



CIRCULAR

SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/45

March 28, 2023

To

All recognized Stock Exchanges

All recognized Clearing Corporations

All registered Depositories

Dear Sir/Madam,

Sub: Norms for Scheme of Arrangement by unlisted Stock Exchanges, Clearing Corporations and Depositories

1. In terms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, listed entities (including listed Market Infrastructure Institutions (MIIs) such as Stock Exchanges, Clearing Corporations and Depositories) desirous of undertaking scheme of arrangement or involved in a scheme of arrangement are required to file the draft scheme with stock exchange(s) for obtaining Observation Letter or No-objection Letter, before filing such scheme with any Court or Tribunal. Stock Exchanges are required to forward such draft schemes to SEBI for comments.
2. However, in case of unlisted MIIs desirous of undertaking scheme of arrangement or involved in a scheme of arrangement, there is no specific provision under extant law to file the draft scheme of arrangement with SEBI prior to filing the application before any Court or Tribunal. Further, the process to be followed by unlisted MIIs in case of scheme of arrangement are currently not specified.

3. With a view to harmonize and bring uniformity in the norms related to scheme of arrangement for unlisted MII in line with provisions currently applicable to listed MII, comments of unlisted MII were sought and the matter was deliberated in Secondary Market Advisory Committee (SMAC). Taking into account the recommendations of SMAC, it has been decided to introduce the framework for Scheme of Arrangement by unlisted MII.
4. The detailed framework for scheme of arrangement by unlisted MII is given as under:
 - 4.1. The unlisted MII desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement as per the provisions of Companies Act 2013 shall file the draft scheme of arrangement along with a non-refundable fee with SEBI for obtaining the observation letter or no-objection letter, before filing such scheme with any Court or Tribunal, in terms of requirements specified by SEBI from time to time.
 - 4.2. The unlisted MII shall pay a fee to SEBI at the rate of 0.1% of the paid-up share capital of the unlisted or transferee or resulting company, whichever is higher, post sanction of the proposed scheme, subject to a cap of INR 5,00,000.
 - 4.3. The provisions may not apply to schemes which solely provide for merger of a wholly owned subsidiary or its division with the parent company. However, such draft schemes shall be filed with SEBI for the purpose of disclosures and the same shall be disseminated on the websites of the unlisted MII.
 - 4.4. Information to be provided to SEBI:**
 - 4.4.1. The unlisted MII shall provide the following information to SEBI while filing the draft scheme of arrangement for obtaining the observation letter or no-objection letter:

- (a) The Draft Scheme of Arrangement or Amalgamation or Merger or Demerger or Reconstruction or Reduction of Capital, etc. (hereinafter referred as “Scheme”)
- (b) Approval of the governing board of the unlisted MII for the proposed Scheme.
- (c) Valuation Report provided by an independent registered valuer, accompanied with an undertaking from the unlisted MII stating that no material event impacting the valuation has occurred during the last 6 months. The Valuation Report is required to be placed before the Audit Committee of the unlisted MII.

For the purpose of this clause, the Registered Valuer shall be a person, registered as a valuer, having such qualifications and experience and being a member of an organization recognized, as specified in Section 247 of the Companies Act, 2013 read with the applicable Rules issued thereunder.
- (d) Report from the Audit Committee recommending the draft Scheme, taking into consideration, *inter-alia*, the Valuation Report, and also having comments on the following:
 - i. Need for the Scheme
 - ii. Rationale of the Scheme
 - iii. Synergies of business of the entities involved in the Scheme
 - iv. Impact of the Scheme on the shareholders.
 - v. Cost benefit analysis of the Scheme.
- (e) Fairness opinion on valuation of assets or shares done by the valuer for the unlisted MII shall be taken from an independent SEBI registered Merchant Banker.
- (f) Shareholding pattern of the unlisted MII pre and post the Scheme.
- (g) Audited financials of last 3 years (financials not being more than 6 months old) of unlisted entities.

- (h) Auditor's Certificate stating that the accounting treatment contained in the Scheme is in compliance with all the Accounting Standards specified by the Central Government under Section 133 of the Companies Act, 2013 read with the rules framed thereunder or the Accounting Standards issued by ICAI, as applicable, and other generally accepted accounting principles.
- (i) Declaration from the unlisted MII on any past defaults of debt obligations (including listed debt, if any) of the entities forming part of the Scheme.
- (j) No Objection Certificate (NOC) from the lending scheduled commercial banks or financial institutions or debenture trustees, in case the unlisted MII or entities forming part of the Scheme have any outstanding debt obligation.
- (k) Report on Complaints containing the details of complaints or comments received by it on the proposed Scheme from various sources (complaints or comments received directly or forwarded by SEBI or any other agency) as per **Annexure I**.
- (l) Detailed Compliance Report as per the format specified at **Annexure II** duly certified by the Company Secretary, Chief Financial Officer and the Managing Director, confirming compliance with various regulatory requirements specified for the Scheme and all accounting standards.
- (m) The unlisted MII shall ensure that all dues to, and fines or penalties imposed by SEBI or any other agency have been paid or settled before filing the draft Scheme. In case of unpaid dues or fines or penalties, the unlisted entity shall submit to SEBI a 'Report on the Unpaid Dues' which shall contain the details of such unpaid dues in the format given at **Annexure III**, prior to filing the draft Scheme.
- (n) The unlisted MII shall provide the information regarding any pending proceedings or litigations against the unlisted MII or entities forming part of the Scheme and the liabilities thereof, if any.
- (o) Immediately upon filing of the draft Scheme with SEBI, the unlisted MII shall disclose the draft Scheme along with all relevant documents on its website.

(p) Subsequent to filing the draft Scheme with SEBI, no changes to the draft Scheme, except those mandated by the regulators or authorities or court or tribunal, shall be made without specific written consent of SEBI.

4.4.2. The valuation report referred to in paragraph 4.4.1(c) above and the fairness opinion referred to in paragraph 4.4.1 (e) above shall be provided by a Registered Valuer and Independent SEBI Registered Merchant Banker respectively. The Registered Valuer and the merchant banker referred therein shall not be treated as independent in case of existence of any conflict of interest among themselves or with the company, including that of common directorships or partnerships.

4.5. Processing of the Draft Scheme by SEBI

4.5.1. Upon receipt of the application from the unlisted MII, SEBI shall provide its observation letter or no-objection letter on the draft Scheme to the MII. While processing the draft Scheme, SEBI may seek clarifications from any person relevant in this regard including the unlisted MII and if required, may also seek an opinion from an Independent Chartered Accountant.

4.5.2. SEBI shall endeavour to provide its observation letter or no-objection letter on the draft Scheme within 30 days from the later of the following:

- (a) date of receipt of satisfactory reply on clarifications, if any, sought from the unlisted MII; or
- (b) date of receipt of opinion from Independent Chartered Accountant, if any, sought by SEBI; or
- (c) All complaints or comments received by SEBI on the draft Scheme, if any, shall be forwarded to the unlisted MII, for necessary action and resolution of the same.



5. **Validity of observation letter or no-objection letter:** The validity of the observation letter or no-objection letter of SEBI shall be for six months from the date of issuance, within which the Scheme shall be filed with any Court or Tribunal, as required, for approval.
6. **Applicability:** The provisions of this circular shall come into effect from 30th day from the date of issuance of the circular.
7. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.
8. This circular is available on SEBI website at www.sebi.gov.in at “Legal Framework - Circulars.”

Yours faithfully,

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Annexure I

Format for Report on Complaints

Part A

Sr. No.	Particulars	Number
1	Number of complaints received directly	
2	Number of complaints forwarded by SEBI	
3	Total number of complaints received (1+2)	
4	Total number of complaints resolved	
5	Total number of complaints pending (3-4)	

Part B

Sr. No.	Name of the Complainant	Date of Complaint	Status (Resolved/Pending)
1			
2			
3			



Annexure II

Format of the Compliance Report to be submitted along with the draft Scheme

It is hereby certified that the draft Scheme involving (Name of the entities) does not, in any way violate, override or limit the provisions of securities laws and the same is in compliance with the applicable provisions of this circular.

Company Secretary

Managing Director

Certified that the transactions / accounting treatment provided in the draft Scheme involving (Name of the entities) are in compliance with all the Accounting Standards applicable to an unlisted entity.

Chief Financial Officer

Managing Director



Annexure III

Format for Report on Unpaid Dues

Sr. No.	Particulars	Details of dues/fine/penalty	Amount (INR)	Reason for non-payment
1.	Pending Dues of SEBI			
2.	Pending Dues of Depositories			