ANNEX 1

Guidelines on Perpetual Non-Cumulative Preference Shares (PNCPS) as part of Tier I capital

1. Terms of Issue

1.1. Limits

The outstanding amount of Tier I Preference Shares along with Innovative Tier 1 instruments shall not exceed 40% of total Tier I capital at any point of time. The above limit will be based on the amount of Tier I capital after deduction of goodwill and other intangible assets but before the deduction of investments. Tier I Preference Shares issued in excess of the overall ceiling of 40% shall be eligible for inclusion under Upper Tier II capital, subject to limits prescribed for Tier II capital. However, investors' rights and obligations would remain unchanged.

1.2. Amount

The amount of PNCPS to be raised may be decided by the Board of Directors of banks.

1.3. Maturity

The PNCPS shall be perpetual.

1.4. Options

(i) PNCPS shall not be issued with a 'put option' or 'step up option'.

(ii) However, banks may issue the instruments with a call option at a particular date subject to following conditions:

(a) The call option on the instrument is permissible after the instrument has run for at least ten years; and

(b) Call option shall be exercised only with the prior approval of RBI (Department of Banking Operations & Development). While considering the proposals received from banks for exercising the call option the RBI would, among other things, take into consideration the bank's CRAR position both at the time of exercise of the call option and after exercise of the call option.

1.5. Classification in the Balance sheet

These instruments will be classified as capital and shown under 'Schedule I-Capital' of the Balance sheet.

1.6. Dividend

The rate of dividend payable to the investors may be either a fixed rate or a floating rate referenced to a market determined rupee interest benchmark rate

1.7. Payment of Dividend

(a) The issuing bank shall pay dividend subject to availability of distributable surplus out of current year's earnings, and if

(i) The bank's CRAR is above the minimum regulatory requirement prescribed by RBI;

(ii) The impact of such payment does not result in bank's capital to risk weighted assets ratio (CRAR) falling below or remaining below the minimum regulatory requirement prescribed by Reserve Bank of India;

(iii) In the case of half yearly payment of dividends, the balance sheet as at the end of the previous year does not show any accumulated losses; and

(iv) In the case of annual payment of dividends, the current year's balance sheet does not show any accumulated losses

(b) The dividend shall not be cumulative. i.e., dividend missed in a year will not be paid in future years, even if adequate profit is available and the level of CRAR conforms to the regulatory minimum. When dividend is paid at a rate lesser than the prescribed rate, the unpaid amount will not be paid in future years, even if adequate profit is available and the level of CRAR conforms to the regulatory minimum.

(c) All instances of non-payment of dividend/payment of dividend at a lesser rate than prescribed in consequence of conditions as at (a) above should be reported by the issuing banks to the Chief General Managers-in-Charge of Department of Banking Operations & Development and Department of Banking Supervision, Central Office of the Reserve Bank of India, Mumbai.

1.8 **Seniority of claim**

The claims of the investors in PNCPS shall be senior to the claims of investors in equity shares and subordinated to the claims of all other creditors and the depositors.

Other conditions

(a) PNCPS should be fully paid-up, unsecured, and free of any restrictive clauses.

(b) Investment by FIIs and NRIs shall be within an overall limit of 49% and 24% of the issue respectively, subject to the investment by each FII not exceeding 10% of the issue and investment by each NRI not exceeding 5% of the issue. Investment by FIIs in these instruments shall be outside the ECB limit for rupee denominated corporate debt as fixed by Government of India from time to time. The overall non-resident holding of Preference Shares and equity shares in public sector banks will be subject to the statutory / regulatory limit.

(c) Banks should comply with the terms and conditions, if any, stipulated by SEBI / other regulatory authorities in regard to issue of the instruments.

2. **Compliance with Reserve Requirements**

(a) The funds collected by various branches of the bank or other banks for the issue and held pending finalisation of allotment of the Tier I Preference Shares will have to be taken into account for the purpose of calculating reserve requirements.

(b) However, the total amount raised by the bank by issue of PNCPS shall not be reckoned as liability for calculation of net demand and time liabilities for the purpose of reserve requirements and, as such, will not attract CRR / SLR requirements.

3. **Reporting Requirements**

3.1 Banks issuing PNCPS shall submit a report to the Chief General Manager-in-charge, Department of Banking Operations & Development, Reserve Bank of India, Mumbai giving details of the capital raised, including the terms of issue specified at item 1 above together with a copy of the offer document soon after the issue is completed.

3.2 The issue-wise details of amount raised as PNCPS qualifying for Tier I capital by the bank from FIIs / NRIs are required to be reported within 30 days of the issue to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai 400 001 in the proforma given in the Appendix. The details of the secondary market sales / purchases by FIIs and the NRIs in these instruments on the floor of the stock exchange shall be reported by the custodians and designated banks, respectively to the Reserve Bank of India through the soft copy of the LEC Returns, on a daily basis, as prescribed in Schedule 2 and 3 of the FEMA Notification No.20 dated 3rd May 2000, as amended from time to time.

4. **Investment in perpetual non-cumulative Preference Shares issued by other banks/ FIs**

(a) A bank's investment in PNCPS issued by other banks and financial institutions will be reckoned along with the investment in other instruments eligible for capital status while computing compliance with the overall ceiling of 10 percent of investing banks' capital funds as prescribed vide circular DBOD.BP.BC.No.3/ 21.01.002/ 2004-05 dated 6th July 2004.

(b) Bank's investments in PNCPS issued by other banks / financial institutions will attract a 100% risk weight for capital adequacy purposes.

(c) A bank's investments in the PNCPS of other banks will be treated as exposure to capital market and be reckoned for the purpose of compliance with the prudential ceiling for capital market exposure as fixed by RBI.

5. **Grant of advances against Tier I Preference Shares**

Banks should not grant advances against the security of the PNCPS issued by them.