



# भारतीय प्रतिभूति और विनिमय बोर्ड Securities and Exchange Board of India

## Discussion Paper on "Monitoring Agency Report and Related Disclosures"

### 1. Background

- a. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations) requires that the offer document shall contain the disclosures about the 'Objects of the Issue'. This requirement ensures that the amount to be utilized towards each object of the issue is specifically earmarked and disclosed in the offer document. Mandating such detailed disclosures helps in monitoring of utilization of the funds raised through public issues as well as enables the investors to take informed decision. Keeping similar objective in mind, SEBI has recently amended the ICDR Regulations and put a limit on the amount that can be earmarked for 'General Corporate Purpose' to 25% of the total issue size. Further, ICDR Regulations also requires appointment of 'Monitoring Agency' if the issue size exceeds Rs. 500 Cr. for monitoring of utilization of issue proceeds.

### 2. Current Regulatory Framework

- a. **Regulation 16 of the SEBI (ICDR) Regulations, 2009** as amended till date provides as under:

*"16. (1) If the issue size exceeds five hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer:*

*Provided that nothing contained in this clause shall apply to an offer for sale or an issue of specified securities made by a bank or public financial institution or an insurance company.*

*16. (2) The monitoring agency shall submit its report to the issuer in the format specified in Schedule IX on a half yearly basis, till the proceeds of the issue have been fully utilised."*

- b. **Provisions in the Listing Agreement:**

- i. **Clause 41(4)(e)** of the Listing Agreement provides as under:

*"If the company had not commenced commercial production or commercial operations during the reportable period, the company shall, instead of submitting financial results, disclose the details of amount raised, the portions thereof which is utilized and that*

*remaining unutilized, the details of investment made pending utilisation, brief description of the project which is pending completion, status of the project and expected date of commencement of commercial production or commercial operations.”*

ii. **Clause 43A** of the Listing Agreement provides as under:

*“(1) The company agrees to furnish to the stock exchange on a quarterly basis, a statement indicating material deviations, if any, in the use of proceeds of a public or rights issue from the objects stated in the offer document.*

*(2) Where the company has appointed a monitoring agency to monitor utilization of proceeds of a public or rights issue and such monitoring agency has pointed out any deviation in the use of the proceeds of the issue from the objects stated in the offer document or has given any other reservations about the end use of funds, the company agrees to intimate the same to the stock exchange, without any delay.”*

iii. While laying down the role of Audit Committee, **Clause 49** of the Listing Agreement, requires Audit Committee to mandatorily review the following:

- ✓ the statement of uses / application of funds raised through an issue
- ✓ the statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice
- ✓ Report submitted by the Monitoring Agency

The Audit Committee is also required to make appropriate recommendations to the Board for taking necessary steps on the above-mentioned matters. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and place it before the Audit Committee. This statement shall be certified by the statutory auditors of the company.

c. The **Companies (Auditor’s Report) Order, 2003 (CARO)** in Para 4(XX) of “Matters to be included in the auditor’s report.” requires as under:

*“Whether the management has disclosed on the end use of money raised by public issues and the same has been verified”*

- d. Revised Schedule VI to the Companies Act, 1956 as amended till date and Schedule III to the Companies Act, 2013 requires that in case of an issue of securities made for a specific purpose and the whole or part of the amount raised has not been used for that purpose till the balance sheet date, the financial statements shall contain a disclosure on how such unutilized amounts have been used or invested by way of note to the financial statements.
- e. Section 13(8)(ii) of Companies Act, 2013 requires that the company shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and dissenting shareholders have been given opportunity for exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

### **3. Major Changes Proposed**

The key changes proposed in Monitoring Agency Report and Related Disclosures are as under:

#### **3.1. Appointment of Monitoring Agency**

##### Present requirement

Appointment of Monitoring Agency is compulsory for all issues where issue size exceeds Rupees five hundred crores

##### Proposed requirement

Mandatory appointment of monitoring agency for all issues, irrespective of issue size.

##### Rationale

As detailed in para (2)(e) above, the Companies Act, 2013 has included certain provisions for deviation in utilization of issue proceeds. Accordingly, it is pertinent to extend the requirement of monitoring of utilization of issue proceeds to all the companies to ensure that such instances are identified and addressed in accordance with extant legal framework. It will also strengthen the monitoring of utilization of all the equity capital raised through issuance of equity shares to public.

#### **3.2. Frequency of Submission of Monitoring Agency Report**

##### Present requirement

Monitoring Agency is required to submit its report to the issuer half-yearly.

##### Proposed requirement

Mandatory submission of report by the monitoring agency on quarterly basis till the funds are fully utilized.

### Rationale

As per Clause 41 & 43 of the Listing Agreement, the company is required to quarterly disclose details of fund utilization and variations in such utilization. For meeting such disclosure requirement, the company either obtains the information from monitoring agency or collates the information itself. Thus, there appears to be a need for quarterly submission of monitoring agency report. The said suggestion was also discussed in Primary Market Advisory Committee (PMAC) meeting held on November 17, 2011 and the committee agreed with the suggestion of aligning reporting requirements to quarterly basis.

### **3.3. Dissemination of Monitoring Agency Report**

#### Present requirement

No Requirement (only material deviations are required to be disclosed by the issuer company under clause 43A(i) of Listing Agreement)

#### Proposed requirement

Mandatory submission of Monitoring Agency Report to Stock Exchanges for public dissemination.

### Rationale

At present, the report submitted by the monitoring agency to the issuer is not required to be made public. Considering that Companies Act, 2013 requires prior approval from shareholders for any change of object and a provision for exit to dissenting shareholders, it is very important that the shareholders get regular update on utilization of issue proceeds. Disclosure of report of monitoring agency in public domain will serve the above objects.

Thus, in order to bring more transparency in the disclosures, it is proposed to mandate submission of Monitoring Agency Report to Stock Exchanges for public dissemination.

### **3.4. Categorization of Reports**

#### Present requirement

No specific requirement for categorizing the report in case of deviation of funds from the stated objects of the issue in the offer document.

#### Proposed requirement

The monitoring agency to grade the deviation on the 2-digit scale as under:

First digit indicates deviation from the objects stated in offer document as under:

- 0 – No deviation from the objects stated in offer document
- 1 – Utilization different from Objects stated in OD but in line with change of objects approved by shareholders' resolution
- 2 – Utilization neither in line with Objects stated in OD nor approved by shareholders' resolution

Second digit indicates range of deviation from the specified objects as under:

- 0 – upto 10% deviation
- 1 – 10 - 25%
- 2 – 25-50%
- 3 – 50-75%
- 4 – 75-100%
- 5 – Not ascertainable

Thus, code of 12 would indicate that the utilization of issue proceeds is different from Objects stated in OD but is in line with change of objects approved by shareholders' resolution and the deviation in utilization is in the range of 25%-50%.

The deviation in utilization of issue proceeds for the stated objects could occur due to delay in the stated time schedule, changing the fund allocations within the stated objects in the offer document or diversion of funds to the object other than stated in the offer document. All these deviations reported by the monitoring agency shall clearly indicate the same along with the reasons for such deviation and also indicate whether necessary approvals from Board/ Shareholders have been obtained. The Stock exchanges shall prominently disseminate list of monitoring agency reports in separate lists based on first digit of said categorization.

#### Rationale

Monitoring Agency Reports where there is a deviation from objects of the issue should be segregated from reports where the utilization is in line with objects of the issue.

Section 13(8)(ii) of Companies Act, 2013 requires that the company shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and dissenting shareholders have been given opportunity for exit by the promoters and shareholders having control. The companies whose reports have first digit of code as 2 can be indicative of the possible deviation in utilization/ change of objects.

### **3.5. Comments of Audit Committee and Management on the findings of Monitoring Agency**

#### Present requirement

No such requirement exists.

#### Proposed requirement

Audit Committee and the Board/ Management shall provide their comments for the deviation, if any, pointed out in the report of monitoring agency.

#### Rationale

It is desirable to have comments of management/ audit committee which will help understand the reasons for such deviation, if any.

### **3.6. Timelines for submission of report to the stock exchanges.**

#### Present requirement

No specific timeframe has been provided in the existing framework.

#### Proposed requirement

For effective monitoring and timely disclosure, it is desirable to have a fixed time limit for submission of the report. It is proposed that the issuer company shall ensure that the Monitoring Agency Report is submitted within 45 days from the end of the quarter to the stock exchanges

#### Rationale

It is desirable to have timely information of the status of utilization of issue proceeds & the deviation, if any. Such disclosure will help shareholder/ stakeholder/ investor in taking informed decision.

### **3.7. Sub-committee of Board members to oversee the monitoring of utilization of issue proceeds**

#### Present requirement

No such specific requirement for overseeing the monitoring of utilization of issue proceeds.

#### Proposed requirement

A committee of Board of Directors of the Company to be constituted to oversee the monitoring of utilization of issue proceeds is constituted before opening of the issue. The said committee shall facilitate monitoring of issue proceeds by monitoring agency. The majority of the member of the said committee shall be independent directors and the same shall be headed by an independent director.

#### Rationale

Constitution of such committee will be helpful in facilitating monitoring of utilization of issue proceeds. Further, the said requirement will ensure

active involvement of Board of Directors monitoring of utilization of issue proceeds.

#### **4. Revision in format of Monitoring Agency Report**

Proposed new format for report of monitoring agency to be submitted to the issuer company is placed at Annexure.

#### **Public Comments**

It is proposed to carry out necessary amendments to regulatory framework in line with revised requirements proposed in this discussion paper. Considering the importance of proposed changes for all the stakeholders including the listed companies, public comments on the draft framework are solicited. Specific comments/ suggestions would be highly appreciated. Such comments may please be emailed on or before March 25, 2014, to [mar@sebi.gov.in](mailto:mar@sebi.gov.in) or sent, by post, to:-

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## Annexure

### Proposed format for Monitoring Agency Report

Front Page:

<b>Monitoring Agency Certificate</b>	
Name of the Issuer:	
For quarter ended:	
Name of the Monitoring Agency:	
Report Category: Deviation Code*	
If type of Report is "Adverse", seriousness of deviations is: Acceptable/Requires Action	
Declaration:	
I/We hereby declare that this report is based on the format as prescribed by SEBI (ICDR) Regulations, 2009, as amended. I/We further declare that this report provides true and fair view of the utilization of issue proceeds.	
Signature	
Name of Authorized Person/Signing Authority:	
Designation of Authorized person/Signing Authority:	
Seal of the Monitoring Agency:	
Date:	

\* The monitoring agency to grade the deviation on the 2-digit scale as under:

- i. First digit indicates deviation from the objects stated in offer document as under:
  - 0 – No deviation from the objects stated in offer document
  - 1 – Utilization different from Objects stated in OD but in line with change of objects approved by shareholders' resolution
  - 2 – Utilization neither in line with Objects stated in OD nor approved by shareholders' resolution
  
- ii. Second digit indicates range of percentage deviation from the specified objects as under:
  - 0 – upto 10%
  - 1 – 10 - 25%
  - 2 – 25-50%
  - 3 – 50-75%
  - 4 – 75-100%
  - 5 – Not ascertainable

Thus, code of 12 would indicate that the utilization of issue proceeds is different from Objects stated in OD but is in line with change of objects approved by shareholders' resolution and the deviation in utilization is in the range of 25%-50%.



Subsequent Pages:

- 1) Issuer Details
  - Name of the issuer :
  - The names of the promoters of the issuer :
  - Industry/sector to which it belongs :
- 2) Issue Details
  - Issue date :
  - Type of issue (public/rights) :
  - Type of specified securities :
  - Grading :
  - Issue size (Rs. in Crores) :
  - Amount collected (Rs. in Crores) :
- 3) Details of the arrangement made to ensure the monitoring of issue proceeds  
(Give item by item description for all the objects stated in offer document separately in following format)

Particulars	Reply	Monitoring Agency Comments	Audit Committee Comments	Mgmt. Comments
Whether all the utilization is as per disclosure in Offer Document?	Yes / No			
Whether Shareholder approval obtained in case of material deviations <sup>#</sup> from expenditures disclosed in Offer Document?	Yes / No			
Whether means of finance for disclosed objects of the Issue has changed?	Yes / No			
Any major deviation observed over the earlier monitoring agency reports?	Yes / No			
Whether all Government / Statutory approvals related to the project obtained?	Yes / No			
Whether all arrangements pertaining to technical assistance/collaboration in operation?	Yes / No			
Any favorable events improving project viability	Yes / No			
Any unfavorable events affecting project viability	Yes / No			
Any other relevant information that may materially affect the decision making of the investors	Yes / No			

<sup>#</sup> Where material deviation may be defined to mean:

- a) Deviation in the objects or purposes for which the funds have been raised
- b) Deviation in the amount of fund actually utilized by more than 10% of the amount projected in the offer documents.

4) Details of projects to be monitored

(i) Cost of project

(Give Item by Item Description for all the Objects Stated in Offer Document separately in following format)

Sl. No	Item Head	Original Cost (as per Offer Document)	Revised Cost	Comments of Monitoring Agency	Management Reply		
					Reason of cost revision	Proposed financing option	Particulars of firm arrangements made

(ii) Progress in the project

(Give Item by Item Description for all the Object Stated in Offer Document separately in following format)

Sl. No	Item Head <sup>§</sup>	Amount as proposed in Offer Document	Amount utilized			Total unutilized Amount	Comments of Monitoring Agency	Management Reply	
			As at Beginning of the quarter	During the quarter	At the end of the quarter			Reason of idle funds	Proposed Course of Action

<sup>§</sup> Provide following details under Item Head:

(a) Name of the project:

(b) Brief description of the project:

(c) Location of the project (if applicable):

(iii) Deployment of unutilized IPO proceeds

Sl. no.	Type of instrument where amount invested*	Amount invested	Maturity date	Earnings	Return on Investment (ROI %)	Market Value as at the end of quarter**

\* Also indicate name of the party/company in which amounts have been invested

\*\* Where market value is not practical to find, provide NAV/NRV/Book Value of the same

(iv) Delay in implementation of the project

Project Name	Completion Date		Delay (No. of days/ months)	Management Reply	
	As per Offer Document	Actual *		Reason of delay	Proposed Course of Action

\* In case of continuing projects please specify latest/revised estimate of completion date