
Swift e-Bulletin

Edition 02nd 2023-24

Week – April 10th to April 14th

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

*"Take Extra Time for yourself; you might discover the important things you were missing and they reach out for you."*

- *Kim Seokjin*

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 Exchange Board of India ("**SEBI**").

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

- SEBI vide Circular dated April 10, 2023 detailed the Direct plan for schemes of Alternative Investment Funds (AIFs) and trail model for distribution commission in AIFs.

- SEBI vide Circular dated April 10, 2023 issued Guidelines with respect to excusing or excluding an investor from an investment of Alternative Investment Funds ("AIF").

We have prepared a comprehensive summary for quick reference of the aforesaid and other updates issued during the week of April 10th to April 14th.

Thank you,
Swift team

## REGULATORY UPDATES

**SEBI**

**1. SEBI vide Circular dated April 10, 2023 detailed the Direct plan for schemes of Alternative Investment Funds (AIFs) and trail model for distribution commission in AIFs**

- SEBI vide Circular No. SEBI/ HO/ IMD/ DF6/ CIR/ P/ 2020/ 24 dated February 05, 2020 introduced the Private Placement Memorandum ("**PPM**"), a simple and comparable format to seek disclosures w.r.t. Direct Plan for investors and the fees that may be charged by the AIF to be disclosed to the investors.

- This Circular brings in flexibility to investors thereby bringing transparency in expenses and curb mis-selling in the following way:

  - **Direct Plan for schemes of AIFs:**

    i. The schemes of AIF will have a Direct Plan for investors wherein no distribution/placement fee shall be entailed.

    ii. For those approaching AIF through SEBI registered intermediaries charging the investors, they shall be on-boarded via Direct Plan only.

  - **Trail model for distribution commission in AIFs:**

    i. AIF while on-boarding the investors disclose the distribution fee/placement fee.

    ii. The distribution fee/placement fee for **Category III Investors** shall be charged on **Equal Trail Basis** (no upfront charging of fees). The payment of such fees shall only be through the management fees received by the managers of such Category III AIFs.

    iii. For **Category** and **Category II AIF** the payment of **One-third fees** shall be made **upfront** and the **balance** shall be paid **over the remaining tenure of the fund.**

- The said Circular issued with approval of the competent authority shall come into effect from May 01, 2023.

To read the Circular in detail, please click here.

2. **SEBI vide Circular dated April 10, 2023 issued Guidelines with respect to excusing or excluding an investor from an investment of Alternative Investment Funds ("AIF")**

- SEBI vide Circular dated February 05, 2020 introduced templates for Private Placement Memorandum **("PPM")** for AIFs by providing certain minimum level of information to be disclosed in a simple and comparable format.

- However, it has been observed that the information disclosed in PPMs that lacks inconsistency and adequate disclosure with respect to certain industry practices.

- Alternative Investment Policy Advisory Committee **("AIPAC")** reviewed the information disclosed in PPMs under the term *"Excuse and Exclusion"* for excusing or excluding an investor from investment of the AIF and accordingly it has been decided to excuse investors of AIF under following circumstances: -

  - If the investor based on opinion of legal professional/advisor confirms that's its participation in the investment opportunity would be in violation of an applicable law or regulation

  - If the investor in the contribution agreement or any other agreement signed with the AIF discloses to the manager that his participation would be in contravention to the internal policy of the investor. The manager shall ensure that the term of such agreement includes reporting of any change in the disclosed internal policy, **within 15 days of such changes**.

  - Further, manager may exclude an investor from participating if it would lead to the scheme of the AIF being in violation of applicable law or regulation or would result in material adverse effect on the scheme of AIF.

  - If the investor of an AIF is also an AIF or any other investment vehicle, such investor may be partially excused or excluded from participation in an investment opportunity to the extent of contribution in fund/investment vehicle 's underlying investors who are to be excused or excluded from such investment opportunity. The manager of AIF shall record the rationale for such excuse or exclusion along with supporting documents, if any

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

To read the Circular in detail, please click here.

3. **SEBI vide Circular dated April 11, 2023 formulated parameters of price bands for the first day of trading pursuant to Initial Public Offering (IPO), re-listing etc. in normal trading session.**

- SEBI vide circular no. CIR/MRD/DP/02/2012 dated **January 20, 2012** prescribed parameters regarding price discovery for the first day of trading pursuant to IPO or recommencement of trading for re-listed scrips in normal trading session.

- Complying the above mentioned Circular multiple stock exchanges have implemented the mechanism and observed that discovered price / equilibrium price pursuant to such price discovery suggested by SEBI could be different on each exchange giving an incorrect picture of price band to investors.

- Accordingly, SEBI has come up with the following:

  - Call Auction session would continue to be conducted separately on individual exchanges and orders would be matched by respective exchanges after computation of equilibrium price.

  - If difference in the equilibrium price between exchanges in percentage terms (i.e. absolute difference/minimum of equilibrium prices, expressed as %) is more than the applicable price band for the scrip, a Common Equilibrium Price ("**CEP**") would be computed by exchanges. The CEP shall be **volume weighted average of equilibrium prices on individual exchanges as determined by the Call Auction**.

  - The exchanges shall set the aforesaid CEP in their trading systems and apply uniform price bands based on the CEP, as applicable.

  - Only unexecuted pending orders from Call Auction session within the aforesaid price band shall be carried forward to the normal market segment.

- This Circular shall come into force after 60 days from the date of issuance of this circular.

To read the Circular in detail, please click here.

4. **SEBI vide Circular dated April 13, 2023 issued a framework for Contribution by eligible Issuers of debt securities to the Settlement Guarantee Fund of the Limited Purpose Clearing Corporation for repo transactions in debt securities.**

- SEBI in its meeting held on September 29, 2020 permitted the setting up a Limited Purpose Clearing Corporation (LPCC) for clearing and settling repo transactions in debt securities. The Board, inter alia, also decided that an amount of 0.5 basis points of the issuance value of debt securities per annum be collected upfront prior to the listing of such securities in order to build the Settlement Guarantee Fund of the LPCC

- It has been decided to put in place, the following framework for upfront collection of amounts as charges from eligible issuers at the time of allotment of debt securities:

  - The eligible issuers shall be notified by the LPCC as per its risk management policy.

- An amount of 0.5 basis points of the issuance value of debt securities per annum based on the maturity of debt securities shall be collected by the Stock Exchanges and placed in an escrow account prior to the allotment of the debt securities. This amount is applicable on a public issue or private placement of debt securities under the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021.

- Stock Exchanges shall transfer the amounts so collected to the bank account of the Lecithin one working day of the receipt of the amount and inform the details of the same to the LPCC.

- The details of the amounts so collected shall also be disclosed by the Stock Exchanges on their websites.

- The abovementioned charges shall be collected based on Actual/Actual. The LPCC shall provide an illustration of the calculation of the amounts to be contributed by the eligible issuers.

- The provisions of this circular shall come into force for the offer documents filed on or after May 01, 2023, for private placement/ public issues of debt securities by such eligible issuers as specified by the LPCC.

To read the Circular in detail, please click here.

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## Call us toll free 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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