

# Preferential Allotment of Specified Securities by Listed Entities

Preferential allotment offers efficiency in terms of time and cost and facilitates targeted capital infusion from the selected investors and aids in strengthening the promoters' stake or bringing in new stakeholders possessing financial or strategic value. Under the Companies Act, 2013, preferential allotment for the listed entities is more layered and includes compliance with various regulations of the Securities and Exchange Board of India. This article throws light on issue from a Non-Banking Financial Company (NBFC), such an issue must also consider sectoral regulations imposed by the Reserve Bank of India (RBI), particularly in relation to the Net Owned Fund (NOF) requirements introduced through the Scale Based Regulatory (SBR) framework under RBI Circular No. DOR.CRE.REC.No.60/03.10.001/2021-22 dated October 22, 2021.



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investors, venture capitalists, or strategic partners. It also aids in strengthening the promoters' stake or bringing in new stakeholders possessing financial or strategic value. While unlisted entities commonly resort to methods such as private placements, rights issues, and initial public offerings (IPOs), listed companies primarily rely on rights issues and preferential allotments as their principal fundraising avenues.

Under the Companies Act, 2013, preferential allotment by the unlisted companies is governed by the provisions of Section 42 and Section 62 read with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014. Whereas for the listed entities, the legal framework is more layered and includes compliance with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (SEBI ICDR Regulations), the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR Regulations), the SEBI (Prohibition of Insider Trading) Regulations, 2015, and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 SEBI SAST Regulations) circulars and clarifications issued by SEBI and stock exchanges from time to time.

Additionally, where the issuer is a Non-Banking Financial Company (NBFC), it must also consider sectoral regulations imposed by the Reserve Bank of India (RBI), particularly in relation to the Net Owned Fund (NOF) requirements introduced through the Scale Based Regulatory (SBR) framework under RBI Circular No. DOR.CRE.REC.No.60/03.10.001/2021-22 dated October 22, 2021.

## INTRODUCTION

### WHAT IS THE PREFERENTIAL ALLOTMENT OF SECURITIES?

Preferential allotment is a strategic capital-raising mechanism employed by companies, particularly listed entities, to issue equity shares or other specified securities to a select group of investors, rather than through a public offering including right issue. This method offers efficiency in terms of time and cost and facilitates targeted capital infusion from the selected investors such as promoters, institutional

### NET OWNED FUND

The regulatory landscape for NBFCs has undergone a calibrated transition with the introduction of the SBR framework, which seeks to strengthen the resilience of NBFCs through revised capital adequacy norms. One of the salient features of the SBR framework is the enhancement of the minimum Net Owned Fund (NOF) requirements for various NBFC categories. For instance, the NOF threshold for NBFC-Investment and Credit Companies (NBFC-ICC), NBFC-Microfinance Institutions (NBFC-MFI), and NBFC-Factors has been increased to ₹10 crore, with a transitional glide path laid out for compliance by March 31, 2025, and March 31, 2027.

The term “Net Owned Fund” has been defined under Section 45-IA(7) of the RBI Act, 1934. It refers to the aggregate of paid-up equity capital, free reserves, share premium, and capital reserves representing profits from asset sales, from which certain deductions such as accumulated losses, intangible assets, and excessive exposures to subsidiaries, group companies, and other NBFCs (beyond specified thresholds) are subtracted. It is imperative that the NOF is calculated based on the most recent audited balance sheet of the NBFC. Importantly, capital raised post the balance sheet date does not form part of the NOF calculation, underscoring the importance of timing in capital infusion through instruments such as preferential allotment.

To ensure compliance, the RBI has provided a phased glide path for existing NBFCs to meet this requirement:

a) Net Owned Fund – Regulatory minimum Net Owned Fund (NOF) for NBFC-ICC, NBFC-MFI and NBFC-Factors shall be increased to ₹10 crore.  The following glide path is provided for the existing NBFCs to achieve the NOF of ₹10 crore: NBFCs	Current NOF	By March 31, 2025	By March 31, 2027
NBFC-ICC	₹2 crore	₹5 crore	₹10 crore
NBFC-MFI	₹5 crore (₹2 crore in NE Region)	₹7 crore (₹5 crore in NE Region)	₹10 crore
NBFC-Factors	₹5 crore	₹7 crore	₹10 crore

**Net Owned Fund** is defined under Section 45-IA (7) of the **RBI Act, 1934** as:

Net Owned Fund (NOF) is calculated by taking the aggregate of certain components and deducting specific items. The calculation process ensures the NBFC maintains a sufficient capital base.

Components to be aggregated: Paid-up Equity Capital, Free Reserves, Balance in Share Premium account, and Capital Reserves (representing surplus from asset sales).

#### Deductions:

- Accumulated loss balance.
- Book value of intangible assets.
- Investments in shares, debentures, or loans of subsidiaries and group companies exceeding 10% of the NOF.
- Investments in shares of other NBFCs exceeding 10% of the NOF.

In essence, NOF is calculated as: Paid-up Capital + Free Reserves + Share Premium + Capital Reserves - Accumulated Losses - Intangible Assets - Excessive investments in Subsidiaries, Group companies, and other NBFCs.

The NOF calculation is based on the NBFC's latest audited balance sheet. Any capital raised after the balance sheet date is not included in the NOF calculation. The NOF is a critical measure of an NBFC's financial strength and stability.

## LEGAL COMPLIANCES AND PROCEDURE FOR ISSUING SHARES ON PREFERENTIAL BASIS

### 1. Initial decision on Fundraising

The Board of directors of the Company shall decide on the mode of fundraising and the object of the same. Without deciding the object and/or purpose of fundraising, the company cannot decide which mode of fundraising will be suitable for them.

### 2. Notice to Board of Directors

The Company is required to give at least seven days' notice before the date of the Meeting. The Notice of the Board Meeting can be sent by registered post or speed

post or by electronic means. However, if company opts to send Notice by speed post or registered post, an additional two days shall be added for the service of the Notice.

### 3. Advance intimation by the Company before conducting the proposed Board Meeting

As per Regulation 29(1) of the SEBI (LODR) Regulations, 2015, the listed company shall give notice of at least 2 working days in advance, excluding the date of the intimation and the date of the meeting to stock exchange about the meeting of Board of directors in which they will consider the fund raising by various modes.

### 4. Eligibility criteria of the proposed allottees as prescribed under SEBI (ICDR) Regulations, 2018

- Preferential issue of specified securities shall not be made to any person who has sold or transferred any equity shares of the company during 90 trading days preceding the relevant date.

Where any person belonging to promoter or the promoter group has sold/transferred their equity shares in the issuer during the 90 trading days preceding the relevant date, the promoter and the promoter group shall not be ineligible for the allotment of specified securities on preferential basis.

- Where any person belonging to promoter(s) or the promoter group has previously subscribed to warrants of an issuer but has failed to exercise

the warrants, the promoter(s) and promoter group shall be ineligible for issue of specified securities of such issuer on preferential basis for a period of one year from:

- i. the date of expiry of the tenure of the warrants due to non-exercise of the option to convert; or
- ii. the date of cancellation of the warrants, as the case may be.

**5. Convening Board Meeting for considering fund raising and increase in authorised capital of the company, if required**

The company shall convene the Board Meeting and take the decision for approving the preferential issues. The company shall comply with the requirement of Secretarial Standard 1 issued by ICSI w.r.t. Meeting of Board of directors. Further, the Company shall also take into consideration the requirement of increasing the authorised share capital of the Company, if any.

**6. Outcome of the Board Meeting to be submitted to the Stock Exchange**

The decision of the Board of directors meeting approving the preferential issue shall be disclosed to the Stock Exchanges within thirty minutes from the closure of the meeting of the Board of directors in which the decision pertaining to the event or information has been taken. In case the meeting of the Board of directors closes after normal trading hours of that day but more than three hours before the beginning of the normal trading hours of the next trading day, the listed entity shall disclose the decision pertaining to the event or information, within three hours from the closure of the Board meeting.

The Board shall also consider the option of taking shareholders' approval for the preferential issue of shares whether through EGM or AGM or Postal Ballot.

**7. Compliance with Section 42 read with Section 62 and Rule 13 of the Companies Act, 2013 and SEBI (ICDR) Regulations, 2018**

While drafting the notice and the explanatory statement for the shareholders' approval, the company is required to ensure that the information as prescribed under the Companies Act, 2013 and rules made thereunder and SEBI (ICDR) Regulations, 2018 are complied with. The information required to be included in the explanatory statement as per the Companies Act, 2013 and rules made thereunder are provided below:



- The object of the issue.
- The total number of shares and other securities to be issued.
- The price or price band at/within which the allotment is proposed.
- The basis on which the price has been arrived at along with report of the registered valuer.
- Relevant date with reference to which price has been arrived at.

Capital raised post the balance sheet date does not form part of the NOF calculation, underscoring the importance of timing in capital infusion through instruments such as preferential allotment.

- The class or classes of persons to whom the allotment is proposed to be made.
- Intention of promoters, directors or Key Managerial Personnel to subscribe to the offer.
- The proposed time within which the allotment shall be completed.
- The names of the proposed allottees and the percentage of pre and post-preferential offer capital that may be held by them.
- The change in control, if any, in the company that would occur consequent to the preferential offer.
- The number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price.
- The justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
- Requirement for appointment of monitoring agency if the issue size is more than Rs.100 Crores.
- The pre - issue and post - issue shareholding pattern of the company is prepared in the following format:

Sr. No.	Category	Pre-Issue		Post-Issue	
		No. of shares held	% of shareholding	No. of shares held	% of shareholding
<b>A</b>	<b>Promoters' holding</b>				
1	Indian				
	Individual				
	Bodies Corporate				
	Sub-total				
2	Foreign Promoters				
	<b>Sub-Total (A)</b>				
<b>B</b>	<b>Non-promoters' holding</b>				
1	Institutional investors				
2	Non-Institutional				
	Private corporate bodies				
	Directors and Relatives				
	Indian Public				
	Others (including NRI)				
	<b>Sub-Total (B)</b>				
	<b>Grand Total</b>				

Further as per Regulation 163 of SEBI (ICDR) Regulations, 2018, the company in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, discloses the following in the explanatory statement to the notice for the general meeting proposed for passing the special resolution:

- Object of the preferential issue.
- Maximum number of specified securities to be issued.
- Intent of the promoters, Directors, Key Managerial Personnel, or senior management of the issuer to subscribe to the offer.
- Shareholding pattern of the issuer before and after the preferential issue.
- Time frame within which the preferential issue shall be completed.
- Identity of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/or who ultimately control the proposed allottees.

*Provided that if there is any listed company, mutual fund, scheduled commercial bank, insurance company registered with the Insurance Regulatory and Development Authority of India in the chain of ownership of the proposed allottee, no further disclosure will be necessary.*

- The percentage of post-preferential issue capital that may be held by the allottee(s) and change in control, if any, in the issuer consequent to the preferential issue.
- Undertaking that the issuer shall re-compute the price of the specified securities in terms of the provision of these regulations where it is required to do so.

- Undertaking that if the amount payable on account of the re-computation of price is not paid within the time stipulated in these regulations, the specified securities shall continue to be locked-in till the time such amount is paid by the allottees.

- Disclosures specified in schedule VI, if the issuer or any of its promoters or directors is a wilful defaulter or a fraudulent borrower.

- The current and proposed status of the allottee(s) post the preferential issues namely, promoter or non-promoter.

**8. Opening of a separate bank account with a Scheduled Bank**

The company making the preferential issue shall ensure that the amount of money so received shall be kept in a separate bank account of a scheduled bank and shall not be utilised for any purposes other than:

- For adjustment against allotment of securities.
- For the repayment of money where the company is unable to allot securities.

**9. Valuation report**

The company is required to take valuation report from the registered valuer if the specified securities issued on a preferential basis is for consideration other than cash. Further, if the shares of the company are infrequently traded the valuation report is required.

As per Regulation 166A of SEBI (ICDR) Regulations, 2018 it is the requirement to obtain valuation report from an independent registered valuer when any preferential issue, which may result in a change in control or allotment of more than 5% of the post-issue fully diluted share capital of the issuer, to an allottee or allottees acting in concert, and consider the same for determining the price.

As per the checklist provided by the stock exchanges, the company shall submit PCS/PCA certificate confirming the Pricing Methodology adopted for the proposed preferential issue along with a detailed working of the same or Valuation Report from independent registered valuer. In case the Valuation Report is being submitted, ensure that:

- i) The valuation report shall also display relative fair value per share/fair share exchange ratio, after considering all the 3 approaches for valuation namely Asset Approach, Income Approach and Market Approach.
- ii) In case comparable company multiples method is used by the valuer, the valuer shall provide the rationale for considering particular companies vis-à-vis comparable companies.
- iii) In case of control premium, valuer shall provide detailed working for arriving at such control premium.
- iv) A summary as per the below format shall be made part of the valuation report:

Valuation Approach	Value Per Share	Weight
Asset Approach		
Income Approach		
Market Approach		
<b>Relative Value per share</b>		

In case the shares of the company are frequently traded on all the stock exchanges, the above certificate shall specify the stock exchanges on which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding 90 trading days prior to the relevant date.

#### 10. Lock-in requirements

- i. Apply for Lock in of shares and get the LOCK - IN confirmation/certificate from the depositories Viz. NSDL/ CDSL where the shares of the allottees are held. If the allottees are with one depository only apply to the depository. It is better applied for lock in before intimation of Board meeting to BSE and/or NSE as the case may be.
- ii. The first step will be to approach the RTA to send the Corporate Action application form. The company has to fill the Corporate Action Form and pay the fees to depositories and a fee to the RTA. On the correctness of the particulars on the Corporate Action form and ensuring that the fees have been paid, the RTA will initiate Corporate Action, and the depositories will respond with LOCK - IN certificate.
- iii. The pre-preferential allotment of shareholding of each of proposed allottee(s) has to be locked in, in accordance with Regulation 167(6) SEBI (ICDR) Regulations, 2018 of the allottee for 3 months from the trading approval. Here we must mention that Lock - in period will be granted for 90 trading days at a time from the date of application which will invariably be the date of Board Meeting.

- iv. Since lock-in is only for 90 days for pre preferential allotment, the issuing company will have to extend the lock - in period once they get the "in principle" approval as lock in period is to be reckoned on the basis of trading approval.

It is a three-stage process with Stock exchanges.

1. Getting in-principle approval.
2. Getting Listing approval.
3. Getting Trading approval.

#### 11. In-principle application to be filed with the Stock Exchanges where the securities are listed

In accordance with Regulation 28 of SEBI (LODR) Regulations, 2015, the listed entity before issuing securities, shall obtain an 'in-principle' approval from all the stock exchanges where the securities of the company are listed.

Further, as per Regulation 160(f) of SEBI (ICDR) Regulations, 2018 the issuer is required to make an application seeking in-principle approval to the stock exchanges where its equity shares are listed, on the same day when the notice has been sent in respect of the general meeting seeking shareholders' approval by way of special resolution.

##### **How to make an application to stock exchanges?**

*In case of a company listed on NSE, the application shall be made via NEAPS portal. The company shall submit the documents as per the requisition list provided by NSE which is available on the NSE website on <https://www.nseindia.com/companies-listing/raising-capital-further-issues-main-sme-checklist>.*

*In case of a company listed on BSE, the application shall be made via BSE listing centre. The company shall submit the documents as per the requisition list provided by BSE which is available on the BSE website on <https://www.bseindia.com/static/about/downloads.aspx>.*

##### **Processing Fees**

###### **BSE**

Main Board: 0.03% of the Issue Size, subject to a minimum fee of Rs. 3 Lacs and a maximum of Rs. 6 Lacs plus GST.

SME Platform: 0.025% of the Issue Size, subject to a minimum fee of Rs.50,000/- and a maximum of Rs. 2 Lacs plus GST.

###### **NSE**

Main Board: (Non-Refundable) of 0.03% of the Issue Size, subject to a Minimum fee of Rs 3,00,000/- and a Maximum of Rs. 6,00,000/- plus applicable tax.

SME Emerge Listed Companies: 0.025% of the Issue Size, subject to a Minimum fee of Rs.50,000/- and a Maximum of Rs. 2,00,000/- plus applicable tax). The issuer has to make payment in the issuer respective virtual account.

#### 12. Private Placement Offer Letter

On receipt of the stock exchange and shareholders' approval, the company shall circulate the private

placement offer letter to all the proposed allottees and get their intention to subscribe under the preferential issue in writing. The proposed allottees shall deposit the amount of their investment before the allotment of equity shares. In case the company makes an allotment of warrants, at least 25% of the warrants amount shall be paid by the proposed allottee before the allotment of warrants and the rest 75% shall be made before the conversion of warrant and allotment of equity shares. The company shall ensure that the amount has been deposited by the proposed allottee before passing Board resolution for allotment.

The allotment with respect to the in-principle approval and the shareholders' approval shall be made within 15 days from the date of receipt of in-principle approval or the shareholders' approval whichever is later.

### 13. Listing application to be made to Stock Exchanges

Once the equity shares are allotted, the company is required to make an application to all the stock exchanges where its equity shares are listed within 20 days from the date of allotment of securities. Further, the application shall be made via NEAPS portal and BSE Listing Centre as the case may be.

### 14. Corporate action

On receipt of Listing approval from the exchange, the company is required to apply to depositories for credit of specified securities in the proposed allottees demat account.

### 15. Trading approval application

The company shall make an application for trading approval within 7 working days from the date of receipt of listing approval from exchanges. In case, the shares of the company are listed on more than one stock exchange, the application shall be made from the date of receipt of last approval from the exchange. For example, if NSE provided Listing approval on June 9, 2025 and BSE provided on June 15, 2025, then the 7 working days shall be calculated from the date of receipt of Listing approval from BSE.

## STOCK EXCHANGE RELATED FORMALITIES

1. Intimation to Stock Exchange as per Regulation 29 of SEBI (LODR) Regulations, 2015 in PDF and in XBRL.
2. Pass Board Resolution approving preferential issue and other items (e.g. appointment of scrutiniser, increase in authorised capital if required etc.)
3. Outcome of Board meeting to be submitted to the stock exchanges within 30 minutes or three hours as the case may be and should be in compliance with clause (i) of Regulation 30 (6) of SEBI (LODR) Regulations, 2015 as per SEBI Circular SEBI/HO/CFD/CFD-PoD-2/CIR/P/2024/185 dated December 31, 2024 – In PDF and in XBRL.

## ROC RELATED FORMALITIES

File MGT 14 of the Board Resolution within thirty days of the Board Meeting and after allotment of shares file Form PAS-3 before transfer of the amount from the separate bank account to the normal bank account.

## CONCLUSION

### 1. Expedited Capital Mobilization

Preferential allotment facilitates expedited access to capital, which is particularly advantageous in competitive or time-sensitive scenarios. For instance, in circumstances where regulatory authorities such as the Reserve Bank of India (RBI) prescribe a limited timeframe to augment Net Owned Funds (NOF), preferential issuance offers a viable solution. Compared to public offerings, preferential issues involve significantly lower compliance requirements, reduced timelines, and minimal associated costs. Moreover, in situations where the issuing company is undergoing operational or financial stress, the probability of successful subscription by retail investors may diminish. In such cases, a preferential allotment provides a strategic alternative to secure funding.

### 2. Enhancement of Borrowing Capacity

The issuance of equity shares through preferential allotment results in an increase in the company's subscribed share capital and, correspondingly, its net worth. This improves the debt-to-equity ratio, thereby strengthening the company's balance sheet and enhancing its eligibility to raise additional debt on favourable terms. Such financial fortification is instrumental in supporting future business expansion and maintaining fiscal stability.

### 3. Facilitation of Strategic Partnerships

Preferential allotments also serve as an effective mechanism to induct strategic investors, advisors, or long-term business partners on mutually beneficial terms. These stakeholders may contribute not only capital but also industry expertise, market access, or operational synergies, thereby aligning with the company's long-term growth and value creation objectives.

## REFERENCES:

- i. *Companies Act, 2013 and rules and regulations made thereunder.*
- ii. *Formats available on the Stock Exchanges website as indicated in the article.*
- iii. *RBI Notification: RBI Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs dated October 22, 2021.*
- iv. *SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR Regulations).*
- v. *SEBI (Prohibition of Insider Trading) Regulations, 2015.*
- vi. *SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SEBI SAST Regulations).*
- vii. *Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (SEBI ICDR Regulations).*
- viii. *Various circulars issued by SEBI and Stock Exchanges from time to time.*

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