भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

Consultation paper for review of circular on Electronic book mechanism for issuance of debt securities on private placement basis

I. Objective:

1. To solicit the comments/views from public on the proposed changes in "Electronic book mechanism for issuance of debt securities on private placement basis (herein after referred as "**the EBP mechanism**)".

II. Background:

2. The circular on the EBP mechanism (herein after referred as "**the EBP circular**") was notified on April 21, 2016, which came in to effect from July 01, 2016. NSE and BSE have been acting as the Electronic Book Providers (herein after referred as "**the EBPs**") since then. The said circular provides broad guidelines on applicability, eligibility, and role of issuer, arrangers, EBPs, investors, etc.

3. The initial response from the implementation of the Electronic Book Mechanism has been encouraging by way of bringing in transparency and at the same time other positive signs such as increased FPIs participation in the private placement of debt securities. It is also worth mentioning that in the FY 2016-17, out of total private placement of debt securities reported on exchanges of Rs.640716crore, since July 2016 (i.e. since implementation of electronic Book Mechanism), 696 issuances worth Rs. 294099.75crore have been done through EBPs.

4. Based on the experiences from the issuances through the EBP mechanism till date, various market participants have offered some suggestions on the existing mechanism. Further, some trends emerging from the bidding on the existing EBP mechanism have also been analysed. Based on the same, certain changes are proposed in the existing mechanism, which are discussed as under:

III. Proposals for consultation:

5. **Reducing the mandatory limit from Rs. 500 crores to Rs. 50 crores for all private placement of debt securities**

5.1. Current regulatory requirement:

As per paragraph 3 of the EBP circular, the existing EBP mechanism is mandatory for all private placements of debt securities with an issue size of Rs.500 crores and above, inclusive of green shoe option, if any.

5.2. Need for the change

a) At the time of introduction of the EBP mechanism, the mechanism was mandated only for the issuances with issue size of Rs. 500 crores or above to facilitate smoother transition.

b) However, based on the analysis of data till March 31, 2017, it is noted that many issuers, with issue size of less than Rs. 500 crores, have also voluntarily opted for EBP mechanism while raising money through private placement of debt securities.

Till March 2017, out of total private placement of debt securities consist of Rs.506259.75crore, the total amount of private placement which took place through EBPs are worth Rs. 294099.75 crore (approx.) from 696 issuances.

Amount Raised (Rs. in Crore)	No. of issuances	Amount Raised (Rs. in Crore)	Percentage of total no. of issuances
Less than 50 Crore	197	3729.65	28.30%
50 crore or more	499	290370.10	71.70%
500 crore or more	175	234129.50	23.92%

c) The issuance of debt securities through EBP mechanism has various benefits for both the issuers as well as the investors in terms of enhanced price discovery, transparency, etc. The aforementioned benefits are also evident from the fact that many issuers are voluntarily opting for EBP mechanism even for issuances of less than Rs. 500 crore.

d) Currently, the issuers do not specify the green shoe amount but just indicates that it intends to raise money over and above the base issue size. In this way, based on the bids received, it decides how much to raise over the base issue. However, the bidders do not come to know upfront the maximum amount the issuer seeks to raise and hence they may not be able to put the right quote.

5.3. Proposal

The mandatory limit for EBP mechanism may be reduced from Rs.500 crores to Rs. 50 crores (i.e. EBP mechanism may be mandated for all private placements of debt securities with an issue size of Rs.50 crores and above, inclusive of green shoe option, if any). Further, the issuer shall specify the amount of green shoe option upfront.

6. Direct participation by investors

6.1. Current regulatory requirement:

a) At present, Institutional investors participating on the EBP platform have an option of either participating through an arranger/sub-arranger or entering bids on proprietary basis on their own.

b) However, for non-institutional investors, the existing EBP circular does not provide any option for direct bidding and these investors are mandatorily required to bid through an arranger.

6.2. Need for the change

a) The underlying objective of the EBP mechanism is to achieve better and transparent price discovery through the bidding process. However, the same may be achieved only if all the investors bid on their own on the platform.

b) Initially the objective was to acquaint the eligible bidders with the platform in order to ensure smooth transition. Since the market is already acquainted with the functioning of EBP mechanism, it is felt that the option of direct participation may now be extended to non-institutional investors as well, at least to those non-institutional investors whose bid amounts are large.

c) However, in this regard, it is noted that the Companies Act, 2013 and the rules made thereunder restricts the total number of investors to 200 in case of private placements. Further, as per the Companies Act and the rules therein, any qualified institutional buyers (‘**QIBs**’) participating in the private placements are excluded from the above threshold of 200 investors.

d) Accordingly, for any QIB which is bidding for Rs.10 crore and above, such QIB shall compulsorily participate directly on the bidding platform. Since the QIB investors are not counted for the Companies Act’s threshold of 200 investors, a direct participation by QIBs would not pose any challenge in this context.

e) Whereas, for non-QIB investors, since these investors are counted for the Companies Act’s threshold of 200 investors, to begin with, a direct participation by such non-QIB investors shall be allowed and shall be mandated only if such investors are bidding for Rs. 25 crores and above.

6.3. Proposals

a) Participation by QIB investors:

(i) For a QIB investor whose bid amount is lower than Rs. 10 crores, it shall continue to have an option of either entering bids on proprietary basis or participating through an arranger/sub-arranger.

(ii) For a QIB investor whose bid amount is Rs.10 crores and above, it shall participate directly on the bidding platform.

b) Participation by Non-QIB investors (including Non-Institutional Investors):

(i) For a non-QIB investor whose bid amount is lower than Rs. 25 crores, it shall participate through an arranger/sub-arranger.

(ii) For a non-QIB investor whose bid amount is Rs. 25 crores and above, it shall participate directly on the bidding platform.

c) Role of Arrangers/Sub-Arrangers:

An arranger/sub-arranger, while entering consolidated bids on behalf of other investors, shall ensure the following for the bids being entered for every individual investor behind such arranger/sub-arranger:

(i) Bid amount on behalf of every single QIB investor shall be lower than Rs. 10 crores per investor.

(ii) Bid amount on behalf of every single non-QIB investor shall be lower than Rs. 25 crores per investor.

d) Minimum bid size:

To enable direct participation in the manner proposed above, the issuer can fix any minimum bid size subject to the following:

(i) For a QIB investor, the minimum bid size shall not exceed Rs. 10 crores.

(ii) For a non-QIB investor,the minimum bid size shall not exceed Rs.25 crores.

e) Role of EBP: For any investors who is participating directly on the platform through proprietary bids, the EBP shall ensure KYC of such investors.

7. **Single Investor Subscription:**

7.1. Current regulatory requirement:

As per Paragraph 4.1 of the EBP circular, the EBP mechanism is optional for fixed coupon rate issues with a single investor.

7.2. Need for the change

a) A concern has been raised by the market participants suggesting that there can be situations, wherein, just to bypass the EBP mechanism, the entire book can be first sold to a single investor, and, the said single investor can then in turn sell the securities to various investors.

b) To curb the above practices, it is felt that a lock in for some stipulated period may be imposed for an investor in cases where the issue is sold, outside of the EBP mechanism, to a single investor.

7.3. Proposal

a) For the fixed coupon rate issues with a single investor wherein EBP mechanism is optional, the option of not following the EBP mechanism would be available subject to a condition that the securities allotted to that single investor would be subject to a lock in of 60 days period from the date of allotment.

8. **Role of Arranger/Sub-arranger**

8.1. Current regulatory requirement:

a) As per Paragraph 6.2.2 of the EBP circular, an arranger/sub-arranger may enter bids on EBP platform either on a proprietary basis or for other participants such as High Net worth Individuals (HNIs), Institutional investors, etc.

8.2. Need for the change

a) The EBP circular does not require the arranger/sub-arranger to clearly disclose upfront whether the bids being entered are proprietary bids or are bids on behalf of other participants or a mix of both.

b) Further, in cases where an arranger/sub-arranger submits a consolidated bid on account of multiple investors, the arranger/sub-arranger is not required to disclose names of the underlying investors and their respective bid quantum at the time of bidding.

c) The above affects the objective of transparency desired for the EBP mechanism.

d) Further, Section 42 (7) of the Companies Act, 2013 requires that

"All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be…."

e) It has been observed that the arranger/sub arranger sometimes bid on behalf of the investors which are not pre identified by the issuer. Hence, arranger/sub arranger puts a consolidated bid which is large in quantity and the same may also result in cornering of the issue and may inter alia attract action under Companies Act, 2013 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

8.3. Proposal

a) At the time of bidding, the arranger/sub-arranger shall clearly provide a breakup in terms of bids being entered on proprietary basis and bids being entered on behalf of other investors.

b) Further, for the consolidated bids being entered on behalf of other investors, the arranger/sub-arranger shall clearly disclose a sub-breakup, mentioning the names of the underlying investors and their respective bid quantum, at the time of bidding.

c) The arranger/sub-arranger shall disclose the names and breakup (as mentioned at sub-paragraphs 'a' and 'b' above) to the EBP, whereas the EBP shall disclose the breakup of the bids on the EBP platform on an anonymous basis without disclosing the names of the arranger/sub-arranger and the underlying investors.

d) Further, for the securities allotted against the proprietary bid of the arranger, such securities would be subject to a lock in of 60 days period from the date of allotment.

9. Mandatory Open bidding(without disclosing the names of the participants):

9.1. Current regulatory requirement:

a) At present, an issuer has an option to either go for Open or Closed bidding.

9.2. Need for the change

a) Based on the market feedback, it is understood that Open bidding provides the bidders an opportunity to understand the dynamics of the market and to evaluate their quotation based on the bids visible on the EBP portal.

b) Further, if the bids are proprietary bids, then open bidding will be even more effective since it will provide optimal yield curve based on large number of bids rather than consolidated bids.

c) However, based on market feedback, it is suggested that although the bids and bidding trends would be visible to all market participants on a real time basis, but the EBP may disclose the said bids on an anonymous basis without disclosing the names of investors, arrangers and sub-arrangers.

d) Further, in most of the cases, initial bidding is closed bidding, whereas during the negotiation window, open bidding mechanism is followed wherein the bidders improve on their old bids based on overall bidding trends.

e) Hence, Open bidding would also reduce the need for negotiation window, since the EBP mechanism anyways allows a bidder to enter multiple bids and revise bids in the bidding time window.

9.3. Proposal:

a) All the issuers should mandatorily follow open bidding mechanism, wherein EBP shall ensure that all the bids should be disclosed on the EBP platform on a real time basis in the following manner:

(i) Bids received from arrangers/sub-arrangers and Direct bids received from investors should be shown separately

(ii) All the bids should be disclosed on an anonymous basis (i.e. without disclosing the names of investors, arrangers and sub-arrangers)

(iii) Further, for the bids received from arrangers/sub-arrangers, the breakup of bids between proprietary and consolidated bids, and the sub-breakup of the consolidated bids should be disclosed on the EBP platform on an anonymous basis (i.e. without disclosing the names of investors, arrangers and sub-arrangers).

f) There may exist a situation wherein the issuer gets the bids to meet its base issue however the cut off yield is more than its expectation. In such case, the issuer may have the discretion to enter in to negotiation. In such negotiation, all the existing shall be able to participate and no new bidders shall be allowed. The Operational Guidelines for the negotiation window has been provided at Annexure 1.

10. <u>To make the allotment of debt securities yield-based:</u>

10.1. <u>Current regulatory requirement:</u>

The EBP circular is silent on the basis of allotment and the same is left to the discretion of the issuer in cases where issue is oversubscribed.

10.2. <u>Need for the change</u>

a) The underlying objective of the EBP mechanism is to achieve better and transparent price discovery through the bidding process. The same can be achieved only if the allotment is done on yield priority basis (i.e. Preference needs to be given to the lower coupon bid over higher coupon bids, irrespective of the bid time and bid quantity).

b) Allotment on yield priority basis would also encourage all the investors to participate directly on the platform.

10.3. <u>Proposal:</u>

a) In cases where the issue is oversubscribed, it may be made mandatory to do allotment on yield priority basis.

b) The same may be implemented as under:

- **(i)** All the bids shall be arranged in the ascending order of the yields, and a cut-off yield (i.e. the minimum yield at which the issue would be fully subscribed, including any green issue portion which the issuer intends to retain) shall be determined.
- **(ii)** All the bids below the cut-off yield shall be accepted and full allotment should be done to such bidders.
- **(iii)** All the bids higher than the cut-off yield shall be rejected.
- **(iv)** For all the bids at the cut-off yield, such bids shall be accepted/partially accepted/rejected depending upon the units available for allotment.

If full quantity cannot be allotted to all the investors who have bided at cut-off yield because of oversubscription, then the allotment may be done on time priority basis/ pro-rata basis or quantity basis.

c) In cases where the issue is undersubscribed, the issuer can either withdraw the issue or can accept the raised quantum of subscription.

11. <u>Allowing Structured Products/ Market Linked Debentures/ Municipal Bonds/Non-convertible Preference shares/CPs/CDs:</u>

11.1. <u>Current regulatory requirement:</u>

Currently, the EBP platform is being used only for private placement of NCDs.

11.2. <u>Need for the change</u>

a) Based on the feedbacks received from the market and keeping in view the benefits of existing electronic book mechanism, it is suggested that the current EBP mechanism may also be extended for private placement of Structured Products/ Market Linked Debentures Municipal Bonds and Non-convertible Preference shares (‘**NCRPS**’).

11.3. <u>Proposal:</u>

a) The existing EBP mechanism (including the changes proposed in this consultation paper) would be extended to private placement of Municipal Bonds and NCRPS. All the existing provisions of the EBP mechanism, as applicable for NCDs, would also be applicable to Structured Products/ Market Linked Debentures, Municipal Bonds and NCRPS.

b) The existing EBP mechanism (including the changes proposed in this consultation paper) may also be used for issuances of CPs and CDs, subject to compliance with existing laws and provisions applicable for issuance of CPs and CDs. All the existing provisions of the EBP mechanism, as applicable for NCDs, would also be applicable to CPs and CDs, unless the same would result in non-compliance of existing laws and provisions applicable for issuance of CPs and CDs.

12. <u>Standard Operational guidelines for the EBPs</u>

In order to bring uniformity across EBPs and in view of the changes as proposed in this consultation paper, it is proposed to provide standard operational guidelines for handling issues on the EBP platform. The same are enclosed at Annexure 1.

IV. **Public Comments:**

In light of the above, public comments are invited on the proposals contained in thisconsultation paper. Comments/ suggestions may be provided in the format given below:

Name of entity / person / intermediary/ Organization			
Sr. No.	Pertains to Point No.	Suggestions	Rationale

The comments may either be forwarded by email to ebp@sebi.gov.inor may be sent by post to the following address latest by **June 21, 2017**.

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Annexure 1

Standard Operational guidelines for the EBPs: Proposal

	KYC	• For QIBs and Non QIBs bidding directly on EBPs, the KYCs will be ensured by EBPs. • For all other participants, arrangers and Sub-arrangers shall ensure KYCs before bidding on their behalf. • Arranger or Sub-Arranger may undertake KYC of participants by obtaining/utilizing existing KYCs of clients from KRAs registered with SEBI Or can do KYC based on the guidelines provided by SEBI from time to time in this regards.
	Bidding Hours	• 9AM to 5PM from Monday to Friday • The bidding has to end before 5 PM
	Holiday Master	• RBI Mumbai Calendar (GOI Securities Trading Calendar)
Pre-Bid Procedure		
	Issue setup authority	• Issue can be set-up by the Issuer or the EBP on behalf of the Issuer
	Issue Parameters	• Issuer has to fill in the issue parameters as specified by the EBP and / or SEBI from time to time. The parameters include Issue Name, Maturity date, Minimum bid value, credit ratings, bidding period, cooling period, negotiation window, etc.

		• Issuer and the EBP shall ensure that the bidding along with negotiation (if applicable) shall be completed on the same working day.
	Issue related uploads	• Necessary issue specific documentation like Term sheet / Private Placement Memorandum (PPM) / Shelf Information Memorandum (IM) / Credit rating letters / Rating reports or Rating rationale or any other document as decided by the EBP or as mandated by the regulators from time to time.
	Minimum market notification time	• Issuer has to notify to the market 1 working hour before the scheduled bidding time in case issue opens on same day. • If the issue details are made available to the exchange before 5 PM on the previous working day, then the bidding can begin at the start of the working day.
	Intimation to market	• Only the eligible participants shall have access to PPM and issue specific information and to the bidding portal provided by EBP • The Exchange shall intimate the issue related information to the eligible participants in a manner as decided by Exchange from time to time

Bidding Process		
	Bidding Period	• Bidding timing will be minimum of 30 minutes which may go up to 2 hours. • EBP as agreed by issuer will specify minimum and maximum time for initial bidding window subject to maximum bidding period specified above. • Directly participating investors (non-arranger) can place bids only for self i.e on proprietary basis • Participants will be allowed to enter multiple bids i.e. single participant may enter more than one bid. In case a participant enters multiple bids, the latest bid shall be considered as the final bid by the participant. • Cancellation and Modification of bids will be allowed during bidding time. • Arrangers are allowed to enter consolidated bids on behalf of multiple investors • Arranger and sub-arranger can place orders for self (proprietary) and/or on behalf of investors (clients)
	Rules for Consolidated Bids	• A consolidated bid is one where the arranger enters a single combined bid on behalf of self and/or multiple investors • The arranger shall upload the client details which are part of the consolidated

		on the EBP portal before the bidding starts.
	Action After Bidding Period	• After the bidding period the issuer has the option to: ➢ Withdraw the issue ➢ Accept and close issue indicating cut-off rate/price ➢ Initiate negotiation
	Negotiation window	• Before the negotiation window becomes active, there shall be a cooling period. The cooling period may be of upto 30 minutes which shall commence just after the bidding period is over. • There shall be a facility for negotiation and the same shall also be done on open book basis. The negotiation window may remain open for maximum of one hour. Further, the negotiation window may have following criteria: ➢ All of the initial bidders shall be eligible to participate in the negotiation round. ➢ Bids from new participants are not allowed during negotiation ➢ The bidders at a particular level can modify their bids any number of times till their respective negotiation slots are active ➢ Issuer can accept and close negotiations at any point during the

<table>
<tr><td></td><td></td><td>negotiation rounds. Issuer cannot withdraw the issue during negotiations
Rules for Modification:
If bidder is reducing coupon/spread (or raising price) then the bidder is allowed to increase or decrease bid amount
In other cases bidders can only increase their bid amount
After the initial negotiation round, the issuer can subsequently open multiple rounds of negotiation if required subject to the same shall be completed on the same working day.
Issuer can withdraw / accept issue subject to rules specified by the EBP in this regards.</td></tr>
<tr><td colspan="3">Note: The EBP shall ensure that any extension of bidding time, cooling period or negotiation window done within the timeframe provided above, shall be made known to all the eligible investors simultaneously through the portal.</td></tr>
<tr><td colspan="3">Post Bidding Procedure</td></tr>
<tr><td colspan="3">Other rules</td></tr>
<tr><td></td><td>Withdrawal of Issue</td><td>An issuer cannot withdraw the issue in following cases:
The base issue size is filled (In case of fixed rate issuance)</td></tr>
</table>

		➢ The base issue size subscribed at the rate as decided by issuer during negotiation ➢ Once issue is accepted
	Non-fulfilment of Obligation by Bidders	• EBP to take necessary action on case to case basis
	Investor Grievance	The investor grievances, if any, arising from bidding process shall be addressed by the Issuer in accordance with the respective agreement. In addition, EBP shall also address the investor grievance arising from bidding process. Further, any dispute between issuer and bidders before listing of privately placed debt securities in recognized Stock Exchange(s) shall be settled as per the respective agreement.