

Bangladesh Securities and Exchange Commission

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No. SEC/CMRRCD/2009-194/30

March 13, 2013

**Subject: Gazette Notification of the "Securities and Exchange Commission
(Private Placement of Debt Securities) Rules, 2012"**

Please find the attached above-mentioned Gazette Notification for kind information and necessary action (if any).

Thanking you.



Ripan Kumar Debnath
Director

Distribution (Not as per seniority):

- All Commissioners, Bangladesh Securities and Exchange Commission
- All Departmental Heads, Bangladesh Securities and Exchange Commission
- Chief Executive Officer, Dhaka Stock Exchange Ltd.
- Chief Executive Officer, Chittagong Stock Exchange Ltd.
- Chief Executive Officer, Central Depository Bangladesh Ltd.
- President, Bangladesh Association of Publicly Listed Companies
- President, Bangladesh Merchant Bankers Association
- President, Association of Asset Management Companies and Mutual Funds
- Chairman's Office, Bangladesh Securities and Exchange Commission
- Commission's website

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

বুধবার, জানুয়ারি ৩০, ২০১৩

[বেসরকারি ব্যক্তি এবং কর্পোরেশন কর্তৃক অর্থের বিনিময়ে জারীকৃত বিজ্ঞাপন ও নোটিশসমূহ]

SECURITIES AND EXCHANGE COMMISSION

NOTIFICATION

October 29, 2012

No. SEC/CMRRCD/2009-194/138/Admin/46—In exercise of the power conferred by sub-section (1) of section 33 of the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969), Securities and Exchange Commission makes, after prior publication, the following rules, namely:—

1. Short title and application.—(1) These rules may be called the “Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012”.

(2) These rules shall be applicable for the issuance of debt securities by an issuer, unless otherwise it is either exempted by Securities and Exchange Commission or governed or regulated by the commission through any other rules or notification or order issued from time to time.

(3) These rules shall be applicable for issuance of debt securities through private placement.

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(4) No issuer shall make an offer of debt securities, or shall publish an information memorandum or offer document for issuance of debt securities unless it obtains consent of the Commission.

(5) These rules shall come into force with immediate effect.

2. **Definitions.**—(1) In these rules, unless the context otherwise requires,—

(a) **“Commission”** means the Securities and Exchange Commission (SEC) established under the সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন আইন, ১৯৯৩ (১৯৯৩ সনের ১৫ নং আইন);

(b) **“debt holder”** means the person in whose name a debt is registered at Central Depository Bangladesh Limited, or if the debts are not deposited in the depository, the person shown on the records of the issuer;

(c) **“debt securities, or debt instruments”** means securities those evidence the indebtedness of the issuer to the eligible investors in the form of bond or debt, or any other instrument of indebtedness, whether secured or not;

(d) **“deed of trust”** means a deed executed by the issuer in favour of the trustees named therein for the benefit of the holders of debt securities;

(e) **“eligible investor”** means banks, insurance companies, financial institutions, mutual funds, provident funds, pension funds, corporates, primary dealers, Non-Resident Bangladeshis and individuals;

(f) **“equity”** means the aggregate amount of tangible assets of the issuer, net of total liabilities calculated on the basis of the audited financial statements of the issuer which is included in the IM;

(g) **“Information Memorandum or IM”** means any document including an electronic document described or issued as an offer document or prospectus and includes any notice, circular, advertisement or other documents inviting offers from the eligible investors for the subscription or purchase of any debt securities issued under these rules;

- (h) **“issue”** means an offer of debt securities by an issuer under these rules;
- (i) **“issuer”** means an entity that intends to raise or has raised long term finance by issuing debt securities which may be a company as defined in the কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নং আইন) or the government or public or local authorities or development or credit institutions;
- (j) **“issue size”** means the aggregate amount of face value of the debt securities to be issued;
- (k) **“obligor”** means a person having any obligation upon the debts, whether as debtor, guarantor, provider of credit enhancement, issuer of conversion or warrant securities, or otherwise;
- (l) **“paying agent”** means a bank appointed to pay to debt holders all payments made by the issuer and to maintain all records required to be kept by the trustee;
- (m) **“premium”** means an amount over the face value;
- (n) **“private placement”** means offer of securities to any person in a way other than public offering;
- (o) **“promoter or sponsor”** of an entity or a proposed company means a person who, acting alone or in concert with other persons, is initiating or directing, or has within one year initiated or directed, the organization of such entity;
- (p) **“rating agency”** means a Credit Rating Agency registered with the Commission under the Credit Rating Companies Rules, 1996;
- (q) **“schedule”** means a schedule appended to these rules;
- (r) **“secured debt instrument”** means debt securities, in which the issuer owes the holders an indebtedness and which is secured by first claims over all present and future assets of the issuer;
- (s) **“trustee”** means a company as defined in the কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নং আইন) or a corporation or a statutory body or any other institution, a bank as defined in the ব্যাংক কোম্পানী আইন, ১৯৯১ (১৯৯১ সনের ১৪ নম্বর আইন) or a financial institution as defined in the আর্থিক প্রতিষ্ঠান আইন, ১৯৯৩ (১৯৯৩ সনের ২৭ নম্বর আইন) registered under rule 9 of these rules to act as trustee to the issue of debt securities;

(t) “**unsecured debt instrument**” means debt securities, in which the issuer owes the holders an indebtedness and which is secured by claims over all present and future assets of the issuer subsequent to all secured lenders/eligible investors.

(2) Words and expressions used herein and not defined, but defined in the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969), সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন আইন, ১৯৯৩ (১৯৯৩ সালের ১৫ নং আইন), ডিপজিটরি আইন, ১৯৯৯ (১৯৯৯ সনের ১১ নম্বর আইন), Insurance Act, 2010 (Act No. XIII of 2010), ব্যাংক কোম্পানী আইন, ১৯৯১ (১৯৯১ সনের ১৪ নম্বর আইন) আর্থিক প্রতিষ্ঠান আইন, ১৯৯৩ (১৯৯৩ সনের ২৭ নম্বর আইন) কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নম্বর আইন) shall have the same meanings respectively assigned to them in the said Acts and the Ordinance, and the Rules and Regulations issued hereunder.

3. Conditions to be fulfilled prior to making an application for issuance of debt securities.—An issuer may make an application to the Commission for issuance of debt securities, subject to fulfillment of the following :—

(1) Total debt of the issuer, including the proposed issue, does not exceed 60% (sixty percent) of its total tangible assets :

Provided that in case the debt-equity or capital adequacy ratio of an issuer is determined by its primary regulator, the issuer fulfills that requirement :

Provided further that the Commission may consider variation of the above-mentioned ratio, if it thinks fit taking into account the industry scenario of the issuer.

(2) The issuer has a good track record of profitability and liquidity or its forecasted financial position indicates a significant profitability, liquidity and ability to pay-back with reasonable basis of making such forecasts.

(3) The issue is rated by a credit rating company and its periodical surveillance rating shall be done by the said rating company up to the full and final redemption or conversion of the debt securities.

(4) The issuer has a valid enforceable interest over its assets and the right to create charges thereon in course of issuance of the debt instruments.

- (5) The issuer has obtained necessary permissions or consents from its primary regulator in order to issue of debt securities, if required.
- (6) The issuer has appointed a trustee for the issue.
- (7) The financial statements of the issuer is prepared as per Bangladesh Accounting Standards (BAS) as applicable in Bangladesh, and audited as per Bangladesh Standards of Auditing (BSA).
- (8) The issue has been approved by the Board of Directors or governing body of the issuer and in case the issuer is a listed company, by the shareholders in a general meeting.
- (9) In case the issuer is a listed company, the information concerning the issue is disseminated as price sensitive information immediately upon Board decision as well as upon approval at the general meeting, in accordance with the relevant notifications issued by the Commission; there should be an explicit announcement while disseminating the information that the issue shall be subject to approval of the Commission.
- (10) Trustee to the issue, if applicable, has examined all the documents including the legal and title documents and has provided a due diligence certificate as per Schedule 'D'.

4. Application for consent to the issue of debt securities.—(1) An issuer (hereinafter also referred to as the applicant) intending to issue debt securities shall make an application for consent to the Commission as per Schedule 'A'.

(2) The applicant shall pay an amount of taka ten thousand (non-refundable) as application fee, along with the application, by way of pay order or demand draft issued in favour of the Securities and Exchange Commission.

(3) With the said application, the applicant shall submit the following documents along with the information memorandum containing the audited financial statements within 120 (one hundred twenty) days of the end of the period for which the said financial statements is prepared, namely :—

- (a) certified copy of memorandum and articles of association or such certified documents, as the case may be;
- (b) certified copy of certificate of incorporation and certificate of commencement of business, where applicable;

