Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Week – April 29th to May 03rd

Quote for the week:

"Success is achieved twice. Once in the mind and the second time in the real world"

– Azim Premji *(Founder, Wipro)*

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 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**"), Reserve bank of India (**"RBI"**), International Financial Services Authority ("**IFSCA**") and SEBI Orders ("**Orders**")

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

- **SEBI issued Circular dated April 29, 2024 on relaxation in requirement of intimation of changes in the terms of Private Placement Memorandum of Alternative Investment Funds through merchant banker.**

- **IFSCA issued Circular dated May 02, 2024 on facilitating investments by NRIs and OCIs into indian securities through Schemes / Funds in an IFSC**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements/ orders issued during the week of April 29th to May 03rd.

Thank you, Swift team

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. **SEBI issued Circular dated April 29, 2024 on relaxation in requirement of intimation of changes in the terms of Private Placement Memorandum of Alternative Investment Funds through merchant banker.**

- Previously as per SEBI Master Circular on Alternate Investment Funds (AIFs), intimation with respect to any change in the terms of Private Placement Memorandum (PPM) is required to be submitted to SEBI through a merchant banker, along with a due diligence certificate from the merchant banker in the format specified by SEBI.

- SEBI based on the feedback received from the market participants reviewed the above mentioned requirement to identify changes in the terms of PPM which may not be required to be submitted through a merchant banker and may be filed directly with SEBI, thereby, facilitating ease of doing business and rationalizing cost of compliance for AIFs.

- Accordingly, it has been decided that the changes in the terms of PPM, as mentioned in Annexure A, shall not be required to be submitted through a merchant banker and may be filed directly with SEBI.

- Large Value Fund for Accredited Investors (LVFs) have been exempted from the requirement of intimating any changes in the terms of PPM through a merchant banker. LVFs may directly file any changes in the terms of PPM with SEBI, along with a duly signed and stamped undertaking by CEO of the Manager of the AIF (or person holding equivalent role or position depending on the legal structure of Manager) and Compliance Officer of Manager of the AIF.

- The said Circular shall come into force with ***immediate effect***.

To read the Circular in detail, please click here.

2. **SEBI issued Circular dated May 02, 2024 on Portfolio Managers - Facilitating ease in digital on-boarding process for clients and enhancing transparency through disclosures.**

- SEBI have constituted working group to review the present regulatory framework under SEBI (Portfolio Managers) Regulations, 2020 and recommend measures to promote ease of doing business for Portfolio Managers.

- Further, based on recommendations provided by the working group, a public consultation was carried out and following has been decided:

- Ease in digital on-boarding process for clients of Portfolio Managers

  - As per Regulation 22(1) of SEBI (Portfolio Managers) Regulations, 2020 the portfolio manager shall enter into an agreement in writing with client before taking any assignment. Such agreement shall contain the details as specified in Schedule IV of SEBI (Portfolio Managers) Regulations, 2020.

  - Master Circular dated March 20, 2023 for Portfolio Managers (‘Master Circular’) requires that Portfolio Manager shall ensure that the client has understood the structure for fees and charges and the new client signs an annexure on fees and charges and adds a note confirming their comprehension. In physical onboarding, this note must be handwritten. In digital onboarding, it should be typed or electronically written in simplified language within a single paragraph. above provision shall be applicable from October 01, 2024.

- Fee calculation tool

  - The Portfolio Manager must provide all the clients a tool to calculate fees which shall able to provide various fee options with multi-year fee calculations. Such tool shall follows the high watermark principle when needed and access to such tool shall be provided to all new clients in advance.

- Additional fees disclosures

  - The annexure for fees and charges to the PMS-client agreement shall contain One year and multi-year fee illustrations which shall follow high watermark principle when needed. This is applicable to for new clients, on-boarded on or after October 01, 2024.

  - Portfolio Manager shall also provide an annexure detailing the fee calculation from October 01, 2024.

- Most Important Terms and Conditions (‘**MITC**’) document

  - Portfolio Manager shall provide to its client MITC document and client shall duly acknowledge it.

  - The above provision shall be applicable to new client on or after October 01, 2024.

  - MTDC shall inform the existing client via mail or any other electronic communication which shall be preserved by January 01, 2025.

  - Portfolio manager shall not charge any other fees other than those mentioned in annexure to the PMS-client agreement.

- Portfolio Manager shall ensure that no additional fees and charges are levied, other than those specified in the annexure (on fees and charges) to the PMS-client agreement.

- The said Circular shall be applicable to all portfolio managers and association of portfolio managers in India.

- This Circular shall come into effect ***<u>from October 01, 2024</u>***. APMI shall issue the standard procedures and required formats by July 31, 2024.

To read the Circular in detail, please click here.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

1. **IFSCA issued Circular dated May 01, 2024 on 'Qualified Suppliers' for supply of bullion on India International Bullion Exchange IFSC Limited (IIBX).**

- IFSCA through this Circular facilitate supply of bullion at IIBX, eligible overseas entities have been enabled to become a Qualified Supplier on the IIBX, either as a client (QS-Client) of a Bullion Trading Member or as a Qualified Supplier – 'Special Category' Clients (QS-SCC).

- Further with a view to widen the scope of participation of IFSC entities and pool of suppliers on the IIBX, it is hereby decided to permit eligible units set up in the IFSC to supply bullion at IIBX, i.e. they shall be eligible to apply to become a Qualified Supplier on IIBX (as QS-IFSC), subject to compliance with various Regulations, Guidelines, Circulars, etc. issued by IFSCA.

- QS-IFSC, unless a Bullion Trading Member, shall participate on IIBX only as a client through a Bullion Trading Member.

- QS-IFSC may bring their bullion into any of the IIDIL empaneled Vaults operated by IFSCA registered Vault Managers – in GIFT IFSC or in other SEZs. Bullion supplied at IIBX shall be sourced by such QS-IFSC directly from an LBMA- accredited refiner or a UAE Good Delivery – accredited refiner or an entity which is a member of at least one of the below mentioned associations/exchanges/jurisdictions, for a cumulative and contiguous period of five years:

  - a) London Bullion Market Association (LBMA);
  - b) CME Group (COMEX);
  - c) Shanghai Gold Exchange International (SGEI);
  - d) Dubai Gold & Commodities Exchange (DGCX);
  - e) Dubai Multi Commodities Centre (DMCC);
  - f) Borsa Istanbul (BIST);
  - g) Or any other association / exchange as may be specified by the IFSCA from time to time.

- QS-IFSC shall intimate IIDIL and the IFSCA registered Vault Manager about the supply of the bullion in the IIDIL empaneled Vault adhering to the good delivery standards prescribed by IIBX for the creation of Bullion Depository Receipts (BDRs).

- IIDIL shall prescribe the Standard Operating Procedure (SOP) for ensuring that bullion being supplied on the IIBX by QS-IFSCA is in compliance with conditions.

To read the Circular in detail, please click here.

2. **IFSCA issued Circular dated May 02, 2024 on facilitating investments by NRIs and OCIs into Indian securities through Schemes / Funds in an IFSC**

- The IFSCA (Fund Management) Regulations, 2022 allow Fund Management Entities (FMEs) to launch various schemes / funds in IFSC. In case these schemes / funds invest in listed Indian securities, they are required to be registered as Foreign Portfolio Investors ("FPIs") under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019.

- SEBI's 'Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors' dated December 19, 2022 specifies a threshold for the aggregate contribution of the Non-Resident Indians , Overseas Citizens of India and Resident Indians in the corpus of an FPI.

- In order to increased participation by NRIs and OCIs in Indian securities through IFSC based FPIs, SEBI in its meeting held on April 30, 2024 has inter alia approved alternative routes.

- Under the Alternative route 1 : NRI/OCI/RI investors may contribute up to 100% in the corpus of IFSC based FPIs where such FPIs will be, inter alia, required to submit copies of PAN (or other suitable documents in the absence of the same), of all their NRI/OCI/RI individual constituents, along with their economic interests in the FPI, to the DDP. The modalities for this alternative shall be specified by SEBI.

- Under the Alternative route 2 : NRI/OCI/RI investors may contribute up to 100% in the corpus of IFSC based FPIs without the FPI required to submit the above-mentioned documents, provided it satisfies conditions as laid down in the said circular.

- FMEs intending to invest in Indian securities through the FPI route, by setting up Retail Schemes, Restricted Schemes and Exchange Traded Funds in an IFSC, shall inter alia comply with the following conditions:

    - The eligibility of FME for such scheme / fund shall be as specified by SEBI.

    - The FME shall independently take investment decisions without being influenced by the investors in the scheme / fund.

    - The scheme / fund shall have at least 20 investors with no single investor accounting for more than 25% of the corpus of the fund.

    - The scheme / fund shall not invest more than 20% of its assets under management in the securities of a single investee company.

    - The FME shall comply with the additional disclosures as specified by SEBI, in case the concentration of investments by the scheme / fund breaches the threshold as specified by SEBI at the corporate group level of the investee company.

    - All other applicable provisions of IFSCA (Fund Management) Regulations, 2022, SEBI (FPI) Regulations, 2019 and circulars issued thereunder shall continue to apply to such scheme / fund.

- The said Circular shall be applicable to all fund management entities in IFSCs.

- The said Circular shall come into force with ***immediate effect***.

To read the Circular in detail, please click here.

3. **IFSCA issued Circular dated May 02, 2024 on 'Issuance of Derivative Instruments against Indian securities by non-bank entities in GIFT-IFSC.**

- Vide the said Circular, IFSCA registered non-bank entities which are registered with SEBI as FPIs, are permitted to issue Derivative Instruments with Indian securities as underlying, in GIFT-IFSC.

- IFSCA Pursuant to the said Circular has provided, the issuer entity to bear the following responsibilities:

    - The entity issuing Derivative Instruments in GIFT-IFSC shall ensure compliance with requirements on issuance of ODIs, issued by SEBI and IFSCA.

    - The issuer entity must provide necessary information to the Clearing Corporations in GIFT-IFSC. This information should be in the format specified, and it must be submitted by the tenth day of each month.

- The said Circular shall be applicable to registered non-bank entities in the IFSC.

To read the Circular in detail, please click here.

RESERVE BANK OF INDIA (RBI)

1. **RBI issued Circular dated May 03, 2024 on amendments to Master Direction on Risk Management and Inter-Bank Dealings.**

   - According to the notification dated July 27, 2018 have granted authorization to Standalone Primary Dealers (SPDs) under Section 10(1) of the Foreign Exchange Management Act (FEMA), 1999.

   - Accordingly, amendments have been made in the Master Direction to reflect the applicability of the provisions to SPDs. These amendments are attached to the said circular as Annexure – I.

   - SPDs shall continue to comply with all applicable Directions issued by the RBI.

   - The directions on reporting of OTC foreign exchange derivative contracts and foreign currency interest rate derivative contracts to the Trade Repository of Clearing Corporation of India Ltd. have been updated and incorporated in Part E of the Master Direction.

   - Certain directions on reporting relating to format, mode, timelines, etc., have also been updated and the amendments being made to the Master Direction are placed as Annexure II in the said Circular.

   - The said Circular shall be applicable to all authorised persons. Authorised Persons shall mean Authorised Dealer Category-I banks and Standalone Primary Dealers authorised as Authorised Dealer Category-III under Section 10 (1) of the FEMA, 1999.

   - The said Circular shall come into force with immediate effect and in suppression of the listed at Appendix III of the Master Direction.

To read the Circular in detail, please click here.

SEBI ORDERS

1. ADJUDICATION ORDER IN THE MATTER OF AGI GREENPAC LIMITED

SEBI had conducted an examination in the matter of AGI Greenpac Limited (hereinafter referred to as "**Noticee**"), a company listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) based on the complaints received from Soneko Marketing (P) Limited and HNG Industries Thozhilalar Nala Sangam.

During the examination, the following allegations were levelled against the Noticee:

1. Failure to provide accurate, adequate and explicit disclosure resulting in misrepresentation to the stock exchanges pursuant to Regulation 4(1)(c), (d), (e) and H of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred as "**LODR Regulations**").

2. Failure to disclose material developments with respect to disclosures made by the Company to BSE and NSE pursuant to Regulation 30(7) of LODR Regulations read with Regulation 4(1), (e) and (h) of LODR Regulations.

Based on the findings of examination, SEBI initiated the Adjudication proceedings and the Adjudicating Officer ("AO") was appointed to inquire into and adjudge for the aforesaid alleged violations by the Noticee. Accordingly, a show cause notice was issued to the Noticee to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HB of the SEBI Act for the aforesaid alleged violations.

After considering all the facts and the circumstances of the case, and the material available on record, the AO was of the view that the above violations make the Noticee liable for monetary penalty. The AO also noted that no quantifiable figures were available to assess the disproportionate gain or unfair advantage made as result of such non-compliance by the Noticee. However, there has been violation of SEBI Regulations by non-disclosure of material information to the investing public. Hence, AO imposed penalty of INR 5,00,000/- on the Noticee for violation of various provisions of said regulations to be paid.

To read the Order in detail, please click here.

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The contents of this newsletter should not be construed as a legal opinion. View detailed disclaimer.

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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 affiliate entity of Nishith Desai Associates ("NDA"), a preeminent India centric law firm. We are a premier and boutique firm specialized in meeting with the global standard corporate governance aspirations of our clients operating in India.

Our team comprises of professionals with a prolific corporate, legal and secretarial compliance background. We aim to provide pragmatic and business-oriented solutions in governance and compliance matters, through a unique holistic approach that blends our expertise and decades of experience in compliance and regulatory areas.

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