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SEBI/CFD/DIL/ICDRR/1/2009/03/09

September 3, 2009

To,

**All Registered Merchant Bankers**

**All Recognized Stock Exchanges**

Dear Sirs,

**Sub.: Notification of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009**

1. SEBI (hereinafter referred to as “the Board”) has been empowered in terms of section 11A(1)(a) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “the Act”) to specify by regulations, for the protection of investors, the matters relating to issue of capital, the manner in which such matters shall be disclosed and other matters incidental thereto.
2. Accordingly, in exercise of powers conferred by section 30 of the Act, the Board has framed the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “the ICDR Regulations”), which have been notified on August 26, 2009.
3. The ICDR Regulations have been made primarily by conversion of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (since rescinded) (hereinafter referred to as “the rescinded Guidelines”).
4. While incorporating the provisions of the rescinded Guidelines into the ICDR Regulations, certain changes have been made by removing the redundant provisions, modifying certain provisions on account of changes necessitated

due to market design and bringing more clarity to the provisions of the rescinded Guidelines. The significant changes are listed in **Annexure I** to this circular for easy reference. Merchant bankers are, however, advised to refer to the exact provisions of the ICDR regulations for doing due diligence and ensuring compliance with the ICDR regulations.

5. Merchant Bankers are also advised to continue to comply with the following instruction circulars, contents of which do not form part of the ICDR Regulations and shall therefore continue to remain in force. In this context, merchant bankers are advised to note that any reference to the provisions of the rescinded Guidelines in these circulars shall be deemed to be a reference to the corresponding provisions of the ICDR Regulations.

<b>Sr. No.</b>	<b>Circular No.</b>	<b>Date of circular</b>	<b>Subject matter in brief</b>
(i)	SEBI/CFD/DIL/DIP/01/2006/20/1	January 20, 2006	Specifying the number of centres for refunds through ECS, NEFT, etc.
(ii)	SEBI/CFD/DIL/DIP/29/2008/01/02	February 1, 2008	Extending the number of centres for refund through ECS, NEFT, etc.
(iii)	SEBI/CFD/DIL/MB/IS/1/2008/11/03	March 11, 2008	<ul style="list-style-type: none"> <li>• Requirements pertaining to PAN for issue applications</li> <li>• Procedure for addressing issue related complaints</li> </ul>
(iv)	SEBI/CFD/DIL/DIP/31/2008/30/7	July 30, 2008	Features of ASBA process
(v)	SEBI/CFD/MB/IS/3/2008/29/08	August 29, 2008	<ul style="list-style-type: none"> <li>• Effective date of ASBA process</li> <li>• Clarification of clause</li> </ul>

			2.8 of the rescinded Guidelines
(vi)	SEBI/CFD/DIL/2008/25/09	September 25, 2008	Introduction of ASBA process in rights issues
(vii)	SEBI/CFD/DIL/MB/IS/5/2009/05/08	August 5, 2009	Clarification on payment of commission in respect of ASBA applications

6. The rescinded Guidelines contained certain provisions pertaining to regulation of the activities of merchant bankers, debenture trustees and registrars to an issue. These provisions have now been incorporated in the respective regulations, through Schedule XX of the ICDR Regulations.
7. The rescinded Guidelines also contained a provision relating to compliance of listing conditions by a listed issuer. A circular of even date has been issued to all recognised stock exchanges for amending their equity listing agreements.
8. Further, the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 (hereinafter referred to as “the SEBI (ESOS and ESPS) Guidelines”) contained certain provisions which were required to be complied with by an unlisted issuer at the time of making an initial public offer. These provisions have now been incorporated in the ICDR Regulations and consequently removed from the SEBI (ESOS and ESPS) Guidelines, through issuance of a circular of even date.
9. In terms of regulation 111 of the ICDR Regulations, any offer document, whether draft or otherwise, filed under the rescinded Guidelines and pending before the Board or any observation made in respect of any offer document, draft or otherwise, filed in respect of the rescinded Guidelines shall be deemed to have been filed or made under the corresponding provisions of the ICDR

Regulations. In this context, merchant bankers are advised to be guided by the contents of **Annexure II** to this circular.

10. This circular and the text of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as notified on August 26, 2009 are available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories “Legal Framework” and “Issues and Listing”.

Yours faithfully,

Neelam Bhardwaj

**Encl.:** As above.

## ANNEXURE I

## SIGNIFICANT CHANGES REFERRED TO IN PARA 4 OF THIS CIRCULAR

Sr. No.	Subject Matter	Provision under the rescinded Guidelines	Provision under the ICDR Regulations
1.	Exemption from eligibility norms for making an IPO	Exemption available to banking company, corresponding new bank and infrastructure company.	Exemption removed. Eligibility norms made applicable uniformly to all types of issuers.
2.	Debarment	Company prohibited from making an issue of securities if it had been prohibited from accessing the capital market under any order or direction passed by the Board.	Issuer not to make public issue or rights issue of specified securities if: (a) the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred from accessing the capital market by the Board; (b) if any of the promoters, directors or persons in control of the issuer was or also is a promoter, director or person in control of any other company which is debarred from accessing the capital market under any order or directions made by the Board.
3.	Offer for sale by listed companies	No provision.	Provided for.
4.	OTCEI Issues and E-IPO	Contained in Chapter XIV and Chapter XI A.	Omitted.
5.	Firm allotment in public issues	Permitted.	Omitted.
6.	Reservation on competitive basis in public issues	(a) For Indian and multilateral development financial institutions, Indian mutual funds, foreign institutional investors and scheduled banks. (b) For shareholders of the	(a) Omitted. (b) For shareholders (other than

		promoting companies in the case of a new company and shareholders of group companies in the case of an existing company.	promoters) in respect of listed promoting companies, in case of a new issuer and listed group companies, in case of an existing issuer.
7.	Book building process	Book building process through 75% or 100% of issue size.	75% book building route omitted.
8.	Allotment/ refund period in public issues	30 days for fixed price issues and 15 days for book built issues.	15 days for both fixed price and book built issues.
9.	Disclosure of price or price band	Required in draft prospectus in case of fixed price public issues.	Not required to be disclosed in draft prospectus.
10.	Transfer of surplus money in Green Shoe Option (GSO) Bank Account	Surplus money to be transferred to Investor Protection Fund of Stock Exchanges.	Surplus money to be transferred to Investor Protection and Education Fund (IPEF) established by the Board.
11.	Issue period for Infrastructure companies in public issues	21 days, as against 10 days for other issues.	Uniform period of 10 days for all types of issuers.
12.	Currency of financial statements disclosed in the offer document	Particulars as per audited financial statements not to be more than 6 months old from the issue opening date for all issuers, except Government companies.	Government and non-government issuers treated at par.
13.	Definition of "Key Management Personnel"	Not defined.	Defined.
14.	Disclosure on pledge of shares by promoters	Not provided.	Provided for.
15.	Extent of	Not explicit.	Where 100% of the offer through

	underwriting obligation		offer document is underwritten, underwriting obligations shall be for the entire amount underwritten.
16.	Financial institution as a monitoring agency	The term "Financial Institution" open to interpretation.	The term "financial Institution" replaced by "public financial institution or a scheduled commercial bank".
17.	Definition of "employee"	Includes permanent employee/ director of subsidiary or holding company of the issuer.	Excludes permanent employee/ director of subsidiary or holding company of the issuer and promoters and immediate relatives of promoters.
18.	Restrictions on advertisements	If issue opening and closing advertisement contained highlights, then the advertisement required to contain risk factors.	If advertisement contains information other than the details specified in the format for issue advertisement, the advertisement shall contain risk factors.
19.	Forfeiture of money on unexercised warrants in preferential issues	Open to interpretation.	Where the warrant holder exercises his option to convert only some of the warrants held by him, upfront payment made against only such warrants can be adjusted. The balance upfront payment made against the remaining unexercised warrants shall be forfeited.
20.	Outstanding convertible instruments in case of initial public offer (IPO)	Compulsory conversion of outstanding convertible instruments and other rights held by promoters or shareholders.	Compulsory conversion of all outstanding convertible instruments held by any person.
21.	Minimum promoters' contribution	Could be brought in by promoters/ persons belonging to promoter group/friends, relatives and associates of promoters.	Shall be brought in only by promoters whose identity, photograph, etc are disclosed in the offer document.
22.	Issue period in case of public issues	Issue period not clear in case of revision in price band in book built public issues.	Total issue period not to exceed 10 days, including any revision in price band.

23.	Timing of pre-issue advertisement for public issues	Pre-issue advertisement to be made immediately after receipt of observations from the Board.	Pre-issue advertisement to be made after registering of prospectus/ red herring prospectus with Registrar of Companies before opening of the issue.
24.	Documents to be attached with due diligence certificate	Documents such as memorandum of association and articles of association of the company, audited balance sheet, checklist for compliance with the rescinded Guidelines etc.	Only checklist to be attached.
25.	Group companies	The term "group companies" not explained.	The term "group companies" explained.



## ANNEXURE II

**APPLICABILITY OF THE ICDR REGULATIONS IN RESPECT OF DRAFT OFFER DOCUMENTS FILED UNDER THE RESCINDED GUIDELINES**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Applicability of the ICDR Regulations</b>
1.	Draft offer documents filed, but observations yet to be issued by the Board	Such draft offer documents would be considered as filed with the Board under the corresponding provisions of the ICDR Regulations. Merchant bankers may, however, be required to submit a checklist confirming compliance with the corresponding provisions of the ICDR Regulations.
2.	Observations issued by the Board under the rescinded Guidelines, but in-seriatim reply yet to be filed by merchant bankers	In-seriatim reply shall be filed in terms of the ICDR Regulations and while doing so, merchant bankers shall submit a checklist, along with a confirmation that all the provisions of the ICDR Regulations have been duly complied with.
3.	(a) In-seriatim reply filed with the Board under the rescinded Guidelines (b) Offer document yet to be registered with the Registrar of Companies (ROC) / filed with the designated stock exchange (DSE), as the case may be	Merchant bankers shall be required to submit a checklist, along with a confirmation that all the provisions of the ICDR Regulations have been duly complied with, before registering/ filing the offer document with the ROC/ DSE, as the case may be.
4.	Offer document registered with the ROC / filed with the designated stock exchange, as the case may be	Merchant bankers may proceed with the issue.