Swift e-Bulletin
Edition 04th/23-24
Week – April 24th to April 28th

Quote for the week:

"Business opportunities are like buses, there's always another one coming."

- Richard Branson

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 International Financial Services Centres Authority ("**IFSCA**") and Reserve Bank of India (**"RBI"**) and Securities and Exchange Board of India (**"SEBI"**) and Ministry of Corporate Affairs (**"MCA"**) and orders/judgements from Supreme Court and SEBI.

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

- SEBI issued Circular dated April 25, 2023 on Bank Guarantees (BGs) created out of client's funds.

- RBI vide Circular dated April 26, 2023 updated the Remittances to International Financial Services Centers (IFSCs) under the Liberalized Remittance Scheme (LRS)

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of **April 24th to April 28th, 2023.**

Thank you,
Swift team

Table of Contents

Swift e-Bulletin 1

REGULATORY UPDATES 4

SEBI 4

1. SEBI vide Circular dated April 25, 2023 issued circular on Bank Guarantees (BGs) created out of client's funds. 4

2. SEBI vide Circular dated April 25, 2023 issued modifications in the requirement of filing of Offer Documents by Mutual Funds 5

3. SEBI issued Master Circular for Custodians dated April 27, 2023. 5

RBI 7

1. RBI vide Circular dated April 26, 2023 updated the Remittances to International Financial Services Centers ("IFSC") under the Liberalized Remittance Scheme ("LRS"). 7

MCA 8

1. MCA amended the Companies (Indian Accounting Standards) Rules, 2015. 8

IFSCA 9

1. IFSCA vide Circular dated April 26, 2023 amends existing Circular titled '*Framework for Aircraft Lease'* dated May 18, 2022. 9

2. IFSCA on April 24, 2023 issued International Financial Services Centres Authority (Fund Management) Regulations, 2022 9

SEBI ORDER 11

1. Adjudication Order in the matter of NJ Asset Management Private Limited. 11

2. Adjudication Order in the matter of Role of Karvy Capital Limited in the matter of NCDs issued by Utkarsh Small Finance Bank Limited. 11

REGULATORY UPDATES

SEBI

1. **SEBI vide Circular dated April 25, 2023 issued circular on Bank Guarantees (BGs) created out of client's funds.**

- The Stockbrokers ("SB")/ Clearing Members ("CM") currently pledge client's funds with Banks which in turn issues BGs to clearing corporations for higher amounts which implicit leverage exposes the market and puts clients funds at risk.

- To safeguard the interest of the investors the following measures have been implemented:

  - From May 01, 2023, no new BGs shall be created out of the client's funds by SBs/CMs; and

  - The existing BGs created out of the client's funds shall be wound down by September 30, 2023.

- The Stock exchanges and clearing corporations shall take stock of the current positions of the BGs issued out of clients funds by SBs/CMs and monitor the wind down to ensure implementation of the circular without any disruption of services to the client.

- The Stock exchanges and clearing corporations have been directed to submit the following data on Name of the SB/CM, Nature of the entity, Total BG amount etc. every fortnightly basis starting from June 01, 2023.

- A certificate by statutory auditor confirming the implementation of this Circular is required to be submitted by SBs/CMs by October 16, 2023.

- The Stock exchanges and Clearing Corporation shall verify the compliance of the provisions of this circular in their periodic inspections/reporting and evolve adequate mechanisms to address cases of SBs/CMs who do not comply with the provisions of the circular by the stipulated date.

- The said above changes have been modified by SEBI in the series of Circular relating to SBs and CMs.

To read the Circular in detail, please click here

2. **SEBI vide Circular dated April 25, 2023 issued modifications in the requirement of filing of Offer Documents by Mutual Funds**

- SEBI on August 10, 2016 vide Circular SEBI/HO/IMD/DF2/CIR/P/2016/68 made it mandatory to submit soft copy of Final Scheme Information Document **("SID")** along with printed/final copy seven (7) working days prior to the launch of the scheme.

- As an initiative towards Go Green, the above mentioned circular has been amended to stating AMCs are ought to file all final offer documents (SID) and final Key Information Memorandum ("KIM") only digitally by emailing the same to a dedicated email id i.e., imdsidfiling@sebi.gov.in and the mandate of physical filing with SEBI is done away with.

- Pursuant to discussion with the Association of Mutual Funds in India ("AMFI"), the submission of Final SID and Final KIM shall be made at least two working days prior to the launch of the scheme.

- All New Fund Offers ("NFOs") shall remain open for subscription for a minimum period of three working days, an initiative to safeguard the interests of the investors.

- The said Circular shall be effective from ***May 01, 2023***.

To read the Circular in detail, please click here.

3. **SEBI issued Master Circular for Custodians dated April 27, 2023.**

- SEBI has time and again issued Circulars/Directions to Custodians owing to which there was a need to collate such circulars at one place for ease in accessibility. SEBI has collated all such Circulars/Directions at one place in the given Master Circular.

- Custodians along with adhering to the specified requirements in the Master Circular will also be required to independently adhere to other requirements specified by SEBI for Market Intermediaries such as the 'Levy of Goods & Services Tax (GST) on the fees payable to SEBI', 'Approach to securities market data access and terms of usage of data provided by data sources in Indian securities market', 'Digital mode of payment', 'Information regarding Grievance Redressal Mechanism' and 'Guidelines on Outsourcing of Activities by Intermediaries', etc. along with the directions/guidelines made specifically applicable to the Custodians.

- The list of the Circulars that are rescinded owing to the issuance of Master Circular is provided for in **Annexure – A** of the said Circular.

- Post rescinding of the contract the following shall be born in mind

    - Acts done prior to the issuance of the Master Circular shall be deemed to have been done or taken under the corresponding provisions of this Master Circular;

- Any application made for registration prior to rescission and pending for approval shall be shall be deemed to have been done or taken under the corresponding provisions of this Master Circular.

- The previous operations, rights, penalty imposed for violation, investigation, etc. under the previous rescinded circular shall remain unaffected as if the rescinded Circulars have never been rescinded.

- The Master Circular consists of the following particulars in detail:

  - Online registration mechanism for the custodians

  - Fees to be payable for custodians along with the format of payment of annual fee at the end of the Financial Year (on or before April 30th every year)

  - Specifications of vaults with custodians is to be submitted on a quarterly basis along with their size.

  - Submission of various reports by the custodians.

  - Publishing of investor charter and disclosure of complaints by custodians on their websites

To read the Master Circular in detail, please click here.

RBI

1. **RBI vide Circular dated April 26, 2023 updated the Remittances to International Financial Services Centers ("IFSC") under the Liberalized Remittance Scheme ("LRS")**

- RBI vide notification issued on February 16, 2021, permitted resident individuals to make remittances under LRS to IFSCs set up in India under the Special Economic Zone Act, 2005 and had updated the Master Direction on Liberalized Remittance Scheme to reflect the same.

- RBI vide the said notification dated April 26, 2023, has decided to amend the para 2 (ii) of the above mentioned notification to align the LRS for IFSCs set up under the International Financial Services Center Authority Act, 2019.

- RBI vide the amendment has permitted Resident Individuals to open a Foreign Currency Account in IFSCs, for making the permissible investments under LRS.

- Therefore, the condition of repatriating any funds lying idle in the account for the period of 15 days from the date of its receipt is withdrawn with immediate effect and will now be governed by the provision of the scheme as contained in the LRS Master Directions.

- AD Category – 1 banks has been directed to bring the content of the said notification to the notice of their constituents and customers.

To read the Circular in detail, please click here

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MCA

1. MCA amended the Companies (Indian Accounting Standards) Rules, 2015.

- MCA has notified the Companies (Indian Accounting Standards) Amendment Rules, 2023.
- Vide this amendment, a new para 39AH has been inserted in Ind AS 101 after para 39AG, which states that 'Deferred Tax related to Assets and Liabilities arising from a Single Transaction' and shall apply for annual reporting periods beginning on or after April 01, 2023.
- Further various other amendments have also been notified vide these rules Companies (Indian Accounting Standards) Amendment Rules, 2023.
- The said rules shall be applicable from the financial year beginning on or after April 01, 2023.

To read the Notification in detail, please click here.

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IFSCA

1. **IFSCA vide Circular dated April 26, 2023 amends existing Circular titled '*Framework for Aircraft Lease*' dated May 18, 2022.**

- IFSCA vide Circular dated May 18, 2022 issued a framework relating to Aircraft Lease ("Framework") where in IFSCA has specified 'permissible Activities' under Part I on Aircraft Operating lease and 'permissible activities under financial lease' in clause 5.E. and 5.H. respectively of the said Framework.

- Post issuance of the framework, IFSCA has received several representations from stakeholders requesting to enable lease of Aviation training simulation devices as Permissible activity under the Framework as it forms an integral part of the aviation ecosystem.

- Considering the requests received from the stakeholders IFSCA vide Notification dated April 11, 2023 specified operating lease, including a hybrid of operating and financial lease, in respect of 'Aviation training simulation devices', as a financial product.

- Further vide this Circular IFSCA has made the following inclusions in the said framework:

- To expand the scope of lessor as defined in clause 5.B.(ii) of the Framework so as to include the business of leasing of aviation training simulation device.

- To include the 'operating lease for an aviation training simulation device' and 'financial lease or any hybrid of financial and operating lease for an aviation training simulation device', to the list of permissible activities under clause 5.E. and 5.H. respectively, of the said Framework.

- To expand the scope of Asset Management Support Services ("AMSS") as specified in clause 5.E.(iii) of the said Framework to include AMSS for assets owned or leased out by any of the group entities of the Lessor set up in the IFSCs in India.

- This Circular further includes the relevant changes in the respective clauses of the framework to bring in effect the above-mentioned changes.

To read the Circular in detail, please click here.

To read the framework in detail, please click here.

2. **IFSCA on April 24, 2023 issued International Financial Services Centres Authority (Fund Management) Regulations, 2022**

    - IFSCA in the exercise of its powers conferred by sub section (1) of Section 28 read with sub-section (1) of Section 12 and sub-section (1) of Section 13 of the International

Financial Services Centres Authority Act, 2019; Section 28C of the Securities and Exchange Board of India Act, 1992, the International Financial Services Centres Authority hereby makes the regulations named as (**"International Financial Services Centres Authority (Fund Management) Regulations, 2022").**

- The regulations include provisions relating to Registration of Fund Management Entity.
- The said regulation is a consolidated version of all the amendments made till April 11, 2023.

To read the Regulations in detail, please click here.

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SEBI ORDER

1. **Adjudication Order in the matter of NJ Asset Management Private Limited.**

- Securities Exchange Board of India ("**SEBI**") conducted an inspection of NJ Asset Management Private Limited (hereinafter referred as "**Noticee**"), registered as Portfolio Manager with SEBI under SEBI (Portfolio Managers) Regulations, 2020 (hereinafter referred as 'PM Regulations').

- During the investigation, it was observed that Noticee accepted investment from clients without meeting the minimum investment criteria, as prescribed in PM Regulations. Accordingly, Adjudicating Proceedings were initiated against the Noticee and a Show cause notice was issued to the Noticees, requiring the Noticee to show cause as to why and inquiry should not be held, and penalty be not imposed.

- After considering all the facts, material available on records and the submissions made by the Noticees, Adjudicating Officer ("**AO**") is of the view that Noticee should have complied with new regulatory minimum investment criteria as prescribed under Regulation 23 (2) of PM Regulations before accepting investment from clients.

- In view of the above, AO imposed penalty of INR 1,00,000/- on Noticee for violation of provisions of Regulation 23 (2) of PM Regulations.

To read the Order in detail, please click here.

2. **Adjudication Order in the matter of Role of Karvy Capital Limited in the matter of NCDs issued by Utkarsh Small Finance Bank Limited.**

- Securities and Exchange Board of India ("**SEBI**") has examined the transaction of Karvy Capital Limited (hereinafter referred as "**Noticee**") in the unsecured Non-Convertible Debentures (NCDs) of Utkarsh Small Finance Bank Limited (hereinafter referred as "**USFB**"). During the examination, the following was observed:

  - KCL is a SEBI registered portfolio manager and Karvy Capital Limited A/c Excel Portfolio is a discretionary strategy offered under its PMS services;

  - KCL in capacity of NBFC structured the NCDs for USFB for which it received advisory fee. Thereafter, KCL in its capacity of PMS subscribed the unsecured NCDs on behalf of its client. Therefore, there was an alleged inherent conflict of interest in the dual role played by KCL as a Structurer of the deal and also as an investor;

  - In the disclosure document also KCL did not mention any thing about the role and the alleged conflict of interest.

- Considering the above facts, Adjudicating Proceedings were initiated against the Noticee and a Show cause notice was issued to the Noticees, requiring the Noticee to show cause as to why and inquiry should not be held, and penalty be not imposed.

- After considering all the facts, material available on records and the submissions made by the Noticees, Adjudicating Officer ("**AO**") is of the view that correct and timely disclosures are an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions. Noticee as a registered intermediary needs to adhere to the rules and regulations as prescribed by SEBI and maintain a high degree of professionalism in the conduct of their business. Nature of default by the Noticee to adhere to the laid down obligations as observed in this case would compromise the regulatory framework and should be dealt with by imposing monetary penalty so as to send an effective message to the market participants as a whole.

- Hence, AO imposed penalty of Rs. 1,50,000/- on Karvy Capital Limited for violation of provisions of regulation 13, 14 and 15(4) of SEBI (PMS) Regulations, 1993 read with clause 1 and clause 3 of Schedule III and Schedule V of SEBI (PMS) regulations, 1993.

To read the Order in detail, please click here.

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

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