

CIRCULAR

SEBI/HO/DDHS/DDHS\_Div1/P/CIR/2022/106

August 04, 2022

To,

**Issuers who have listed and/ or propose to list Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities or Commercial Paper;**

**All Recognized Stock Exchanges;**

**All Depositories;**

**All Debenture Trustees registered with SEBI;**

**All Credit Rating Agencies registered with SEBI;**

Dear Sir/ Madam,

**Sub: Enhanced guidelines for debenture trustees and listed issuer companies on security creation and initial due diligence**

1. The SEBI Board, in its meeting on September 28, 2020, approved changes to the regulatory framework relating to debenture trustees (DTs), enhancing their role. Resultant amendments were made in the SEBI (Debenture Trustees) Regulations, 1993, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and erstwhile SEBI (Issue and Listing of Debt Securities) Regulations, 2008<sup>1</sup>, pursuant to which a circular<sup>2</sup> on the creation of security and due diligence by DTs was issued.
2. Since the issue of the circular, SEBI has received feedback from market participants on the aspects of due diligence and security creation. On the basis of such feedback, it has been decided that certain aspects of the said circular be tweaked. Accordingly, the present circular laying down revised requirements relating to encumbrance, creation of security and related due diligence by DTs.

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<sup>1</sup> Replaced by the SEBI (Issue and Listing of Non-convertible securities) Regulations, 2021

<sup>2</sup> Circular no. [SEBI/HO/MIRSD/CRADT/CIR/P/2020/218](#) dated November 03, 2020

**A. Manner of change in security/ creation of additional security/ conversion of unsecured to secured in case of already listed non-convertible debt securities:**

3. Regulation 59 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) provides for a change in terms of listed non-convertible debt securities.

A change in the structure of non-convertible debt securities, *inter-alia*, may include:

- A change in security,
- Creation of additional security in case of already secured debt securities or
- Creation of security in case of unsecured debt securities.

4. Accordingly, in order to harmonize the process of creation of security pursuant to listing, the following directions are issued:

4.1. Before initiating due diligence, a DT and the listed entity shall enter into an amended debenture trust agreement to incorporate the obligations arising out of provisions of para 4 to 7 of SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020 and obligations prescribed in terms of SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/230 dated November 12, 2020 and SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2022/67 dated May 19, 2022 for continuous monitoring and any other stipulations of SEBI from time to time with respect to security creation, initial due diligence and continuous monitoring by DTs.

4.2. A DT shall carry out due diligence for change in security, creation of security/ additional security in the manner as prescribed in para 4 to para 7 of SEBI Circular dated November 03, 2020. Pursuant to the initial due diligence carried out as per para 4-7 of SEBI Circular dated November 03, 2020, the DT shall issue a no-objection certificate (NOC) to issuer company for going ahead with proposed change in the structure/ creation of security.

4.3. Thereafter, the issuer company shall create the proposed security and the charge in favour of DT and the same shall be registered with the sub-registrar, Registrar of Companies, CERSAI, Depository etc., as applicable, within 30 days of creation of such charge. In case the charge is not registered anywhere or is not independently

verifiable, then the same shall be considered as a breach of the covenants/ terms of the issue by the Issuer.

4.4. Pursuant to the creation and registration of charge, the issuer company and DT shall enter into a supplemental/ amended debenture trust deed including all the terms and conditions arising out of the due diligence carried out by the DT as well as of the security created by Issuer Company.

4.5. The issuer company, pursuant to execution of supplemental/ amended debenture trust deed, shall submit the following to the Depositories and Stock Exchanges:

- i. NOC by DT for change in security or creation of security.
- ii. Executed supplemental/ amended debenture trust deed;
- iii. An undertaking from the DT that the security has been created and registered.
- iv. Other documents/ consents required to be submitted to Stock Exchanges and Depositories in terms of Regulation 59 of LODR Regulations, circulars issued thereunder and bye - laws of Stock Exchanges and Depository, as applicable.

4.6. The Depository shall assign a new ISIN to the non-convertible debt securities pursuant to submission of documents mentioned above only and shall share the information with respect to change in ISIN of debt securities, with the recognized Stock Exchanges.

**B. Encumbrance on securities for issuance of listed debt securities:**

5. Creation of encumbrance on the securities for securing the non-convertible debt securities shall be through the depository system only in accordance with the Depositories Act, 1996, the SEBI (Depositories and Participants) Regulations, 2018, Depository bye laws and other applicable regulations and circulars.

6. Encumbrance for the above shall mean the following:

- 6.1. Pledge, hypothecation, lien, negative lien, non-disposal undertaking or non-disposal agreement;
- 6.2. Any restriction on the free and marketable title to securities, by whatever name called, whether executed directly or indirectly;

6.3. Any covenant, transaction, condition or arrangement in the nature of encumbrance, by whatever name called, whether executed directly or indirectly.

**C. Due Diligence Certificate in case of Shelf Prospectus/ Memorandum:**

7. In case security details have not been finalized at the time of the filing of a draft shelf prospectus/ placement memorandum filed by an issuer company, then the DT shall undertake due diligence as under:

7.1. The DT may furnish a due diligence certificate, confirming that it has carried out due diligence for the clauses other than that related to security creation [clauses are specified in the formats prescribed under regulations 40(a) and 44(3) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) and Annexure A of SEBI Circular dated November 03, 2020].

7.2. At the time of the issuance of the tranche memorandum/ prospectus when the issue structure including terms related to security has been determined and finalized, the DT shall issue a due diligence certificate covering all clauses of formats prescribed under regulations 40(a) and 44(3) of the NCS Regulations and Annexure A of SEBI Circular dated November 03, 2020, as applicable.

**D. Empanelment of External Agencies by Debenture Trustee(s):**

8. For the purpose of empanelment of external agencies for carrying out due diligence in terms of SEBI Circular dated November 03, 2020, continuous monitoring in terms SEBI Circular dated November 12, 2020 as well as this circular, DTs shall:

8.1. Adopt an empanelment criterion/ policy as approved by their board of Directors and shall disclose the same on their website.

8.2. Formulate a policy on mitigating conflict of interest and shall disclose the same on their website; the policy shall, inter-alia, include a requirement that the empaneled agency would have no pecuniary relationship with the issuer company 3 years prior to the issue.

**E. Compliance with SEBI Circulars on ‘Security & Covenant Monitoring System’**

9. In order to ensure efficient recording of details regarding creation of security and monitoring of covenants via the system hosted by Depositories using the Distributed Ledger Technology (DLT), various stakeholders, viz. Issuers, Depositories, DTs and CRAs shall ensure that they are in compliance of SEBI circulars SEBI/HO/MIRSD/MIRSD\_CRADT/CIR/P/2021/618 dated August 13, 2021 and SEBI/ HO/ MIRSD/ CRADT/ CIR/ P/ 2022/ 38 dated March 29, 2022 and various circulars issued in respect of the DLT system issued by SEBI from time to time.
10. This circular is issued in exercise of the powers conferred upon SEBI under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 2A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 and Regulation 55 of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and Regulation 101(1) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements ) Regulations, 2015 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.
11. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories “Legal Framework” and “Circulars”

Yours faithfully,

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