NAVIGATING CAPITAL ISSUANCE: BIRD'S EYE VIEW OF SEBI (ICDR) REGULATIONS

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Investor confidence, not only from institutional investors but also from retail ones, is propelling the current boom in the Indian capital markets. Numerous factors, such as a cut in corporate tax rates and the government's heavy investment in infrastructure projects[1], fuel the line-up of initial public offerings ('**IPO**') in the primary market and the successful fund raising by companies, indicating a very healthy state of affairs. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ('**SEBI (ICDR) Regulations**') primarily govern the process of raising capital by listed entities. The SEBI (ICDR) Regulations consist of 12 chapters and 20 schedules. The chapters mostly deal with various types of issues, such as IPOs on the main board, rights issues, further public offers ('**FPO**'), preferential issues, qualified institutional placement, IPOs of Indian Depository Receipts, rights issues of Indian Depository Receipts, IPOs by small and medium enterprises, innovator growth platforms, social stock exchanges, bonus issues, and miscellaneous provisions. Hence, companies have a variety of options to raise capital, based on their unique needs.

Initial Public Offer on Main Board

Before filing the offer documents (such as the red herring prospectus, prospectus, or shelf prospectus) with the Securities and Exchange Board of India ('**SEBI**') and the Registrar of Companies ('**RoC**'), issuers must comply with the conditions of Chapter II of the SEBI (ICDR) Regulations.[2]

An IPO need not be of only of equity shares; rather, it can also be of convertible debt instruments and warrants. In the case of an IPO of convertible debt instruments, the issuer shall not be in default of payment of interest or repayment of the principle amount in respect of debt instruments issued by it to the public (if any) for a period of more than six months. Regulation

[1] Nishant Kumar, *What Is Causing IPO Boom in India? Why Are Experts Worried about Investor Frenzy? | Stock Market News*, MINT (2024), https://www.livemint.com/market/ipo/stock-market-today-what-is-causing-the-ipo-boom-in-india-why-are-experts-worried-about-investor-frenzy-11719923337118.html (last visited Jul 16, 2024).
[2] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, The Gazette of India: Extraordinary, pt. III, § 4 (Sep. 11, 2018).

13 of the SEBI (ICDR) Regulations prescribes the eligibility criteria for an issuer to issue warrants in an initial public offer.

Part III of Chapter II of the SEBI (ICDR) Regulations sets out the rules for the minimum promoters' contribution. This means that the issuer's promoters must hold at least 20% of the post-issue capital. This contribution can come in the form of equity shares or subscriptions to convertible securities. Regulation 15 of the SEBI (ICDR) Regulations specifies which securities, such as shares received through bonus issues, are not eligible for the minimum promoter's contribution.

Part IV of Chapter II[3] lays down the lock-in requirements of the specified securities held by the promoters and persons other than promoters. The promoters must lock in the specified securities for eighteen months from the date of allotment in the initial public offer. Persons other than promoters are subject to a six-month lock-in period, except for equity shares allotted to employees under the employee stock option scheme, equity shares held by a venture capital fund or alternative investment fund of category I or II, and foreign venture capital investors. The rationale behind this is to ensure that promoters or persons other than promoters do not misuse the public issue as a dump and exit pathway, which consequentially might have an adverse impact on retail shareholders.

Rights Issue

A rights issue means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for any corporate purposes. Chapter III of the SEBI (ICDR) Regulations deals with the eligibility requirements for an entity to make a rights issue. An entity initiates a rights issue by issuing a letter of offer to the shareholders. The issuer can also make a rights issue of convertible debt instruments, which requires obtaining a credit rating from at least one credit rating agency and appointing at least one debenture trustee in accordance with the provisions of the Companies Act, 2013[4] and the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.[5] For the issue of warrants, the issuer

[3] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, The Gazette of India: Extraordinary, pt. III, § 4 (Sep. 11, 2018).
[4] The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).
[5] Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, The Gazette of India: Extraordinary, pt. III, § 4 (1993).

needs to ensure that the tenure of the warrant does not exceed eighteen months from their date of allotment in the rights issue.

The issuer may also opt for a fast-track rights issue (**'FTRI'**) if it fulfills the conditions laid down in Regulation 99 of the SEBI (ICDR) Regulations. FTRI is an expedited method of raising capital via a rights issue.[6] Unlike traditional methods, FTRI does not require the issuer to submit a draft letter of offer to SEBI for observations, which streamlines the process and allows for a quicker rights issue, enabling the issuer to access funds more expeditiously.

Further Public Offer

A further public offer means an offer of specified securities by a listed issuer to the public for subscription by any existing holders of such specified securities. Chapter IV of the SEBI (ICDR) Regulations deals with further public offers (**'FPO'**). Recently, Vodafone Idea Limited[7] undertook this route to raise funds from the public. Similar to an IPO, an issuer may make a FPO of convertible debt instruments and warrants, provided the issuer's equity shares are already listed and it is not in default in payment of interest or repayment of the principal amount in respect of debt instruments issued by it to the public (if any) for a period of more than six months.

According to Regulation 112 of the SEBI (ICDR) Regulations, the minimum promoters' contribution requirements for the FPO route do not apply when the issuer lacks an identifiable promoter, such as Indian companies like ITC Limited, Larsen & Toubro Limited, etc., but they do apply otherwise.[8] Regulation 113 of the SEBI (ICDR) Regulations provides the minimum promoters' contribution requirements. Similar to FTRI, Part X of Chapter IV provides the provisions pertaining to fast-track further public offers ('FTFPO').

Qualified Institutional Placement ('QIP')

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[6] Vinod Kothari Consultants, *Eligibility and Disclosures under Rights Issue Rationalized – Vinod Kothari Consultants*, https://vinodkothari.com/2020/10/eligibility-and-disclosures-under-rights-issue-rationalized/ (last visited Jul 16, 2024).

[7] Business Standard, *Vodafone Idea's FPO: A Rs 287 Crore Bonanza for Investment Bankers*, (2024), https://www.business-standard.com/companies/news/vodafone-idea-s-fpo-brings-big-payday-for-investment-bankers-124042600997_1.html (last visited Jul 16, 2024).

[8] Should investors worry about companies with no promoters? Here's a reality check - CNBC TV18, CNBCTV18 (2023), https://www.cnbctv18.com/business/companies/icici-bank-lt-vedanta-itc-gcpl-iex-share-price-promoters-exit-annual-returns-17726951.htm (last visited Jul 16, 2024).

QIP refers to the private placement of eligible securities by a listed issuer to qualified institutional buyers. Chapter VI of the SEBI (ICDR) Regulations deals with the QIP route for fund raising by a listed issuer.

Fund raising through the QIP route has gained traction in the face of a bullish market. Some recent examples include fundraising by Angel One and JSW Energy.[9] QIP is more preferred than public issues since it is more time-efficient. Moreover, the bullish nature of the market at present (which has resulted in high stock prices) would favor corporations as the dilution of capital would be less.

Preferential Issue

A preferred issue is an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis in accordance with Chapter V of the SEBI (ICDR) Regulations. Note that this chapter only applies when the issuer is a listed company. Regulations 159 and 160 deal with a preferential issue's ineligibility and conditions, respectively. It is a preferred mode of raising capital due to its speed and fewer compliance requirements compared to public issues.

Social Stock Exchange

The Social Stock Exchange (**'SSE'**) is an electronic platform for fund raising by social enterprises regulated by SEBI and is accessible to institutional, non-institutional, and retail investors.[10] Chapter X-A of the SEBI (ICDR) Regulations lays down the provisions pertaining to a social stock exchange. It allows for-profit social enterprises (**'FPSEs'**) and not-for-profit organizations (**'NPOs'**) focused on social welfare to raise capital through equity, debt, or units similar to a mutual fund. SSE's primary goal is to address the lack of funding by offering alternative fundraising mechanisms to achieve socio-development objectives. SGBS Unnati Foundation was the first entity to list on SSE, and since then, more than five entities have

[9] Business Standard, *Fundraising via Qualified Institutional Placements Gains Traction in 2024*, (2024), https://www.business-standard.com/markets/news/fundraising-via-qualified-institutional-placements-gains-traction-in-2024-124041100824_1.html (last visited Jul 16, 2024).

[10] Indian Institute of Banking and Finance,https://www.iibf.org.in/documents/Brochure/Social%20Stock%20Exchange.pdf

utilized this route to raise funds through the public issuance of zero-coupon-zero-principal instruments.[11]

Conclusion

Issuers have numerous options to choose from, and the choice depends on the size of the issue, the desired time frame, and other factors. Quite often, issuers choose a combination of options to balance their specific requirements, which is known as a composite issue. Investor confidence in the Indian capital markets is the bedrock for the continued success of numerous IPOs, FPOs, and QIPs that took place in FY 2023–24, and many more are in the pipeline. Moreover, the success of social stock exchanges paves the way for capital raising to achieve sustainable development goals. Although the process of raising capital has become easier over the years, raising capital by SMEs is still one area that needs sustained focus as they form the backbone of the Indian economy.

[11] BL Mumbai Bureau, *Five Firms Raise ₹8 Crore via Social Stock Exchange Listing*, BUSINESSLINE (2024), https://www.thehindubusinessline.com/markets/five-firms-raise-8-crore-via-social-stock-exchange-listing/article67951255.ece (last visited Jul 16, 2024).