Swift India

CORPORATE SERVICES LLP

Swift e-Bulletin

Week – July 29th to August 3rd

Quote for the week:

“Stock markets are always right. Never time the market.”

– Rakesh Jhunjhunwala *(*Indian investor and stock trader*)*

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 vide circular dated August 01, 2024, issued amendment to Circular for mandating additional disclosures by FPIs that fulfil certain objective criteria.**

- ❖ **RBI vide notification dated July 29, 2024 issued ‘Fully Accessible Route’ for Investment by Non-residents in Government Securities – Exclusion of new issuances in 14-year and 30-year tenor securities.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements/ orders issued during the week of July 29th to August 3rd.

Thank you, Swift team

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. **SEBI vide circular dated August 01, 2024, issued amendment to Circular for mandating additional disclosures by FPIs that fulfil certain objective criteria.**

   - SEBI vide Circular dated August 24, 2023 mandated additional disclosures for FPIs that fulfil objective criteria as specified in the said Circular.

   - Further, FPIs satisfying any of the criteria listed under Para 8 of the said Circular were exempted from the additional disclosure requirements, subject to conditions specified in the said Circular. The said circular has been subsumed subsequently in the Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors ("**FPI Master Circular**") dated May 30, 2024.

   - Further in this regard it has been decided that University Funds and University related Endowments shall not be required to make the additional disclosures as specified in Para1 (xiii) of Part C of the FPI Master Circular, subject to compliance with certain conditions. In view of the above, the FPI master circular stands modified as follow after clause (g) of para 1 (xiv) of Part C, the following shall be inserted:

     - "(h) University Funds and University related Endowments, registered or eligible to be registered as Category I FPI, subject to them fulfilling the following additional conditions:

       i. Indian equity AUM being less than 25% of global AUM
       ii. Global AUM being more than INR 10,000 crore equivalent
       iii. Appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organization exempt from tax."

   - The eligible jurisdictions with respect to the exemption granted to University Funds and University related Endowments shall be as specified by SEBI from time to time, consultation with the pilot Custodians and DDPs Standards Setting Forum, through the Standard Operating Procedure framed in terms of Para 1(xii) of Part C of the FPI Master Circular.

   - The said circular shall be applicable to all Foreign Portfolio Investors ('**FPIs**'), Designated Depository Participants ('**DDPs**') and Custodians, The Depositories, The Stock Exchanges and Clearing Corporations, Registrars to an Issue and Share Transfer Agents, Listed Companies.

   To read the circular in detail, please click here.

RESERVE BANK OF INDIA (RBI)

1. **RBI vide notification dated July 29, 2024 issued 'Fully Accessible Route' for Investment by Non-residents in Government Securities – Exclusion of new issuances in 14-year and 30-year tenor securities.**

   - A reference is invited to the Fully Accessible Route introduced by the Reserve Bank, vide A.P. (DIR Series) Circular No. 25 dated March 30, 2020, wherein certain specified categories of Central Government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well.

   - Further e-Government Securities that are eligible for investment under the Fully Accessible Route (**'specified securities'**) were notified by the Bank in various circulars in past.

   - On a review and in consultation with the Government, it has been decided to exclude all new securities of 14-year and 30-year tenors from the Fully Accessible Route. Consequently, future issuances of Government Securities in these tenors shall not be available for investment under the Fully Accessible Route.

   - Existing stocks of Government Securities in 14-year and 30-year tenors already included as 'specified securities' under the Fully Accessible Route shall, however, continue to be available under the Fully Accessible Route for investments by non-residents in the secondary market.

   - Further Investments by Foreign Portfolio Investors in new Government Securities in 14-year and 30-year tenors issued henceforth shall be either reckoned under the investment limits prescribed in A.P. (DIR Series) Circular as amended from time to time or reckoned under investment limits and subject to conditions stipulated in the circular.

   - The said Master Directions shall supersede the Master Circular on Classification and Reporting dated July 01, 2015.

To read the notification in detail, please click here.

2. **RBI vide notification dated July 30, 2024, issued Guidelines on treatment of Dividend Equalization Fund ('DEF') - Primary (Urban) Co-operative Banks ('UCBs')**

   - Guidelines on "Declaration of Dividends by UCBs" dated July 05, 2012 prohibit dividend payments from previously accumulated profits or reserves and mandate that dividend can only be paid by the banks from net profit of the current year after making all statutory and other provisions and after adjustment for accumulated losses in full.

   - RBI has decided to permit UCBs to transfer the balances in the DEF to general reserves/free reserves as a onetime measure to provide a better treatment of these balances for regulatory capital purposes. The credit balances in general reserves/free reserves, shall qualify as Tier-I capital as per our Master Circular.

- As per the terms of Reserve Bank of India (Financial Statements -Presentation and Disclosures) Directions, 2021 dated August 30, 2021 Suitable disclosures shall be made of transfers in the 'Notes on Accounts' to the Balance Sheet

- Further, UCBs shall comply with the provisions of applicable State/ Central Co-operative Acts & bye - laws, and other applicable laws, statutes and regulations.

- The said circular shall be applicable to all Primary (Urban) Co-operative Banks.

- The circular shall come into force with immediate effect.

To read the notification in detail, please click here.

3. **RBI vide notification dated July 30, 2024 issued Master Directions on Cyber Resilience and Digital Payment Security Controls for non-bank Payment System Operators.**

- RBI issued Master Directions on Cyber Resilience and Digital Payment Security Controls for non - bank Payment System Operators ('**PSOs**') with aim to improve safety and security of the payment systems operated by PSOs by providing a framework for overall information security preparedness with an emphasis on cyber resilience.

- The Board of Directors (Board) of the PSO shall be responsible for ensuring adequate oversight over information security risks, including cyber risk and cyber resilience. However, primary oversight may be delegated to a sub-committee of the Board, headed by a member with experience in information / cyber security, which shall meet at least once every quarter.

- The PSO shall formulate a Board approved Information Security ('**IS**') policy to manage potential information security risks covering all applications and products concerning payment systems as well as management of risks that have materialized.

- The PSO shall maintain a record of all the key roles, information assets (applications, data, infrastructure, personnel, services, etc.), critical functions, processes and third-party service providers, and classify and document their levels of usage, criticality and business value.

- The PSO shall follow a 'secure by design' approach such as Secure-Software Development Life Cycle (S-SDLC) for design and development of products / services and ensure that no security weaknesses are introduced during the build process.

- The PSO shall develop a BCP based on different cyber threat scenarios and shall put in place a cloud operation policy, Board approved incident response mechanism, data leak prevention policy for confidentiality, integrity, availability and protection of business and customer information.

- The PSO shall facilitate its members / participants have mechanisms for online alerts based on various parameters such as failed transactions, transaction velocity, as well as in case of new account parameters

- Prepaid Payment Instruments (PPI) shall put in place suitable cooling period for funds transfer and cash withdrawal after such funds are electronically loaded on to the PPI.

- The PSO providing / facilitating / processing mobile payment services transactions shall comply with the security practices and risk mitigation measures

- The said Master Directions shall be applicable to all authorised non-bank PSOs.

- The Directions shall come into effect on the day they are placed on the official website of the RBI. A phased implementation approach is prescribed to provide adequate time to put in place the necessary compliance structure.

Regulated Entity	**Timeline**
Large non-bank PSOs	April 1, 2025
Medium non-bank PSOs	April 1, 2026
Small non-bank PSOs	April 1, 2028

To read the notification in detail, please click here.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

1. **IFSCA vide circular dated July 31, 2024 issued circular enabling credit rating agencies to undertake additional activities relating to ESG Ratings and Data Products Providers.**

   - Environmental, Social and Governance Ratings and Data Products Providers (‘**ERDPPs’**) globally has seen a significant rise due to factors such as net zero targets in several jurisdictions and companies having their own targets to reduce carbon footprints, demand from investors for businesses to have a positive social impact and pervasiveness of transparency and governance.

   - Various regulatory frameworks internationally require disclosures of ESG reports including sustainability reports by entities, thereby increasing the role of ERDPPs. Subsequently, securities market regulators in a few global jurisdictions have issued frameworks, including codes of conduct, for regulating ERDPPs.

   - With an objective to develop an ecosystem for various activities relating to ESG including sustainability in the IFSC, it has been decided that a framework may be specified to enable credit rating agencies (“**CRAs**”) registered with the IFSCA to also undertake services relating to ERDPPs.

   - The said circular inter alia has laid down requirements for CRAs registered with IFSCA to undertake services relating to ERDPPs.

     - CRAs shall be permitted to provide services relating to ESG Ratings and ESG data products.

     - ESG ratings shall include the broad spectrum of rating products relating to sustainable finance and include ESG scorings, ESG rankings, Sector ESG Ratings, and Thematic scores.

     - ESG data products shall include products and services relating to ESG-related information.

     - CRAs may provide ERDPP services for any financial product or security or to an issuer (including a sovereign or a multilateral institution) or a financial institution in the IFSC or any Foreign Jurisdiction.

     - ERDPPs shall adopt and implement written policies and procedures designed to help ensure the issuance of high quality ESG ratings and data products.

     - ERDPPs shall ensure appropriate governance arrangements are in place that enable them to promote and uphold the principles and overall objectives of the Code of Conduct.

     - ERDPPs shall adopt and implement written policies and procedures designed to address and protect all non-public information received from or communicated to them by any entity, or its agents, related to their ESG ratings and data products, in a manner appropriate in the circumstances.

- CRAs providing ESG Ratings shall have guidelines / criteria on the rating process and the same shall be disclosed on their websites.

- CRAs shall have an annual audit conducted by a member of the Institute of Chartered Accountants of India or a member of the Institute of Company Secretaries of India or any person authorised to conduct audit in a Foreign Jurisdiction in accordance with regulation 22 of the IFSCA (Capital Market Intermediaries) Regulations, 2021. The audit shall also cover all aspects relating to ERDPPs and the compliance with the requirements mentioned in said circular.

- CRAs shall segregate the credit rating activities from the services relating to ERDPPs to ensure that there is no conflict of interest between these activities.

- The Authority may call for any information, documents or records from the CRAs, including relating to their activities as ERDPPs and CRAs shall provide such information, documents or records as and when sought by the Authority.

▪ The said circular shall come into force with immediate effect.

▪ The said circular shall be applicable to all CRAs in the IFSC.

To read the circular in detail, please click here.

SEBI ORDERS

1. ADJUDICATION ORDER IN THE MATTER OF IIFL SECURITIES LIMITED

Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted examination of M/s IIFL Securities Limited (hereinafter referred as "**Noticee**") which is a SEBI registered stockbroker with respect to its role in uploading mismatch/wrong Unique Client Code (UCC) data of clients in Multi Commodity Exchange of India Ltd (MCX) platform including Sikkim based clients for the inspection period as mentioned in the order.

SEBI initiated the Adjudication proceedings, and the Adjudicating Officer ("AO") was appointed to inquire into and adjudge for the alleged violation of SEBI (Stock- Brokers) Regulations, 1992 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.

During the examination, it was observed that, the Noticee had uploaded incorrect data of Sikkim based clients in UCC Database, which was different from KYC documents with respect to various clients which could have resulted in violation of Stamp Duty Act and misuse of the exemptions, only available to Sikkim domiciled residents. It was alleged that the Noticee has not acted with due skill, care and diligence in the conduct of all his business, and thus, violated the provisions of Clause A (2) of Code of Conduct as specified in Schedule II of Regulation 9(f) of Stock-Brokers Regulations, 1992.

After considering all the facts and the circumstances of the case, and the material available on record, the AO was of the view 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, the Noticee has been penalized earlier for the violation of provisions of code of conduct under Stock-Brokers Regulations, 1992. Thus, the violation is repetitive in nature. Hence, AO imposed penalty of INR 3,00,000/- on the Noticee for violation of said regulations.

To read the order in detail, please click here.

DISCLAIMER:

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

This newsletter provides general information existing at the time of preparation. The newsletter is intended as a news update and Swift India Corporate Services LLP neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this newsletter. It is recommended that professional advice be taken based on the specific facts and circumstances. This newsletter does not substitute the need to refer to the original pronouncements.

+91 22 6669 5000

Call us to explore a topic or let us answer your questions

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.

Swift India Corporate Services LLP

Regd. Office: 91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
LLPIN: AAH-4705, registered under the Limited Liability Partnership Act, 2008
Tel +91 22 6669 5000, Fax +91 22 6669 5001

Website:
https://swiftindiallp.com/

Contact:
swift@nishithdesai.com

Core Team:
Ms. Hetal Pandya - hetal.pandya@nishithdesai.com
Mr. Maulin Salvi – maulin.salvi@nishithdesai.com
Mr. Santosh Gangavati – santosh.gangavati@nishithdesai.com
Mr. Chandrashekar K – chandrashekar.k@nishithdesai.com

Principal Advisor:
Mr. Janak C. Pandya – janak.pandya@nishithdesai.com