Notice

The Securities and Exchange Commission (SEC) hereby publishes the Draft amendment to the Securities and Exchange Commission (Public Issue) Rules, 2006 in the newspaper as per the requirement of section 33 of the Securities and Exchange Ordinance, 1969 for eliciting public opinion, etc.

Opinion, advice or objection, if any, thereon will have to be sent to the following address within two weeks from the date of publication of the draft amendment.

Chairman
Securities and Exchange Commission
Jiban Bima Tower (15, 16 & 20th Floor)
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Dhaka-1000

Draft amendment

1. In the Securities and Exchange Commission (Public Issue) Rules, 2006, sub-rule (1) of rule 2 shall be replaced by the following new sub-rule (1), namely:-

"**2. Definitions.** – (1) In these Rules, unless there is anything repugnant in the subject or context,-

(a) "associate" means any partner, employee or officer of a company, and a related body corporate over which the directors or subscribers to the Memorandum of Association and Articles of Association of a company can exercise significant influence or control;

(b) "banker to the issue" means any bank so named in the prospectus to collect money as subscription against security;

(c) "bidders" means the eligible institutional investors;

(d) "book-building" means the process by which an issuer attempts to determine at what price to offer its security based on demand from eligible institutional investors;

(e) "Commission" means the Securities and Exchange Commission (SEC) established under the wmwKDwiwUR I G·‡PÄ Kwgkb AvBb, 1993 (1993 m‡bi 15 bs AvBb);

(f) "commission" means any money paid to any person in connection with the public offering of security under these Rules;

(g) "cut-off price" means the lowest price offered by the bidders at which the total issue could be cleared;

(h) "floor price" means the lowest price of the price band within which the eligible institutional investors shall bid for security under book-building method;

(i) "indicative price" means the price which the issuer indicates in the draft prospectus taking input from the eligible institutional investors on which the bidders bid for final determination of price;

(j) "initial public offering" means first offering of security by an issuer to the general public;

(k) “merchant banker” means a merchant banker as defined in the wmwKDwiwUR I G·‡PÄ Kwgkb (gv‡P©›U e¨vsKvi I †cvU©‡dvwjI g¨v‡bRvi) wewagvjv, 1996;

(l) “price discovery” means a method of determining the price for a specific security through demand and supply factors related to the market;

(m) “prospectus” means any document prepared for the purpose of communicating to the general public an issuer’s plan to offer for sale of its security under these Rules;

(n) “public issue” means public issue of security through initial public offering or repeat public offering;

(o) “registrar to the issue” means the merchant banker or any person employed by the issuer registered with the Commission for carrying on the activities in relation to an issue including collecting applications from investors, keeping record of applications and money received from investors or paid to the seller of security, assisting in determining the basis of allotment of security, finalizing the list of persons entitled to allotment of security and processing and dispatching allotment letters, refund orders or certificates and other related documents;

(p) “repeat public offering” means further public offering for issuance of additional security by an issuer which is either listed with a stock exchange or has raised capital earlier through public offering;

(q) “road show” means presentation by an issuer of security to potential investors; and

(r) “subsidiary company” is an entity which is controlled by another entity (known as the parent company).”.

2. Rule 3 shall be replaced by the following new rule 3, namely:-

“3. General requirements for filing application for consent to an issue of capital through public offering.-

A. Application for consent under these Rules may be based on any of the following pricing methods:

(a) Fixed Price Method;
(b) Book-building Method.

B. For obtaining the consent, an issuer shall apply to the Commission along with the following documents:-

(1) Ten copies of the prospectus, duly completed, together with all annexes thereto, duly signed on each page, by the issuer's chief executive officer/managing director, chief financial officer and issue manager. All the directors, including the chief executive officer, shall sign a declaration as prescribed in **Annexure-A**.

(2) Any amendment to the prospectus, signed by the said persons, shall also have to be filed with the Commission, in accordance with sub-rule (1).

(3) All stock exchanges shall be supplied simultaneously by the issuer with one copy each of the said prospectus, together with its annexes, and the amendments thereto, if any, duly signed by the persons who have signed prospectus that is submitted to the Commission.

(4) The audited financial statements of the issuer must be submitted to the Commission along with the prospectus and said financial statements shall not be older than 120 days at the time of submission to the Commission.".

3. Serial No. (16) of sub-heading 'B' of rule 8, shall be replaced by new Serial No. (16), namely;-

"(16) Determination of Offering Price:

(1) Under Fixed Price Method.-

(a) If ordinary shares are being offered, the factors considered in determining the offering price shall be set forth in the prospectus.

(b) If the issue price of the ordinary share is higher than the par value thereof, justification of the premium should be stated with reference to-

(i) net asset value per share at historical or current costs;

(ii) earning-based-value per share calculated on the basis of weighted average of net profit after tax for immediately preceding five years or such shorter period during which the issuer was in commercial operation;

(iii) projected earnings per share for the next three accounting year as per the issuers own assessment duly certified by the auditor of the issuer;

(iv) average market price per share of similar stock for the last six months immediately prior to the offer for common stocks or if issuance is the repeat public offering market price per share of common stock of the issuer for the aforesaid period; and

(v) all other factors with justification which have been taken into account by the issuer for fixing the premium:

Provided that premium on public offering shall not exceed the amount of premium charged on shares issued (excluding the bonus shares) within immediately preceding one year.

(2) Under Book Building Method.- Notwithstanding anything contained otherwise in these Rules, the following shall be applicable to an issuer which opts for pricing its security under book-building method:

I. Prerequisites of an issuer for becoming eligible for book-building method.-

An issuer may determine issue price **of** its **security** being offered following book-building method (i.e. price discovery process) subject to compliance with the following, namely:-

(1) The issuer-

(a) must have at least Tk. 30 crore net-worth;
(b) shall offer at least 10% shares of paid up capital (including intended offer) or Tk. 30 crore whichever is higher;
(c) shall be in commercial operation for at least immediate last five years;
(d) shall have profit in three years out of the immediate last five completed accounting/financial year;
(e) shall have no accumulated loss at the time of application;
(f) shall be regular in holding annual general meeting;
(g) shall audit at least its latest financial statements by a firm of chartered accountants from the panel of auditors of the Commission;
(h) shall appoint separate person as issue manager and registrar to the issue for managing the offer; and

(i) shall comply with all requirements of these Rules in preparing prospectus.

(2) The Commission, if deems appropriate for the interest of investor or development of capital market, may exempt or relax any of the above requirements.

II. Price discovery for determining indicative price.-

The price discovery process for determining indicative price of security will involve the following eligible institutional investors registered with or approved by the Commission in this regard:-

(a) Merchant Bankers excepting the issue manager and underwriter to the proposed issue;
(b) Foreign Institutional Investors registered with the Commission;
(c) Recognized Pension Funds and Provident Funds;
(d) Financial Institutions under regulatory authority of Bangladesh Bank;
(e) Insurance companies regulated under Insurance Ordinance, 2008;
(f) Institutional Venture Capital and Institutional Investors registered with the Commission; and
(g) Any other person permitted by the Commission for this purpose.

III. Procedures to be followed for determining price under book-building.-

(a) Issuer shall invite for indicative price offer from the eligible institutional investors through proper disclosures, presentation, documents, seminars, road shows etc.;

(b) Issuer in association with issue manger and eligible institutional investors shall quote an indicative price in the prospectus and submit the same to the Commission with a copy to the stock exchanges;

(c) Such indicative price range shall be determined as per price indications obtained from at least five eligible institutional investors covering at least three different categories of such investors;

(d) Rationale for the indicative price must be included in the prospectus i.e. the issuer is required to disclose in detail about the qualitative and quantitative factors justifying the indicative price;

(e) The indicative price shall be the basis for formal price building with an upward and downward band of 20% (twenty percent) of indicative price within which eligible institutional investors shall bid for the allocated amount of security;

(f) Eligible institutional investors bidding shall commence after getting consent from the Commission for this purpose;

(g) If institutional quota is not cleared at 20% (twenty percent) below indicative price the issue will be considered cancelled unless the floor price is further lowered within the face value of security with the approval of the Commission;

(h) Prospectus will have to be posted on the Websites of the Commission, stock exchanges, issue manager and issuer at least two weeks prior to the start of the bidding to facilitate investors to know about the company and all aspect of offering;

(i) No institutional investors shall be allowed to quote for more than 10% (ten percent) of the total security offered for sale;

(j) Institutional bidding period will be 3-5 (three to five) working days, extendable to 7 (seven) working days with the approval of the Commission;

(k) The bidding will be handled through a uniform and integrated automated system of the stock exchanges, or any other organization as decided by the Commission, especially developed for book building;

(l) The volume and value of bid at different prices will be displayed on the monitor of the said system without identifying the bidder;

(m) The institutional bidders will be allotted security on pro-rata basis at the weighted average price of the bids that would clear the total number of securities being issued to them;

(n) Institutional bidders shall deposit their bid with 20% (twenty percent) of the amount of bid in advance to the designated bank account and the rest amount to settle the dues against security to be issued to them shall be deposited within 5 (five) working days prior to the date of opening subscription for general investors;

(o) In case of failure to deposit remaining amount that is required to be paid by institutional bidders for full settlement of the security to be issued in their favor, 50% (fifty percent) of bid money deposited by them shall be forfeited by the Commission;

(p) General investors, which include mutual funds and NRBs, shall buy at the cut-off price;

(q) There shall be a time gap of 25 (twenty five) working days between closure of bidding by eligible institutional investors and subscription opening for general investors;

(r) Subscription for general investors shall remain open for the period as specified by the Commission;

(s) General investors shall place their application through banker to the issue; and

(t) All application money shall be kept in a separate escrow account opened with a designated bank with prior intimation to the Commission. Issuer will not be allowed to utilize such money until all the process of issue is completed and Commission's consent to this effect is obtained.

IV. Distribution mechanism and price at which security will be issued.-

The distribution of security issued under book-building method will be made in accordance with the following ratio:-

Size of Total Issue	Eligible Institutional Investors' Portion	General Public		
		Mutual Fund Portion	NRB Portion	Public Portion
Tk. 30 to Tk. 50 Crore	20%	10%	10%	60% or balance amount
Over Tk. 50 Crore to Tk. 100 Crore	30%	10%	10%	50% or balance amount
Over Tk. 100 Cr. to Tk. 500 Crore	40%	10%	10%	40% or balance amount
Over Tk. 500 Crore	50%	10%	10%	30% or balance amount

V. Lock-in.

There shall be lock-in of 15 (fifteen) trading days from the first trading day on the security issued to the eligible institutional investors.

VI. Fee of issue manager and registrar to the issue.

Fee of issue manager and registrar to the issue could be on negotiated basis but not exceeding 5% (five percent) in total of the issue size.”.

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