RBI /2008-09 /253
DNBS (PD) CC. No.131 /03.05.002 / 2008-2009

October 29, 2008

All Non-Deposit taking Non-Banking
Finance Companies with assets size of Rs 100 crore and above

Dear Sir

Enhancement of NBFCs' capital raising option for capital adequacy purposes

Taking into consideration, the need for enhanced funds for increasing business and meeting regulatory requirements, it has been decided that Systemically Important Non-Deposit taking Non-Banking Financial Companies (NBFCs-ND-SI) may augment their capital funds by issue of Perpetual Debt Instruments (PDI) in accordance with the guidelines contained in the Annex. Such PDI shall be eligible for inclusion as Tier I Capital to the extent of 15% of total Tier I capital as on March 31 of the previous accounting year.

2. The minimum investment in each such issue/tranche by single investor shall not be less than Rs 5 lakh. The amount of funds raised by NBFCs-ND-SI shall not be treated as 'public deposit' within the meaning of clause 2 (1)(xii) of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998.

3. The, amount of PDI in excess of amount admissible as Tier I shall qualify as Tier II capital within the eligible limits.

4. Amending Notifications DNBS (PD) Notification No. 203 (PK)/2008-09 amending Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 and DNBS(PD) Notification No. 202 (PK)/2008-09 amending Non-Banking Financial (Non- Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 are enclosed.

Yours faithfully

(P. Krishnamurthy)
Chief General Manager-In-Charge

Annex

Terms and conditions applicable to Perpetual Debt Instruments (PDI) for being eligible for inclusion in Tier I capital

The Perpetual Debt Instruments (PDI) may be issued as bonds or debentures by NBFCs-ND-SI on the following terms and conditions to qualify for inclusion as Tier I Capital or Tier II Capital, as the case may be, for capital adequacy purposes.

1. Terms of Issue of PDI

i) Currency of issue

PDIs shall be issued in Indian Rupees only.

ii) Amount

The aggregate amount to be raised by issue of such instruments shall be within the overall limits of Tier I and Tier II as explained in clause (iii) below. It may be raised in tranches. However, the minimum investment by single investor in each such issue/tranche shall be Rs 5 lakh.

iii) Limits

PDI shall be eligible to be treated as Tier I capital upto 15 per cent of total Tier I capital. The above limit will be based on the amount of Tier I capital as on March 31 of previous year after deduction of goodwill and other intangible assets but before the deduction of investments.

The, amount of PDI in excess of amount admissible as Tier I shall qualify as Tier II capital subject to provisions contained in paragraph 2(1)(xxi) of the Non-Banking Financial (Non- Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007.

iv) Maturity period

The PDI shall be perpetual.

v) Rate of interest

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

vi) Options

NBFCs-ND-SI shall issue PDI as plain vanilla instruments only.

However NBFCs-ND-SI may issue PDI with a 'call option' subject to strict compliance with each of the following conditions:

(a) that the instrument has run for a minimum period of ten years from the date of issue;

and

(b) Call option shall be exercised only with the prior approval of RBI. While considering the proposals received from NBFCs-ND-SI for exercising the call option the RBI would, among other things, take into consideration the NBFC's CRAR position both at the time of exercise of the call option and after the exercise of the call option.

vii) Step-up option

The issuing NBFC-ND-SI may have a step-up option for increasing the rate of interest payable on PDIs. Such option may be exercised only once during the whole life of the instrument after the lapse of ten years from the date of issue. The step-up shall not be more than 100 bps in reference to interest rate advertised in terms of offer document under clause (v) above. The limits on step-up apply to the all-in cost of the debt to the issuing NBFCs.

viii) Lock-In Clause

(a) PDI shall be subjected to a lock-in clause in terms of which the issuing NBFCs-ND-SI may defer the payment of interest, if

- the NBFC's CRAR is below the minimum regulatory requirement prescribed by RBI; or
- the impact of such payment results in NBFC's capital to risk assets ratio (CRAR) falling below or remaining below the minimum regulatory requirement prescribed by Reserve Bank of India;

(b) However, NBFCs-ND-SI may pay interest with the prior approval of RBI when the impact of such payment may result in net loss or increase the net loss, provided the CRAR remains above the regulatory norm.

(c) The interest shall not be cumulative except in cases as in (a).

(d) All instances of invocation of the lock-in clause shall be notified by the issuing NBFCs-ND-SI to the Regional Office of Department of Non-Banking Supervision of the Reserve Bank of India in whose jurisdiction NBFC is registered.

ix) Seniority of claim

The claims of the investors in PDI shall be

a) Superior to the claims of investors in equity shares; and
b) Subordinated to the claims of all other creditors.

x) Discount

The PDI instruments shall not be subjected to a progressive discount for capital adequacy purposes since these are perpetual.

xi) Other conditions

a) PDI shall be fully paid-up, unsecured, and free of any restrictive clauses and the issue of PDI and the terms and conditions applicable thereto shall be compliant with the provisions of Companies Act, 1956 and all other laws for the time being in force including the rules, regulations, directions and guidelines issued by the applicable regulatory authorities.

b) Subject to compliance with extant FEMA Regulations, NBFCs shall obtain prior approval of the Reserve Bank of India, on a case-by-case basis, for investment by FIIs/NRIs in PDI to be raised by a NBFC-ND-SI in Indian Rupees.

c) NBFCs-ND-SI shall comply with the terms and conditions, if any, stipulated by SEBI/other regulatory authorities in regard to issue of the instruments.

d) The investment by other NBFCs in such instruments issued by an NBFC-ND-SI shall be governed by the provisions of definition of Net Owned Fund (NOF) as provided in explanation to Section 45-IA of the RBI Act. As such, investment in excess of 10% of the owned fund of NBFC will be deducted from Owned Fund to arrive at NOF of the NBFC.

2. Reporting Requirements

NBFCs-ND-SI issuing such instruments shall submit a report to the Regional Office in whose jurisdiction the NBFC is registered giving details of the debt 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. Investment in PDI issued by other NBFCs-ND-SI

An NBFC's investment in PDI issued by other NBFCs-ND-SI and financial institutions will be subject to definition of Net Owned Fund as defined in Section 45-IA of the RBI Act, 1934 and will attract risk weight as prescribed in Non-Banking Financial (Non- Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007.

4. Grant of advances against PDI

NBFCs-ND-SI shall not grant advances against the security of the PDI issued by them.

5. Disclosure Requirement

(I) NBFCs-ND-SI shall make suitable disclosures in their Annual Report about:

(i) Amount of funds raised through PDI during the year and outstanding at the close of the financial year;

(ii) Percentage of the amount of PDI of the amount of its Tier I Capital;

(iii) Mention the financial year in which interest on PDI has not been paid in accordance with clause 1(viii) above.

(II) While framing policy as regards PDI, the Board of Directors of the NBFCs-ND-SI shall ensure that sufficient disclosures are made to the investor which clarify the type of the instrument, the risks associated and its uninsured nature so as to enable the investor to make informed investment decision. The offer document shall contain a clause that the investor may make investment decision on the basis of its own analysis and the RBI does not accept any responsibility about repayment of such investment. The policy evolved by the NBFCs-ND-SI shall also include provision as regards factors to be taken into account by the NBFC to demonstrate that it can meet extra load in case the company decides to step up the rate of interest under clause 1(vii) above. Board of Directors shall ensure strict compliance with all the terms and conditions set forth above.

RESERVE BANK OF INDIA
DEPARTMENT OF NON-BANKING SUPERVISION
CENTRAL OFFICE
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Notification No. DNBS. (PD) 202 / CGM(PK)-2008 dated October 29,2008

The Reserve Bank of India, having considered it necessary in public interest and being satisfied that, for the purpose of enabling the Bank to regulate the credit system to the advantage of the country, it is necessary to amend the Non-Banking Financial (Non- Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 contained in Notification No. DNBS. 193/DG(VL)-2007 dated February 22, 2007 in exercise of the powers conferred by section 45JA of the Reserve Bank of India Act, 1934 (2 of 1934) and of all the powers enabling it in this behalf, hereby directs that the said directions shall be amended with immediate effect as follows, namely -

1. In paragraph 2, in clause (1), in sub clause (xx), after the words, 'ten percent of the Owned Fund;' the following words shall be inserted, namely,
"and perpetual debt instruments issued by a Systemically important non-deposit taking non-banking financial company in each year to the extent it does not exceed 15% of the aggregate Tier I Capital of such company as on March 31 of the previous accounting year;"

2. In paragraph 2, in clause (1), in sub clause (xxi), in item (d), after the words 'hybrid debt capital instruments;' the word, 'and' shall be omitted.

3. In paragraph 2, in clause (1), in sub clause (xxi), after item (e), the following words, brackets and figures shall be inserted, namely,

"; and

(f) perpetual debt instruments issued by a Systemically important non-deposit taking non-banking financial company which is in excess of what qualifies for Tier I Capital"

(P. Krishnamurthy)
Chief General Manager In-Charge

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Notification No. DNBS (PD). 203 / CGM (PK)-2008 dated October 29 , 2008

The Reserve Bank of India, having considered it necessary in the public interest and being satisfied that for the purpose of enabling the Bank to regulate the credit system to the advantage of the country, it is necessary to amend the Non-Banking Financial Companies Acceptance of Public Deposit (Reserve Bank) Directions, 1998, in exercise of the powers conferred by Sections 45J, 45K, 45L and 45MA of the Reserve Bank of India Act, 1934 (2 of 1934) and of all the powers enabling it in this behalf, hereby directs that the said directions contained in Notification No. DFC. 118 / DG (SPT) / 98 dated January 31, 1998 stand amended, with immediate effect, as follows, namely -

2. In paragraph 2, in sub-paragraph (1), in clause (xii), after sub-clause (k), the following new sub-clause shall be inserted, namely -

> " (l) any amount received by a Systemically important non-deposit taking non-banking financial company by issuance of 'perpetual debt instruments' in accordance with Company Circular DNBS (PD) CC. No. 131 /03.05.002 /2008-2009 dated October 29, 2008 as amended from time to time ".

(P. Krishnamurthy)
Chief General Manager In-Charge