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SEBI/MRD/SE/AT/46/2003
December 22, 2003

**The Executive Directors/Managing Director/Administrators
Of All Stock Exchanges**

Dear Sir/Madam,

Sub: Secondary Market for Corporate Debt Securities - Clarifications

1. SEBI had issued a circular No.SEBI/MRD/SE/AT/36/2003/30/09 dated September 30, 2003 stipulating the conditions to be complied in respect of private placement of debt securities. These conditions governed three aspects, viz., issuance, listing and trading of privately placed debt securities.
2. The said circular was issued by SEBI after a consultative paper on the subject was placed on the web site of SEBI for public comments. Subsequent to the issuance of the circular, market participants have made representations and suggestions and sought clarifications on the various provisions of the circular from SEBI. A series of meetings were also held with them. Meanwhile, SEBI has vide press release dated November 25, 2003 granted a transition period up to March 31, 2004 to those issuer companies who had issued privately placed debt securities but did not list those securities prior to September 30, 2003 (the date of the circular) to enable them to comply with the provisions of the circular.
3. The clarifications sought and representations covered the following aspects :
 - 3.1 Applicability of the circular to
 - i. Type of issuer companies
 - ii. Prospective and existing issues
 - iii. Tenor of the debt instruments
 - 3.2 Extent of disclosures and applicability of DIP Guidelines
 - 3.3 Association of SEBI registered intermediaries, including merchant bankers
 - 3.4 Vetting of Offer document
 - 3.5 Whether the requirement of 1% deposit with the stock exchange/s is mandatory
 - 3.6 Applicability of minimum subscription clause as per DIP guidelines
 - 3.7 Credit rating
 - 3.8 Listing through a separate listing agreement
 - 3.9 Denomination for issuance and market lot for trading
 - 3.10 Trading of securities on the stock exchanges.

4. The clarifications to the above are as follows:

4.1 Applicability of the circular

i. Type of Issuer companies

- a) The SEBI circular dated September 30, 2003 would be applicable to all listed companies which have any of their securities, either equity or debt, offered through an offer document, i.e., through a public issue and listed on a recognized stock exchange and also includes Public Sector Undertakings whose securities are listed on a recognized stock exchange.
- b) Further, unlisted companies/statutory corporations/other entities, if they so desire, may get their privately placed debt securities listed in the stock exchanges, by complying with the relevant provisions of the said circular.

ii. Prospective and existing issues

- a) The SEBI circular is applicable to all debt securities that have been and would be issued on a private placement basis on or after the date of the circular, i.e., September 30, 2003.
- b) The circular would also apply to those issuer companies whose outstanding debt securities were issued prior to September 30, 2003. However, such issuer companies are required to comply with the provisions of the circular before March 31, 2004 for which transition time was provided vide press release dated November 25, 2003.
- c) If, however, the issuer companies do not comply with the aforesaid conditions for listing of such securities before March 31, 2004, then such securities would remain unlisted and, would, therefore, not be permitted for trading in the Stock Exchange trading platform from April 01, 2004.

iii. Tenor of the debt instruments

The SEBI circular would not be applicable for private placement of debt securities having a maturity of less than 365 days.

4.2 Extent of disclosures and applicability of DIP Guidelines

- a) As already stipulated in the circular dated September 30, 2003 the issuer companies shall make full disclosures (initial and continuing) in the manner prescribed in Schedule II of the Companies Act, 1956, Chapter VI of the SEBI (DIP) Guidelines, 2000 and the listing agreement with the stock exchanges.
- b) Such disclosures may be made through the web site of the stock exchanges where the debt securities are sought to be listed if the privately placed debt securities are issued in the standard denomination of Rs. 10 lakhs.
- c) The issuer companies which make frequent private placements of debt securities would be permitted to file an umbrella offer document on the lines of a “Shelf prospectus” as applicable for a public issue.
- d) As regards financial disclosures, issuer companies which are not in a position, for genuine reasons, to disclose audited accounts upto a date not earlier than six months of the date of the offer document, in terms of provisions of Clause 6.18 of SEBI (DIP) Guidelines, 2000 may disclose the audited accounts for the last financial year and un-audited accounts for the subsequent quarters with a limited review by a practicing Chartered Accountant.
- e) It is also being clarified that the provisions other than Chapter VI of SEBI (DIP) Guidelines, 2000 will not be applicable for privately placed debt securities.

4.3 Association of SEBI registered intermediaries, including merchant bankers

- a) The appointment of intermediaries (other than debenture trustee) for private placement of debt securities is not mandatory.
- b) Since engaging the services of an intermediary (other than debenture trustee) is not mandatory, the appointment of such an intermediary would be left to the discretion of the issuer company, as it deems fit.

- c) There is no prohibition on SEBI registered intermediaries to be associated with the privately placed unlisted debt securities. However, such intermediaries would be accountable for their activities. Further, they would be required to furnish periodical reports to SEBI in such format as specified by SEBI from time to time.

4.4 Vetting of offer document

There is no requirement of vetting of the offer document by SEBI.

4.5 Whether the requirement of 1% deposit with the stock exchange/s is mandatory

There is no requirement to deposit 1% of the issue size of the privately placed debt securities with the stock exchanges.

4.6 Applicability of minimum subscription clause as per DIP guidelines

This clause will not be applicable for privately placed debt securities.

4.7 Credit rating

The debt securities shall carry a credit rating from a Credit Rating Agency registered with SEBI.

4.8 Listing through a separate listing agreement

The separate Listing Agreement for listing the privately placed debt securities is being finalised. Till such time, the issuance process would be allowed and the securities may be listed on the basis of disclosures subject to the issuer company furnishing an undertaking to the Stock Exchanges stating, inter-alia, that the issuer company shall sign the Listing Agreement as soon as the same comes into force.

4.9 Denomination for issuance and market lot for trading

- a) The privately placed debt securities need not necessarily be issued in denomination of Rs. 10 lakhs.
- b) The securities shall be issued in demat form.

- c) However, if an investor is allotted securities of Rs.1 lakh or less, such securities may be issued in physical form at the option of the investor. It shall be disclosed by the issuer companies that such investors would not be able to trade in such securities through the stock exchange mechanism.

4.10 Trading of securities on the stock exchanges

- a) The trading in the privately placed debt securities would be permitted in standard denomination of Rs. 10 lakhs in the anonymous, order driven system of the stock exchanges in a separate trading segment. The marketable lot would be Rs. 10 lakhs.
- b) All class of investors would be permitted to trade subject to the said standard denomination/marketable lot.
- c) The trades executed on spot basis shall be required to be reported to the stock exchange/s.

5. The stock exchanges are directed to:

- make necessary amendments to the listing agreement, bye- laws, rules and regulations for the implementation of the above decision immediately, as may be applicable and necessary.
- bring the provisions of this circular to the notice of the listed companies/member brokers/clearing members of the Exchange and also to disseminate the same on the website for easy access to the investors; and
- communicate to SEBI, the status of the implementation of the provisions of this circular in Section II, item no. 13 of the Monthly Development Report for the month of January, 2004.

6. This circular is being issued in exercise of powers conferred by 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 market.

Yours faithfully,

V S SUNDARESAN