Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

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Week – July 31 to August 05th

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

"Strive not to be a success, but rather to be of value."

– *Albert Einstein (Theoretical physicist)*

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") and Ministry of Corporate Affairs ("MCA")

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

- ❖ SEBI vide circular dated August 01, 2023 issued circular on Trading Preference by Clients – Applicability for commodity derivatives.

- ❖ Ministry of Corporate Affairs (“MCA”) vide notification dated August 02, 2023 introduced the Companies (Incorporation) Second Amendment Rules, 2023.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of July 31st to August 05th 2023.

Thank you,
Swift team

REGULATORY UPDATES

SEBI

1. **SEBI vide circular dated August 01, 2023 issued circular on Trading Preferences by Clients – Applicability for commodity derivatives.**

- SEBI with an intent of allowing clients access to all the exchanges for the same segment, prescribed a revised format of “Trading Preferences” to be provided by clients to their respective stock brokers.

- Commodity derivates exchanges have represented that the format prescribed at Para 5 of the SEBI circular dated June 21, 2023 may not be made applicable to exclusive members of the commodity derivatives exchanges.

- Further, it is hereby clarified that the aforesaid format of “Trading Preferences” as specified in SEBI circular dated June 21, 2023 shall not be made applicable to members registered exclusively with commodity derivatives exchanges. Such members shall use the format as prescribed by the erstwhile Forward Market Commission (**“FMC”**) vide its circular dated February 26, 2015.

- Referring to Para 6 of the SEBI circular dated June 21, 2023, it is clarified that opting out facility should be provided to new as well as existing clients and negative consent should be obtained separately from clients in writing.

- Stockbrokers shall be mandated to maintain records of such written negative consents provided by the clients for at least five years.

- All other provisions specified in SEBI circular dated June 21, 2023 shall continue to remain applicable.

- The said circular shall be applicable to All Recognized Stock Exchanges and Stockbrokers through Recognized Stock Exchanges.

To read the circular in detail please click here.

2. **SEBI vide circular dated August 02, 2023 issued circular on Audit of firm-level performance data of Portfolio Managers.**

- As per SEBI Master Circular on Portfolio Managers dated March 20, 2023, Portfolio Managers are required to audit firm-level performance data on annual basis and submit the confirmation of compliance to SEBI within sixty days of the end of each financial year.

- As per the aforesaid requirements, Portfolio Managers are required to consider both discretionary and non-discretionary portfolio management services for the purpose of auditing the firm-level performance data.

- Association of Portfolio Managers in India (**"APMI"**) in consultation with SEBI, shall specify standardized Terms of Reference (**"ToR"**) for aforesaid auditing of firm-level performance data.

- The standard ToR shall inter-alia include requirement for Portfolio Managers to consider clients portfolios under all services for the purpose of audit of firm-level performance data and Performance of advisory clients may be excluded only if performance of such clients, either individually or cumulatively, is not reported or published in any marketing material or website.

- The standard ToR specified by APMI shall be applicable with effect from October 01. 2023, shall be mandatorily followed by all Portfolio Managers for the purpose of annual audit of firm-level performance data.

- The Portfolio Managers shall submit the confirmation of compliance with the aforesaid requirement of annual audit of firm-level performance data in line with the standard ToR specified by APMI, to SEBI within sixty days from the end of each financial year.

- The aforesaid report on confirmation of compliance to SEBI is required to be certified by Directors/Partners of the Portfolio Managers or by persons authorized by the Board of Directors/ Partners of the Portfolio Managers.

- The circular shall be applicable to All portfolio managers and APMI

- The circular shall come into effect from the date of issuance of the said circular.

To read the circular in detail, please click here.

3. **SEBI vide circular dated August 03, 2023 issued a circular on Offer for Sale framework for sale of units of Real Estate Investment Trusts ("REITs") and Infrastructure Trusts (InvITs)**

- SEBI vide Circular dated January 10, 2023 has specified the comprehensive framework on Offer for Sale (**"OFS"**) of shares including units of REITs and InvITs through stock exchange mechanism.

- Further, it has been decided to modify SEBI circular dated January 10, 2023 based on the feedback received from the market participants to allow OFS for units of private listed InvITs, as below: -

    - OFS for sale of units of REITs and InvITs by sponsor(s) or sponsor group entities, and other unitholders are permitted only in units of listed REITs and listed InvITs. The OFS framework for REITs and InvITs shall be equivalent to the OFS framework prescribed at paragraph-A above for equity shares of listed companies

- Provided that in case of OFS for listed InvITs, the trading lot shall be same as the trading lot prescribed for such InvITs in the secondary market in terms of SEBI (Infrastructure Investment Trusts) Regulations, 2014.

- Provided further that since there is no participation of retail investors in private listed InvITs, the provisions related to retail investors as specified in paragraph-A above shall not be applicable in case of OFS for such InvITs and the OFS shall remain open only for one day (i.e. T day)."

- The circular shall be applicable to All recognized stock exchanges, all recognized clearing corporations and all depositories.

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

To read the circular in detail, please click here.

4. **SEBI vide circular dated August 04, 2023 issued circular validating period of approval granted by SEBI to Alternative Investment Funds ("AIF") and Venture Capital Funds ("VCF") for overseas investment.**

- In terms of SEBI Circular dated August 09, 2007, on VCFs and SEBI Master Circular dated July 31, 2023 on AIFs, have a time limit of six months from the date of prior approval from SEBI for making the allocated investments in offshore venture capital undertakings. In case the applicant AIF/VCF does not utilize the limits allocated within six months, SEBI may allocate such unutilized limit to other applicant AIFs/VCFs.

- In this regard taking into account recommendations of the Alternative Investments Policy Advisory Committee, it has been decided to reduce the aforesaid time limit for making overseas investments by AIFs/VCFs from six months to four months, so that the allocated limit is utilised efficiently and, if unutilised, the same is again available to the AIF industry in a shorter time span.

- The provisions of this circular shall apply to the overseas investment approvals granted by SEBI subsequent to the issuance of this circular.

- The said circular is applicable to all AIFs and all VCFs.

To read the circular in detail, please click here.

5. **SEBI vide circular dated July 31, 2023 issued circular on Online Resolution of Disputes in the Indian Securities Market**

- After extensive public consultations and in furtherance of the interests of investors the existing dispute resolution mechanism in the Indian securities market is being streamlined under the aegis of Stock Exchanges and Depositories (collectively referred to as Market Infrastructure Institutions (**"MIIs"**) by expanding their scope and by establishing a common Online Dispute Resolution Portal (**"ODR Portal"**) which harnesses online conciliation and online arbitration for resolution of disputes arising in the Indian Securities Market.

- Introduction of the common Online Dispute Resolution Portal:
  - The MIIs will make joint efforts to develop and operationalize the ODR Platform. The Board may, from time to time, undertake inspection in order to ensure proper functioning of ODR Portal and MIIs shall provide complete cooperation to the Board in this regard.
  - Each MIIs will identify and empanel one or more independent ODR Institutions which are capable of undertaking time-bound online conciliation and/or online arbitration (in accordance with the Arbitration and Conciliation Act, 1996 and any other applicable laws) that harness online/audio-video technologies and have duly qualified conciliators and arbitrators. The norms for empanelment of ODR Institutions are specified in **Schedule C** of this circular as also the continuing obligations of the ODR Institutions
  - All market participants and MIIs are advised to display a link to the ODR Portal on the home page of their websites and mobile apps.

- Initiation of the dispute resolution process:
  - An investor/client shall first take up his/her/their grievance with the Market Participant by lodging a complaint directly with the concerned Market Participant. If the grievance is not redressed satisfactorily, the investor/client may, in accordance with the SCORES guidelines, escalate the same through the SCORES Portal
  - Alternatively, the investor/client can initiate dispute resolution through the ODR Portal if the grievance lodged with the concerned Market Participant was not satisfactorily resolved
  - The dispute resolution through the ODR Portal can be initiated when within the applicable law of limitation

- ODR Portal and allocation system:
  - The ODR Portal shall have the necessary features and facilities to, inter alia, enrol the investor/client and the Market Participant, and to file the complaint/dispute and to upload any documents or papers pertaining thereto.

- Conciliation:

  - The ODR Institution that receives the reference of the complaint/dispute shall appoint a sole independent and neutral conciliator from its panel of conciliators. Such conciliator shall have relevant qualifications or expertise.

  - Such conciliator shall conduct one or more meeting/s for the disputing parties to reach an amicable and consensual resolution within 21 calendar days from the date of appointment of conciliator by the ODR Institution, which shall do so within 5 days of receipt of reference of the complaint/dispute by the ODR Institution.

  - If the process of conciliation is successful, the same shall be concluded by a duly executed settlement agreement between the disputing parties. Such an agreement shall be executed and stamped through an online mode, as permissible in law.

- Arbitration:

  - When the investor/client and/or the Market Participant pursue online arbitration, the ODR Institution shall appoint a sole independent and neutral arbitrator from its panel of arbitrators within 5 calendar days of reference. In the event that the aggregate of the claim and/or counter-claim amount exceeds Rs 30,00,000/- (Rupees Thirty Lakhs) or such amount as the Board may specify from time to time, the matter shall be referred to an Arbitral Tribunal consisting of three Arbitrators (within 5 calendar days of reference)

  - Upon the conclusion of the arbitration proceedings and issuance of the arbitral award, subject to the terms of the arbitral award, when such arbitral award requires payment of any amount by the Market Participant or performance by it of a certain nature, then such payment shall be made by the Market Participant within a period of 15 calendar days from the date of the arbitral award

  - Upon the issuance/pronouncement of the arbitral award, the party against whom order has been passed, will be required to submit its intention to challenge the award under Section 34 of the Arbitration Act within 7 calendar days.

- This circular inter-alia contains the following chapters:

  - Form of Proceedings of Arbitration and Conciliation
  - Fees & Charges
  - Empanelment and Training of the Panel of Conciliator and Arbitrators
  - Roles and Responsibilities of MIIs
  - Responsibilities of the Market Participants
  - Timelines for Implementation

To read the Circular in detail, please click here.

6. **SEBI vide Circular dated August 04, 2023 issued as Corrigendum cum Amendment to Circular dated July 31, 2023 on Online Resolution of Disputes in the Indian Securities Market.**

- SEBI issued circular no. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/131 dated July 31, 2023 providing the guidelines for online resolution of disputes in the Indian securities market.

- The establishment of Online Dispute Resolution Portal (**"ODR Portal"**) will harnesses online conciliation and online arbitration for resolution of disputes arising in the Indian Securities Market.

- Pursuant to the feedback received, and the need for additional clarity or correction of language used was recognized by SEBI and through this corrigendum cum Amendment, the circular dated July 31, 2023 stands modified, and the following clauses shall be substituted:

  - Clause 8 of the circular which deals with the enrolment of the market participants on the ODR portal

  - Clause 11 of the circular which deals with the lodging of the compliant directly with the concerned market participant.

  - Clause 13 of the circular which provided for the initiation of the dispute resolution through the ODR portal

  - Other clauses which are substituted through this corrigendum cum Amendment are Clause 17, Clause 20c, Clause 21, Clause 24, Clause 25, Clause 27, Clause 49, Clause 50, Schedule A and Schedule C of the circular.

- The said corrigendum cum Amendment shall be applicable to All Recognized Stock Exchanges (including Commodity Derivatives), All Clearing Corporations, All Depositories, All Stock Brokers, All Depository Participants, All SEBI Registered Intermediaries / All SEBI Regulated Entities, All Listed Companies, All Registrar & Share Transfer Agents and All Asset Management Companies

- The said circular shall be applicable with immediate effect

To read the circular in detail, please click here.

MCA

1. **Ministry of Corporate Affairs ("MCA") vide notification dated August 02, 2023 introduced the Companies (Incorporation) Second Amendment Rules, 2023.**

- These rules shall come into force from the date of publication in the official gazette

- In the Companies (Incorporation) Rules, 2014, in the Annexure, for Form No. RD-1, the form RD-1 shall be substituted with immediate effect.

- Form RD-1 is required to be filed by the company for application to the concerned Regional Director (RD) for seeking approval order in case of Rectification of Name, change in financial year, Conversion of Public company into a private company, Notice of approval of the scheme of merger in CAA-11 and other purposes under the Companies Act, 2013.

- The revised form RD-1 shall be available on the MCA V3 portal in Approval Services (Regional Director) under the company e-filing tab.

To read the amendment 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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