



Consultative Paper on draft

SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2007 [\[PDF\]](#)

20th June 2007

1. The Securities Contracts (Regulation) Amendment Act, 2007 has been passed recently with a view to providing a legal framework for enabling listing and trading of securitized debt instruments. Comments are invited from the public on the draft [SEBI \(Public Offer and Listing of Securitised Debt Instruments\) Regulations, 2007](#) as well as on the proposed regulatory structure. The amendments in the Act provide for the following: –

- a. Inserted a new sub-clause (ie) in section 2(h) [definition of securities], so as to include securitisation certifications or instruments in the definition of securities. The said sub-clause reads as follows:-

"(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case maybe;"

- b. Inserted a new section 17A in the principal Act to provide for a disclosure based regulatory regime for public issue and listing of such securitised debt instruments. The new section 17A reads as follows –

"17 A. (1) Without prejudice to the provisions contained in this Act or any other law for the time being in force, no securities of the nature referred to in sub clause (ie) of clause (h) of section 2 shall, be offered to the public or listed on any recognised stock .exchange unless the issuer fulfils such eligibility criteria and complies with such other requirements as may be specified by regulations made by the Securities and Exchange Board of India.

(2) Every issuer referred 'to in sub-clause (ie) of clause (h) of section 2 intending to offer the certificates or instruments referred therein to the public shall make an application, before issuing the offer document to the public, to one or more recognised stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.

(3) Where the permission applied for under sub-section (2) for listing has not been granted or refused by the recognised stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally be liable to repay that money with interest at the rate of fifteen per cent. per annum.

Explanation.-In reckoning the eighth day after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881, shall be disregarded, and if the eighth day (as so reckoned) is itself such a public holiday, there shall for the said purposes be substituted the first day thereafter which is not a holiday.

(4) All the provisions of this Act relating to listing of securities of a public company on a recognised stock exchange shall, *mutatis mutandis*, apply to the

listing of the securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 by the issuer, being a special purpose distinct entity.”

- c. Consequential amendments have been made in sections 23 (Offences) and 31 (Regulation making power of SEBI).

2. Section 17A provides for regulations to be made by SEBI. As is clear from the section, such regulations will only apply to cases where the securitised debt instruments are proposed to be offered to the public or proposed to be listed on a recognized stock exchange. Pursuant to internal deliberations, SEBI has prepared a draft of the regulations to be framed under section 17A, which is annexed to this paper. It is felt that for effective regulation, registration of the issuers of such instruments by SEBI may be beneficial. The draft regulations therefore introduces a system of registration of special purpose distinct entities which propose to offer securitised debt instruments to the public or which seek listing for such instruments issued by them. The main features of the draft regulations are as follows –

- a) It is proposed that SEBI will regulate the activity of public issue of or listing of the securitized securitised debt instruments by registering special purpose distinct entities engaging in regulated activities, i.e., activities relating to public offer, listing, related disclosures and compliances. It is also proposed to mandate certain other minimal requirements in respect of the underlying securitisation transaction, such as ensuring legal realisability of the underlying debt or receivable by the issuer, maximum allowable expenditure that can be incurred by the issuer for various purposes, provisions designed to ensure bankruptcy remoteness of the issuer, obligation to maintain proper accounts, prevention of conflict of interest with originator, etc., which may have a vital bearing on the interest of investors.
- b) An issuer may be granted registration by SEBI upon fulfillment of the eligibility criteria. Unless registered, a special purpose distinct entity may not make any public offer of or seek listing for securitised debt instruments issued by it. In case of public issue, the draft offer document will be submitted to SEBI (in line with existing practice in case of public

issue of equity or debt instruments), and the observations of SEBI, if any, will be taken care of while finalizing the offer document.

- c) As far as public issue of such securitised debt instruments is concerned, it is proposed to mandate obtaining of credit rating from at least two registered credit rating agencies.
- d) While deciding on an application requesting grant of approval, SEBI may examine the credentials of the issuer, its sponsor and its directors or trustees. It is proposed to be mandated that all the directors or trustees of the issuer should be independent of the originator (the person who transferred the debt or receivables to the issuer).
- e) It is felt that there need not be any restrictions from SEBI's side as far as the structure of the issuer is concerned. The restriction mentioned in section 2(h)(ie) of the Act will however be followed by issuers, i.e. that the investors of the securitized debt instruments should have beneficial interest in the underlying debt or receivables which are securitized. In other words, only pass through structures are permitted and not pay through or synthetic structures. Further, the issuer of such securities or the separate trustee, as the case may be, will therefore hold the underlying debt or receivables, not absolutely, but in trust for the investors.
- f) Accordingly, it is proposed that the issuer may be either a company or a trust. Where the issuer is a company, its directors can be the trustees for the investors or it can have a separate set of trustees. It is proposed to enable registered debenture trustees to discharge the function of separate trustee in the latter case.
- g) The issuer can be a single trust structure or a multiple trust structure with multiple schemes having separate asset pools and separate investors.
- h) The regulations, which are structure neutral, will require strict segregation of assets and realizations of each scheme of the issuer from the other schemes and the personal assets of the issuer or its sponsor.
- i) In case of a public issue of such securitised debt instruments, disclosures of all relevant material facts will be mandated in the offer document including financials of the issuer, originator, quality of the asset pool, disclosure of various kinds of risk credit ratings including unaccepted ratings, arrangements made for credit enhancement, liquidity

facilities availed, underwriting of the issue etc. apart from the routine disclosures relating to issue, offer period, application etc.

- j) Provisions will be made for protecting the investors' interest in connection with allotment of securities, refund of application moneys etc.
- k) Listing of privately placed securitized debt instruments will be permitted on a case to case basis. The general rule will be that only publicly issued instruments will be listed and SEBI will retain power to relax this general rule. Where privately placed securities are sought to be listed, a similar disclosure obligation as that which applies to issue of such securities, would be applicable. This will be in line with the provisions of rule 19(2)(b) and 19(7) of the Securities Contracts (Regulation) Rules, 1957 in respect of equity and debt listings. However, minimum percentages of offer to public will not be specified.