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UPDATES

SEBI introduces alternate pricing option for preferential issues under the ICDR Regulations

03 July 2020

This update covers:

1 Introduction

In the wake of the Covid-19 pandemic and ensuing financial and operational challenges, companies are seeking capital infusion through modes such as preferential issues. However, the prevailing pricing norms for preferential issue have been a hindrance given that the price in the preferential issue is to be calculated over a 26-week period. For a company in deteriorating financial conditions and falling share prices, this leads to a wide gap between the price at the beginning of such period (which would invariably be higher at that time) and at the time funds are proposed to be raised.

SEBI has introduced an additional pricing option for preferential issues of frequently traded shares under the ICDR Regulations.

Accordingly, the Securities and Exchange Board of India (**SEBI**) has introduced an additional option to the existing pricing framework applicable to preferential issues through the SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2020 (**Amendment Regulations**) on 1 July 2020.

2 Temporary Relaxations for Pricing of Preferential Issues

A new Regulation 164B (**New Regulation**) has been introduced to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**ICDR Regulations**) to provide an additional option (**Temporary Pricing Option**) to the existing pricing framework for preferential issues of frequently traded shares. The Temporary Pricing Option may be availed for preferential issues made between 1 July 2020 and 31 December 2020.

Key aspects of the New Regulation are as follows:

a. Under the Temporary Pricing Option, pricing of equity shares will be at least the higher of the average weekly high and low of the volume-weighted average price during either (i) 12 weeks, or (ii) 2 weeks preceding the relevant date.

The existing pricing framework for frequently traded shares provides for the higher of the average weekly high and low of the volume-weighted average price during either (i) 26 weeks, or (ii) 2 weeks preceding the relevant date. While the existing pricing framework will continue to remain in force, issuers have now been given an option to choose between the existing pricing framework and the Temporary Pricing Option.

b. Specified securities allotted in a preferential issue using the Temporary Pricing Option will be subject to a lock-in period of 3 years.

c. All allotments under a preferential issue arising from the same shareholders' resolution are required to follow the same pricing framework.

3 Conclusion

SEBI has introduced an option where the pricing framework for a preferential issue has been reduced to the average 12-week price of equity shares as opposed to the existing 26-week price, which accounts for the post-Covid-19 market price. This amendment is a welcome step as it will allow entities to raise funds at more realistic prices. The lock-in period of 3 years, however, may be seen as too restrictive especially for non-promoter shareholders who may wish to infuse funds in the short term and exit once the entity stabilises and share price goes up. This may also disincentivise foreign portfolio investors and affect the ability of entities to take advantage of the Temporary Pricing Option.