document (KID)

- Issuance of NCS by private placement
- Filing for each subsequent offers in private placement under GID
- KID contains: Details of Offer, Financial information, material changes and developments, etc.

Schedule I (For public issue and private placement)

- Common disclosure format - erstwhile Schedule I an Schedule II is combined
- Applicable for NCS, perpetual debt instruments, perpetual NCRPs issued by way of public issue or private placement
- Introduction of additional disclosures such as break-up of issue related expenses, revised ALM format, reference of RPT in Audit reports, lending and borrowing policy, etc.

Introduction of:

- ***General Information Document (GID)***
- ***Key Information Document (KID) and***
- ***Common Disclosures***

INTENT

- Parity between initial disclosures to be provided for public issuance and private placement of NCS.
- Reduce Issuer's burden to file placement memoranda and avoid repetitive nature of disclosure.
- To align LODR Regulations with NCS Regulations.
- To ensure transparency in disclosure of issue related expenses.

IMPACT

- Detailed information in the placement memorandum akin to a prospectus and enhanced transparency
- No limit of issuances during the year due to dispensation from the filing of shelf placement memorandum
- Reduced complexity of filing different disclosures for different types of debt securities

Large Corporate Borrowers (LCB)

Listed Entities having:

- its specified securities, debt securities, NCRPS - listed, &
- o/s long term borrowing (original maturity > 1 yr) of Rs. 100 Cr., excluding ECB and Inter-corporate loans, &
- credit rating of 'AA and above'

- Introduced vide SEBI Circular November 26, 2018
- Listed entities classified as LCBs are required to raise not < 25% of its incremental borrowings by way of issuance of debt securities
- Compliance - After applicability
- (a) For first 2 years - Annual basis
- (b) From FY 22 - block of 2 years

Amendment *(dated March 31, 2023)*
Increased the block of 2 yrs to 3 yrs to meet mandatory requirements by LCBs, from FY 21-22 onwards

INTENT:

- Issues faced by LCs due to tight liquidity and increase in the benchmark rate
- Cost of debt/borrowing costs
- LCs were of the opinion that current provisions put the commercial burden on the LCs

IMPACT:

- Relaxation to LCBs as additional time to comply with the 25% of incremental borrowings

Source: SEBI Board Meeting Agenda dated March 29, 2023
Article on Mandatory bond issuance by large corporate borrowers: FAQs by Vinod Kothari Consultants

High Value Debt Listed Entities (HVDLEs)

Meaning:

Every debt listed entity having outstanding value of listed non-convertible debt securities of Rs. 500 crore and above as on March 31, 2021

Compliances:

Comply with the Corporate Governance provisions from Reg. 16 to 27 of Listing Regulations

Applicability:

- Comply or explain basis - March 31, 2023
- Mandatory - from April 01, 2023

Timeline:

Comply within 6 months from the date of trigger

Amendment (w.e.f. June 15, 2023)

Comply of explain basis - extended till March 31, 2024

INTENT:

- On Account of impracticalities faced by issuers in CG norms compliance for e.g. RPT, director appointment, etc
- Need time to introduce new set of framework for HVDLE

IMPACT:

- Extended time to comply with Applicable norms by HVDLEs

SEBI Consultation Paper dated February 08, 2023 (not yet notified)

A. Obtain objections from debtholders before moving forward with the approval of shareholders in case of RPTs

B. Timeline for continuous compliance of CG norms - consecutive 3 years after HVDLEs fall below the **thresholds**

Source: SEBI Board Meeting Agenda dated March 29, 2023

SEBI Consultation Paper on review of CG norms for HVDLEs

Mandatory Listing of further NCD issuances

SEBI Consultation Paper February 09, 2023	Listed issuers: • required to list further issuances of debt securities • having o/s unlisted debt securities (maturity > 5 yrs) are require to list within specified time • having unlisted debt securities (maturity < 5 yrs) have option to list within specified time
SEBI Board Meeting dated June 28, 2023	• SEBI approved the amendment in Listing regulations for mandating listing of subsequent issuances of NCDs by listed issuers *(w.e.f. January 01, 2024)* • Applicable - Listed entities having o/s listed NCDs as on December 31, 2023 • Exemption - Capital Gains Tax debt securities u/s 54EC of Income Tax, NCDs issued pursuant to agreement with multilateral institutions (having lock in requirements), court/tribunal/regulator ordered NCD issuances • Optional Listing - Existing listed issuers having unlisted NCDs as on December 31, 2023

INTENT	• Information asymmetry due to parallel issuances • Difficult exit for issuers, liquidity risk • No option to avail SEBI grievance redressal mechanism • Confusion for investor at ISIN level, difficulty in comparing • Possibility of mis-selling • Trading outside settlement mechanism prone to counterparty risk • Inconsistency in continuous listing requirements
IMPACT	• Issuers may be reluctant to opt for debt issuances due to similar regulatory requirements as equity issuers • Concern for LCBs to cross the thresholds and comply with CG norms as HVDLEs • Listing Costs

Source: [SEBI Consultation Paper dated February 09, 2023]
[Article on Mandatory listing for further bond issues by Vinod Kothari Consultants]

Voluntary Delisting

[SEBI Consultation Paper dated May 12, 2023] → [Proposal approved by SEBI in its Board Meeting dated July 28, 2023]

Insertion of Chapter VIA in Listing Regulations

- Applicability – All listed NCDs and NCRPs with specified exceptions
- Reg 59 (Structure of NCDs and NCRPs) – Not applicable to voluntary delisting
- In principle approval – Application to SE not later than 15 WD from the date of passing BR or on receipt of any other statutory/ regulatory approval, whichever is later
- Obligations of LE
- Serving notice of delisting to the holders of NCDs/NCRPs and obtaining their approval
- NOC from DT in case of NCDs
- Failure of Delisting proposal
- Final application to SE – within 5 WD of obtaining approval from holders
- Delisting from some SEs

INTENT:

- No regulatory provisions governing the delisting of NCDs
- Need of express provisions instead of using Reg 59 of Listing Regulation for delisting
- To provide exit opportunity to the listed issuers having very few holders, intending to restructure NCDs and due to reason of merger

IMPACT:

- Easy exit to debt listed companies
- Far-fetched requirement to obtain 100% approval from the holder of NCDs/NCRPs

Online Bond Platforms (OBP)

Meaning:

Buy and sell platform offering listed and unlisted debt securities to investors

As per **NCS Regulations**, it is:

- Electronic platform
- Not a recognised SE or Electronic Book Provider platform
- On which listed/proposed to be listed debt securities are traded
- Whether issued through private placement or public issue

Regulatory regime:

- Reg 51A of NCS Regulations – Require OBPP to obtain CoR from SEBI under Stock Broker regulations (other than SE and EBP)

- Chapter XXI of NCS Master Circular (introduced vide SEBI Circular dated November 14, 202) – Registration and regulatory framework

    (a) Company incorporated in India + registered with SEBI as stock broker in debt segment + application to SE to act as OBPP

    (b) Roles & Obligations

    (c) Operational Framework consisting of – Access, KYC, issue and execution of orders, risk management, grievance redressal, data integrity, advertisement code, etc

    (d) Disclosure and reporting requirements

Online Bond Platforms (OBP)

Amendment - SEBI Circular dated June 16, 2023

- Restrictions of products offered other than specified. OBPP to divest
- Holding/subsidiary/ associate/third party not to use name/brand name/resembling name or not to access information regarding OBP of OBPP unless they are regulated
- OBPP not to operate OBP unless regulated
- Updated list of products allowed to be offered – listed debt securities, debt securities proposed to be listed through public issue, listed G-secs and T-bills and listed sovereign gold bonds
- Investor Grievance Redressal mechanism of stock brokers to be applicable

IMPACT

- Due to practices followed by OBP providers such as :
  - (a) offering restricted securities
  - (b) not divesting as prescribed
  - (c) Having link on OBP to another platform for transaction unlisted/other securities
- Representation by OBP providers to permit other listed and regulated securities

INTENT

- Restrictions on OBP providers to ensure fair practice
- More scope of trading in listed regulated securities
- Investor Grievance Redressal Mechanism introduced

Source: [SEBI Consultation Paper dated July 21, 2022]

Other Amendments

Security Covenant & Monitoring - Depositories to ensure compliance and report non-compliances

RFQ Platform

Capping of ISINs - w.e.f. April 01, 2023

Period of subscription in case of public issue of NCS:

- Offer period 3-10 WD
- Extension of issue period in case of price revision, force majure, etc.

Corporate Debt Market Development Fund
(w.e.f. June 15, 2023)

CONCLUSION

Positive Aspects

- *Market expansion with Green Debt Securities*
- *Ease of issuance due to GID/KID concept*
- *Relaxation to Issuers in limits of LCBs and HVDLEs*
- *Steps such as regulating OBP, the appointment of Nominee Director, Security Covenant & Monitoring – Increase confidence of Investors*
- *Introduction of CDMD Fund*
- *Exit to Issuers via Voluntary Delisting*

Challenges

- *Demotivation for Issuers due to impracticalities faced by HVDLEs in compliance with CG norms*
- *Concern for LCBs as they are likely to cross the thresholds of HVDLEs leading to compliance with CG norms*
- *The burden of Compliance and Listing Costs*
- *Debt Issuers at par with Equity Issuers*
- *Approval of all the debt holders for Voluntary Delisting may be a challenge for Issuers*

THANK YOU