

## Corpsec Hotline

June 25, 2008

### SEBI ALLOWS LISTING OF SECURITIZED DEBT INSTRUMENTS

SEBI has recently notified the SEBI (Public Offer and Listing of Securitized Debt Instrument) Regulations, 2008 ("Regulations") which lays down the broad parameters for eligibility of the Issuer and the other conditions for listing of securitized debt instruments. The Regulations shall be applicable to the public offer and listing of securitized debt instrument.

#### Key highlights of the Regulation

##### 1. Eligibility criterion

1. The special purpose distinct entity ("**Issuer**") shall be in the form of trust.
2. It is mandated that the originator or its associates shall not have any control over the Issuer and its trustees.
3. The Trust Deed must contain certain clauses<sup>1</sup>, as provided in the Schedule IV of the Regulations. The instrument of trust shall not contain a clause which shall have the effect of limiting or extinguishing the obligations and liabilities of the trustees or the Issuer or indemnifying the trustees or the Issuer for loss or damage caused to the investors by their act of negligence or commission or omission.
4. The trustees of the Issuer should be registered with SEBI except for a debenture trustee registered with SEBI; securitization or an asset reconstruction company; National Housing bank or NABARD. On being satisfied of the qualification criterion such as track record, object clause, adequacy of infrastructure to ensure proper servicing of the securitization transaction, SEBI may grant registration to the Issuer. Further, any change in management and control shall be effectuated only if with a prior consent of SEBI.

##### 2. Operations of the Issuer

There are other conditions with respect to the operation of the Issuer which are prescribed under the Regulations, inter alia, which are:

1. It shall not raise any moneys in the form of debt or issue any debt securities other than through issue of securitized debt instruments. However, Issuer can continue to issue security receipts.
2. Issuer shall be entitled to segregate the debt or receivables out of the asset pool for the purpose of servicing of any securitized debt instrument.
3. The Issuer shall not be dissolved until the securitized debt instruments issued under all its schemes are fully redeemed or written off in accordance with their terms of issue.
4. The Issuer shall not engage in the business of lending or investment except in the manner required in accordance with the schemes floated by it or activities of an asset management company or portfolio manager or a mutual fund.
5. In the event the Issuer proposes to launch multiple schemes, the instrument of trust should allow the Issuer to launch multiple schemes and terms of Issuer of the securitized debt instruments proposed to be issued under each scheme shall restrict the rights of the investors to the relevant asset pool alone.
6. The assignment of assets to the Issuer shall be in the nature of a true sale. The Issuer shall not acquire any debt or receivable from any originator which is a part of the same group or under the same management as that of the trustee. The debt or receivables assigned to the Issuer should be expected to generate identifiable cash flows for the purpose of servicing the instrument and the originator should have valid enforceable interests in the assets and in cash flow of assets prior to securitization. Further, it has been provided that the debt or receivables shall be transferred at an arm's length price based on commercial considerations.
7. The Issuer shall be a bankruptcy remote from the originator.

##### 3. Schemes of the Issuer

The schemes formulated by the Issuer should be in accordance with the Regulations. Distinct accounts should be maintained in case of multiples schemes and assets pools and realization of a scheme should not be commingled with another. Any expense in excess of the allowable expense as specified in the scheme will be borne by the trustee. Further, subject to adequate disclosures, terms of issue may provide for exercise of a clean-up call option by the issue which means an option retained and exercisable by the originator to

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purchase the debt or receivables assigned to a special purpose distinct entity, if the residual value of such debt or receivables falls below a specified percentage of the price at which it was assigned.

The offer document of each scheme should contain the expected period of maturity of the scheme, the possibility of extension or shortening along with likely circumstances for such shortening. Further, at any time an originator shall not subscribe to or hold securitized debt instruments in excess of twenty per cent of the total securitized debt instruments issued by the special purpose distinct entity in a particular scheme. However this condition is not applicable in case of holding on account of underwriting or credit enhancement. A scheme can be wound up when the securitized debt instruments have been fully redeemed or upon legal maturity. It may also be wound by vote of investors by a special resolution.

4.

## Rights of Investors

The securitized debt instruments issued to the public or listed shall be freely transferable and the investors holding them shall have beneficial interest in the underlying debt or receivables. Investors in the securitized debt instruments shall have such beneficial interest in the underlying debt or receivables as may have been conferred by the scheme, the trustees do not have any beneficial interest in the underlying debts or receivables, delineating the duties and obligation of the trustees. In the event the Issuer fails to redeem any securitized debt instrument, the investors holding at least 10% in nominal value of such securitized debt instruments can call a meeting wherein they can decide to wind up the scheme, remove the trustee or replace him, the expenses for all of which shall be reimbursed out of realization from the asset pool. Further, the terms of issue shall not be adversely varied without the consent of investors.

### 1. Listing

The Issuer offering securitized debt instruments to public for subscription through an offer document should contain disclosures<sup>2</sup> of all material facts including financials of the Issuer, originator and quality of asset pool. It has been prescribed that any offer of securitized debt instrument made to fifty or more persons in a financial year shall be deemed to be an offer made to public. Further, it has been made mandatory that credit rating from two credit agencies is mandatory which have to be disclosed in the offer document.

### 2. Conclusion

The Regulations have paved way for the listing and trading of the securitized debt instruments. SEBI has also proposed to introduce simplified and relaxed listing agreement in this regard. It shall be interesting to see the market norms with respect to such instruments as the market is still not matured for trading of such debt instruments.

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1. Content of Trust Deed are provided under Schedule IV of the Regulations.
  2. Content of Disclosures to be made in Offer Document are provided under Schedule V of the Regulations..

#### Sources:

- [SEBI Notification dated May 26, 2008](#)
- [SEBI Press Release PR No.124/2008](#)

- **Abir Roy & Vyapak Desai**

You can direct your queries or comments to the authors

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