Swift e-Bulletin

Edition 23rd 23-24

Week – October 16th to October 21st

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

“A champion is defined not by their wins but by how they can recover when they fall”

– ***Serena Williams*** *(American former tennis player)*

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 challenging times. This week’s newsletter covers various circulars/notifications issued by certain regulatory authorities such as the Securities and Exchange Board of India (“**SEBI**”) and Reserve Bank of India (“**RBI**”)

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

- SEBI vide Circular dated October 16, 2023 issued Master Circular for Stock Exchanges and Clearing Corporations

- RBI vide Notification dated October 17, 2023 amended the Master Direction (MD) on KYC.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of October 16th to October 21st.

Thank you,
Swift team

REGULATORY UPDATES

SEBI

1. SEBI vide Circular dated October 16, 2023 issued Master Circular for Stock Exchanges and Clearing Corporations.

- SEBI has been issuing various circulars/directions from time to Stock Exchanges and Clearing Corporations to be followed by them in the securities market.
- In order to enable the users to have access to all the applicable circular/directions at one place, this Master Circular on the captioned subject is being issued.
- The said Master Circular is a compilation of the circulars/directions issued by SEBI up to August 31, 2023 on the captioned subject and includes certain modifications.
- The provisions of the said Master Circular shall come into force from the date of its issue.
- All circulars for issued by SEBI from time to Stock Exchanges and Clearing Corporations as listed in Schedule I shall stand rescinded/modified as indicated therein.
- The said Master Circular is issued with the approval of the Competent Authority.
- The said Master Circular shall be applicable to all recognised stock exchanges and recognized cleating corporations.

To read the Master Circular in detail, please click here.

2. SEBI vide Circular dated October 20, 2023 have issued Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Qualified RTAs (QRTAs)

- QRTAs having more than 2 Crore folios are systematically important institutions as they, inter-alia, provide infrastructure necessary for the smooth and uninterrupted functioning of the securities market. QRTAs need to have high level of resiliency to provide essential facilities and perform systemically critical functions uninterruptedly in the securities market.
- SEBI in view of the above and with the Technical Advisory Committee (TAC) of SEBI, has decided to issue guidelines for strengthening overall resiliency, the procedure at/governance of QRTAs for handling disruptions, augmentation of systems and practices to achieve better Recovery Time Objective ("RTO") and Recovery Point Objectives ("RPO"), and to improve overall preparedness by conducting periodic announced/ unannounced drills. Hence, QRTAs are required to comply with the framework for BCP and DR.

- The said guideline interalia includes the following:-

  - QRTAs shall have in place Business Continuity Plan (BCP) and Disaster Recovery Site (DRS) so as to ensure continuity of operations, maintain data and transaction integrity.

  - The Technology Committee of the QRTAs shall review the implementation of BCP-DR policy approved by the board of the QRTA on a quarterly basis.

  - All QRTAs shall also have a Near Site (NS) to ensure zero data loss. The DRS should be set up in different seismic zones and in case due to certain reasons such as operational constraints, change of seismic zones, etc., minimum distance of 500 kilometre shall be ensured between PDC and DRS so that both DRS and PDC are not affected by the same disaster.

  - QRTAs should develop systems that do not require configuration changes at the end of AMCs/other regulatory entities for switchover from the PDC to DRS.

  - In case of disruption of any one or more of the 'Critical Systems', the QRTA shall, within 30 minutes of the incident, declare that incident as 'Disaster' and take measures to restore operations including from DRS within 45 minutes of the declaration of 'Disaster'.

  - The Recovery Time Objective(RTO)- the maximum time taken to restore operations of 'Critical Systems' from DRS after declaration of Disaster- shall be 45 minutes, to be implemented within 90 days from the date of the said circular.

  - QRTAs to also ensure that the Recovery Point Objective (RPO) - the maximum tolerable period for which data might be lost due to a major incident- shall be 15 minutes.

  - Any updates made at the PDC should be reflected at DRS/ NS immediately (before end of day) with head room flexibility without compromising any of the performance metrics

  - Adequate resources (with appropriate training and experience) should be available at all times to handle operations at PDC, NS or DRS, as the case may be, on a regular basis as well as during disasters.

  - QRTAs shall conduct periodic training/drills programs on quarterly basis to enhance the preparedness and awareness level among its employees and outsourced staff, vendors, etc. as per BCP policy.

  - QRTAs shall also conduct unannounced live operations from its DRS for at least 1 day in every three months on normal working days (i.e. not on weekends / trading holidays). Unannounced live operations from DRS of QRTAs shall be done at a short notice of 45 minutes.

- The results and observations of these drills should be documented and placed before the Governing Board of QRTAs. Subsequently, the same along with the comments of the Governing Board should be forwarded to SEBI within a month of the DR drill.

- QRTAs shall put in place a comprehensive BCP-DR policy document for Broad Scenarios to define Disaster, Standard Operating Procedures, Documentation policy on record keeping pertaining to DR drills etc.

- In case a QRTA desires to lease its premise at the DRS to other entities including to its subsidiaries or entities in which it has stake, the QRTA should ensure that such arrangements do not compromise confidentiality, integrity, availability, targeted performance and service levels of the QRTA's systems at the DRS.

- Considering the above SEBI has advised QRTAs to submit their revised BCP-DR policy to SEBI within 3 months from the date of the said Circular.

- The said circulars shall supersede earlier circular dated August 10, 2018 issued on BCP-DR Policy of QRTAs

To read the circular in detail please click here.

RBI

1. **RBI vide Notification dated October 17, 2023 amended the Master Direction (MD) on KYC**

- It has been decided by the RBI to amend the MD on KYC dated February 25, 2016, as amended from time to time, in terms of which Regulated Entities (**"Res"**) have to undertake Customer Due Diligence (**"CDD"**), as per the process laid out therein, for their customers.

- In this regard, it has been decided to amend the MD on KYC to:

  - Update certain instructions considering amendments to the PML Rules vide Government notifications dated September 4, 2023 and October 17, 2023.

  - Update certain instructions in accordance with the FATF Recommendations.

  - Add a new Section 55A, on FCRA, in the MD on KYC

  - Update certain other instructions post review

- The changes carried out in the MD in this regard are provided in the attached Annexure to this circular.

- The amended provisions in the MD shall come into force with immediate effect

To read the circular in detail, please click here.

2. **RBI vide Notification dated October 19, 2023 issued Master Direction – Reserve Bank of India (Non- Banking Financial Company – Scale Based Regulation) Directions, 2023.**

- RBI having considered it necessary in the public interest, to enable to regulate the financial systems to the advantage of the country and to prevent the affairs of any Non- Banking Financials Company from being conducted in a manner detrimental to the interest of investors and depositors or in any manner prejudicial to the interest of such NBFCs issued the said Master Direction for the Non-Banking Financial Company.

- The said Master Circular have been issued in the suppression of two Master Directions on NBFC–Non-Systemically Important Non-Deposit taking (Reserve Bank) Directions, 2016 and NBFC–Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016,

- These Directions, shall apply to a non-banking financial company being a Government company as defined under clause (45) of Section 2 of the Companies Act, 2013

- The Master Direction lays down directions relating to capital requirement, fair practice code, prudential regulation, acceptance of public deposits, corporate governance, acquisition/transfer of control, opening of branch/ subsidiary/joint ventures, reporting requirement, conduct of business regulations and statutory provisions, etc.

- With the issue of the said Master Directions, RBI has repealed certain total number of 129 circular/guidelines/notification etc. issued from the year 1998 to 2016

- The Provision of the said directions are applicable to-

    - every Systemically Important Non-Deposit taking Non-Banking Financial Company (NBFC-ND-SI) registered with the Bank under the provisions of RBI Act, 1934;

    - every Deposit taking Non-Banking Financial Company (NBFC-D) registered with the Bank under the provisions of RBI Act, 1934;

    - every NBFC-Factor registered with the Bank under section 3 of the Factoring Regulation Act, 2011 and having an asset size of ₹ 500 crore and above;

    - every Infrastructure Debt Fund – Non-Banking Finance Company (IDF-NBFC) registered with the Bank under the provisions of RBI Act, 1934;

    - every Non-Banking Finance Company – Micro Finance Institutions (NBFC-MFIs) registered with the Bank under the provisions of RBI Act, 1934 and having an asset size of ₹ 500 crore and above;

    - every Non-Banking Finance Company - Infrastructure Finance Company (NBFCIFC) registered with the Bank under the provisions of RBI Act, 1934 and having an asset size of ₹ 500 crore and above.

- Further, Specific directions applicable to specific categories of NBFCs registered as NBFC-Factors, IDF-NBFCs and NBFC-MFIs are as provided for under respective Chapters in these Directions.

To read the Master Direction in detail, please click here.

Ministry of Finance

1. **Ministry of Finance vide Notification dated October 17, 2023 notified the amendments for Prevention of Money-laundering (Maintenance of Records) Rules, 2005.**

- Pursuant to such amendment, the said Rules will be termed as Prevention of Money-laundering (Maintenance of Records) Third Amendment Rules, 2023

- The amendment related to Rule 2, Rule 3A, Rule 8 and Rule 9.

- Rule 2(1)(b) dealing with **Client due diligence** now has given broader perspective to the definition to include "**using reliable and independent sources of identification**"

- Rule 3A has been substituted in a way to include measure for policy implementation by groups

    - Every reporting entity, which is part of a group, shall implement group-wide programmes against money laundering and terror financing, including group-wide policies for sharing information required for the purposes of client due diligence and money laundering and terror finance risk management and such programmes shall include adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.

    - Groups will now be required to implement group wise policies for the purpose of discharging obligations under Chapter IV of PMLA, 2002.

- In Rule 8 Sub Rule 2 has been modified and Sub Rule 6

    - Rule 8(2): The principal officer of a reporting entity shall, on being satisfied that the transaction is suspicious, furnish the information promptly in writing by fax or by electronic mail to the Director in respect of transactions referred to in clause (D) of sub-rule (1) of rule 3.

    - Rule 8(6): Every reporting entity, its Directors, officers, and all employees shall ensure that the fact of maintenance of records referred to in rule 3 and furnishing of information to the Director is kept confidential.

      Provided that nothing in this rule shall inhibit sharing of information under rule 3A of any analysis of transactions and activities which appear unusual, if any such analysis has been done.

- Rule 9 has been substituted vide the said Notification as below

- Every Reporting Entity while commencing account based relationship or while carrying occasional transaction of an amount equal to or exceeding INR 50,000 either through standalone transaction or several transactions which appear to be connected or international transfer operations

    (a) identify clients, verify their identity using reliable and independent sources of identification, obtain information on the purpose and intended nature of the business relationship, where applicable;

    (b) undertake steps to identify customer's business, ownership and control;

    (c) Thoroughly check if the Client is acting on behalf of a beneficial owner and if so carry out a thorough check of such beneficial owner's identity.

- In cases where the Regulator is of the view that money laundering and terrorist financing risks are effectively managed and it is not feasible to interrupt the normal conduct of business; the Regulator may permit the reporting entity to complete the verification as soon as reasonably practicable following the establishment of the relationship

- In cases where the Client is subscribing or dealing with the depositary receipts or equity shares of an Indian incorporated company, issued or listed in Central Government notified jurisdiction and acting on behalf of a beneficial owner who is a resident of such jurisdiction, the determination, identification and verification of such beneficial owner, shall be as per the norms of such jurisdiction and nothing in sub-rule (3) to sub-rule (9) shall be applicable for due-diligence of such beneficial owner.

- In **Rule 9** which deals with with Client Due Diligence for **Sub Rule 2(a)** instead of stipulated timeline of **2 Working Days** given to obtain from the third party or from the Central KYC Records Registry records or the information of such client due diligence carried out by the third party; now the timeline has been scrapped out and the amendment uses the word "**immediately**".

- The amendments had come into effect from October 17, 2023.

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About Swift

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