

SEBI issues guidelines for the listing of NCRPS/ NCDs issued pursuant to a Scheme of Arrangement

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In brief

The Securities and Exchange Board of India (SEBI) *vide* its Circular³ dated 26 May, 2017 (the Circular) has issued guidelines with respect to listing of Non-Convertible Redeemable Preference Shares (NCRPS)/ Non-Convertible Debentures (NCDs) that are issued in lieu of specified securities² in a Scheme of Arrangement (Scheme). The guidelines were required as the existing SEBI Circular¹ dated 10 March, 2017 (March 2017 Circular) did not cover procedures to be followed for listing of NCRPS/ NCDs that are issued pursuant to a Scheme.

An overview of the applicability of these guidelines and the additional conditions required to be complied are provided in this Insight.

In detail

Rule 19 of the Securities Contracts (Regulation) Rules, 1957 (SCRR) provides basic quantum and other compliance requirement for listing of securities on stock exchanges. SEBI has the power to relax the applicability of the said provisions. SEBI had issued the March 2017 Circular¹ providing detailed compliance requirements for being eligible to get relaxation under Rule 19 and get the specified securities, issued by the transferee company, pursuant to a Scheme, listed on the stock exchange. The term specified securities² did not cover

NCRPS/ NCDs and consequently same were not covered in the March 2017 Circular and there were no other guidelines provided for the listing of such NCRPS/ NCDs. Therefore, SEBI has now issued the Circular³ for granting relaxation under Rule 19 of SCRR for listing of NCRPS/ NCDs issued by the transferee company.

Applicability

The Circular shall be applicable for all the draft schemes filed with stock exchanges after the date of this Circular, i.e. 26 May, 2017.

Conditions

For listing of NCRPS/NCDs, issued by the transferee company pursuant to a Scheme, on a recognised stock exchange, the listed entity shall comply with the following additional requirements (i.e. in addition to the existing conditions of the March 2017 Circular).

- A. Additional conditions to be complied with ***before submitting the Scheme of arrangement*** to the National Company Law Tribunal (NCLT).

¹ SEBI Circular CFD/DIL3/CIR/2017/21 dated 10 March, 2017

² Specified securities as defined in SEBI (Issue of Capital and Disclosure

Requirements) Regulations, 2009. The is reproduced as under:

“(zj) “specified securities” means equity shares and convertible securities;”

³ SEBI Circular CIR/IMD/DF/50/2017 dated 26 May, 2017

Conditions	Particulars/Remarks
Eligibility for seeking listing of NCRPS/ NCDs	<ul style="list-style-type: none"> The transferor entity, amalgamating, demerged entity etc., should be a listed entity. Pursuant to the Scheme NCRPS/ NCDs are issued only to the holders of the specified securities² of the listed transferor entity as consideration for amalgamation /demerger. <p>If the same series/ class of NCRPS/ NCDs are also allotted to investors, other than the holders of the listed specified securities as per the Scheme, then such NCRPS/NCDs would not be eligible for listing.</p>
Tenure/ Maturity	Minimum tenure shall be one year
Credit rating	<ul style="list-style-type: none"> In case of NCRPS – Minimum of such credit rating as specified for the public issue of NCRPS under SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013, which is currently prescribed to be “AA”. In case of NCDs - Minimum of such credit rating as specified for the public issue of NCDs under SEBI (Issue and Listing of Debt Securities) Regulations, 2008, which is currently prescribed to be “AA”.
Valuation report	The Valuation report as obtained for compliance with the March 2017 Circular, to also include the valuation of the underlying NCRPS/ NCDs to be issued pursuant to the Scheme of Arrangement.
Disclosures in the Scheme of Arrangement	<p>The following to be disclosed in the draft Scheme:</p> <ul style="list-style-type: none"> Face value & issue price Dividend/ coupon Credit rating Tenure/ Maturity Terms of redemption Other embedded features like put option, call option, etc.) Other terms of instruments Any other information/ details pertinent for investors
Other conditions	<ul style="list-style-type: none"> Issue of NCRPS/NCDs to be in compliance with applicable provisions of the Companies Act, 2013, including provisions relating to trustee, if applicable. NCRPS/ NCDs to be issued in dematerialised form only. Issue of NCRPS/ NCDs should be in compliance 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 for provisions relating to public issue, or private placement, or filing of offer document, etc.

B. Additional conditions to be complied **after the Scheme is sanctioned** by the Hon’ble High Court/ NCLT and at the

time of applying for relaxation under Sub-rule (7) of Rule 19 of the SCRR.
The application for relaxation

under Rule 19(7) of the SCRR for listing of NCRPS/ NCDs shall include a detailed compliance report as per the

prescribed format, duly certified by the company secretary **and** the managing director, confirming the compliance of the Scheme with the provisions of the Circulars dated 26 May, 2017 and 10 March, 2017.

The takeaways

The Circular provides much awaited clarity in relation to listing of NCRPS/ NCDs issued pursuant to a Scheme.

The Circular seems to be applicable only to the NCRPS/ NCDs issued to holders of specified securities as consideration for the Scheme. However, it does not seem to cover NCRPS/ NCDs issued to other security holders e.g. NCDs issued to NCD holders of the listed company on amalgamation of listed company with unlisted company.

Further, one of the requirements that NCRPS/ NCDs shall be issued only in the dematerialised

form may pose a challenge when certain shareholders hold shares in only physical form. Whether in such a scenario, the NCRPS/ NCDs are required to be issued in only the dematerialised form or whether the issue in physical form would mean that NCRPS/ NCDs shall not be listed.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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