भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

CIR/IMD/DF/ 12 /2014 **June 17, 2014**

To,

All Recognised Stock Exchanges
All Registered Merchant Bankers
All Credit Rating Agencies
All Issuers, through stock exchanges, where they are listed.

Dear Sir/Madam,

Base Issue Size, Minimum Subscription, Retention of Over-Subscription Limit and further disclosures in the Prospectus for Public Issue of Debt securities

1. **<u>Minimum Subscription Limit</u>:**

    a) Section 69 of the Companies Act, 1956 specifies that no allotment shall be made of any share capital of a company, offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount has been subscribed. As per Schedule II to the Companies Act, 1956, the issuer is required to make a declaration about refund of the issue, if minimum subscription of 90% of the issue size is not received.

    b) However, for public issue of non-convertible debentures (NCDs), no such requirement is specified under Companies Act, 1956. Further, as per Regulation 12 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (SEBI ILDS Regulations), the issuer may decide the amount of minimum subscription, which it seeks to raise from public through issue of NCDs and disclose the same in the offer document.

    c) Companies Act, 2013 and the Rules made there under also do not specify the quantum of minimum subscription needed in case of public issues (both for equity and debt), but only requires disclosure of the same in the offer document.

    d) In view of the above, it has been decided that the minimum subscription for public issue of debt securities shall be specified as 75% of the base issue

e) size for both NBFCs and Non NBFC issuers. Further, if the issuer does not receive minimum subscription of its base issue size (75%), then the entire application monies shall be refunded within 12 days from the date of the closure of the issue. In the event, there is a delay, by the issuer in making the aforesaid refund, then the issuer shall refund the subscription amount along with interest at the rate of 15% per annum for the delayed period.

f) However, the issuers issuing tax-free bonds, as specified by CBDT, shall be exempted from the above proposed minimum subscription limit.

2. <u>Base Issue Size</u>:

In any public issue of debt securities, it has been decided that the Base Issue size shall be minimum Rs 100 crores.

3. <u>Retention of Over-Subscription Limit:</u>

a) Currently, in respect of public issue of NCDs, SEBI ILDS Regulations does not specify any maximum cap on the retention of over-subscription.

b) In general, issuers shall be allowed to retain the over-subscription money up to the maximum of 100% of the Base Issue size or any lower limit as specified in the offer document. However, for the issuers filing a shelf prospectus, they can retain oversubscription up to the rated size, as specified in their Shelf Prospectus.

c) The issuers of tax free bonds, who have not filed Shelf Prospectus, the limit for retaining the oversubscription shall be the amount, which they are authorised by CBDT to raise in a year or any lower limit, subject to the same being specified in the offer document.

4. <u>Further disclosures in the prospectus for Debt Issues:</u>

I. <u>"Objects of the issue"</u>

a) As per Schedule I of SEBI ILDS Regulations, companies making public issue of NCDs need to specify the "Object of the issue" in the offer document. However, detailed disclosure requirements, as required in case of equity issues are not specified under the SEBI ILDS Regulations.

b) On analysis of the various offer documents, filed by the issuers for public issue of NCDs, it is observed that almost none of the issuers gave concrete objectives for the issue. Most of the objectives stated are in the form of a blanket statement encompassing a lot of avenues for utilizing the monies raised through the issue.

c) In this regard, it is stated that the entities coming out with public issue of NCDs shall provide granular disclosures in their offer document, with regards to the "Object of the Issue" including the percentage of the issue proceeds earmarked for each of the “object of the issue”. Further, the amount earmarked for "General Corporate Purposes", shall not exceed 25% of the amount raised by the issuer in the proposed issue.

d) Further, it is understood that NBFCs are the most frequent users of the debt channel and most of the NBFCs utilize the issue proceeds for onward lending. In view of the same, NBFCs shall have to disclose in their offer document, the details with regards to the lending done by them, out of the issue proceeds of previous public issues, including details regarding the following:

    i. Lending policy;

    ii. Classification of loans/advances given to associates, entities /person relating to Board, Senior Management, Promoters, Others, etc. ;

    iii. Classification of loans/advances given to according to type of loans, sectors, maturity profile (less than one year, 1-3 yrs, 3-5 yrs, 5-10 yrs, etc.), denomination (loans of value below Rs. 50 lakhs, Rs. 50 Lakhs – 1 Cr; Rs. 1 Cr- 5 Cr, Rs. 5 Cr- 25 Cr, Rs. 25 Cr.-100 Cr etc,), geographical classification of borrowers, etc.;

    iv. Details of top ten borrowers including their name, address, exposure etc;

    v. Details of top ten loans, overdue and classified as non-performing in accordance with RBI Guidelines, in terms of exposure to those entities.

II. **<u>Disclosures in the offer document for public issue of NCDs</u>**:

Issuers coming out with public issues of NCDs need to make disclosure in accordance with the disclosure requirements as specified in Schedule II to Companies Act, 1956 (Chapter III of Companies Act, 2013) and disclosure requirements as specified in Schedule I of SEBI ILDS Regulations. In furtherance to the same, it has been decided that following additional disclosures have to be made in the Offer Document, by the issuers.

i. Offer document shall contain the following disclaimer clause in bold capital letters:

"It is to be distinctly understood that submission of offer document to the Securities and Exchange Board of India (SEBI) should not in any way be deemed or construed that the same has been cleared or approved by SEBI. SEBI does not take any responsibility either for the financial soundness of any scheme or the project for which the issue is proposed to be made or for the correctness of the statements made or opinions expressed in the offer document. The lead merchant banker, _______________ has certified that the disclosures made in the offer document are generally adequate and are in conformity with the SEBI (Issue and listing of Debt Securities) Regulations, 2008 in force for the time being. This requirement is to facilitate investors to take an informed decision for making investment in the proposed issue.

It should also be clearly understood that while the Issuer is primarily responsible for the correctness, adequacy and disclosure of all relevant information in the offer document, the lead merchant banker is expected to exercise due diligence to ensure that the issuer discharges its responsibility adequately in this behalf and towards this purpose, the lead merchant banker ________________ has furnished to SEBI a due diligence certificate dated _______________ which reads as follows:

(due diligence certificate submitted to the Board, as per Schedule II of SEBI ILDS Regulations, to be reproduced here)"

ii. Provisions relating to fictitious applications

iii. Declaration by board of directors that the underwriters, if any, have sufficient resources to discharge their respective obligations.

iv. Reservation in the Issue, if any

v. Utilization details regarding the Previous Issues of the issuer as well as the Group Companies

vi. Benefit / interest accruing to Promoters/Directors out of the object of the issue

vii. Details regarding material Contracts other than the contracts entered in the ordinary course of business and the material contracts entered within the previous 2 Years.

5. The provisions of this circular shall be applicable for the draft offer document for issuance of debt securities filed with the designated stock exchange on or after July 16, 2014.

6. 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.

7. This circular is available on SEBI website at www.sebi.gov.in.

Yours faithfully,

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