

SEBI Revises The Institutional Trading Platform Regulations: A Positive Step Towards Ease of Listing for Start-ups

written by Sindhuja Kashyap | February 8, 2019

Introduction

Securities and Exchange

Board of India ("SEBI") had brought on ground its ambitious project of introducing Institutional Trading Platform ("ITP") vide amendments to the SEBI

(Issue of Capital and Disclosure Requirements) Regulations, 2009 on August 14,

2015. ITP was brought in with an idea to facilitate listing of new age start-ups in the country. This framework was further retained in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations"). While the interest of listing has and is growing with each passing day, the framework failed to attract the investors and start-ups mostly

due to its stringent and complex requirements.

In order to deal with

this insufficiency to achieve the goal, SEBI on June 12, 2018^[1] constituted a group to

look into the existing ITP framework and suggest measures to facilitate listing

of startups. The group involved in extensive deliberations with the stakeholders and submitted its recommendations to the Primary Market Advisory Committee ("PMAC"). On the basis of these recommendations a consultation paper

was published by SEBI seeking public comments ("Consultation Paper").^[2]

On December 12, 2018,

board of directors of SEBI ("Board")^[3] had a meeting wherein the recommendations were reviewed and an in-principal approval was provided to the

amendments to the regulations of ITP in ICDR regulations as detailed below:

1. Appellation of the Platform

In order to connect the

platform with the intention for its existence, Board approved the proposal to rename the platform from ITP to Innovators Growth Platform ("IGP").

• Eligibility Criteria for listing

ICDR

regulation provides for two criterias of startups namely, Eligible Startups^[4] and Other Eligible Startups^[5].

Eligible

Startup includes an '*issuer which*

extensively uses technology, information technology, intellectual property, data

analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value additions'. This definition has

been retained by the Board. However, the extant ICDR regulation also provided for an additional qualification of 25% of the pre-issued capital of the Eligible Startups to be held by qualified institutional buyers as on the date of filing of draft information document or draft offer document. This additional qualification has been modified wherein 25% of the pre-issued

capital of the Eligible Startups for at least two years should have been held by the following:

1. Qualified Institutional Buyers
 2. Family trust with net-worth of more than five hundred crore rupees;
 3. Category III Foreign Portfolio Investor
 4. A pooled investment fund with minimum assets under management of USD 150 million and registered with a financial sector regulator in the jurisdictions where it is resident. The fund should be a resident of a country whose securities market regulator is a signatory to IOSCO's MMOU (Appendix A Signatories) or a signatory to bilateral MOU with SEBI and not a resident in a country identified in the public statement of Financial Action Task Force as deficient in AML and combating financing of terrorism.
 5. Accredited Investors (AIs) for the purpose of IGP, to include:
 6. Any individual with total gross income of INR 50 lakhs annually and who has minimum liquid net worth of INR 5 crores or
 7. Any body corporate with net worth of INR 25 crores
- However, it is pertinent to note that a cap of 10% holding of the pre-issue capital is applicable on Accredited Investors.

The above amendment with the intention to widen the ambit of Eligible Startups for the purpose of listing may have been partially achieved due to failure in expanding the scope from the business model/sector perspective. This could have been a milestone decision in order to entail confidence in the market by providing right opportunities to various startups intending to list themselves and providing a level play for all startups irrespective of the business model. However, the amendment is a welcomed move as it brings along the change in the shareholding structure, thereby not limiting the same only to the qualified institutional buyer alone. Such widening of shareholding structure shall be considered a welcome move by the angel investors and off-shore funds as these form major chunk of investors in the nascent phase of any startups.

Further, Board made no reference to Other Eligible Startups, which leaves a trace of ambiguity on whether the amendments and relaxations as applicable on Eligible Startups is also applicable on Other Eligible Startups on similar terms.

- Capping of the post-issued capital

The existing law entails that no person, individually or collectively with persons acting in concert, shall hold twenty five per cent or more of the post-issue share capital in either Eligible Startups or Other Eligible Startups.^[6] However it was recommended

in the Consultation Paper that the capping of such post-issued capital in the Eligible Startups and Other Eligible Startups shall be removed and the same was

approved by the Board.

This removal of capping is a welcome move for the promoters and other initial investors of such startups who would intend to continue holding significant shareholding in the startups even post listing.

- Minimum application size and trading lot

The Board has approved the reduction of the minimum application size^[7] and minimum trading lot^[8] from INR Ten Lakhs as was present in the existing law to INR Two Lakhs and in multiples of INR Two Lakhs.

- Requirement of minimum reservation of allocation to specific category of investor

The extant law provided for reservation of allocation in the net offer to public category in the following manner:

1. seventy-five per cent to institutional investors^[9]
2. twenty-five per cent to non-institutional investors^[10]

Further, no allocation was allowed for anchor investors. However, the Board has approved the removal of such minimum allocations to any such specific category of investors at all. This purging of minimum reservation is a constructive move to avoid limiting the attraction of specific category of investors and thereby the growth of the startups.

- Minimum number of allottees

The Board approved the reduction of the minimum bar of allottees from existing 200 limit^[11] to 50 number of allottees in the initial public offer.

- Minimum net offer to public

The extant law provides for the minimum offer to the public to be subject to the provision of Rule 19(2)(b) of the Securities Contracts (Regulations) Rules, 1957 ("Rules"). The Board has approved the proposal for reduction of such minimum offer size to INR 10,00,00,000 (INR Ten Crores). Further, the Board has brought in the requirement for such minimum net offer to

public to be in compliance with the minimum public shareholding norms. The minimum public shareholding norms are directed under rules 19(2)(b) and 19A of

the Rules which are to be read in consonance with regulation 38 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"). Further, rule 19A of Rules clearly states that every listed company, other than public sector company, shall maintain public shareholding of at least twenty five per cent. Therefore, the Board has approved for a minimum net public offer to be at least 25%.

- Migration to main board for trade under regular category

The existing law provides the listed entity with an option to migrate to the main board of the stock exchange on which it is listed after expiry of three years from the date of listing. This option was subject to compliance with the eligibility requirements of the stock exchange.

Post receiving the suggestions in the Consultation Paper, Board has designated IGP as the main board for startups. However, each startups shall

be
provided with an option to migrate to the main board to trade under the
regular
category after completion of one year from the date of listing. This option
too
shall be subject to compliance with the eligibility requirements of the stock
exchange.

Conclusion

We observe that most of the recommendations made in the Consultation Paper
post deliberations with the stakeholders have been approved in principal by
the Board. While the interested startups may be disappointed in not receiving
a broadened definition of Eligible Startups by the Board, the other
amendments such as inclusion of Accredited Investor, family trust is a hailed
move. Further, various other recommendations in the Consultation Paper such
as lock-in of pre-issue capital^[12] wherein lock-in of 6 months was proposed
to apply uniformly to all the categories of pre-IPO public shareholders was
not considered by the Board. Therefore, this change in the regulations of ITP
of ICDR Regulations shall be beneficial for startups in easily attracting
investment in the nascent stage and getting themselves listed without any
dissuasion of complex requirements.

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^[1]

https://www.sebi.gov.in/media/press-releases/jun-2018/sebi-constitutes-group-to-review-institutional-trading-platform-itp-framework-to-facilitate-the-listing-of-start-ups_39255.html

^[2]

https://www.sebi.gov.in/reports/reports/oct-2018/consultation-paper-review-of-framework-for-institutional-trading-platform_40824.html

^[3]

https://www.sebi.gov.in/media/press-releases/dec-2018/sebi-board-meeting_41274.html

^[4] Regulation 283 (1) (a) of the ICDR Regulations

^[5] Regulation 283 (1) (b) of the ICDR Regulations

^[6] Regulation 283 (2) of
the ICDR Regulations

^[7] Regulation 286 of ICDR
Regulations

^[8] Regulation 289 of ICDR
Regulations

^[9] Regulation 287 (2)(a)
of ICDR Regulations

^[10] Regulation 287 (2)(b)
of ICDR Regulations

^[11] Regulation 287 (1) of
ICDR Regulations

^[12] Regulation 288(1) of ICDR Regulations

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