Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

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Week – July 17 to July 21, 2023

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

"It's better to hang out with people better than you."

– ***Warren Buffett.*** *(Chairperson of Berkshire Hathaway)*

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**").

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

- SEBI vide circular dated July 20, 2023 issued circular on new category of Mutual Fund schemes for Environmental, Social and Governance ("**ESG**") Investing and related disclosures by Mutual Funds.
- SEBI vide circular dated July 19, 2023 issued Circular on Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**") – Extending framework for restricting trading by Designated Persons ("**DPs**") by freezing PAN at security level to all listed companies in a phased manner.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of July 17 to July 21, 2023.

Thank you,

Swift team

REGULATORY UPDATES

SEBI

1. **SEBI vide circular dated July 20, 2023 issued circular on new category of Mutual Fund schemes for Environmental, Social and Governance ("ESG") Investing and related disclosures by Mutual Funds.**

- The concept of ESG investments is emerging and therefore consistent, comparable, and decision-useful scheme disclosures are desirable which shall enable investors to make informed investment decision and to prevent greenwashing

- In order to suggest further measures to improve transparency, with a particular focus on mitigation of risks of mis-selling and greenwashing, an ESG Advisory Committee was set up by SEBI which provided recommendations for expanding the disclosure norms for ESG funds.

- Considering the recommendations of the ESG Advisory Committee and pursuant to public consultation on the matter, the provisions of the SEBI (**Mutual Funds**) Regulations, 1996 were amended on June 27, 2023 to inter-alia specify that the funds under ESG schemes shall be invested in the manner as specified by SEBI from time to time.

- Accordingly, SEBI now has decided to implement the following measures to facilitate green financing with thrust on enhanced disclosures and mitigation of green washing risk.

    - **Thematic schemes on ESG Strategies:**

        – SEBI has now decided to introduce a separate sub-category for ESG investments under the thematic category of Equity schemes. Any scheme under the ESG category shall be launched with one of the following strategies (**details of strategies are at Annexure A of this circular**) -

            (i) Exclusion

            (ii) Integration

            (iii) Best-in-class & Positive Screening

            (iv) Impact investing

            (v) Sustainable objectives

            (vi) Transition or transition related investments

        – Minimum 80% of the total assets under management ('**AUM**') of ESG schemes shall be invested in equity & equity related instruments of that particular strategy of the scheme. The remaining portion of the investment shall not be in contrast to the strategy of the scheme.

- **Investment criteria for ESG Schemes:**

  - It is decided that an ESG scheme shall invest at least 65% of its AUM in companies which are reporting on comprehensive Business Responsibility and Sustainability Reporting ('**BRSR'**) disclosures and are also providing assurance on BRSR Core disclosures.

  - Such ESG schemes which are not in compliance with the aforesaid investment criteria as on October 01, 2024, shall ensure compliance with the requirement by September 30, 2025.

- **Disclosure requirements for ESG Schemes:**

  - The following disclosure requirements must be made for such ESG schemes:

    (i) Scheme strategy to be reflected in scheme name

    (ii) Mutual Funds shall disclose in their monthly portfolio statements of ESG schemes the Security wise BRSR Core scores and name of the ESG Rating Provider ('**ERPs'**) along with the ESG scores

    (iii) The Asset Management Companies ('**AMCs'**) are required to make disclosures of votes cast on their website on a quarterly basis, along-with the specific rationale supporting their voting decision.

    (iv) The enhanced voting disclosures shall be applicable from FY 2024-25 i.e. For Annual General Meetings held from April 01, 2024 onwards.

- **Annual Fund Manager commentary and disclosure of case studies:**

  - A 'Fund Manager Commentary' along with the additional disclosures with respect to engagements undertaken by Mutual Funds for ESG schemes shall be provided in the Annual Report of the ESG schemes.

  - The requirement of Annual Fund Manager commentary shall be applicable from FY 2023-24.

- **Assurance on ESG Schemes:**

  - The AMCs shall obtain an independent reasonable assurance on an annual basis regarding their ESG scheme's portfolio following the strategy and objective of the scheme, as stated in respective Scheme Information Documents.

  - Such an assurance shall be on a "comply or explain basis" for all ESG schemes for FY 2022-23 by December 31, 2023. Thereafter, disclosure of assurance shall mandatorily be made in the scheme's annual report.

- **Certification by the Board of AMCs:**
  - The board of directors of AMCs, based on comprehensive internal ESG audit, shall certify the compliance of ESG schemes with the regulatory requirements including disclosures, in annual report of the scheme.

To read the Circular in detail, please click here.

2. **SEBI vide circular dated July 19, 2023 issued Circular on Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") – Extending framework for restricting trading by Designated Persons ("DPs") by freezing PAN at security level to all listed companies in a phased manner**

- According to Clause 4 (1) of Schedule B read with Regulation 9 of PIT Regulation states as below:-
  - "Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring the trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of UPSI. Such closure shall be imposed in relation to such securities to which such UPSI relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed".
- According to Clause 4 (2) of Schedule B read with Regulation 9 of PIT Regulations, which states as below:-
  - "trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results……".
- SEBI in order to rationalize the compliance requirement under Clause 4 of Schedule B read with Regulation 9 of PIT regulations and to improve ease of doing business and to prevent inadvertent non-compliances of the said provision by DPs, a circular was issued dated August 05, 2022 which laid down a framework for developing a system to restrict the trading by DPs by way of freezing the PAN at security level during Trading Window closure period.
- A system was developed and framework was put in place by the Depositories and the Stock Exchanges, which was initially was made applicable for listed companies that were part of benchmark indices i.e. NIFTY 50 and SENSEX which was superseded by Master Circular on Surveillance of Securities Market dated March 23, 2023.
- Further based on the consultation held with the Stock Exchanges and Depositories and considering the satisfactory implementation of the framework, it is hereby now extended to all listed companies.

- Timelines for phase wise implementation of the framework has been laid down in the said Circular.

- The procedure for implementation of the system has be laid down in **Annexure – A** and **Annexure – B** of the said Circular.

- The Depositories shall submit the quarterly report to SEBI in the format placed under **Annexure-C**

- The said Circular shall be applicable to All Recognized Stock Exchanges, All Depositories and All Listed Companies.

- The Circular shall come into force as per the Timelines mentioned in the said Circular.

To read the Circular in detail, please click here.

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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 associate entity of Nishith Desai Associates — Legal & Tax Counseling Worldwide (legal and tax consulting firm).

We are a team of professionals with rich corporate, legal and secretarial backgrounds. We are a premier corporate compliance firm that caters to the needs and demands of our global clients. Swift aims to provide quick and pragmatic corporate solutions alongside high-quality compliances.

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