Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Week – November 11th to November 16th

Quote for the week:

"Either you run the day or the day runs you."

– **Jim Rohn** (American entrepreneur and author)

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 Securities and Exchange Board of India **("SEBI")**, Reserve Bank of India **("RBI")** and SEBI Orders**.**

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

- **SEBI on November 11, 2024 issued Circular on trading supported by Blocked Amount in Secondary Market.**

- **RBI vide Notification dated November 11, 2024 issued Operational framework for reclassification of Foreign Portfolio Investment to Foreign Direct Investment ("FDI")**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements/ orders issued during the week of November 11th to November 16th.

Thank you, Swift team

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. **SEBI on November 11, 2024 issued Circular on trading supported by Blocked Amount in Secondary Market.**

- SEBI vide Master Circular dated October 16, 2023 introduced a supplementary process for trading in secondary market based on blocked funds in investors bank account, instead of transferring them upfront to the TMs, thereby, providing enhanced protection to the cash collateral of the investors.

- The facility of trading using UPI block mechanism was introduced as a non-mandatory facility to be provided by the stockbrokers.

- Some TMs are already offering the facility of 3 -in-1 trading accounts. The salient features of the 3 – in - 1 trading account primarily include:

  - Integration of the trading account with the demat and bank accounts of the client.

  - Blocking of funds, to the extent of the obligation, in the bank account of the client on placement of buy orders. In case the buy orders are not executed the funds blocked are released.

  - Blocking of securities in the demat account of the client on placement of sell orders. In case the sell orders are not executed, the block on the securities is removed.

  - The pay - in (transfer of Funds / securities) blocked at the time of order placement, from the bank / demat account of the client is carried out post market hours and is upstreamed to the Clearing Corporation. The client earns interest on the available funds till the pay-in.

- Based on the aforesaid deliberations and considering the significant changes required to be made in the systems and processes of the Clearing Corporations, Stock Exchanges, Depositories, NPCI and the TMs, in implementation of the facility of trading supported by blocked amount to trade in the secondary market, the following has been decided:

- In addition to the current mode of trading, the Qualified Stock Brokers (“**QSBs”**)shall provide either the facility of trading supported by blocked amount in the secondary market (**cash segment**) using UPI block mechanism or the 3-in-1 Trading Account facility, to their clients.

- The 3-in-1 trading account facility offered/ to be offered by the TMs shall, at least have the features as specified.

- Clients of the QSBs will have the option, to either continue with the existing facility of trading by transferring funds to TMs or opt for either of the facilities stated at above, as provided by the QSBs.

- The Stock Exchanges and Clearing Corporations are advised to:

  - Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision, as may be necessary/applicable.

- Bring the provisions of this circular to the notice of the market participants (including QSBs) and to disseminate the same on their website.

▪ The Circular shall be applicable to all recognised Stock Exchanges, All recognised Clearing Corporations, All recognised Depositories, National Payment Corporation of India.

To read the Circular in detail, please click here.

2. **SEBI on November 11, 2024 issued Circular on procedure for reclassification of FPI investment to FDI**

▪ As per Regulations 20(7) and 22(3) of the SEBI (Foreign Portfolio Investors) Regulations,2019 provide that in case a FPI fails to divest its holdings (in excess of the prescribed threshold), within five trading days, the entire investment in the company by such foreign portfolio Investor including its investor group shall be considered as investment under the Foreign Direct Investment("**FDI**"), as per the procedure specified by the Board.

▪ Procedure specified in under Para 17 of Part C of Master Circular for FPI, Designated Depository Participants and Eligible Foreign Investors dated May 30, 2024 stands modified as under:

▪ **Procedure for reclassification of FPI investment to FDI**:

- In case the investment made by a FPI (along with its investor group) reaches 10% or more of the total paid up equity capital of a company on a fully diluted basis and the FPI (along with its investor group) intends to reclassify its FPI holdings as FDI, it shall follow extant FEMA Rules and circulars issued thereunder in this regard.

- Pursuant to receipt of such intent from the FPI, the respective Custodian shall report the same to the Board and freeze purchase transactions by such FPI in equity instruments of such Indian company, till completion of the reclassification.

- On receipt of request from the FPI for transfer of the equity instruments of such Indian company from its FPI demat account to its demat account maintained for holding FDI investments, the Custodian shall process the request if the reporting for reclassification, as prescribed by RBI, is complete in all respects.

▪ The provisions of this Circular shall come into force with ***immediate effect***.

▪ The Circular shall be applicable to FPIs, Designated Depository Participants ("**DDPs**") and Custodians, The Depositories, The Stock Exchanges and Clearing Corporations.

To read the Circular in detail, please click here.

3. **SEBI vide Circular dated November 12, 2024, issued simplified registration for Foreign Portfolio Investors (FPIs)**

▪ As per SEBI's Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors dated May 30, 2024 Every FPI applicant is required to submit a duly filled and signed Common Application Form (CAF) and 'Annexure to CAF' supported by required documents for registration.

- If FPI applicants belonging to the below mentioned categories information regarding the Investment Manager (IM) and other relevant information is already captured in depositories' CAF module

  - fund(s) operated by investing/non-investing IM, wherein such IM or any fund operated by IM, is already registered as FPI

  - sub-fund(s) of a master fund, wherein such master fund or any sub-fund of such master fund, is already registered as FPI

  - sub-fund(s) or separate class(es) of shares or equivalent structure(s) with segregated portfolio of a fund, wherein such fund or any of its sub-fund or separate class of shares or equivalent structure with segregated portfolio, is already registered as FPI

  - scheme(s)of insurance companies wherein the parent entity or any scheme of insurance company is already registered as FPI.

- For ease and to reduce duplication of available information deliberations held with market participants, the following is decided:

  - In case applicant opts for this abridged version of CAF, the remaining fields shall either be auto populated from the information available in the CAF module or shall be disabled, as applicable.

  - On receipt of information from the applicant, shall update the details in CAF and take an explicit consent to use the same and a confirmation.

- This Circular is applicable to FPI, Designated Depository Participants and Custodians, The Depositories.

- The provisions of this Circular shall come into force ***after three months from the date of this Circular***.

To read the Circular in detail, please click here.

4. **SEBI vide Circular dated November 13, 2024, issued relaxation from certain provisions for units allotted to an employee benefit trust for the purpose of a unit based employee benefit scheme, Alignment of timelines for making distribution by REITs, InvITs and Format of Quarterly Report and Compliance Certificate-Real Estate Investment Trusts (REITs) & Infrastructure Investment Trusts (InvITs)**

   - SEBI amended SEBI (Real Estate Investment Trusts) Regulations, 2014 ("REIT Regulations") & SEBI (Infrastructure Investment Trusts) Regulations, 2014 on July 13, 2024 to provide a framework for unit based employee benefit ("**UBEB**") scheme that provide issuance of units to the employee benefit trust shall be based on the guidelines for preferential issue of units, including pricing guidelines as specified by the Board

   - Lock-in

     - Other than sponsor - One year from the date of trading approval for such units.

     - Entire pre-preferential issue unitholding of the allottees - six months from the date of trading approval.

- **Allotment**

  - Preferential issue of units shall not be made to any person who has 90 trading days preceding the relevant date has sold/transferred their units or where any person belonging to the sponsor(s) has sold/transferred their units of the issuer during the 90 days preceding the relevant date.

    restriction on preferential issue of units shall not be applicable to a sponsor(s),in case any asset is being acquired by the REIT or InvIT from that sponsor(s), and preferential issue of units is being made to that sponsor, as full consideration for the acquisition of such asset.

- Aforementioned lock-in and allotment related restrictions shall not apply to the employee benefit trust.

- Payment to any unitholders has remained unpaid or unclaimed, the Investment Manager shall, within seven working days from the date of expiry of timelines transfer such unclaimed amounts to an Escrow Account to be opened by it on behalf of the InvIT & REIT in any scheduled bank. Such account shall be termed as the 'Unpaid Distribution Account.'

- The provisions of this Circular shall be applicable to Bharat InvITs Association, Bharat InvITs Association, all Infrastructure Investment Trusts (InvITs) & all Real Estate Investment Trusts (REITs) and all Parties to InvITs & REIT, all recognized Stock Exchanges, all Depositories.

- This Circular shall be applicable ***with immediate effect***.

To read the Circular in detail, please click here

RESERVE BANK OF INDIA (RBI)

1. RBI vide Notification dated November 11, 2024 issued operational framework for reclassification of Foreign Portfolio Investment ("FPI") to Foreign Direct Investment ("FDI")

- RBI through notification attention of Authorised Dealer (AD) Category - I banks is invited to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, (hereinafter referred to as 'Rules') notified by the Central Government on October 17, 2019.

- RBI draw attention to Schedule II to the Rules which prescribes that investment made by foreign portfolio investor along with its investor group (hereinafter referred to as 'FPI') shall be less than 10 percent of the total paid-up equity capital on a fully diluted basis. Further, FPI investing in breach of the prescribed limit shall have the option of divesting their holdings or reclassifying such holdings as FDI. In this regard, an operational framework for such reclassification of FPI to FDI is provided in the Annex. The AD Category-I banks may accordingly facilitate the reporting of such transactions as per this framework.

- These directions will become operative with immediate effect. AD Category-I banks may bring the contents of this Circular to the notice of their customers / constituents concerned.

To read the Notification and Annex in detail, please click here.

SEBI ORDERS

1. Adjudication order in the matter of Ankur Jain (proprietor: Winway research)

- SEBI had received many complaints in SCORES against Ankur Jain, Proprietor of Winway Research (hereinafter referred to as "**Noticee**"). Subsequently, SEBI conducted examination in the matter of Ankur Jain.

- The findings of the examination are summarised below:

  A. Noticee did not apply for registration as a non-individual Investment Adviser ("**IA**").

  B. Noticee insisted the clients to make payments from bank account of relatives and seeking payments in their bank account, taking money from its clients in different personal bank accounts belonging to other persons. Noticee charged fees from the complainant (i.e. Shyam Kumar Kandukuri) for same product for overlapping durations.

  C. Noticee issued invoices for various payments but has not mentioned the same in the agreements entered with the complainants and Noticee did not enter into agreement with the client with respect to various fees charged from its clients.

  D. Noticee failed to submit records sought by SEBI and failed to maintain call records.

  E. Noticee promised assured returns to client and induced the client fraudulently to subscribe to its service packages.

  F. Noticee did not resolve the SCORES complaints and did not file the ATRs submitting reasons that the procedures and guidelines have been complied with.

- 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.

- 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 role of an IA is crucial to the development of the securities market, especially for the entry of the small investors who may rely on the advice of such IAs. In this regard, the role of an IA is crucial as a facilitator of small investors into the securities market. So, it is of utmost importance that every IA takes all necessary steps to comply with all the provisions, Rules and Regulations as laid down by the Regulator. Hence, the Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, Rules and Regulations and Circulars/directions issued thereunder etc., which it failed to do. Hence, AO imposed penalty of INR 7,00,000/- on the Noticee for violation of said regulations.

To read the Order in detail, please click here.

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About Swift

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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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