

## Corpsec Hotline

January 05, 2008

### INDIAN CORPORATE DEBT MARKET – ALL SET FOR A REVAMP

The Indian corporate debt market, which for long remained an investment destination primarily for Banks, financial institutions and few private players, is all geared to reach out to the masses. As a positive step towards creating a robust corporate debt market, the market regulator, Securities and Exchange Board of India ("SEBI") has on Thursday, January 3, 2008, announced a consultative paper on draft Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 ("**Debt Securities Regulations**"). SEBI has invited public comments on the consultative paper, which should be submitted before January 23, 2008, beyond which SEBI will formulate its final view and is likely to finalise the proposed Regulations.

The corporate debt market in India has lagged far behind the equity market, which has witnessed radical transformation during the last few years. The debt market continued to remain a less preferred choice for the issuers due to absence of sound reforms in that segment. Further, the rigorous and onerous disclosure requirements and enormous time-line involved in such public issue of debt securities discouraged the issuers from accessing public debt market and favoured raising of funds from banks / institutions, including through private placement of debt securities. The increase in the number of private placements and the poor growth of primary debt market, in turn, adversely affected the secondary debt market, which remained highly illiquid. Also, inadequate / marginal trading of such debt securities lead to non transparent pricing of such securities. This propelled SEBI to take a number of measures during the last few years to develop a dynamic corporate debt market and the Debt Securities Regulations are a step in that direction.

#### Key highlights

The key highlights of the draft Debt Securities Regulations are as follows:

1. The proposed Regulations govern issuance and listing of debt securities which are not convertible, either in whole or in part into equity instruments.
2. At the time of public issue, the disclosure requirements would be bifurcated into a more detailed and simplified one, depending on whether the equity shares of that issuer are already listed. In case of issuance of debt securities by companies whose shares are already listed, since vast amounts of corporate information are already available in public domain, marginal incremental disclosures would be sufficient. For companies whose equity is not listed, raising debt capital would require detailed disclosures, but that would also be fewer than equity securities related disclosures.

Similarly, it is proposed to have two (2) kinds of listing agreements for listed debt securities. A simple one in case the equity shares of the issuer are already listed and a more detailed one in the other event.

1. In case of private placement of debt instruments, which would be listed on the stock exchanges, the issuer need not file an offer document with SEBI and would only be required to comply with the disclosure norms specified in the listing agreement and the Debt Securities Regulations. The draft offer document, in line with Schedule II of the Companies Act, 1956, needs to be filed with SEBI only in case of public offer of debt securities, and such offer document would be displayed on the website of SEBI for a period of seven (7) working days.
2. As per Section 67(3) of the Companies Act, 1956, Public Financial Institutions and Non-Banking Financial Companies are allowed to make private placement of securities to fifty (50) persons or more. In order to develop corporate debt market, it is proposed that such issuance of debt securities to 50 persons or more would require compulsory listing and specific disclosures.
3. Unlisted companies making private placement of debt securities may list its securities on a recognized stock exchange. SEBI may waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by the Securities Contracts (Regulation) Rules, 1957, for listing of such privately placed debt securities.
4. The proposed Regulations seek to create an enabling mechanism for e-issuance of debt securities to the public.
5. The responsibility of merchant bankers has been enhanced. They are expected to exercise proper due diligence and certify the issue of debt securities.

#### Implications

- The proposed Regulations are aimed at simplifying the public issuance and listing of debt securities and thereby making such issuance less time consuming and cost effective.
- It is proposed to do away with onerous disclosure requirement at the time of public issue, especially in case of

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issuance of debt securities by listed companies. From the issuer's perspective this would be a welcome move, as it would avoid duplication of information which is otherwise available in public domain.

- The introduction of e-issuance of debt securities could result in faster and cost-effective debt rising by the companies. The mechanics of the e-issuance are being worked out by SEBI and its effectiveness will still need to be seen.
- Simplification of public issue of debt securities is expected to reduce the pre-dominance of private placement in debt market, which could increase the liquidity of debt instruments in the secondary market. However, it is imperative that an active and developed primary corporate debt market is supported by a well developed, liquid and equally active secondary corporate debt market. Though SEBI has recently introduced series of initiatives to develop the secondary debt market like setting up of trading platforms at Bombay Stock Exchange Limited ("BSE") and the National Stock Exchange of India Ltd. ("NSE"), mandatory reporting of Over-the-Counter (OTC) trades in corporate bonds on the reporting platform of BSE and NSE, providing clearing and settlement services for trades undertaken in debt market, extending services of Electronic Clearing Services, etc., it remains to be seen how effectively the reforms in the primary and secondary market supplement each other to fulfill the vision of SEBI to set up a vibrant, transparent and dynamic corporate debt market.

Source: *Consultative paper on draft SEBI (Issue and Listing of Debt Securities) Regulations, 2008*

**- Vaidhyadnan Iyer & Vyapak Desai**

You can direct your queries or comments to the authors

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