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Analysing developments impacting business

SEBI NOTIFIES TEMPORARY RELAXATIONS TO FAST TRACK FURTHER PUBLIC OFFERS

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Background

In order to allow a larger group of listed companies to raise funds from the public, during the testing times brought about by COVID-19, the Securities and Exchange Board of India (SEBI) has issued a circular dated 9 June 2020 (Circular). The Circular has relaxed the eligibility conditions applicable to fast track further public offers by listed companies (Fast Track FPOs). This is in continuation of the regulator's efforts to aid listed companies access capital during this time - over the last several months, SEBI relaxed several regulations applicable to rights issues by companies, allowed creation of encumbrances by listed REITs (allowing debt funding), relaxed certain procedural matters applicable to takeovers and buybacks and guidelines applicable to initial public offerings, *et cetera*.

As the name suggests, a Fast Track FPO permits a listed company (which is compliant with specified eligibility conditions) to raise public funds within a significantly shorter duration - by "fast tracking" the fundraising procedure. Such "fast tracking" of procedure includes exemption from preparation and filing of a draft offer document with SEBI. In essence, SEBI does not review and provide feedback on the offer document. This exemption reduces the overall time taken to access funds from typically a time frame of six to eight months to two-three months.

This article discusses the relaxations granted by the Circular, together with an analysis of its prospective impact on public fundraising by listed companies.

As mentioned earlier, the Circular grants temporary relaxation to certain aspects of Fast Track FPO eligibility - it is applicable to FPOs which will open for subscription on or before 31 March 2021.

Relaxations to the eligibility conditions to undertake a Fast Track FPO

1. *Reducing the requirements to meet average market capitalisation*

One of the eligibility conditions a company had to meet, before undertaking a Fast Track FPO, was the threshold of average market capitalisation of its public shareholding. The average market capitalisation of public shareholding means the total outstanding equity shares held by the members of the public (which does not include shares held by the promoter and promoter group of the issuer) multiplied by the market price of such shares divided by the period of reference - which, in this case, is

one year. The Circular has reduced the threshold of average market capitalisation of public shareholding from Rs. 1,000 crores to Rs. 500 crores.

Accordingly, the Circular implies that: (a) a company with a public holding of lesser than 25% of their paid-up capital would naturally have a lesser market capitalisation of public shareholding – such companies can now consider a Fast Track FPO to fund their growth plans/ deleverage; and (b) a relatively smaller company can access public funds through this route.

2. *Pending show cause notices (SCN)*

A listed company could not undertake a Fast Track FPO if SEBI had issued an SCN or had initiated prosecution proceedings, against an issuer, its promoters or whole-time directors. The Circular has provided a relaxation for cases in which: (a) SCNs have been issued under adjudication proceedings; or (b) where prosecution proceedings have been initiated by SEBI, subject to requisite disclosures regarding such actions in the offer document, along with its potential adverse impact on the issuer. This exemption provides relief to companies attempting to raise funds while the matters are *sub judice*. In our view, this relaxation should be a general exemption and not a temporary relaxation due to the ongoing COVID-19 pandemic.

3. *Settlement of any alleged violation of securities laws through the consent or settlement mechanism*

A listed company was ineligible to undertake a Fast Track FPO if such company / its promoter / promoter group / director had settled any alleged violation of securities laws through the consent or settlement mechanism with SEBI during the last three years. This condition no longer impacts the eligibility of a listed company to undertake a Fast Track FPO if the terms of such settlement have been fulfilled or the directions of the settlement order have been adhered to.

4. *Qualification in audit report(s)*

A listed company was earlier ineligible to undertake a Fast Track FPO if the impact of its quantifiable audit qualifications, included in the audit report covering audited financial statements disclosed in the offer document, exceeded 5% of the net profit or loss after tax of the issuer. The Circular has done away with this condition as an eligibility condition, as long as the qualification is disclosed in the offer document and the impact is adjusted for in the restated financial statements.

Comments

Fast Track FPOs score over rights issues as the promoters are not expected to further capitalise the issuer company (a significant development, especially during the ongoing COVID-19 pandemic). They also score over qualified institutional placements (QIPs) as the price of shares offered in an FPO is not subject to pricing norms, unlike in the case of QIPs.

Another advantage of FPOs is that the existing shareholders, on fulfilment of certain prescribed conditions, have the option of offering their shares for sale in the "offer for sale" portion in an FPO. This, in turn, gives an option to the shareholders, including the promoters, to monetise their investments. This option is not available in the case of rights issues.

These relaxations make FPOs a commercially attractive fund-raising proposition during these times and we expect the Circular to lead to an increase in Fast Track FPOs during this financial year.

- Subhayu Sen (Partner) and Chirayu Chandani (Principal Associate)

For any queries please contact: editors@khaitanco.com

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Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com