Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Week – August 5th to August 10th

Quote for the week:

“It does not matter how large or small your sphere of activity is, what counts finally is the commitment that you bring to the job that has been ordained for you in this life.”

– A.P.J. Abdul Kalam (Former President of India, Indian aerospace scientist)

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**”), Ministry of Corporate Affairs (“**MCA**”), Reserve bank of India (**“RBI”**) and International Financial Services Authority (“**IFSCA**”).

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

- **SEBI on August 05, 2024 issued Circular in relation to methodology for valuation of additional Tier 1 Bonds (“AT-1 Bonds”)**

- **RBI on August 08, 2024 issued Notification in relation to frequency of reporting of credit information by Credit Institutions to Credit Information Companies**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements/ orders issued during the week of August 5th to August 10th.

Thank you, Swift team

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. **SEBI on August 05, 2024 issued Circular in relation to methodology for valuation of additional Tier 1 Bonds ("AT-1 Bonds")**

- SEBI vide Circular dated August 05, 2024 issued on valuation of additional Tier 1 Bonds ('AT-1 Bonds') with reference to Master Circular dated June 27, 2024 for Mutual Funds ("Master Circular"), on valuation of bonds with multiple call options.

- National Financial Reporting Authority **('NFRA')**, in its report to Department of Economic Affairs, Ministry of Finance has recommended that since the market practice for AT-1 bonds has been observed to trade at or quote prices closer to Yield to Call (YTC) basis, valuation of AT-1 Bonds on Yield to Call basis (adjusted with appropriate risk spreads) will be consistent with the principles of market-based measurement under Ind AS 113.

- YTC methodology is confined only to the interpretation of Ind AS 113 with reference to the valuation of AT-1 bonds and the issue of deemed maturity date for other purposes is outside NFRA's remit.

- On the basis of recommendation of NFRA, SEBI has been decided that the valuation of AT-1 Bonds by Mutual Funds shall be based on Yield to Call.

- The said Circular shall be applicable to all Mutual Funds **('MFs')**, Asset Management Companies **('AMCs'),** Trustee Companies/ Boards of Trustees of Mutual Funds, Registrar to an Issue and Share Transfer Agents **('RTAs')**, Association of Mutual Funds in India **('AMFI').**

To read the Circular in detail, please click here.

2. **SEBI on August 05, 2024 issued Circular in relation to institutional mechanism by Asset Management Companies for identification and deterrence of potential market abuse including front-running and fraudulent transactions in securities.**

- SEBI issued Circular in order to address instances of market abuse including front running and fraudulent transactions in securities, consultations were held with relevant stakeholders including Mutual Funds Advisory Committee ('MFAC') on the proposal of putting in place a structured institutional mechanism at the end of AMCs, which can proactively identify and deter instances of such market abuse. Further a public consultation was also carried out on the abovementioned proposal.

- Accordingly, the SEBI (Mutual Funds) Regulations, 1996 have amended vide notification dated August 01, 2024 to give effect to above proposal.

- AMCs shall put in place an institutional mechanism for identification and deterrence of potential market abuse including front-running and fraudulent transactions in securities.

- This mechanism shall consist of enhanced surveillance systems, internal control procedures, and escalation processes such that the overall mechanism is able to identify, monitor and address specific types of misconduct, including front running, insider trading, misuse of sensitive information etc.

- The mechanism shall ensure the Accountability, Alert-based surveillance mechanism, Processing of alerts, Standard operating procedures, Action on suspicious alerts, Escalation process, Whistle blower policy, Periodic review.

- As alerts generated under surveillance mechanism, AMCs shall report all examined alerts to SEBI alongwith action taken in Compliance Test Report ('CTR') and the Half-yearly Trustee Report ('HRTY') submitted to SEBI in the prescribed format.

- The said Circular shall be applicable to All Mutual Funds, All Asset Management Companies (AMCs), All Trustee Companies/ Board of Trustees of Mutual Funds, Association of Mutual Funds in India (AMFI), All Recognized Stock Exchanges, All Recognized Depositories.

To read the Circular in detail, please click here.

3. **SEBI on August 06, 2024 issued Circular in relation to amendment to Master Circular for Infrastructure Investment Trusts (InvITs) & Real Estate Investment Trusts (REITs) dated May 15, 2024 -Board nomination rights to unitholders of InvITs & REITs.**

- SEBI vide Circular amended Para 22.3.1. (b) of Chapter 22, titled "Board nomination rights to unitholders of Infrastructure Investment Trusts ('**InvITs'**) & Real Estate Investment Trusts ('**REITs'**)", of the Master Circular for InvITs & REITs dated May 15, 2024 requires as under:

- "(b) Eligible Unit holder(s)shall been titled to nominate only one Unitholder Nominee Director, subject to the unitholding of such Eligible Unitholder(s) exceeding the specified threshold. If the right to nominate one or more directors on the Board of Directors of the Investment Manager is available to any entity (or to an associate of such entity) in the capacity of shareholder of the Investment Manager or lender to the Investment Manager or the InvITs & REITs (or its HoldCo(s) or SPVs), then such entity in its capacity as unitholder, shall not be entitled to nominate or participate in the nomination of a Unitholder Nominee Director".

- Market participants have requested to provide clarity on the availability of the right to nominate a director on the Board of Directors of the Investment Manager of InvITs & REITs, to a unitholder where such nomination right is also available to a unitholder in the capacity of lender to the Investment Manager or the InvITs & REITs (or its HoldCo(s) or SPVs)

- In order to promote ease of doing business and based on the request of the industry and recommendation of Hybrid Securities Advisory Committee ('**HySAC**'), It is proposed to insert the following proviso under paragraph 22.3.1. (b) of Master Circular for Infrastructure Investment Trusts & Real Estate Investment Trusts dated May 15, 2024:"Provided that the above restriction relating to the right to nominate a Unitholder Nominee Director shall not be applicable if the right to appoint a nominee director is available in terms of clause (e) of sub-regulation (1) of regulation 15 of the SEBI (Debenture Trustees) Regulations, 1993."

- The said Circular shall be applicable to all InvIT & REITs, All Parties to InvIT & REITs, All Recognized Stock Exchanges, All Depositories.

To read the Circular in detail, please click here.

MINISTRY OF CORPORATE AFFAIRS (MCA)

1. MCA on August 05, 2024 issued Notification on amending the Companies (Adjudication of Penalties) Rules, 2014.

- In the exercise of the powers conferred by section 454 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Adjudication of Penalties) Rules, 2014, namely:

- In the Companies (Adjudication of Penalties) Rules, 2014, —

  - (i) after rule 3, the following rule shall be inserted, namely: -

    "3A. Adjudication Platform.- (1) On the commencement of the Companies (Adjudication of Penalties) Amendment Rules, 2024, all proceedings (including issue of notices, filing replies or documents, evidences, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer and Regional Director under these rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose.

  - (ii) In case the e-mail address of any person to whom a notice or summons is required to be issued under these rules is not available, the adjudicating officer shall send the notice by post at the last intimated address or address available in the records and the officer shall preserve a copy of such notice in the electronic record in the e-adjudication platform referred to in sub-rule (1):

    Provided that in case no address of the person concerned is available, the notice shall be placed on the e-adjudication platform."

To read the Notification & substituted form in detail, please click here

2. MCA on August 05, 2024 issued notification on amending the Limited Liability Partnership Rules, 2009

- The amended rules may be called the Limited Liability Partnership (Amendment) Rules, 2024.

- The said Notification shall come into force with effect from ***August 27, 2024.***

- In the Limited Liability Partnership Rules, 2009, in rule 37 (i) in sub-rule (1)

  - in clause (b) and in the first proviso after the word "Registrar", the words "the Centre for Processing Accelerated Corporate Exit" has been inserted and now section shall be read as follows:

    "For a period of one year or more and has made an application in Form 24 to the Registrar the Centre for Processing Accelerated Corporate Exit, with the consent of all partners of the limited liability partnership for striking off its name from the register, the Registrar the Centre for Processing Accelerated Corporate Exit shall send a notice to the limited liability partnership and all its partners, of his intention to strike off the name of the limited liability partnership from the register and requesting them to send their representations along with copies of the relevant documents, if any, within a period of one month from the date of the notice:

Provided that no such notice by Registrar 4[the Centre for Processing Accelerated Corporate Exit] shall be required under clause (b):

Provided further that where the limited liability partnership is regulated under a special law, the application for removal of its name shall be accompanied by approval of the regulatory body constituted or established under that law.”

- The following Explanation has been provided under above provision :

  For the purposes of this sub-rule, the Centre for Processing Accelerated Corporate Exit means the office of Centre for Processing Accelerated Corporate Exit established by the Central Government, vide notification number S.O. 1269(E), dated 17th March, 2023 issued under sub-sections (1) and (2) of section 396 of the Companies Act, 2013 (18 of 2013)";

▪ In the Limited Liability Partnership Rules, 2009, in rule 37 (i) in sub-rule (3) after the word "Registrar" occurring at both places, the words "or the Centre for Processing Accelerated Corporate Exit, as the case may be” has been inserted and now section shall be read as follows:

  - “At the expiry of the time mentioned in the notice under sub-rule (1), or one month under sub-rule (2) above, the Registrar or the Centre for Processing Accelerated Corporate Exit, as the case may be may, by an order, unless cause to the contrary is shown by the limited liability partnership, or the Registrar 6[or the Centre for Processing Accelerated Corporate Exit, as the case may be] is satisfied that the name should not be struck off from the register, strike its name off the register, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the limited liability partnership shall stand dissolved.”

▪ In the Limited Liability Partnership Rules, 2009, in rule 37 (i) in sub-rule (4) after the word "Registrar", the words "or the Centre for Processing Accelerated Corporate Exit, as the case may be” has been inserted and now section shall be read as follows:

  - The Registrar or the Centre for Processing Accelerated Corporate Exit, as the case may be, before passing an order under sub-rule (3), shall, where he has sufficient cause to believe that the limited liability partnership has any asset or liability, satisfy himself that sufficient provision has been made for the realisation of all amount due to the limited liability partnership and for the payment or discharge of its liabilities and obligations by the limited liability partnership within a reasonable time and, if necessary, obtain necessary undertakings from the designated partner or partner or other persons in charge of the management of the limited liability partnership:

    Provided that notwithstanding the undertakings referred to in this sub-rule, the assets of the limited liability partnership shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the limited liability partnership from the register.

To read the Notification form in detail, please click here.

RESERVE BANK OF INDIA (RBI)

1. **RBI on August 08, 2024 issued Notification on frequency of reporting of credit information by Credit Institutions to Credit Information Companies**

- As per Circular dated January 15, 2015 the Credit Information Companies ('CICs') and Credit Institutions **('CIs')** are required to maintain and collect credit information or updated regularly on a monthly basis or at such shorter intervals as mutually agreed upon between the CI and the CIC. Due to the faster turnaround time in credit underwriting through digital processes, it is imperative that the Credit Information Reports (CIRs) provided by CICs reflect a more current information, enabling lenders to make informed credit decisions.

- Accordingly, CICs and CIs are directed to keep the credit information collected/maintained by them updated regularly on a fortnightly basis (i.e., as on 15th and last day of the respective month) or at such shorter intervals as mutually agreed upon between the CI and the CIC. The fortnightly submission of credit information by CIs to CICs shall be ensured within seven (7) calendar days of the relevant reporting fortnight.

- As per Circular dated October 26, 2023 CICs are required to ingest credit information data received from the CIs, as per their data acceptance rules, within seven (7) calendar days of its receipt from the CIs. This is now being revised to five (5) calendar days of its receipt.

- CICs shall provide a list of CIs to RBI not adhering to the fortnightly data submission timelines at a half yearly intervals (as on March 31 and September 30 each year)

- The said instructions shall be effective from ***January 1, 2025***. However, the CIs and CICs are encouraged to give effect to these instructions as expeditiously as feasible but not later than January 1, 2025.

- The said Notification shall be applicable to all Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks, and excluding Payments Banks), all Primary (Urban) Co-operative Banks/State Co-operative Banks/ Central Co-operative Banks, all-India Financial Institutions (Exim Bank, NABARD, NHB, SIDBI and NaBFID), all Non-Banking Financial Companies (including Housing Finance Companies), all Asset Reconstruction Companies, all Credit Information Companies.

To read the Notification in detail, please click here.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

1. **IFSCA on August 09, 2024 issued Circular regarding Bullion Trading Members and Clearing Members in GIFT- IFSC**

   - IFSCA has extended the initial 6 months period specified in paragraphs 3 and 4 of the dated September 17, 2021 till July 28, 2024 vide circular dated February 22, 2024.

   - The period specified in paragraphs 3 and 4 of the Circular till October 31, 2024 or till the time IFSCA issues revised guidelines/handbook/circular specifying the requirements of minimum Net worth and Base Minimum Capital for Bullion intermediaries, whichever is earlier.

   - The said Circular shall be applicable to Bullion Exchange, Bullion Clearing Corporation, Bullion intermediaries in the International Financial Services Centre (IFSC)

   To read the Circular in detail, please click here.

DISCLAIMER:

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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.

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