

## SEBI'S PROPOSALS ON GOLD EXCHANGE AND REVISION TO PROMOTER REGIME

### INTRODUCTION

In a major move towards growing India's bullion trading market, SEBI has issued a consultation paper proposing framework for a Gold Exchange in India. SEBI has been nominated as the regulator of the entire ecosystem of the proposed Gold Exchange and would be the sole regulator for Gold Exchange including for vaulting, assaying and gold quality and delivery standards. The proposed Gold Exchange, encompassing the entire ecosystem of trading and physical delivery of gold, is suggested to create a vibrant gold ecosystem in India which is commensurate with India's large share of global gold consumption. The proposed Gold Exchange is expected to lead to efficient and transparent domestic spot price discovery, assurance in the quality of gold, promotion of India good delivery standard with active retail participation, greater integration with financial markets, and augment greater gold recycling in the country.

In another important proposal, SEBI has suggested changes to following: (i) Reduced lock-in periods for minimum promoter's contribution and other shareholders; (ii) Deletion of holdings by common group of individuals from definition of 'Promoter Group'; (iii) Reduced disclosures relating to group companies under offer documents; (iv) Shifting from concept of 'promoter' to concept of 'person in control'.

Key proposals have been analyzed below:

1. [Consultation Paper on proposed framework for Gold Exchange in India and draft SEBI \(Vault Managers\) Regulations, 2021;](#)
2. [Consultation Paper on "Review of the regulatory framework of promoter, promoter group and group companies as per Securities and Exchange Board of India \(Issue of Capital and Disclosure Requirements\) Regulations, 2018".](#)

### CONSULTATION PAPER ON PROPOSED FRAMEWORK FOR GOLD EXCHANGE IN INDIA AND DRAFT SEBI (VAULT MANAGERS) REGULATIONS, 2021

Topic	Proposal for consideration/public comments
<b>Trading Instrument   EGR</b>	The instrument to be traded on the exchange platforms to be termed as <b>"Electronic Gold Receipt" (EGR)</b> .
<b>Transaction on the gold exchange   Procedure</b>	The entire transaction in the proposed framework to be divided into 3 tranches: <ul style="list-style-type: none"> <li>▪ <b>First Tranche:</b> Conversion from Physical Gold to EGRs.</li> <li>▪ <b>Second Tranche:</b> Trading of EGRs on stock exchange(s).</li> <li>▪ <b>Third Tranche:</b> Conversion from EGRs to Physical Gold</li> </ul>
<b>Setting up of Exchanges   Existing or New exchange</b>	Presently, SEBI is exploring both of the following options for trading of EGRs: <ul style="list-style-type: none"> <li>▪ <b>Establishment of a new stock exchange:</b> Setting up a new stock exchange exclusively for EGR may be beneficial in terms of single Good Delivery Standard, reduced market fragmentation, improved liquidity, single reference price, etc. However, having a separate stock exchange may also be time consuming, require fresh investments in setting up new stock exchange, clearing corporations, require fresh registration of members of stock exchanges, increase compliance cost and may not be viable being based on a single product i.e., gold available for trading.</li> <li>▪ <b>Trading on existing stock exchange:</b> Existing stock exchanges may be allowed to deal in</li> </ul>

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	<p>EGRs either through a separate segment or as a new asset class in the existing segment. The advantages of maintaining a 'Universal Exchange' wherein stock exchanges deal with both equities and commodities are that it allows for greater and efficient utilization of existing infrastructure and resources of securities market.</p>
<p><b>Product denomination for trading and conversion of EGRs</b></p>	<ul style="list-style-type: none"> <li>▪ <b>Product Denomination for trading:</b> It is proposed that initially, EGR of 1 kg, 100 grams and 50 grams denomination may be available with the stock exchange/s with same denomination for trading of EGR and conversion of EGR into physical gold. In order to attract more players to this market, EGR with smaller denominations such as 10 grams and 5 grams may also be allowed, for trading purposes.</li> <li>▪ <b>Product denomination for conversion:</b> It is proposed that conversion of smaller denominations of EGRs to physical gold may be permitted only when the beneficial owner has accumulated a certain weight of physical gold in the form of EGRs.</li> </ul>
<p><b>Trading and validity period of EGRs</b></p>	<ul style="list-style-type: none"> <li>▪ All features of trading as applicable to other securities to be made applicable to EGRs as well, since EGRs will be notified as "securities".</li> <li>▪ Considering the EGR as equivalent to any "securities" traded on the stock exchange/s, a perpetual life period of EGRs to be considered.</li> </ul>
<p><b>Fungibility of EGRs and inter-operability between Vault Managers   Location advantage</b></p>	<ul style="list-style-type: none"> <li>▪ EGRs to be made fungible i.e. the EGR created by vault managers not to be linked with the unique bar reference number of the physical gold.</li> <li>▪ EGRs to be made inter-operable between vault managers, allowing the deposit and withdrawal of physical gold from different locations and different vault managers.</li> <li>▪ Allowing fungibility of EGRs and inter-operability between vault managers will allow depository to facilitate withdrawal of gold from the preferred location of the buyer, to the extent possible.</li> </ul>
<p><b>Gold Delivery Centers</b></p>	<ul style="list-style-type: none"> <li>▪ The framework of a base delivery center and additional delivery centers applicable to commodities derivatives market may be adopted for the delivery location of physical gold.</li> </ul>
<p><b>Storage and Delivery Charges</b></p>	<ul style="list-style-type: none"> <li>▪ Storage or vaulting charges, as levied by the vault managers, to be paid by the beneficial owner of the EGR as at the end of the trading day.</li> <li>▪ Delivery charges to be borne by the beneficial owner of EGRs opting for withdrawal of the physical gold.</li> <li>▪ Storage and delivery charges to be collected by the depository participant from the beneficial owner of EGRs, and such charges to be deposited with the Depository for onward payment to the vault managers.</li> <li>▪ Request by beneficial owner of EGRs for withdrawal of physical gold to be sent to the vault manager only upon payment of storage/delivery charges by the beneficial owner to the depository.</li> </ul>
<p><b>Regulating Gold Logistics and Assaying</b></p>	<ul style="list-style-type: none"> <li>▪ Assaying agencies to be empaneled by vault managers or any other suitable entity.</li> <li>▪ SEBI to not have jurisdiction over choice of vehicle or logistics for physical movement of gold and the same be the discretion of the owner of such gold.</li> </ul>
<p><b>Taxation incentives for trading in EGRs</b></p>	<ul style="list-style-type: none"> <li>▪ Securities Transaction Tax (<b>STT</b>) to be made applicable to trading of EGRs, as is applicable to trading of any other "securities".</li> <li>▪ Goods and Services Tax (<b>GST</b>) to be made applicable during the conversion of EGR to physical gold. Levying of IGST alone to be considered, since the buyer and seller may be from different states thereby making the levy of SGST difficult.</li> </ul>

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Settlement cycle	<ul style="list-style-type: none"> <li>It is proposed that settlement of all trades to be carried out on T+1 day.</li> </ul>
Clearing and settlement   Risk management	<ul style="list-style-type: none"> <li>Clearing corporations to follow the existing model of clearing and settlement and risk management activities as used in equities market.</li> </ul>
Grievance redressal mechanism	<ul style="list-style-type: none"> <li>Vault managers to put in place a grievance redressal mechanism as prescribed.</li> </ul>
KYC and KYD requirements	<ul style="list-style-type: none"> <li>Existing mechanism of KYC (know your client) through KYC Registration Agency i.e., KRA, to be utilized and existing mechanism of KYD (know your depositor) being followed in commodity derivatives market to be utilized</li> </ul>
Participants	<ul style="list-style-type: none"> <li>Banks, FPIs, bullion dealers, jewelers, retail participants, refiners etc. may be permitted to access this market.</li> </ul>
Vault Managers   Eligibility, SOP, Code of Conduct and other compliances	<ul style="list-style-type: none"> <li><b>SEBI to regulate vault managers:</b> SEBI will regulate the Vault Managers as part of the gold ecosystem. It is proposed to regulate the gold exchange related business of the Vault Managers thereby not hindering the non-gold exchange business of the Vault Managers. Draft of the regulations have been proposed for the same which provide for parameters on registration, net worth criteria and security deposit, infrastructure requirements, standard operating procedure, issuance of EGR, inspection by SEBI, action against vault managers, maintenance of records, code of conduct, segregation of gold exchange and non- gold exchange business.</li> </ul>

The detailed proposals in relation to the framework proposed for gold exchange are provided under the SEBI Consultation Paper on the Proposed Framework for Gold Exchange in India and Draft SEBI (Vault Managers) Regulations, 2021 dated May 17, 2021 ([available here](#)) and public comments are invited till **June 18, 2021**.

### CONSULTATION PAPER ON "REVIEW OF THE REGULATORY FRAMEWORK OF PROMOTER, PROMOTER GROUP AND GROUP COMPANIES AS PER SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

SEBI has proposed following changes to the regulatory framework governing "promoters"/"promoter groups" under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**ICDR Regulations**):

- Reduced lock-in periods for minimum promoter's contribution and other shareholders;
- Deletion of holdings by common group of individuals from definition of 'Promoter Group';
- Reduced disclosures relating to group companies under offer documents;
- Shifting from concept of 'promoter' to concept of 'person in control';

Key proposals are summarized below:

#### A. Reduced lock-in periods for minimum promoter's contribution and other shareholders | Promoter's skin in the game

SEBI has laid down following proposals for reduction in lock-in period for promoters and other shareholder in case of an initial public offer (IPO), considering that presently majority of companies going public are well established with pre-existing institutional investors and the promoters have already demonstrated "skin in the game" for several years before proposing listing:

- Lock-in for minimum promoters' contribution of 20%:** Where the object of the issue involves offer for sale or financing other than for capital expenditure for a project, lock-in period is proposed to be reduced from 3 years to 1 year from the date of allotment in the IPO. Further, the shares held by Promoter(s) to be exempt from lock-in

requirements after 6 months from date of allotment in the IPO, only towards the purpose of achieving compliance with minimum public shareholding norms.

2. **Lock-in for the promoters' holding in excess of minimum promoters' contribution of 20%:** Lock-in period proposed to be reduced from 1 year to 6 months from the date of allotment in the IPO.
3. **Lock-in for entire pre-issue capital held by persons other than the promoters:** Lock-in period for the entire pre-issue capital held by persons other than the promoters proposed to be reduced from existing 1 year to 6 months from the date of allotment in the IPO.

#### **B. Rationalization of definition of "promoter group" | Deletion of holdings by common group of individuals**

Presently, where the promoter is a body corporate, promoter group includes any body corporate in which a group of individuals or companies or combinations thereof acting in concert, which hold 20% or more of the equity share capital in that body corporate and such group of individuals or companies or combinations thereof also holds 20% or more of the equity share capital of the issuer and are also acting in concert.

SEBI has now proposed to delete the aforesaid criterion with a view to ensure that unrelated companies especially ones with common financial investors do not get included in the definition of promoter groups.

#### **C. Reduced disclosures relating to group companies under offer documents**

Presently, plethora of disclosures are required to be made in the offer documents in relation to group companies, including disclosures relating to date of incorporation, nature of activities, equity capital, reserves, sales, profit after tax, earnings per share and diluted earnings per share, net asset value, pending litigation involving the group company which has a material impact on the issuer etc.

SEBI has now proposed that only the names and registered office address of all the group companies should be disclosed in the offer document and all other disclosure requirements like financials of top 5 listed/unlisted group companies, litigation etc., presently done in the Draft Red Herring Prospectus can be done away. However, these disclosures may continue to be made available on the websites of the listed companies.

#### **D. Shifting from the concept of "promoter" to "promoter in control"**

The identification of promoters and promoter groups in a company is material given that the freezing of promoter holdings is presently an important tool of enforcement in securities market. Presently, the term "promoter" has been defined as a person who has been named as such in the offer document or in the annual return of the issuer or a person who has control over the issuer (directly or indirectly) or in whose advice, directions or instructions the board of directors of the issuer is accustomed to act. Thus, the definition of promoter is wide-ranging and goes beyond persons in control of the issuer.

Considering that there has been a change in the ownership structure of companies and unlike earlier, now the control rights and ownership is not restricted completely in the hands of promoters/promoter groups but also in a number of private equity and institutional investors, SEBI has proposed a shift from the existing concept of promoter and promoter group to the concept of 'person in control' or 'controlling shareholders' and 'persons acting in concert', respectively.

The details of aforesaid proposals are provided under the SEBI Consultation Paper dated May 11, 2021 ([available here](#)) and public comments are invited till June 10, 2021.

We hope you have found this information useful. For any queries/clarifications please write to us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:

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