

Uniquus Corner

Shaping the regulatory and governance agenda

Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) (Fourth Amendment) Regulations, 2022 (“ICDR regulations 2022”), applicable with effect from November 21, 2022

Introduction

The Securities and Exchange Board of India ("SEBI"), in its board meeting held on September 30, 2022, which subsequently got notified in the official gazette dated November 21, 2022, had approved certain key proposals, including:

- Disclosure of Key Performance Indicators (KPIs);
- Disclosure of price per share of Issuer based on past transactions and past fund raising from the investors; and
- Introduction of pre-filling of offer documents as an optional alternative mechanism for the purpose of Initial Public Offer on the Main Board.

In this publication we have analysed and shared our views and extent of compliance with the above mentioned regulations.



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Background

Securities And Exchange Board of India (Issue of Capital And Disclosure Requirements) Regulations, 2018 ("ICDR regulations 2018") provided a detailed framework for disclosing financial information/ratios including the audited financial statements as part of the offer documents by the Issuers. However, there was no specific requirement or a defined framework to disclose KPIs.

Whilst the Issuers disclosed the same on a discretionary manner to suit their purpose, the information disclosed was not required to be audited/certified, defined consistently, explained or to be presented in a comprehensive manner. Further, disclosure of traditional financial parameters such as earnings per share (EPS), price to earnings (P/E), average return on net worth (RoNW) and net asset value (NAV) in "Basis for Issue Price" section of offer documents were not necessarily useful in cases where the Issuer was yet to turn profitable or had yet to reach break-even.

With an objective to provide comprehensive information to investors to make informed decisions and to avoid mis-pricing, there was felt a need to supplement traditional financial parameters/ratios with adequate disclosure of various non-traditional parameters like the KPIs and therefore SEBI, via ICDR Regulations 2022, has mandated disclosure of KPIs under "Basis for Issue Price" section of offer documents for all offer documents and provided a framework for such disclosures.

ICDR Regulations 2022 do not prescribe a list of KPIs that should be included. The identification and computation of KPIs have been left to the judgement of the Issuer.



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- a. KPIs disclosed in the offer document and the terms used in KPIs shall be defined in the “Definitions and Abbreviations” section of the offer document and must be comprehensive.
- b. KPIs disclosed in the offer document shall be approved by the Audit Committee of the Issuer.
- c. Disclosure and confirmation from the Audit Committee that all KPIs that have been disclosed to its investors at any point of time during the three years preceding to the date of filing of offer document are disclosed in the offer document.
- d. KPIs disclosed in the offer document shall be certified by the statutory auditors or independent Chartered Accountant/firm or Cost Accountants.
- e. Certificate issued with respect to KPIs shall be included in the list of material documents, which should be available for inspection.
- f. KPIs shall be provided for the period which should be co-terminus with the period for which the restated financial information is disclosed in the offer document.
- g. Explanation shall be provided on how these KPIs have been used by the management historically to analyse, track, or monitor the operational and/or financial performance of the Issuer.
- h. Disclosure of any other relevant and material KPIs of the business can be made in consultation with the lead merchant banker.
- i. Cross reference of KPIs disclosed in other sections of the offer document to be provided.
- j. KPI comparison with Indian listed peer Companies and/ or global listed peer Companies will be required to be disclosed.
- k. Issuers must at least annually disclose updates to KPIs disclosed in the “Basis of Offer Price” section, till the later of (a) one year from listing date or (b) full utilization of the IPO proceeds, with explanations for changes.

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- a. Under the existing regulations, disclosure of key accounting ratios under the “Basis for offer/issue price section” provided information only of financial parameters, which had the following limitations:

- Financial parameters help in assessing the financial performance of those Companies that are profitable and may not assist investors in taking investment decision with respect to investing in an issue by a Company which is yet to break-even.
- Prospective investors in new age technology Companies and startup Companies also consider non-financial parameters such as scale of operations, long-term potential market leadership and similar other factors for making investment decisions, for which existing accounting ratios, which are disclosed in the offer document, may not be relevant.
- Basis for issue price is driven by many other non-financial factors including KPIs. Non-disclosure of such data in the offer document precludes providing the investors with a comprehensive view about the Company’s operations.

- b. The mandate to disclose KPIs is a welcome move from SEBI, one which if implemented appropriately, will aim to bring transparency and rationality to issue pricing. Even for a profitable Company, whilst financial numbers can be used to measure financial performance of the Company, KPIs would additionally aid the investors to take better and more informed decision for investment in the said Company. From an Issuer’s perspective, the KPI disclosures make the trends in the business transparent and help keep management accountable. Hence, we believe, it is a win-win situation for all the stakeholders.

- c. Audit committee has been entrusted with the responsibilities to:

- Approve the KPIs disclosed in the offer document.
- Confirm that verified and audited details for all KPIs pertaining to the Issuer that have been disclosed to previous investors at any point of time during the three years period prior to IPO, have been disclosed under ‘Basis for Issue Price’ section of the offer document.

SEBI has also mandated a positive confirmation of compliance by the Audit committee of the above regulations as an inclusion in the offer document.

This requirement will make the management responsible for taking the ownership of the data being disclosed and it provides the investors with approved and validated disclosures. However, many companies may have formed an Audit Committee in recent times (post conversion of Private Limited Company into Public Limited Company) and hence it is going to be important for the newly formed Audit Committee members to fully familiarise themselves with the past transactions.

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- d. SEBI has also required the disclosure of KPIs after certification from Statutory auditors or Independent Chartered Accountants or Cost Accountants. This certification must also form part of the material contracts and documents submitted to Registrar of Companies along with the offer documents. This requirement will add more weightage on the reliability and accuracy of the figures and explanations of KPIs being disclosed, as these are certified by independent experts.
- e. The following requirements will improve the consistency of the information included in the offer documents:
 - Disclosure of KPIs under 'Basis for issue price' section to provide relevant information to the investors in one earmarked section to facilitate investors' understanding about Issuer's performance on all metrics – both on financial and non-financial measures.
 - Disclosure of all the KPIs, disclosed to pre-IPO investors during the three years period prior to IPO and the same needs to be confirmed by the Audit Committee.
 - Providing a cross reference to the KPIs, if any, disclosed in other sections of the offer document to 'Basis for issue price' section.
- f. The amendment also emphasises the need to disclose the identifiable peers (domestic and global) and to compare the KPIs of the Issuer with such peers. This will enable investors to analyse and benchmark the performance of the Company with other industry participants, both local and global.
- g. The amendment requires a continuation of KPI disclosures post listing for a specified time period and further, the Issuer is also required to explain changes made in KPIs post listing during the specified period.
- h. Whilst the above requirements of the SEBI are commendable and impactful, however, basis our analysis, we noted that the KPI disclosures are yet to be adopted by the Issuers in true spirit.

Below is the summary of public issue filings made with SEBI for the period from November 21, 2022 (effective date of amendment) to March 15, 2023:

Particulars	Count till March 15, 2023
Main platform	
Draft Red Herring Prospectus (DRHP)	16
Red Herring Prospectus (RHP)	5
Prospectus	9
Total filings	30

Note:

• 16 DRHPs were filed from November 21, 2022, till March 15, 2023, wherein corresponding RHPs/ Prospectus have not been filed till March 15, 2023.

• 5 RHPs (net) have been considered out of the 13 RHPs (gross) filed from November 21, 2022, till March 15, 2023, as 8 RHPs have reached Prospectus stage till March 15, 2023.

• 8 Prospectus have come from RHP stage (as explained above) and 1 Prospectus has been filed from November 21, 2022, till March 15, 2023, for which DRHP/RHP had been filed before the amendment date i.e., November 21, 2022.



Our observations on the above filings are as below

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Disclosure requirements	Findings	Our observations
Financial KPIs	- Revenue from operations, growth % in revenue from operations, EBITDA, Profit/loss before or after tax are the common financial KPIs disclosed by 29 Issuers. - Return on capital employed, return on equity and gross margin % are the common KPIs for more than 10 Issuers.	There are no standard set of KPIs prescribed by SEBI and Issuers are required to disclose KPIs which have been disclosed to pre-IPO investors in last 3 years. Such KPIs also require an approval of Audit Committee. There are varied practices observed as mentioned in the adjacent column.
Operational KPIs	- Sales volume and number of customers are the common operational KPIs disclosed by more than 10 Issuers. 4 Issuers are disclosing more than 7 operational KPIs. 5 Issuers are disclosing only 1 operational KPI. 13 Issuers are not disclosing operational KPIs.	
Approval of Audit committee (AC)	26 Issuers have disclosed the fact that KPIs disclosed have been approved by the Audit Committee.	13% of the Issuers have not complied with this mandatory disclosure requirement. i.e., there is no disclosure of the fact that: - KPIs have been approved by the Audit Committee - Confirmation that the reported KPIs have been disclosed to pre-IPO investors

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Certification on KPIs and basis for offer price	26 Issuers have disclosed the fact that KPIs disclosed have been certified by the Auditors, of which 10 Issuers have appointed auditors other than their statutory auditors for certification and for 3 Issuers where joint auditors are appointed, this certificate has been issued by one of the joint auditor. - For other 4 Issuers which have not disclosed this fact, reference of certificate has been also not given in the “list of material contract and other documents” disclosed in the offer documents.	13% of the Issuers have not complied with this mandatory disclosure requirement.
Industry peers and Comparison of KPIs	22 Issuers have identified domestic peers which are commensurate with size and operations for KPI comparison purposes.	None of the Issuers have identified global peers and 8 Issuers are stating that there are no industry peers in India and/or globally. Management of the prospective Issuers should implement a robust mechanism to identify comparable peers in consultation with Audit Committee.
Explanation on how KPIs form basis for issue price	25 Issuers have given explanation on how KPI acts as one of the driving elements in arriving at the issue price.	Merely defining the KPIs may not help the investors to understand how it contributes to measuring the operations of the Issuer. Explanations need to be provided by the Issuers to inform investors as to how KPIs are used to gauge the performance of the Issuer and acts as basis for arriving at the issue price.

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Disclosure of relevant KPIs including material KPIs disclosed before the pre-IPO Investors during the three years prior to the IPO	17 Issuers have disclosed the fact that, KPIs disclosed in the offer documents are the complete set of KPIs disclosed to pre-IPO investors in the last 3 years. 7 Issuers have disclosed the fact that, there were no KPIs disclosed to pre-IPO investors in the last 3 years.	6 Issuers (20% of the population) have not disclosed this requirement. Non-disclosure of the same may not provide the investors with requisite information on whether the KPIs have been disclosed to pre-IPO investors or not.

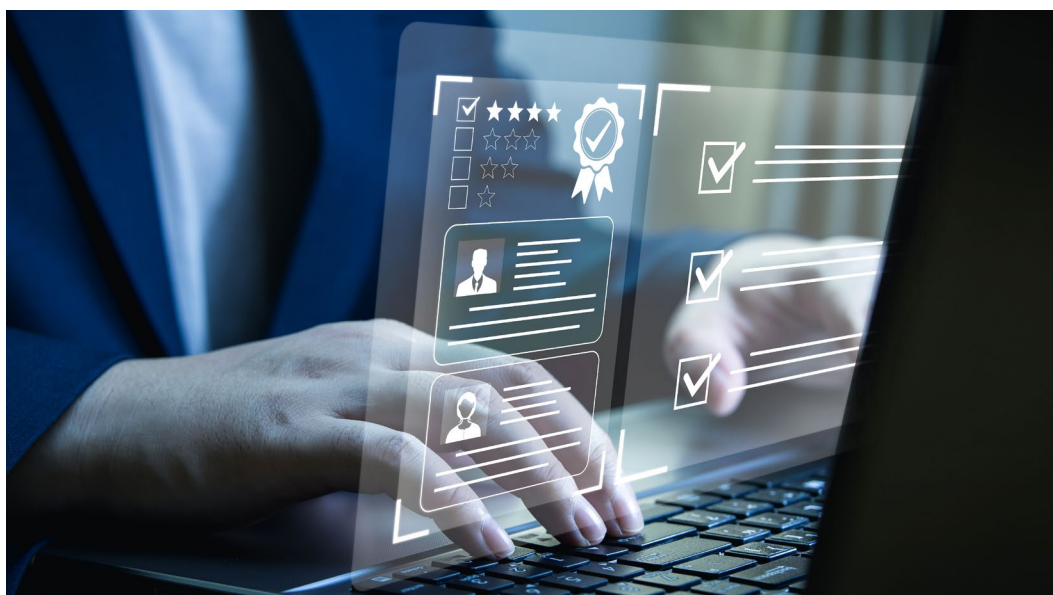
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As seen in the above analysis, whilst the requirement to comply with the KPI guidance is mandatory, we note that in practice there has been a mixed application of the regulation. Our recommendation is that the Issuers ensure absolute compliance with the above regulation, as non-compliance of the same can result in significant litigation risk for the Issuer, its Key Managerial Personnel and Board of directors, including the independent directors of the Issuer.



B Disclosure of price per share of Issuer based on past transactions and past fund raising from the investors

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Background

With the objective to provide comprehensive details to investors regarding past share issue transactions of Issuers under one particular section of the offer document, SEBI, via ICDR Regulations 2022, has mandated the following disclosure under “Basis for Issue Price” section of offer documents for all offer documents.

Summary of disclosure requirements under ‘Basis for issue price’ section

- a. Disclose price per share of Issuer based on primary / new issue of shares, excluding share issued under ESOP/ ESOS and issuance of bonus shares during the 18 months period prior to filing of DRHP/RHP, where such issuance is equal to or more than 5% of the fully diluted paid-up share capital of the Issuer.
- b. Disclose price per share of Issuer based on specified secondary sale / acquisition of shares, during the 18 months period prior to IPO, where such issuance is equal to or more than 5% of the fully diluted paid-up share capital of the Issuer.
- c. Disclose price per share of Issuer based on last five primary or secondary transactions, not older than three years prior to IPO, in case there are no such transactions of primary / new issue of shares or specified secondary sale / acquisition of shares.
- d. Disclose weighted average cost of acquisition (WACA) based on primary / new issue of shares and specified secondary sale / acquisition of shares and last five primary or secondary transactions, with the floor price and cap price as being “X” times the WACA in the offer document and in the Price Band Advertisement under ‘Risks to Investors’.

- e. Disclose detailed explanation for offer price / cap price being “X” times of WACA computed as above, along with comparison of Issuer’s KPIs and financial ratios for the last three full financial years and stub period (if any) included in the offer document.
- f. Disclose explanation for offer price / cap price in view of the external factors which may have influenced the pricing of the issue, if any.
- g. Disclose the fact in Price Band Advertisement that committee of Independent Directors shall recommend that the price band is justified based on quantitative factors / KPIs vis-à-vis the WACA disclosed as above.

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- a. It's a welcome move from SEBI, as details of past transactions and past fund raising from investors will aid the future investors to take an informed decision and assess the reasonableness of the issue price.
- b. Considering the dynamic nature of business models, a look back period of 18 months appears to be adequate for all Issuers before making an investment.
- c. Based on the comments received by SEBI from various stakeholders, either the Issuers may not have access to the details of all pre-IPO secondary transactions of its shares and details of transactions done by individual investors may not be subject to any pricing of shares by the Issuers. For this purpose, SEBI has introduced the requirement to disclose only secondary transactions of promoter, promoter group, shareholders selling shares through offer for sale in IPO and shareholder having nomination right(s).
- d. Price per share details is to be given for transactions which equal to more than 5% of the fully diluted paid-up share capital of the Issuer. This threshold will ensure that, only transactions which are significant in size are covered in the disclosure.
- e. The intent of this disclosure is to capture the transactions which may cover the latest pricing of shares by the Issuer. If there are no primary/ secondary transactions in last 18 months, then disclosure shall be given for last 5 primary or secondary transactions, not older than 3 years prior to the date of filing of the DRHP / RHP, irrespective of the size of transactions.
- f. It is also expected that Issuers provide qualitative disclosures to compare offer price with WACA of past primary/ secondary transactions along with comparison of Issuer KPIs/financial ratios.

- g. Based on the filings represented in the table given under KPIs para, our observations are as below:

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Disclosure requirements	Findings	Our observations
Disclose price per share of Issuer based on primary / new issue of shares	22 Issuers have disclosed in the offer documents that there were no such transactions. 6 Issuers have had primary issuance in the past. Hence, they have disclosed, the details of such transactions.	93% of the population have complied with this mandatory disclosure requirement. 2 Issuers have given the requisite disclosures under other sections of the offer documents. As per the regulation, the disclosure requirements are to be given under "Basis for issue price section".
Disclose price per share of Issuer based on specified secondary sale/ acquisition of shares, during the 18 months period prior to IPO	26 Issuers have disclosed in the offer documents that there were no such transactions. 2 Issuers have had secondary issuance in the past. Hence, they have disclosed the details of such transactions.	
Disclose price per share of Issuer based on last five primary or secondary transactions, not older than three years prior to IPO	19 Issuers have disclosed the details of such transactions and for 6 Issuers this disclosure is not applicable as these Issuers have given disclosure as per the requirement to disclose price per share of Issuer based on primary / new issuance of shares, as explained above.	83% of the population have complied with this mandatory requirement. 4 Issuers have given the requisite disclosure under other sections of the offer documents. As per the regulation, the disclosure requirements are to be given under "Basis for issue price section".

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Disclosure requirements	Findings	Our observations
Disclosure on WACA	25 Issuers have disclosed the details of WACA under "Basis for issue price section".	83% of the population have complied with this mandatory requirement. 4 Issuers have given the requisite disclosure under other sections of the offer documents. As per the regulation, the disclosure requirements are to be given under "Basis for issue price section".
Disclosure of detailed explanation for offer price / cap price, being "X" times of WACA and view of the external factors which may have influenced the pricing	6 Issuers who are in the RHP and prospectus stage have given the explanations. 16 Issuers which have filed DRHPs and 3 Issuers, which have filed RHP have mentioned that the explanations will be given only under prospectus stage. 3 Issuers, even though they are in the prospectus stage, have not provided the explanations.	Most of the Issuers are not providing this information at DRHP stage and stating that the explanation will be provided at the prospectus stage. This disclosure is important for the investors to assess offer price qualitatively Therefore, disclosure of the same at DRHP stage would give more information to investors.

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Small and Medium Enterprises Platform (SMEs):

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a. Disclosure of KPIs

The amendment to disclose requirements on KPI is in Part A of Schedule VI, in paragraph (9) under the heading - (K) Basis for Issue Price ("this section"). This schedule is also applicable for Initial public offers (IPOs) made on SMEs platforms as given in Chapter IV of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Below is the summary of public issue filings made with SEBI for the period November 21, 2022 (effective date of amendment) to March 15, 2023:

b. Disclosure of price per share of Issuer based on past transactions and past fund raising from the investors

Particulars	Count till March 15, 2023
SME platform	
Draft Red Herring Prospectus (DRHP)	50
Red Herring Prospectus (RHP)	-
Prospectus	46
Total filings	96

c. Introduction of pre-filing of offer documents as an optional alternative mechanism for the purpose of Initial Public Offer on the Main Board

Note:

• 50 DRHPs (net) have been considered out of 67 DRHPs (gross), filed from November 21, 2022, till March 15, 2023, as 17 DRHPs have reached the prospectus stage.

• Nil RHP (net) has been considered out of 18 RHPs (gross), filed from November 21, 2022, till March 15, 2023, as 18 have reached the prospectus stage.

• Out of 46 Prospectus, 28 Prospectus have been filed from November 21, 2022, till March 15, 2023, for which DRHP/ RHP had been filed before the amendment date i.e., November 21, 2022, and 18 Prospectus have come from DRHP/RHP stage (as explained above).

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Our analysis on the above filings is as below

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Disclosure requirements	Our observations
<i>a. Disclosure of KPIs</i>	
Financial and Operational KPIs	Of the 96 offer documents filed on SME platform, 27 Issuers have given disclosure on KPI. 6 Issuers have disclosed operational KPIs out of 27 Issuers which have disclosed KPIs information.
Approval of Audit committee	24 Issuers from a total of 96 Issuers have disclosed the fact that KPIs disclosed have been approved by the Audit Committee.
Certification on KPIs and basis for offer price	25 Issuers have disclosed the fact that KPIs disclosed have been certified by the Auditors, of which 4 Issuers have appointed different auditors for certification purposes who are not the statutory auditors. - For other 71 Issuers which have not disclosed this fact, reference of certificate is also not given in the "list of material contract and other documents" disclosed in the offer documents.
Industry peers and Comparison of KPIs	14 Issuers have identified domestic peers which are commensurate with size, operations for KPI Comparison purposes.
Explanation on how KPIs form basis for issue price	27 Issuers have given explanation on how KPI acts as one of the driving elements in determining the issue price.
Disclosure of relevant KPIs including material KPIs disclosed before the pre-IPO Investors during the three years prior to the IPO	2 Issuer have disclosed the fact that, KPIs disclosed in the offer documents are the complete set of KPIs disclosed to pre-IPO investors in the last 3 years. 22 Issuers have disclosed the fact that, there were no KPIs disclosed to pre-IPO investors in the last 3 years.

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Disclose price per share of Issuer based on primary / new issue of shares	17 Issuers have disclosed in the offer documents that there were no such transactions. 8 Issuers have had primary issuance in the past. Hence, they have disclosed the details of such transactions. 71 Issuers have not disclosed any details/facts under "Basis for issue price section".
Disclose price per share of Issuer based on specified secondary sale / acquisition of shares, during the 18 months period prior to IPO	22 Issuers have disclosed in the offer documents that there were no such transactions. 3 Issuers have disclosed the details of such transactions. 71 Issuers have not disclosed any details/facts under "Basis for issue price section".
Disclose price per share of Issuer based on last five primary or secondary transactions, not older than three years prior to IPO	18 Issuers have disclosed the details of such transactions and for 6 Issuers this disclosure is not applicable as it has given disclosure under the above clauses. 72 Issuers have not disclosed any details/facts under "Basis for issue price section".
Disclosure on WACA	25 Issuers have disclosed the details of WACA under "Basis for issue price section".
Disclosure of detailed explanation for offer price / cap price, being "X" times of WACA and in view of the external factors which may have influenced the pricing	- None of the Issuers who are in the RHP and prospectus stage have given the explanations. 1 Issuer who is at the DRHP stage has given the explanation.

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There is scope of improving adherence with and quality of these disclosures by Issuers, especially on the SME platform. Considering there is a very low compliance of KPI disclosure requirement in SME platform filings, we expect the Issuers to ensure compliance with the regulations in totality as non-compliance of the same can result in significant litigation risk for the Issuers, its Key Managerial Personnel and Board of directors, including the independent directors of the Issuers.



Introduction of pre-filing of offer documents as an optional alternative mechanism for the purpose of Initial Public Offer on the Main Board

Background

Under the existing regulations, there is no concept of Pre-filing of Draft Red Herring Prospectus (PDRHP). In this amendment, the SEBI has introduced an optional alternative mechanism to facilitate public Companies desirous of an IPO listing on main board to file their draft offer document on a confidential basis. For this, a new chapter (Chapter II A) has been introduced in the SEBI ICDR Regulations, 2018.

Pre-filing mechanism allows Issuers to carry out interaction with Qualified Institutional Investors (QIBs) for limited marketing without having to make any sensitive information public. Further the document which incorporates SEBI's initial observations would be available to investors for a period of at least 21 days, thereby, better assisting them in their investment decision making process. The existing mechanism of processing offer document shall continue in addition to this alternative mechanism of pre-filing.

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Activity	Our analysis
Filing of offer documents	1. Filing of PDRHP (not available in the public domain) 2. Receipt of SEBI Observations (not available in the public domain) 3. Filing of updated DRHP (UDRHP-1) (available in the public domain) 4. Filing of updated UDRHP - 1 (UDRHP-2) (not available in the public domain) 5. Filing of RHP (available in the public domain) 6. Issue Opening and Closure (available in the public domain) 7. Filing of Prospectus (available in the public domain)
Publicity and Marketing	Limited marketing is permitted (only for assessing market interest with QIB's) from the date of filing of PDRHP until the date of receiving SEBI observations on PDRHP. A minimum gap of seven working days is required between the date of intimation to SEBI about completion of the QIB Interaction and the date of filing of UDRHP-I. All public communications issued or published in any media during the period commencing from the date of the meeting of the board of directors of the Issuer in which the public issue is approved till the date of filing of UDRHP-I shall be consistent with existing mechanism.

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Activity	Our analysis
Compliance with ICDR Requirements	PDRHP to be in compliance with ICDR Regulations (to the extent applicable) with flexibility/ exemption in following until receipt of SEBI's observations on PDRHP. • Restriction on issuance of new shares/ compulsory convertibles. • Changes in matters mentioned under Schedule XVI such as change in director, promoter, objects of issue etc without requirement of refiling.
Validity of SEBI Observation	Issue shall open within 18 months from the date of receipt of SEBI Observation on PDRHP, subject to filing of UDRHP-I within 16 months vis-à-vis within 12 months from the date of SEBI Observation on DRHP under the existing mechanism.
Certain thresholds under Schedule XVIA (pre-filing mechanism) vis-à-vis Schedule XVI (existing mechanism)	Changes which require fresh filing of the PDRHP or DRHP with the Board, along with fees: • Any addition to the objects of the Issue resulting in an increase in the estimated issue size / means of finance by more than 50% (vis-à-vis 20% under Schedule XVI). • If there are grounds to believe that there is an exacerbation of risk on account of deletion of an object resulting in a decrease in issue size by more than 50% (vis-à-vis 20% under Schedule XVI). • Increase / decrease in the estimated issue size (for fresh issues and/or for offer for sale) by more than 50% (vis-à-vis 20% under Schedule XVI).

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- a. Under the existing process, following are the challenges faced by the Issuers:

- An Issuer exploring the possibility of an IPO will need to make disclosure of various sensitive information about its business in the DRHP at a time when there may not be certainty that the IPO would be executed or when it would be executed.
- There remains an apprehension in the mind of the Issuer that competitors might take undue advantage of the information disclosed by it in its DRHP.
- After filing DRHP by the Issuers, SEBI seeks clarification on the same and issues an Observation Letter. An Issuer can access the market within 1 year from the date of this Observation Letter. At times, due to volatility in market conditions or other factors, Issuers may defer the IPO. Consequently, the feedback received from potential institutional investors during the roadshows and observations from SEBI loses its recency when the Issuer re- approaches the market for its IPO.
- The RHP, which is quite comprehensive in information, and which has undergone regulatory review incorporating observations of SEBI, is available for investors only for a maximum period of 5 days as Issuers launch IPOs within 3-5 days of filing RHP with Registrar of Companies.

- b. SEBI's move on PDRHP- confidential filing, is a welcome change in India. Globally, it is seen that some jurisdictions such as UK, Canada and US have already permitted pre-filing of the offer document for review by the regulatory authorities.

Comparison with US-SEC regulations on confidential filings

- In US, with effect from July 10, 2017, voluntary draft registration statement (DRS) submissions for all Issuers for non-public review has been introduced to facilitate confidential filing and for Emerging Growth Companies (EGCs), the process of confidential filing was already in existence under the Jumpstart Our Business Startups (JOBS) Act.

Below is the 5-year trend on DRS filed on the US stock exchanges:

Year	DRS-SEC filing
2022	164
2021	1142
2020	885
2019	394
2018	425

Note: DRS form type is to be used for filing Registration Statement under confidential route by all Issuers (Foreign private Issuers, EGCs Issuers and non EGCs Issuers).

The above data has been extracted from EDGAR (Electronic Data Gathering, Analysis, and Retrieval system) database of SEC (Securities exchange Commission) website under forms archives

1. Introduction

2. Our Analysis

a. Disclosure of KPIs

b. Disclosure of price per share of Issuer based on past transactions and past fund raising from the investors

- It can be seen from the above data, that the number of Issuers opting voluntarily for confidential filing in US is significant.
- The below table provides the IPO trend for the last 3 financial years and the 9 month period till December 31, 2021 (FYs) in India:

Financial Year	Number of DRHP filings	Number of Issuers from column 2 who did not proceed with IPO
2018-19	65	41
2019-20	33	10
2020-21	31	6
2021-22 (nine months till Dec 31, 2021)**	114	49
Total	243	106

Note:

• Source: SEBI guidelines

• ** For the FY 2021-22, the data is yet to be released by SEBI and we have arrived at the number of DRHP filings from SEBI website-Public issue filings. Further, information on second/third column is given for cases where DRHP filed between period April 01, 2021 to December 31, 2021 and not listed till March 15, 2023.

3. Uniquis Point of View

From the above table, it can be noted that 106 Issuers i.e. 44% did not proceed with the IPO despite filing the DRHP.

- d. Post the SEBI amendment on confidential filings, as per the filings made until March 15, 2023, only one Company has opted for this PDRHP confidential filing.

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3. Uniquis Point of View

Point of View

SEBI's move on confidential filings will facilitate disclosure of an information rich document for investors to consume at an appropriate time when the Issuer is ready to proceed with its listing plans and at the same time will protect the interests of the Issuers who will also be required to disclose the market sensitive information only when its reasonably certain that they will proceed with their listing plans.

However, there is not much adoption seen of this alternate mechanism, which may be attributable to the slow activity in IPO market over the last few months. If global experience is an indicator, we expect an increased usage of this mechanism by Issuers going forward.



Uniquus Point of View

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- The above mentioned amendments to the ICDR Regulations is expected to bring in greater transparency in the IPO process through increased disclosures on aspects impacting the offer price of the Issuer.
- The enhanced regulations also impose an onerous responsibility on independent directors and the Audit Committees, since the required disclosures are required to be formally approved.
- On the disclosures of KPIs, the SEBI, as a capital markets regulator has taken a lead in this area. Our analysis indicates that the capital markets regulators of jurisdictions such as the US, UK and Canada, which are fairly deep in capital market activity and advanced in capital markets regulations, have still not introduced the disclosures of the type proposed by the SEBI, which we believe is of relevance to the potential investors in taking investment decisions.
- Similarly, the introduction of a pre- filing regime, which has been tried and tested successfully in overseas jurisdictions for some time now, puts the Indian ecosystem on par with the global jurisdictions and will go a long way in making the capital raising process attractive to all types of Issuers.
- The above regulations are a step in the right direction and will greatly benefit the Investors as well as the Issuers. However, for this to be of benefit to all stakeholders, it is imperative that Issuers apply the requirements of the regulations in its true spirit and in totality. More specifically:
 - Issuers need to engage with their Audit Committee's well in advance to educate them on their duties under this amendment to avoid any later surprises in the IPO process.
 - Issuers should carefully evaluate what would be categorized as KPIs that best depicts their business performance and relevant peer companies' benchmarks. This ought to be done in consultation with Audit Committee as this impacts the basis of issue price.
 - Issuers also have to weigh benefits of confidential filings with management and Audit Committee before concluding the mode of filing.

3. Uniquus Point of View

A TEAM THAT YOU CAN TRUST TO DELIVER



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