



SEBI issues norms for listing of non-convertible redeemable preference shares and non-convertible debentures issued in a scheme of arrangement

6 June 2017

First Notes on

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Audit committee

CFO

Others

Transition

Immediately

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

Background

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) provide the procedure (through a circular dated 30 November 2015)¹ to be followed by listed entities for undertaking schemes of arrangements such as amalgamations, mergers, reconstruction, etc.

During the year ended 31 March 2017, various developments took place with respect to such schemes of arrangements. The key developments are as follows:

- **Notification of related sections of the Companies Act, 2013:** On 7 December 2016, the Ministry of Corporate Affairs (MCA) notified certain sections of the Companies Act, 2013 (2013 Act) including sections relating to compromises, arrangements, amalgamations (including fast track amalgamations and demergers), reduction of capital and variations of shareholders' rights.

These sections became effective from 16 December 2016 and the National Company Law Tribunal (NCLT) assumed jurisdiction of the High Courts as the sanctioning authority for certain sections such as compromises, arrangements, reduction of capital and variations of shareholders' rights.

- **Revised regulatory framework:** On 17 January 2017, SEBI gave an in-principle approval for the revised regulatory framework for the schemes of arrangements and issued two circulars highlighting the following important changes:
 - The schemes of arrangement for merger of a wholly-owned subsidiary with the parent entity would not be required to be filed with SEBI (under the Listing Regulations). Such schemes would be filed with stock exchanges for the purpose of disclosures²
 - Where under a scheme of arrangement the allotment of shares takes place only to a select group of shareholders or shareholders of unlisted companies then the pricing provisions of Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 would be applicable.³

¹SEBI circular no. CIR/CFD/CMD/16/2015 dated 30 November 2015 provides the detailed guidance to be complied with by the listed entities.

²SEBI circular no. SEBI/LAD-NRO/GN/2016-17/029 dated 15 February 2017.

³SEBI circular no. SEBI/LAD-NRO/GN/2016-17/030 dated 15 February 2017.

- **Revision in the Listing Regulations:** On 10 March 2017, SEBI made revision to certain obligations for in the Listing Regulations (given in circular dated 30 November 2015) and laid down the detailed requirements to be complied with by the listed entities while undertaking schemes of arrangement for listing of equity or warrants pursuant to the scheme⁴.

The circular did not provide guidance for listing of the Non-Convertible Redeemable Preference Shares (NCRPS) or Non-Convertible Debentures (NCDs) which could also be issued, in lieu of specified securities* in a scheme of arrangement.

(*Specified securities means equity shares and convertible securities⁵.)

New development

On 26 May 2017, SEBI issued a circular⁶ (SEBI circular on listing of NCRPS/NCDs) which lays down the additional conditions to be complied when NCRPS/NCDs are issued in lieu of the specified securities and such NCRPS/NCDs are proposed to be listed on the recognised stock exchanges.

These additional conditions have been classified under the following heads:

- Conditions to be complied before the scheme of arrangement is submitted for sanction by the NCLT
- Conditions to be complied after the scheme of arrangement is sanctioned by the High Court/NCLT and at the time of making application for relaxation under Rule 9(7) of the Securities Contracts (Regulation) Rules, 1957.

The above conditions have to be complied with in addition to the requirements specified under the SEBI circular dated 10 March 2017.

This issue of First Notes provides an overview of the conditions specified under the above two heads.

Overview of the SEBI circular on listing of NCRPS/NCDs issued in a scheme of arrangement

I. Conditions to be complied before the scheme of arrangement is submitted for sanction by the NCLT: A listed entity which has listed its specified securities could seek listing of NCRPS/NCDs issued under a scheme of arrangement only if it meets all the following conditions:

- **Eligibility for seeking listing of NCRPS/NCDs:** A listed entity which has listed its specified securities could seek listing of NCRPS/NCDs issued pursuant to a scheme of arrangement only if it meets both the given criterion:
 - The listed entity is a part of such scheme of arrangement and
 - The NCRPS/NCDs are issued to the holders of specified securities of such a listed entity.

These conditions could be met in the following events:

- In case of demerger:* A listed entity, which has listed its specified securities (demerged entity) demerges a unit and transfers the same to another entity (resultant entity) and such a resultant entity issues NCRPS/NCDs to the holders of the specified securities of the listed entity (i.e. demerged entity) as a consideration under the scheme of arrangement.

- In case of amalgamation:* A listed entity, which has listed its specified securities, (amalgamating entity) has been merged with another entity (amalgamated entity), and the amalgamated entity issues NCRPS/NCDs to the holders of the specified securities of listed entity (i.e. amalgamating entity) as a consideration under the scheme of arrangement.

Further, it has been clarified that if the same series/class of NCRPS/NCDs are also allotted to other investors (other than the allotment done to the holders of the listed specified securities) as per the scheme of arrangement, then such NCRPS/NCDs would not be eligible for seeking listing.

- **Tenure of NCRPS/NCDs:** The minimum tenure of NCRPS/NCDs should be one year.
- **Credit rating:** The NCRPS/NCDs should have a minimum credit rating as specified by a credit rating agency registered with the SEBI.
- **Valuation report:** All listed entities are required to submit a valuation report from an independent Chartered Accountant to SEBI as per the SEBI circular dated 10 March 2017.

The SEBI circular on listing of NCRPS/NCDs requires that such a valuation report should also include valuation of the underlying NCRPS/NCDs to be issued pursuant to the scheme of arrangement.

⁴SEBI circular no. CFD/DIL3/CIR/2017/21 dated 10 March 2017 revised the requirements of SEBI circular dated 30 November 2015.

⁵SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

⁶SEBI circular no. CIR/IMD/DF/50/2017 dated 26 May 2017 provides guidance on listing of NCRPS/NCDs issued in a scheme of arrangement.

- **Disclosures in the scheme of arrangement:** The SEBI circular prescribes certain disclosures to be made in the draft scheme of arrangement. These disclosures, *inter alia*, include terms of payment of dividends/coupon including frequency, terms of redemption and credit rating.
- **Ensure compliance with the 2013 Act and other regulations:** The issue of NCRPS/NCDs should be compliant with the provisions of the 2013 Act including the provisions relating to creation and maintenance of Capital Redemption Reserve/Debenture Redemption Reserve.

Additionally, it should comply with all the provisions of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 except the provisions relating to making a public issue, or making a private placement, or filing of offer document, etc.

In case of issue of NCDs, the issuer is required to ensure compliance with the following additional conditions in accordance with the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and the 2013 Act:

- Appointment of a debenture trustee
 - Creation of charge or security.
- **Issue of securities in demat form:** The NCRPS/NCDs should be issued in dematerialised form only.

II. Conditions to be complied after the scheme is sanctioned by the High Court/NCLT and at the time of making an application for relaxation under Rule 19(7) of the Securities Contracts (Regulation) Rules, 1957 (SCR Rules)

Rule 19(7) of the SCR Rules permits SEBI to waive or relax the strict enforcement of all or any of the requirements prescribed in SCR Rules with respect to listing of securities.

The SEBI circular on listing of NCRPS/NCDs requires that an application for relaxation under Rule 19(7) of the SCR Rules for listing of NCRPS/NCDs should complete following requirements:

- Include a compliance report as per the format prescribed in the circular and
- Comply with the provisions of SEBI circular on listing of NCRPS/NCDs, SEBI circular on listing of equity and warrants, and with other regulatory requirements specified for schemes of arrangement.

Additionally, the compliance report is required to be certified by the company secretary and the managing director of the entity.

Applicability: The draft schemes of arrangements filed with the stock exchange after the date of the SEBI circular on listing of NCRPS/NCDs i.e. 26 May 2017 would be governed by the provisions of the recent circular (dated 26 May 2017).

Our comments

The SEBI circular on listing of NCRPS/NCDs brings an important change in the scheme of arrangements involving merger, amalgamation, etc. by the listed entities. Such schemes could involve issue of NCRPS/NCDs, equity shares, warrants, etc. as part of consideration. Till now, the listed entities could only get the equity shares or warrants issued in such a scheme listed on the stock exchanges. But the recent SEBI circular paves way for listing of NCRPS/NCDs issued in a scheme of arrangement on the recognised stock exchanges.

Some of the key requirements for listing of the NCRPS/NCDs (issued by the companies undergoing such scheme of arrangements) that need further consideration are as follows:

- **NCRPS/NCDs to be issued to the holders of specified securities:** The SEBI circular on listing of NCRPS/NCDs clarifies that only the NCRPS/NCDs issued to the holders of the listed specified securities in a scheme of arrangement would be eligible for listing i.e. even if the same series/class of NCRPS/NCDs have been allotted to the other investors, then such NCRPS/NCDs would not be eligible for listing.
- **Enhanced disclosure requirements:** The conditions specified in the SEBI circular on listing of NCRPS/NCDs are to be complied with in addition to the requirements specified in the SEBI circular dated 10 May 2017 on listing of equity shares and warrants.

The SEBI circular on listing of equity shares and warrants requires that a listed entity should include the applicable information pertaining to the unlisted entity involved in the scheme in the format specified for abridged prospectus (as provided in Part D of Schedule VIII of the ICDR Regulations) in the explanatory statement or notice or proposal of accompanying resolution to be passed to be sent to the shareholders while seeking an approval of the scheme.

Listed entities would be required to make certain additional disclosures as mandated by the recent SEBI circular on listing of NCRPS/NCDs. These, *inter alia*, include terms of payment of dividend, terms of redemption, credit rating and tenure of NCRPS/NCDs.

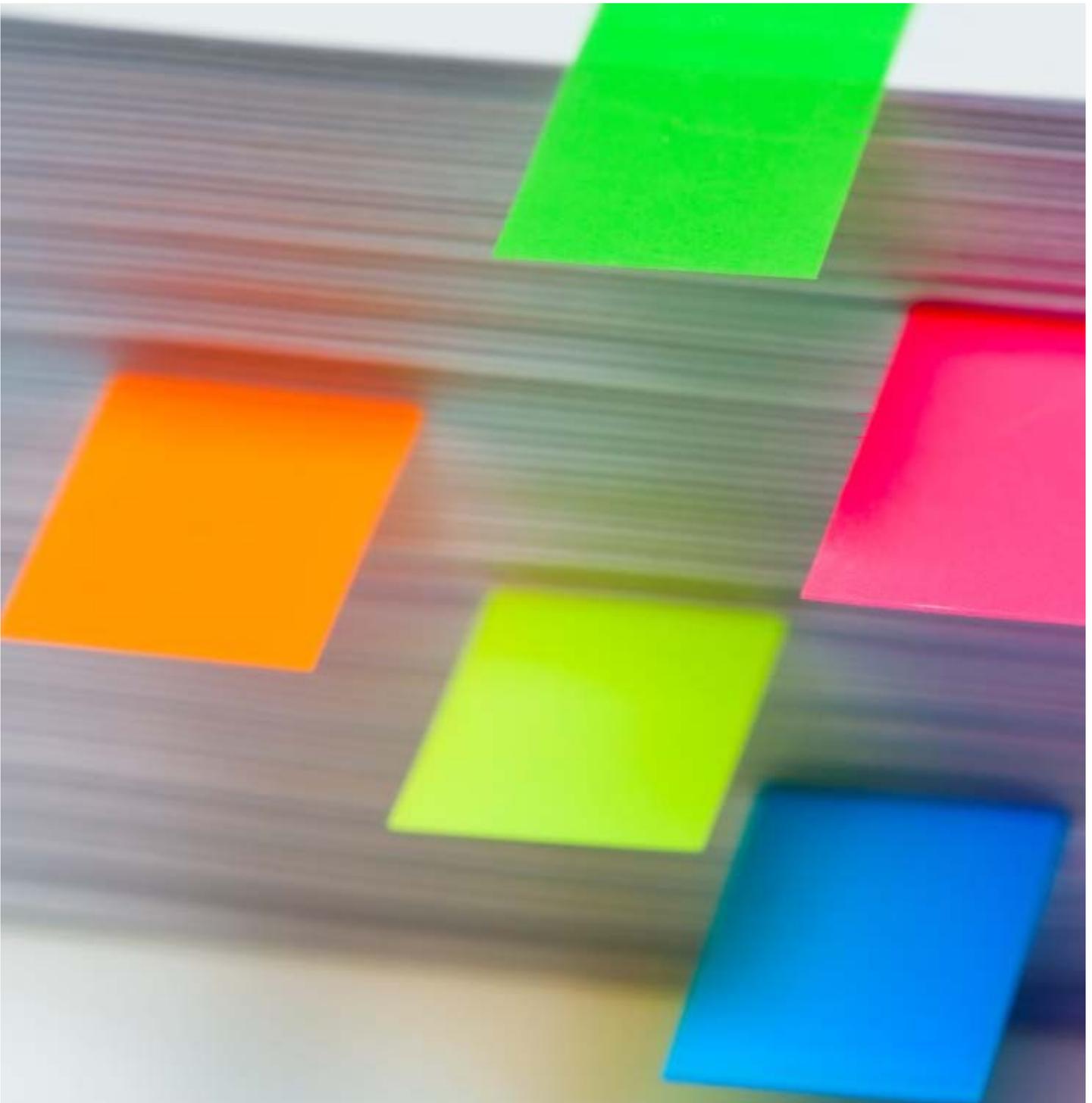
Our comments (cont.)

Additionally, listed entities are also required to include a detailed compliance report along with the application for relaxation of the provisions of the SCR Rules.

- **Applicability of the provisions:** The circular for listing of NCRPS/NCDs would be applicable to the draft schemes of arrangements filed with the stock exchange after the date of this circular i.e. 26 May 2017. This implies that all the draft schemes of arrangements filed before the date of this circular and involves issue of NCRPS/NCDs would not be eligible for listing. Further clarity would be required in cases where the draft schemes of arrangement have been filed but are due for approval as on the date of the circular.

The bottom line

The provisions are expected to help the listed entities seeking listing of the NCRPS/NCDs issued in lieu of specified securities in a scheme of arrangement.



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The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

IASB seeks feedback for post-implementation review of IFRS 13

2 June 2017

The IASB is conducting the PIR of IFRS 13 in two phases. During the first phase, the IASB held meetings with many stakeholders to identify potentially challenging areas of application. Although the general consensus from stakeholders was that IFRS 13 has worked well and brought significant improvements to financial reporting, a number of areas were flagged in which it was felt that practical improvements could be made to the standard.¹ Since IFRS 13 has given rise to a number of implementation issues, IASB has issued a Request For Information (RFI) on this standard. The RFI launches the second phase of the PIR.

The RFI is open for comments until 22 September 2017.

Missed an issue of Accounting and Auditing Update or First Notes



Issue no. 10/2017 – May 2017

The topics covered in this issue are:

- Accounting treatment of enabling assets
- Computation of EIR for loans advanced by banks
- Independent directors – An insight into the role and responsibilities
- Application of substance over form under Ind AS – sale and leaseback arrangements
- Regulatory updates.

CBDT issues draft ICDS on real estate transactions

15 May 2017

The Finance Minister constituted a Committee (the Committee) comprising of experts from accounting, departmental officers and representatives from the Institute of Chartered Accountants of India (ICAI) to recommend the areas in respect of which further ICDS may be notified under the IT Act.

The Committee vide a press release dated 11 May 2017 has issued the draft ICDS on real estate transactions (draft ICDS). The draft ICDS is based on the Guidance Note issued on *Real Estate Transactions* (ICAI GN) issued by ICAI in 2012. For the purposes of providing uniformity, certainty and harmonising the same with provisions of the IT Act, the Committee suggested certain changes in draft ICDS in comparison to the ICAI GN.

The draft ICDS is open for comments from stakeholders till 26 May 2017.

This issue of First Notes provides an overview of the draft ICDS issued by the MoF.

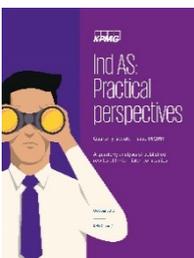
Ind AS - Practical perspectives

KPMG in India's Ind AS - Practical perspectives through aims to put a finger on the pulse of India Inc's adoption of Ind AS and capture emerging trends and practices.

Our impact assessment is based on Nifty 50 companies which would be the first group of companies to report Ind AS results. The Nifty 50 companies have released their financial results for the year ended 31 March 2017.

Out of the companies comprising Nifty 50 index, eight companies are banks, one is Non-Banking Financial Company (NBFC) and two companies follow a different date of transition to Ind AS. Therefore, our analysis would comprise the remaining 39 companies.

This can be accessed on KPMG in India website - '[Ind AS- Practical perspectives' webpage](#)



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