



भारतीय प्रतिभूति और विनियम बोर्ड Securities and Exchange Board of India

CIR/CFD/DIL3/18/2015

December 31, 2015

To

All Recognised Stock Exchanges

Dear Sir/Madam,

Sub: Procedure to deal with cases prior to April 01, 2014 involving offer / allotment of securities to more than 49 up to 200 investors in a financial year.

1. Prior to April 01, 2014, offers of securities - shares and debentures - by companies to more than 49 persons were deemed to be public offers. SEBI has initiated penal action on receipt of specific complaints against the companies offering such securities without complying with the relevant provisions of the Companies Act, 1956 and applicable SEBI Guidelines / Regulations governing a public issue. Under the new Companies Act, 2013, post April 01, 2014, any offer or allotment of securities shall be construed as public issue if the number of offerees / allottees exceeds 200 persons in a financial year, excluding certain class of subscribers.
2. Considering the higher cap for private placement provided in the Companies Act, 2013, it has now been decided that in respect of earlier cases involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to investors.

Refund procedure

3. The process followed by companies for providing option to their security holders to surrender securities and obtain refund shall be supported by proof of dispatch through Registered or Speed Post by India Post or proof of delivery of letters if effected through any other mode.
4. The refund to security holders who have opted for such surrender shall be made only through banking channels through crossed account payee cheque / crossed demand draft / internet banking channels to enable audit trail.
5. Companies are allowed to adjust the amounts already paid to the allottees either as interest / dividend or otherwise from the amount of refund to be paid to the investors.



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6. In case of transfer of securities by the original allottees, the option for refund shall be provided to the current holders of the securities.

Certification

7. The company shall submit a certificate from an independent peer reviewed practicing Chartered Accountant certifying compliance as mentioned above.
8. The certificate as provided above shall state that the certification has been made after verifying various documentary evidences including proof of dispatch / delivery of letters, response of investors, complaints from investors, bank statements of the company etc.

The Stock Exchanges are advised to bring the provisions of this circular to the notice of listed entities and also to disseminate the same on their websites.

Yours faithfully,

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