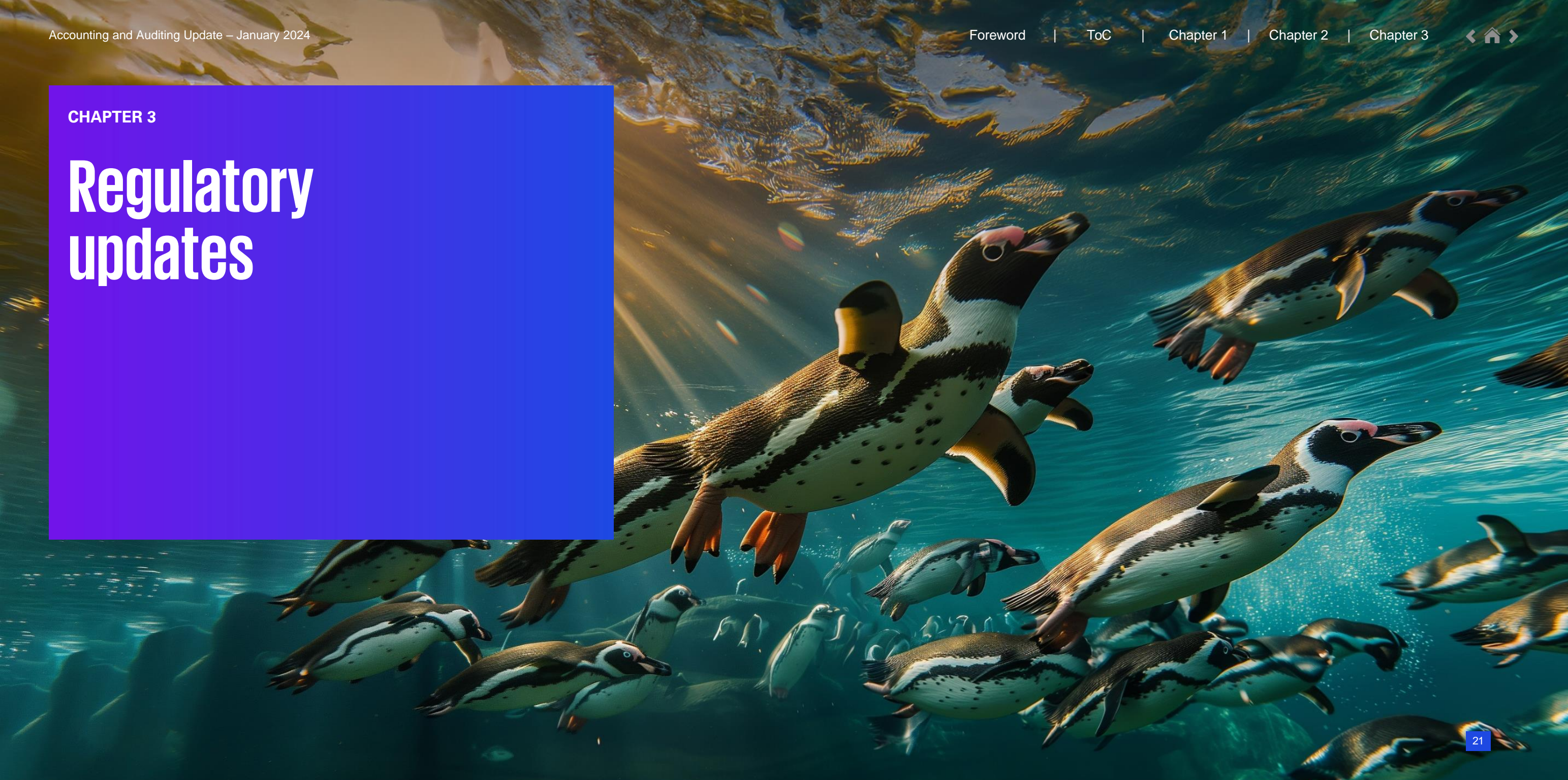


CHAPTER 3

Regulatory updates



Proposals to regulate verification of market rumors

In June 2023, the Securities and Exchange Board of India (SEBI) amended Regulation 30 (11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulation) which required certain listed companies, to confirm, deny or clarify market rumours. The requirements are applicable to top 100 listed entities by market capitalisation¹ from 1 February 2024 and the top 250 listed entities with effect from 1 August 2024.

On 28 December 2023, SEBI issued a consultation paper to propose framework related to regulations for verification of market rumors. Considering the proposed amendments, SEBI through its notification dated 25 January 2024 extended the effective date of implementation of Regulation 30(11). Thus, the revised timelines are as follows:

Top 100 listed entities	From 1 June 2024 (<i>earlier 1 February 2024</i>)
Top 250 listed entities	From 1 December 2024 (<i>earlier 1 August 2024</i>)

The key proposals in the consultation paper are as follows:

- I. **Criteria for verification of market rumors:** As per the existing regulation, only rumours pertaining to 'material' events or information require verification by the listed entity. The events specified under Para A of Part A of Schedule III of LODR Regulations are considered as deemed material events. For events specified under

Para B of Part A of Schedule III of LODR Regulations, the materiality should be determined as per the criteria specified in Regulation 30(4) of LODR Regulations. SEBI has proposed to amend this requirement. As per the proposal, market rumor should be verified if there is a **material price movement** in the securities of the listed entity. The material price movement could be determined based on the following parameters:

- **Price range of the securities of the listed entity:** For determining material price movement, a lower percentage variation should be considered for securities falling under high price range and a higher percentage variation should be considered for securities falling under low price range.
- **Movement in the benchmark index (Nifty50/Sensex):** To determine material price movement, the price variation in the securities of the listed entity could be indexed to movement in Nifty50/Sensex (benchmark index). Annexure-B to the consultation paper includes the proposed framework for material price movement.

Further, with respect to the timeline for verification of market rumor, it is proposed that the rumour should be verified and confirmed, denied or clarified **within 24 hours from material price movement** (*as per existing requirement, within 24 hours of reporting in the mainstream media*).

- II. **Consideration of unaffected price:** The market price of the shares of the listed entity are affected upon confirmation of market rumours. In this regard, to determine the transaction price of the securities, it is proposed to consider the unaffected price when the listed entity confirms the market rumour due to material price movement. For this purpose, the unaffected price would be for 60 days (or 180 days in case of a competitive bidding process for a potential Mergers and Acquisition (M&A) deal) from the date of confirmation of the market rumour till the 'relevant date'.

1. The top 100 and 250 listed entities shall be determined on the basis of market capitalisation, as at the end of the immediately preceding financial year

III. Obligation on promoters, directors, KMP and senior management: In instances where the rumour pertains to promoters/directors/Key Managerial Personnel (KMP)/senior management, it is proposed to mandate such persons to provide adequate, accurate and timely response to queries raised or explanation sought by the listed entity in order to ensure timely disclosure to the investors and compliance with the requirements under Regulation 30(11) of LODR Regulations.

IV. Classification of information not verified as UPSI: There could be instances where the listed entity classifies certain information as Unpublished Price Sensitive Information (UPSI) but the market rumour pertaining to that information is not verified by the listed entity. In such a scenario, SEBI has proposed that, an insider should not use such information as a defence that it was 'generally available'. In other words, such information should be continued to be treated as UPSI and not 'generally available' information.

The last date to provide comments on the above consultation paper ended on 18 January 2024.

(Source: SEBI, Reports for Public Comments, dated 28 December 2023 and SEBI circular no. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/7 dated 25 January 2024)

Consultation paper to facilitate ease of doing business and harmonise ICDR and LODR Regulations

With an aim to facilitate ease of doing business and harmonise the provisions of LODR Regulations and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations), the Expert Committee (EC) of SEBI issued a consultation paper on 11 January 2024. The key proposals are as follows:

LODR Regulations

- **Applicability of the regulations based on market capitalisation (Regulation 3(2)):** As per exiting regulation, the provisions that become applicable to a listed entity on the basis of market capitalisation criteria (ranking) should continue to apply even if the market capitalisation falls and remains below the applicability threshold SEBI has proposed the following measures with respect to this:
 - a. **Average market capitalisation:** At present, to determine the applicability of certain provisions, the market capitalisation for a listed entity is calculated as on 31 March i.e. it is based on a single day's market capitalisation. It is proposed that ranking should be based on average market capitalisation figures from 1 July to 31 December and therefore, 31 December should be considered as the cut-off date to determine the rank. Accordingly, a time period of three months from 31 December would be provided to a listed entity to ensure compliance with relevant provisions. Further, with respect to reporting of BRSR (or assurance under BRSR Core), a listed entity should put in place systems and processes to capture the data to be reported within a period of three months from 31 December and thereafter a glide path of one year would be provided for BRSR reporting (or assurance under BRSR Core) in the annual report.
 - b. **Highest ranking across stock exchanges:** If a listed entity a specified securities listed on more than one recognised stock exchanges, then the highest ranking in any one of the recognised stock exchange(s) would be considered for the purpose of determining the applicability of market capitalisation based provisions.

c. Sunset clause: If the market capitalisation of a listed entity is below the applicability range for three consecutive years, then such a listed entity need not comply with the provisions of the regulations that would not apply to it due to its current ranking. However, such provisions would become applicable in future if listed entity's ranking or market capitalisation changes resulting in the entity entering into the list of top 100/250/1000/2000, as the case may be, prepared by the stock exchanges on 31 December of any subsequent calendar year.

• **Limit of membership and chairmanship of committees for a director (Regulation 26(1)):** As per existing regulation, a director can be a member in maximum 10 committees or act as chairperson for maximum five committees across all listed entities. Further, for the purpose of determination of limit, chairpersonship and membership of audit committee and the stakeholders' relationship committee should be considered across all public limited companies, including unlisted public companies.

The EC has issued the following recommendations with respect to this provision:

- For the purpose of calculation, only equity listed entities should be considered. Therefore, the positions at unlisted public companies should be excluded.
- As the existing provisions of Regulation 17A, a director can be a member of maximum seven audit committees in listed entities and therefore, it is proposed to remove the requirement of maximum 10 committees in Regulation 26(1), to align the requirements.
- For determining the limit, only the membership and chairmanship of audit committee should be considered. Therefore, stakeholders' relationship committee could be excluded from the regulation.

- **Filling up of vacancies of Key Managerial Personnel (KMP) Regulation 26A(1) and (2):** The regulation states that, vacancy in the office of KMP should be filled up at the earliest but within three months from the date of such vacancy. However, it is observed that, obtaining necessary regulatory/government/statutory approvals for such appointments could be beyond the control of the listed entity to ensure timely compliance with the provision. Therefore, SEBI has proposed that in case the listed entity is required to obtain approval of regulatory, government or statutory authorities to fill up vacancy in the office of KMP, then such vacancies should be filled up within six months from the date of the vacancy.
- **Timeline for prior intimation of board meetings (Regulation 29):** The regulation requires a listed entity to give prior intimation to stock exchanges about its board meetings in which certain types of proposals are to be considered e.g. financial results, buyback of securities, fund raising, alteration of nature of securities, date of payment of interest or redemption etc. The following modifications are proposed:
 - Prior intimation to be provided **at least two working days** in advance, excluding the date of the intimation and date of the meeting (*as per existing requirement, timeline for giving prior intimation varies from two working days to a maximum of 11 working days*).
 - Prior intimation not required for determination of issue price for fund raising done through qualified institutions placement as per ICDR Regulations.
 - Clarification that prior intimation would be required only for fund-raising proposals that involve issue of securities and for determination of issue price excluding borrowings/short-term borrowings which do not involve issuance of any securities.
- **Gap between meetings of the Risk Management Committee (RMC) (Regulation 21(3C)):** The EC has proposed to amend the gap between the meetings of RMC. As per the proposal the RMC should meet twice a year and the gap between two consecutive meetings should not more than **210 days** (*existing requirement, 180 days*).

ICDR Regulations

- **Compulsorily convertible securities included for computation of minimum promoters' contribution (Regulation 15):** For the purpose of determination of minimum promoters' contribution, it is proposed to include equity shares arising from conversion of fully paid-up compulsorily convertible securities that have been held for a period of at least one year prior to the filing of the Draft Red Herring Prospectus (DRHP). It is further proposed that the compulsorily convertible securities should be converted into equity shares prior to the filing of the Red Herring Prospectus (RHP).
- **Non-individual shareholders permitted to contribute towards minimum promoters' contribution (Regulation 14):** As per the existing provision, for determination of minimum promoters' contribution, promoters of a company should hold at least 20 per cent of the post-offer paid-up equity share capital on a fully-diluted basis. In case of any shortfall, alternative investment funds, foreign venture capital investors, scheduled commercial banks, public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India (IRDAI) are permitted to contribute equity shares to meet the shortfall subject to a maximum of 10 per cent, without being identified as a promoter. SEBI has proposed that any non-individual shareholder holding five per cent or more of the post-offer equity share capital would also be permitted to contribute towards the shortfall in minimum promoters' contribution, subject to the existing maximum of 10 per cent, without being identified as a promoter.
- **Events triggering re-filing of draft offer documents:** As per Schedule XVI of the ICDR Regulations, the following changes require fresh filing of a draft offer document:
 - Fresh issue:** any increase or decrease in the estimated issue size by more than 20 per cent of the estimated issue size

- Offer for sale:** any increase or decrease in either the number of shares offered for sale or the estimated issue size, by more than 50 per cent.

The consultation paper, clarifies that the size of the issue will be measured in INR terms. Further, it is also proposed to amend the requirement for offer for sale. As per the proposal, offer for sale size can be based on either the estimated issue size (in INR value) or the number of shares, as disclosed in the DRHP, and not on both criteria.

- **Extension of the bid/offer closing date:** As per the existing regulations issuer companies are permitted to extend the bidding period disclosed in the offer document for a minimum period of three working days in case of any force majeure events, banking strike or similar circumstances. It is proposed to reduce the minimum period to one working day.

The last date to provide comments on the above consultation paper ends on 1 February 2024.

(Source: SEBI, Reports for Public Comments, dated 11 January 2024)



Framework for Social Stock Exchange (SSE) for NPOs

SEBI issued a regulatory framework for Social Stock Exchange (SSE) in 2022 and corresponding amendments were made in the respective SEBI Regulations. As per the framework, a Not for Profit Organisation (NPO) is required to be registered with an SSE to raise funds.

In August 2023, SEBI issued a consultation paper proposing certain amendments to ICDR and LODR Regulations due to certain challenges encountered by NPOs. Subsequently, on 21 December 2023, SEBI issued amendments to the ICDR and LODR Regulations and thereafter issued a circular on 28 December 2023.

The key takeaways are as follows:

- **Registration requirements:** To be eligible for registration as an NPO with an SSE, entities should have a registration certificate under Section 12A/12AA/12AB/10(23C)/10(46) under the Income-tax Act, 1961 (IT Act). The registration certificate should be valid for at least next 12 months. While making the application, details should be provided regarding pending notices or scrutiny cases from all regulatory and statutory authorities and of fines and penalties paid or appealed within seven days.

Further entities registered under Section 12A/12AA/12AB of the IT Act should have a valid 80G registration under the IT Act.

- **Disclosure of past social impact:** NPOs to provide details of past social impact as per the existing practice. The past social impact should highlight trends in key metrics/parameters relevant to the NPOs, number of beneficiary, cost per beneficiary and administrative overheads.

- **Conditions for issuance of Zero Coupon Zero Principal Instruments (ZCZP):** The circular has also laid down the following key conditions for issuance of ZCZP instruments:
 - a. ZCZP instruments should only be issued in dematerialised form.
 - b. They should not be transferable from the original subscriber/holder till the expiry of the tenure of the instrument.
 - c. The minimum issue size should be INR50 Lakh (*earlier INR1 crore*) and minimum application size should be INR10,000 (*earlier INR2 lakh*).
 - d. Minimum subscription required is 75 per cent of the funds proposed to be raised issuance of ZCZP instruments.
 - e. In case of any under subscription, following details should be provided in the fund raising document:
 - Under subscription between 75 per cent and 100 per cent, manner of raising balance capital should be provided
 - If under subscription is not arranged, then details regarding the possible impact on achieving the social objective(s).
 It is further stated that, if the subscription is less than 75 per cent of the issue size then the funds should be refunded.
- **Social Impact Assessor:** The term 'Social Auditor' is substituted with 'Social Impact Assessor' in the ICDR and LODR Regulations.
- **Other considerations:** The circular also lays down the procedure for public issuance of ZCZP instruments and contents required in the fund raising document.

(Source: SEBI notification no. No. SEBI/LAD-NRO/GN/2023/161 and SEBI/LAD-NRO/GN/2023/162 dated 21 December 2023 and circular no. SEBI/HO/CFD/PoD-1/P/CIR/2023/196 dated 28 December 2023)

RBI's restrictions for investments in Alternative Investment Funds (AIFs)

Regulated entities (REs)² make investments in units of AIFs as part of their regular investment operations. However, the Reserve Bank of India (RBI) observed regulatory concerns in certain transactions wherein direct loan exposure of REs to borrowers was substituted by indirect exposure through investments in units of AIFs by the REs. In order address this concern of possible evergreening, RBI issued a circular on 19 December 2023.

The key considerations are as follows:

- i. **Prohibition on investment:** REs should not make investments in any scheme of AIFs which has downstream investments either directly or indirectly in a debtor company of the RE.
For this purpose, a debtor company means any company to which the RE currently has or previously had a loan or investment exposure anytime during the preceding 12 months.
- ii. **Liquidate the investment:** If an RE is already an investor in an AIF scheme and such an AIF scheme makes a downstream investment in the debtor company, then the RE should liquidate its investment within 30 days from the date of such downstream investment by the AIF. In case of existing investments on the date of the circular, the REs should liquidate their investment within 30 days from date of issuance of this circular.

- iii. **100 per cent provision:** If REs are not able to liquidate their investments within the above-prescribed time limit, then they should make 100 per cent provision on such investments.
- iv. **Investment in subordinated units of any AIF scheme:** Investments made by REs in the subordinated units of any AIF scheme with a 'priority distribution model'³ would be subject to full deduction from RE's capital fund.

The above requirements are effective from 19 December 2023.

(Source: RBI circular no. RBI/2023-24/90 DOR.STR.REC.58/21.04.048/2023-24 dated 19 December 2023)



2. REs include all commercial banks (including small finance banks, local area banks and regional rural banks), all primary (urban) co-operative banks/state co-operative banks/central co-operative banks, all All-India Financial Institutions and all non-banking financial companies (including housing finance companies)

3. 'Priority distribution model' shall have the same meaning as specified in the SEBI circular SEBI/HO/AFD-1/PoD/P/CIR/2022/157 dated 23 November 2022
REs include Scheduled commercial banks including small finance banks (excluding regional rural banks, local area banks and payments banks) and all deposit taking Non-Banking Financial Companies (NBFCs) registered with RBI .

FAQs on framework for acceptance of green deposits

In April 2023, RBI issued a framework for acceptance of green deposits with an aim to encourage Regulated Entities (REs)⁴ to offer green deposits to customers, protect interest of the depositors, aid customers to achieve their sustainability agenda, address greenwashing concerns and assist in increasing the flow of credit to green activities/projects.

Recently on 29 December 2023, RBI issued Frequently Asked Questions (FAQs) on this framework. The key takeaways from FAQs are as follows:

- **Nature of compliance:** It is not mandatory for REs to raise green deposits. However, if REs intend to raise green deposits then they should comply with requirements of the framework.
- **Applicability:** The framework is applicable for green deposits raised by REs on or after 1 June 2023. Accordingly, REs cannot finance green activities/projects first and raise green deposits thereafter.
- **Denomination currency:** Green deposits should be denominated in INR only.
- **Eligibility criteria for external review:** REs can engage with any appropriate and reputed domestic/international agency for external review of the financing framework, third-party verification or assurance and impact assessment of the green activities/projects.

- **Allocation of proceeds in liquid instruments:** As per the framework, proceeds of green deposits that are pending allocation towards green activities/projects, can be temporarily parked in liquid instruments with maximum maturity upto one year. Liquid instruments are Level 1 High Quality liquid assets as per the extant guidelines. It is important to note that, there is no penalty for non-allocation of proceeds towards green activities/projects however, this process would be subject to supervisory review.
- **Interest on green deposits:** As per extant guidelines⁵, REs are not permitted to offer differential rate of interest on green deposits. REs are required to pay interest as per the agreed terms and conditions and directions stipulated in the extant guidelines, irrespective of allocation/utilisation of proceeds. Further, there is no restriction on premature withdrawal of green deposits and the same would not have any bearing on the activities/projects undertaken using the proceeds of green deposits.
- **Overdraft facility against green deposits:** Banks are allowed to offer overdraft facility to customers against green deposits subject to certain prescribed instructions⁶.
- **Single global policy by foreign banks:** Foreign banks could have a common global policy on green deposits subject to the provisions of the framework for green deposits issued by RBI .

(Source: RBI FAQs dated 29 December 2023)

4. REs include Scheduled commercial banks including small finance banks (excluding regional rural banks, local area banks and payments banks) and all deposit taking Non-Banking Financial Companies (NBFCs) registered with RBI .

5. Master Direction - Reserve Bank of India (Interest Rate on Deposits) Directions, 2016 dated March 03, 2016; Master Direction - Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 dated August 25, 2016; and Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank) Directions, 2021 dated February 17, 2021.

6. Instructions contained in the Consolidated Circular on Opening of Current Accounts and CC/OD Accounts by Banks issued on 19 April 2022, as amended from time to time

ISSB issues amendments to SASB standards

Sustainability Accounting Standards Board (SASB) standards are designed to identify and standardise disclosure for the sustainability issues that are most relevant for investor decision-making. The SASB standards are considered as important guidance to fulfil the requirements of IFRS Sustainability Disclosure Standards. In June 2023, the climate-related content in the SASB Standards were amended to align with the industry-based guidance accompanying IFRS S2, *Climate-related Disclosures*.

In December 2023, the International Sustainability Standards Board (ISSB) amended the non-climate-related content in the SASB Standards to enhance their international applicability. These amendments would help preparers apply the SASB standards regardless of the jurisdiction in which they operate or the type of Generally Accepted Accounting Principles (GAAP) they use without substantially altering the SASB Standards' structure or intent. The SASB Standards facilitate the implementation and application of IFRS S1, *General Requirements for Disclosure of Sustainability-related Financial Information*.

The key amendments are with respect to:

- Replacing jurisdiction-specific terms of reference with internationally applicable references for standards, definitions or calculation method
- Providing general descriptions for standards, definitions or calculation methods to replace jurisdiction specific terms of reference
- Permitting the use of applicable jurisdictional laws or regulations to replace jurisdiction-specific terms of reference and aligning with the preparer's legal and regulatory compliance requirements
- Removing certain jurisdiction-specific metrics that were unsuitable for international application i.e. those that had no identified international equivalents or were not adaptable to general descriptions

(Source: IFRS news 'ISSB publishes targeted amendments to enhance the international applicability of the SASB Standards' dated 20 December 2023)

FASB enhances income tax disclosure

On 14 December 2023, the Financial Accounting Standards Board (FASB) issued an Accounting Standards Update (ASU) to address investor requests to enhance annual income tax disclosures to provide more information about the tax risks and opportunities present in an entity's worldwide operations.

The key enhancements are as follows:

- **Reconciliation of the expected tax to the reported tax:** Public business entities should provide a tabular reconciliation using both percentages and amounts, broken out into specific categories with certain reconciling items at or above 5 per cent of the expected tax further broken out by nature and/or jurisdiction. Whereas, other entities should qualitatively disclose the nature and effect of significant reconciling items by specific categories and individual jurisdictions.
- **Income taxes paid:** Entities should disclose income taxes paid (net of refunds received), broken out between federal (national), state/local and foreign. Further, disclose the income taxes paid (net of refunds received) to an individual jurisdiction when 5 per cent or more of the total income taxes paid (net of refunds received).

The applicability of above ASU is as follows:

- Public business entities - Annual periods beginning after 15 December 2024
- Other entities - Annual periods beginning after 15 December 2025.

(Source: FASB media advisory dated 14 December 2023 and KPMG LLP's article on 'FASB issues ASU to disaggregate income tax disclosures' dated 15 December 2023)

FASB issues update on crypto asset accounting

Currently, crypto-assets are accounted for as indefinite-lived intangible asset wherein such crypto intangible assets are not amortised, instead they are written down (impaired) to fair value whenever their fair value falls below their carrying amount. These impairments are never reversed, even if the fair value of the asset recovers during the same reporting period. Stakeholders provided feedback that the current accounting model does not provide decision-useful information to investors nor appropriately reflects the economics of a holder's investment in crypto assets like bitcoin or ether.

In response to the above feedback, on 13 December 2023, FASB issued an ASU which is intended to improve the accounting for and disclosure of certain crypto assets. This ASU applies to all entities (i.e. public, private, not-for-profit and across all industries), even though some of its requirements do not apply to entities that apply certain industry-specific US GAAP (e.g. Topic 946 on investment companies or Topic 958 on not-for-profit entities).

Assets meeting the following criteria would be scoped-in for applicability of the ASU:

- a. Meet the US GAAP definition of intangible assets
- b. Do not provide the asset holder with enforceable rights to or claims on underlying goods, services, or other assets
- c. Are created or reside on a distributed ledger based on blockchain or similar technology
- d. Are secured through cryptography
- e. Are fungible
- f. Are not created or issued by the reporting entity or its related parties.

The main provisions of the ASU are as follows:

- **Subsequent measurement:** In-scope crypto assets should be subsequently measured at fair value under Topic 820, *Fair Value Measurement*, with fair value changes recorded in net income. It is important to note that, this ASU does not address initial measurement (including accounting for transaction costs), recognition or derecognition of crypto assets and therefore, reporting entities are required to comply with other Generally Accepted Accounting Principles (GAAP) for the same.
- **Presentation:** In-scope crypto assets are presented separately from other intangible assets on the face of the balance sheet. Similarly, gains and losses from remeasurement of in-scope crypto assets are presented separately from impairments or other changes in carrying amount (e.g. amortisation) of other intangible assets.
- **Disclosure:** Enhanced disclosures about in-scope crypto asset holdings and activity are required.

The amendments in the ASU are effective for fiscal years beginning after 15 December 2024.

(Source: FASB media advisory dated 13 December 2023 and KPMG LLP's article on 'FASB issues final ASU on crypto asset accounting' dated 13 December 2023)

