Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

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Week – May 08th to May 12th

<u>Quote for the week:</u>

"To each his own, but my process of preparation is based on conditions, not opposition."

- *Rohit Sharma*

Introduction

We welcome you to our weekly newsletter!

The 'Swift e-Bulletin' - weekly newsletter, covers all regulatory updates and critical judgements passed during the week. We hope that you liked our previous editions and found it to be of great value in its content. We want this newsletter to be valuable for you so, please share your feedback and suggestions to help us improve.

Further, various regulatory authorities have been proactive in bringing significant regulatory changes in recent times. This week's newsletter covers various circulars/notifications issued by certain regulatory authorities such as the Securities and exchange Board of India ("**SEBI**"), Ministry of Corporate Affairs ("**MCA**"), Ministry of Finance ("**MOF**") and International Financial Services Centres Authority ("**IFSCA**").

The Regulatory authorities provided various updates/relaxations, some of which being:

- SEBI vide Circular dated May 10, 2023 introduced provisions pertaining to Direct Market Access ("DMA") to SEBI registered Foreign Portfolio Investors ("FPIs") for participating in Exchange Traded Commodity Derivatives ("ETCDs").
- MOF vide Notification dated May 09, 2023 further amended the Prevention of Money-laundering Act, 2002 and bought under its purview certain professionals and excluded certain activities by such professionals.

We have prepared a comprehensive summary for quick reference of the aforesaid updates issued during the week of May 08th to May 12th, 2023.

Thank you,

Swift team

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REGULATORY UPDATES

MINISTRY OF FINANCE

1. MOF vide Notification dated May 09, 2023 further amended the Prevention of Money-laundering Act, 2002 and bought under its purview certain professionals and excluded certain activities by such professionals.

- The Prevention of Money Laundering Act ("**PMLA**") aims to prevent money laundering and other financial crimes. The MOF has issued a Notification dated May 03, 2023 which has brought certain financial transactions carried out by practising Chartered Accountant ("**CAs**"), Cost Accountant ("**CMA**")Or Company Secretary ("**CS**") on behalf of their clients under the scope of the PMLA.

- In a further Notification issued on May 09, 2023, more activities carried out in the course of business on behalf of or for another person are bought in to the purview of PMLA, extract of which are mentioned below:

  - *acting as a formation agent of companies and limited liability partnerships;*
  - *acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships;*
  - *providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;*
  - *acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and*
  - *acting as (or arranging for another person to act as) a nominee shareholder for another person.*

- This Notification also clarifies certain activities not to be considered under purview of PMLA, below is a summary of those activities,

  - Lease, Sub-Lease, Tenancy or any other arrangement for the use of land or building or any space provided the consideration is subjected to deduction of income-tax;
  - Employee and Employer Relationship and under course of employment;
  - Activities of an Advocate, CAs, CSs, and CMAs in practice, who is engaged in the formation of a company only to the extent of filing a declaration as required under Companies Act, 2013; and
  - Intermediaries as defined under PMLA.

To read the Notification in detail please click here.

SEBI

1. **SEBI vide Circular dated May 10, 2023 introduced provisions pertaining to Direct Market Access ("DMA") to SEBI registered Foreign Portfolio Investors ("FPIs") for participating in Exchange Traded Commodity Derivatives ("ETCDs").**

- SEBI has laid down the framework of DMA facility for Institutional Investors or through investment manager vide 3 Circulars viz., Circular No MRD/DoP/SE/Cir-7/2008 dated April 3, 2008, Circular No MRD/DoP/SE/Cir-03/2009 dated February 20, 2009 and Circular No CIR/MRD/DP/20/2012 dated August 2, 2012.

- SEBI permitted FPIs to participated in the ETCDs post following certain conditions vide Circular No. SEBI/HO/MRD/MRD-RAC-1/P/CIR/2022/131 dated September 29, 2022.

- DMA facilitates the direct access to the exchange trading system for the clients of the brokers via broker's infrastructure to place/execute orders without any manual intervention of the broker.

- DMA without manual intervention of the pose's certain benefits to the client
  - Direct Control over the orders
  - Faster execution of orders
  - Reduced risk of errors associated with manual order entry
  - Maintaining confidentiality
  - Lowe impact costs for large orders
  - Implementing better hedging and arbitrage strategies

- SEBI received representations for enabling DMA facility to FPIs in ETCDs and post deliberations by Commodity Derivatives and Advisory Committee ("CDAC") of SEBI, it is decided to allow the Stock Exchanges to extend DMA facility to FPIs for ETCD participation by following the conditions stipulated below
  - Stock Exchanges/brokers should be in adherence with the provisions related to procedure for application for DMA, operational specifications, Client authorization and broker-client agreement, risk management, etc. as stipulated in SEBI Circulars set out in 2008, 2009 and 2012.
  - Circular of 2022 will continue to remain applicable allowing FPIs to participate in ETCDs.

- The provisions of the Circular shall come into ***immediate effect***.

- Stock Exchanges in relation to the said provisions of the Circular is required to adhere to the following

- Take the necessary steps to amend the bye-laws, rules and regulations in line to give effect to the said Circular.
- To disseminate the information on their website and bring to the notice of the members of the Stock Exchanges the provisions.
- File with SEBI the Monthly Development Report to communicate the status of implementation of the provisions of this Circular.

To read the Circular in detail, please click here.

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2. **SEBI vide Circular dated May 9, 2023, issued Registration with the FINNET 2.0 system of Financial Intelligence Unit- India ("FIU-India").**

- The Designated Directors and Principal Officers of Debenture Trustees were address by FIU-India vide a letter dated April 19, 2023, which specified guidelines including red flags indicators for detecting suspicious transactions by Debenture Trustee under Rule 7(3) of Prevention of Money Laundering (Maintenance of Records) Rules, 2005.
- FIU-India has now informed that all Reporting entities falling under Debenture Trustee segment and registered under FINNET 1.0 system are required to re-register themselves in FINNET 2.0 system/module.
- Those reporting entities who have not yet registered themselves are also required to be registered under the new FINNET 2.0 system immediately in light of the FATF mutual evaluation.
- The Circular shall be applicable to ***all registered debenture trustees***.

To read the Circular in detail, please click here.

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MCA

1. **MCA vide Notification dated May 10, 2023, introduced the Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023.**

- MCA vide the said Circular has further amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

- **Rule 4 sub-rule (1)** of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 shall be inserted as follows:-

- *The company shall be allowed to file an application unless it has filed overdue financial statements under Section 137 and overdue annual returns under Section 92, up to the end of the financial year in which the company ceased to carry its business operations.*

- *In case a company intends to file the application after the action under sub-section (1) of Section 248 has been initiated by the Registrar it shall be file all pending financials statements under Section 137 and all pending annuals returns under Section 92, before filing the application*

- *Further, once notice under Section 248 (5) has been initiated by the Registrar for publication pursuant to the action initiated under Section 248 (1), a company shall not be allowed to file the application under this sub-rule.*

To read the Notification in detail, please click here.

IFSCA

1. **IFSCA vide Circular dated May 09, 2023 issued clarification relating to Status of operations at Disaster Recovery ("DR") Site of the Broker Dealers and Clearing Members registered with IFSCA.**

- IFSCA in IFSCA (Capital Market Intermediaries) Regulations, 2021 has allowed the registered Broker Dealers and Clearing Members to set up their DR Sites in India.

- Now with this Circular, IFSCA has clarified that operations carried out by the Broker Dealers and Clearing Members, from their respective DR sites located outside GIFT-IFSC and within India, shall be **deemed to have been carried out at GIFT-IFSC.**

To read the Circular in detail, please click here.

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About Swift

Swift India Corporate Services LLP ("Swift") (Formerly known as SwiftIndiaInc Corporate Services Private Limited) established in the year 2005, is an associate entity of Nishith Desai Associates — Legal & Tax Counseling Worldwide (legal and tax consulting firm).

We are a team of professionals with rich corporate, legal and secretarial backgrounds. We are a premier corporate compliance firm that caters to the needs and demands of our global clients. Swift aims to provide quick and pragmatic corporate solutions alongside high-quality compliances.

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