



General Order No. 01 of 2012 under S. 11A of the Securities and Exchange Board of India Act 1992

SEBI (Framework For Rejection Of Draft Offer Documents) Order, 2012

In exercise of powers conferred under Section 11A(1)(b) read with Section 4(3) of Securities and Exchange Board of India (SEBI) Act, 1992, the Securities and Exchange Board of India ("the Board") hereby issues a General Order to lay down general criteria subject to which draft offer documents filed for issue of securities with the Board, may be rejected, where the Board has reasonable grounds to believe, for the protection of interest of investors, that the adequacy and quality of disclosures in such offer documents are not satisfactory, or where an investor may not be able to assess the risks associated with the issue.

Whereas the Board does not regulate on merits or approve, document of offer / issue of securities, but only mandates true, fair and adequate disclosures including the possibility of a sanction where entities are put on notice for applying due diligence and caution while taking a decision to subscribe to the issue. The Board issues a letter of observation(s) specifying changes about disclosures and accordingly, the offer document is required to be modified.

Whereas, in case of rejection of draft offer document, the communication in writing shall contain the reasons therefor.

Therefore, with the above objective, a draft offer document would be scrutinized based on following broad criteria:

1. Rejection Criteria

1.1 Where Capital Structure involves any of the following;

- (i) Existence of circular transactions for building up the capital / net worth of the issuer.
- (ii) Ultimate promoters are unidentifiable.
- (iii) Promoters' contribution not complying with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 in letter or in spirit.

1.2 Where Object of the Issue;

- (i) Is vague for which a major portion of the issue proceeds are proposed to be utilized .

- (ii) Is repayment of loan or inter corporate deposit or any other borrowing of similar nature, and the issuer is not in a position to disclose the ultimate purpose for which the loan was taken or demonstrate utilization of the same for the disclosed purpose.
- (iii) Is such where the major portion of the issue proceeds is proposed to be utilized for the purpose which does not create any tangible asset for the issuer, such as, expenses towards brand building, advertisement, payment to consultants, etc., and there is not enough justification for creation of such assets in terms of past performance , experience and concrete business plan of the issuer.
- (iv) Is to set up a plant and the issuer has not received crucial clearances / licenses / permissions / approvals from the required competent authority which is necessary for commencement of the activity and because of such non-receipt of clearances / licenses / permissions / approvals, the issue proceeds might not be utilized towards the stated objects of the issue.
- (v) Is such where the time gap between raising the funds and proposed utilization of the same is unreasonably long.

1.3 Where business model of an issuer is;

Exaggerated, complex or misleading and the investors may not be able to assess the risks associated with such business models.

1.4 Where scrutiny of Financial Statements shows;

- (i) Sudden spurt in the business just before filing the draft offer document and reply to clarifications sought is not satisfactory. This will include spurt in line items such as Income, Debtors/Creditors, intangible assets, etc.
- (ii) Qualified audit reports or the reports where auditors have raised doubts / concerns over the accounting policies. This would also be applicable for the subsidiaries, joint ventures and associate companies of the issuer which significantly contributes to the business of the issuer. This would also be applicable for the entities where the issue proceeds are proposed to be utilized.
- (iv) Change in accounting policy with a view to show enhanced prospects for the issuer in contradiction with accounting norms.
- (iii) Majority of the business is with related parties or where circular transactions with connected / group entities exist with a view to show enhanced prospects of the issuer.

1.5 Where there exists litigation including regulatory action;

- (i) Which is so major that the issuer's survival is dependent on the outcome of the pending litigation.
- (ii) Which is willfully concealed or covered.

1.6 Other General Criteria;

- (i) Failure to provide complete documentation in terms of requirements of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- (ii) Non-furnishing of information or delay in furnishing of information or furnishing of Incorrect / vague / misleading / incomplete / false / non satisfactory information to the Board.
- (iii) Failure to resolve conflict of interest, whether direct or indirect, between the issuer and Merchant Banker appointed by the issuer to undertake the book building process. Quantification of conflict of interest may not always be possible but it would largely depend upon the Board's assessment on whether such conflict of interest may affect the judgment and ability of the Merchant Banker in conducting due diligence activity of issuer.

2. Applicability of the General Order

- (i) The General Order issued herein shall be applicable to all the draft offer documents filed for issue of securities, with the Board.
- (ii) The criteria specified for rejection in this General Order is illustrative / indicative and prescribes only general standards.
- (iii) Whereupon the Board after scrutinizing the draft offer document is of the opinion that the criteria mentioned in this General Order are not adhered to by the issuer/Merchant Banker, it may reject the draft offer document filed with the Board. Such scrutiny by the Board may be based on relevant information pertaining to the period of past 5 years from the date of filing of the draft offer document with the Board or any other period as deemed appropriate by the Board in exceptional cases.
- (iv) It is clarified here that mere triggering of any or few criteria mentioned in this General Order would not be considered as an automatic case for rejection and in all such cases a final view on rejection shall be taken by the Board after considering the materiality of the findings and facts and circumstances of each case.

3. One Time Withdrawal Opportunity

As on the date of issuance of this General Order, one-time opportunity for withdrawal of draft offer documents is allowed to the issuers whose draft offer documents are pending with the Board. Draft offer documents can be withdrawn within one month from the date of issuance of this General Order.

4. Consequences of Rejection of Draft Offer Documents

- (i) Entities whose draft offer documents are rejected will not be allowed to access capital markets for at least one year from the date of such rejection and the same may be increased depending upon the materiality of the omissions and commissions.
- (ii) In cases where the Board rejects a draft offer document or where an issuer or a Merchant Banker to an issue chooses to withdraw the draft offer document, there shall be no refund of filing fees with the Board.
- (iii) The rejection of draft offer document under this General Order shall be without prejudice to the right of the Board to initiate any action which may be undertaken against issuer or Merchant Banker, in accordance with law.
- (iv) The list of such draft offer documents rejected by the Board, along with the details of issuers / Merchant Bankers and the reasons for rejection, shall be disseminated by the Board in public domain by hosting on its website.

5. This General Order shall come into force with immediate effect.

DATE: OCTOBER 09, 2012
PLACE: MUMBAI

U. K. SINHA
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA