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(Old Syllabus)

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Capital Markets and Securities Laws

MODULE -2, PAPER-6

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Students appearing in Examination shall note the following:

Students are also required to update themselves with all the relevant Notifications, Circulars, Clarifications, etc. issued by the SEBI, RBI & Central Government on or before six months prior to the date of the examination.

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LESSON 3: CREDIT RATING AND IPO GRADING

(1) **Standardizing and Strengthening Policies on Provisional Rating by Credit Rating Agencies (CRAs) for Debt Instruments**

(SEBI Circular No. SEBI/ HO/ MIRSD/ MIRSD_CRADT/ P/ CIR/ 2021/ 554 dated April 27, 2021)

SEBI came out with new framework to strengthen policies on provisional rating by Credit Rating Agencies (CRAs) for debt instruments.

Under the new framework, all provisional ratings ('long term' or 'short term') for debt instruments need to be prefixed as 'provisional' before the rating symbol in all communications viz. rating letter, press release / rating rationale, etc. Further, a rating shall be considered as provisional and not final in cases where certain compliances that are crucial to the assignment of credit rating are yet to be complied with or certain documentations remain to be executed at the time of rating. These documents or compliances include execution of guaranteed deed, opening of escrow account and setting up of debt service reserve account.

With regard to validity period, the provisional rating will be converted into a final rating within 90 days from the date of issuance of the debt instrument. The final rating assigned after the end of 90 days will be consistent with the available documents. An extension of 90 days may be granted on a case-to-case basis by the CRA's rating committee(s), in accordance with the policy framed by the credit rating agency in this regard. Also, no CRA shall assign any provisional rating to a debt instrument upon the expiry of 180 days from the date of its issuance.

The circular also provides various disclosures which shall be included in press release/ rating rationale while assigning provisional ratings in addition to the disclosures already made by Credit Rating Agencies.

For details: https://www.sebi.gov.in/legal/circulars/apr-2021/standardizing-and-strengthening-policies-on-provisional-rating-by-credit-rating-agencies-cras-for-debt-instruments_49951.html

LESSON 7: MUTUAL FUNDS

(1) **Revision of Monthly Cumulative Report (MCR)**

(Circular No. SEBI/HO/IMD/DF3/ CIR/P/2021/014 dated January 29, 2021)

SEBI has modified MCR format pursuant to introduction of a new scheme category and to bring transparency in reporting of segregated portfolios, from January 2021 onwards. Under the modified MCR, Asset Management Companies (AMCs) will have to disclose about the number of segregated portfolios created as well as net assets under management (AUM) in such segregated portfolios. The revised format of MCR is enclosed as Annexure A to this circular.

For details: https://www.sebi.gov.in/legal/circulars/jan-2021/circular-on-revision-of-monthly-cumulative-report_48927.html

(2) **Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2021 (February 4, 2021)**

SEBI vide its notification amends the provisions of SEBI (Mutual Funds) Regulations, 1996, which shall come into force on 30th day from the date of their publication in the Official Gazette.

Brief of the Amendments

- **Regulation 18 (18), w.r.t. rights and obligations of the trustees which specifies that the net worth shall be reviewed on a quarterly basis, has been substituted, namely:**
“The trustees shall on a quarterly basis review the net-worth of the asset management company to ensure compliance with the threshold provided in clause (f) of sub-regulation (1) of regulation 21 on a continuous basis.”
- **Regulation 21 (f), w.r.t. eligibility criteria for appointment of asset management company which specifies the asset management company to fulfil the requirements, has been substituted, namely:**

“the asset management company has a networth of not less than rupees fifty crore.”

Where the sponsor does not fulfil the requirements provided in part (iv) of the Explanation to clause (a) of regulation 7 at the time of making application, the asset management company shall be required to have a networth of not less than rupees one hundred crore and the asset management company shall maintain such networth till it has profits for five consecutive years.

However, an asset management company of a mutual fund eligible to launch only infrastructure debt fund schemes, shall have a networth of not less than rupees ten crore.

- Regulation 21 (g) has been inserted which specifies that the networth of the asset management company shall be maintained on a continuous basis.
- **Regulation 35(3) and proviso w.r.t. allotment of units and refunds of moneys, shall be substituted namely:**

“Any amount to be refunded to the applicants under sub-regulation (2) shall be refunded within a period of five working days from the date of closure of subscription list and in the manner as may be specified by the Board from time to time”.

- **Regulation 36(1) and proviso w.r.t. statement of accounts or unit certificates, shall be substituted with the following, namely,-**

“An applicant in a scheme whose application has been accepted shall have the option either to receive the statement of accounts or to hold the units in dematerialised form and the asset management company shall issue to such applicant, a statement of accounts specifying the number of units allotted to the applicant or issue units in the dematerialized form as soon as possible but not later than five working days from the date of closure of the initial subscription list or from the date of receipt of the application.”

- **Regulation 49(3) and proviso w.r.t. pricing of units, shall be substituted with the following, namely,-**

“While determining the price of the units, the mutual fund shall ensure that the repurchase price of an open ended scheme is not lower than 95 per cent of the Net Asset Value.”

For details: https://www.sebi.gov.in/legal/regulations/feb-2021/securities-and-exchange-board-of-india-mutual-funds-amendment-regulations-2021_49020.html

(3) Circular on Mutual Funds

(Circular No. SEBI/HO/IMD/DF2/CIR/P/2021/024 dated March 04, 2021)

SEBI, after deliberations on the suggestions of the Working Group constituted for revamp exercise of SEBI (Mutual Funds) Regulations, and various circulars issued thereunder, has provided its recommendations on various proposals. With respect to proposals relating to modifications in various circulars issued under MF Regulations, SEBI has decided to implement the Gross Exposure Limits, Investment Pattern, Procedure for Change in Control of AMC, Go Green Initiatives, Filing of Annual Information Return (AIR) by Mutual Funds, Investment in securities by employees of AMC(s) and Trustees of Mutual Funds, Disclosure of performance of mutual fund schemes, Key Personnel of the AMC, Updation of Scheme Information Document (SID) and Key Information Memorandum (KIM), Disclosures of Votes Cast by Mutual Funds, Dividend Distribution Procedure for Mutual Funds etc.

For details: https://www.sebi.gov.in/legal/circulars/mar-2021/circular-on-mutual-funds_49393.html

(4) Review of norms regarding investment in debt instruments with special features, and the valuation of perpetual bonds.

(SEBI Circular No. SEBI/HO/IMD/DF4/CIR/P/2021/032 dated March 10,2021)

Mutual Funds invest in certain debt instruments with special features viz. subordination to equity (absorbs losses before equity capital) and /or convertible to equity upon trigger of a pre-specified event for loss absorption. Additional Tier I bonds and Tier 2 bonds issued under Basel III framework are some instruments which may have above referred special features.

Presently, there are no specified investment limits for these instruments with special features and these instruments may be riskier than other debt instruments. Therefore, following prudential investment limits have been decided for such instruments.

- Reviews investment norms of instruments with special features suchas AT1 bonds and Tier 2 bonds.

- Maturity of all perpetual bonds shall be treated as 100 yrs from the issuance date for the purpose of valuation.
- Close-ended debt schemes shall not invest in perpetual bonds.
- MF under all schemes to own up to 10% of such instruments issued by a single issuer.
- An MF scheme can invest up to 10% of its NAV of debt portfolio of the scheme in such instruments and MF can invest up to 5% of its NAV of the debt portfolio of the scheme by a single issuer.
- The above investment limit for an MF scheme shall be within the overall limit for debt instruments issued by a single issuer.
- Investments in excess of the limits may be grandfathered. Such an MF scheme may not make any fresh investments until investments come within specified limits.
- This circular shall come into effect from April 01, 2021.

For details: https://www.sebi.gov.in/legal/circulars/mar-2021/review-of-norms-regarding-investment-in-debt-instruments-with-special-features-and-the-valuation-of-perpetual-bonds_49463.html

(5) **Clarification on the valuation of bonds issued under Basel III framework.**

(SEBI Circular No. SEBI/HO/IMD/DF4/ CIR/P/2021/034 dated March 22, 2021)

SEBI, vide its circular no. SEBI/HO/IMD/DF4/CIR/P/2021/032 dated March 10, 2021, had *inter alia* stated that the maturity of all perpetual bonds shall be treated as 100 years from the date of issuance of the bond for the purpose of valuation.

Based on the representation of the Mutual Fund Industry to consider a glide path for implementation of the policy and request of other stakeholders, SEBI has decided that the deemed residual maturity for the purpose of valuation of existing as well as new bonds issued under Basel III framework shall be as below:

Time Period	Deemed Residual Maturity of Basel III AT-1 bonds (Years)	Deemed Residual Maturity of Basel III Tier 2 Bonds (Years)
Till March 31, 2022	10	10 years or Contractual Maturity whichever is earlier
April 01, 2022 – September 30, 2022	20	Contractual Maturity
October 01, 2022 – March 31, 2023	30	Contractual Maturity
April 01, 2023 Onwards	100	Contractual Maturity

For details: https://www.sebi.gov.in/legal/circulars/mar-2021/clarification-on-the-valuation-of-bonds-issued-under-basel-iii-framework_49604.html

(6) **Circular on Reporting Formats for Mutual Funds**

(SEBI Circular No. SEBI/HO/IMD/IMD-I DOF2/P/CIR/2021/550 dated April 12, 2021)

SEBI came out with fresh guidelines on reporting formats for mutual funds. The formats for the reports to be submitted by asset management companies (AMCs) to trustees, by AMCs to SEBI and by trustees to SEBI have been reviewed and revised on the basis of consultation from the industry.

1) Reporting by AMCs to Trustees

- **Bi-monthly Compliance Certificate (BCC)**

The Compliance Certificate to be submitted by the AMC to the Trustees on a Bi-monthly basis shall be discontinued.

- **Half yearly Compliance Certificate (HYCC) by AMC to Trustees**

The Compliance Certificate to be submitted by the AMC to the Trustees on an half yearly basis shall be discontinued.

The contents of both BCC and HYCC have been suitably incorporated in the Quarterly Report by AMC to Trustees.

- **Quarterly Report by AMC to Trustees (QR)**

The AMC shall submit QR to the trustees, as required in sub-regulation (4) of Regulation 25 of MF Regulations, on its activities and the compliance with MF Regulations and various circulars issued thereunder. The prescribed format of QR is annexed to this circular. The same shall be submitted by AMC to Trustees by 21st calendar day of succeeding month for the quarters ending March, June, September and December.

2) Reporting by AMCs to SEBI

- **Compliance Test Report by AMC to SEBI (CTR)**

To synchronize the frequency of submission of the CTR and QR, SEBI modified guidelines to the extent that, instead of exceptional reporting, complete CTR shall be submitted by AMC to SEBI on a quarterly basis, by 21st calendar day of succeeding month for the quarters ending March, June, September and December. The revised prescribed format of CTR is prescribed annexed to this circular.

3) Reporting by Trustees to SEBI

- **Half Yearly Trustee Report by Trustees to SEBI (HYTR)**

- a) The HYTR containing the broad coverage of report of trustees to SEBI has been revised & prescribed in the circular annexed to it.
- b) Trustees, shall submit corrective steps taken with respect to the noncompliance reported in the HYTR.
- c) Trustees shall continue to submit HYTR for the half year ending September and March within two month from the end of the half year.

Applicability

1. For QR and CTR reports, the circular shall come into effect for reporting from the quarter ending June, 2021;
2. For HYTR report, the circular shall come into effect for reporting from the half year ended March, 2021;

BCC and HYCC shall be discontinued subsequent to the effective date of the QR report as mentioned at paragraph (1) above.

For details: https://www.sebi.gov.in/legal/circulars/apr-2021/circular-on-reporting-formats-for-mutual-funds_49813.html

(7) Disclosure of the following only w.r.t schemes which are subscribed by the investor: a. risk-o-meter of the scheme and the benchmark along with the performance disclosure of the scheme vis- à-vis benchmark and b. Details of the portfolio

(SEBI Circular No. SEBI/HO/IMD/IMD-II DOF3/P/CIR/2021/555 dated April 29, 2021)

Based on the recommendation of Mutual Fund Advisory Committee (MFAC) and to enhance the quality of disclosure w.r.t. risk and performance and portfolio of the schemes, without creating information overload on the investor, SEBI decided that the following disclosures shall be made to the investor only for the schemes in which the unitholders are invested as on the date on which the disclosures are stipulated:

- a) Mutual Fund/AMCs shall also disclose risk-o-meter of the scheme and benchmark while disclosing the performance of scheme vis-à-vis benchmark and
- b) Mutual Funds/ AMCs shall send the details of the scheme portfolio while communicating the fortnightly, monthly and half-yearly statement of scheme portfolio via email.

This circular shall be applicable with effect from September 1, 2021 (extended date).

For details: <https://www.sebi.gov.in/legal/circulars/apr-2021/disclosure-of-the-following-only-w-r-t-schemes-which-are-subscribed-by-the-investor-a-risk-o-meter-of-the-scheme-and-the-benchmark-along-with-the-performance-disclosure-of-the-scheme-vis-vis-ben-49992.html>

(8) Timelines for updation of Scheme Information Document (SID) and Key Information Memorandum (KIM)

(SEBI Circular No. SEBI/HO/IMD/IMD-IDOF2/P/CIR/2021/0560 dated April 30, 2021)

SEBI vide circular no. SEBI/HO/IMD/DF2/CIR/P/2021/024 dated March 04, 2021 has prescribed the procedure for updation of SID and KIM of Mutual Fund schemes. In this regard, based on the feedback received, SEBI has modified paragraph 11 of the aforesaid circular as follows:

- “11.1 (i) For the open ended and interval schemes, the SID shall be updated within next six months from the end of the 1st half or 2nd half of the financial year in which schemes were launched, based on the relevant data and information as at the end of previous month. Subsequently, SID shall be updated within one month from the end of the half- year, based on the relevant data and information as at the end of September and March respectively.”
- “11.1 (iv) KIM shall be updated at least once in half-year, within one month from the end of the respective half-year, based on the relevant data and information as at the end of September and March and shall be filed with SEBI forthwith through electronic mode only.”

SID and KIM are among the important documents which are prepared by asset management companies (AMCs) to provide information about a particular mutual fund scheme.

For details: <https://www.sebi.gov.in/legal/circulars/apr-2021/timelines-for-updation-of-scheme-information-document-sid-and-key-information-memorandum-kim-50020.html>

LESSON 8: ALTERNATIVE INVESTMENT FUND

(1) **Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2021 (January 08, 2021)**

SEBI vide its notification amends the provisions of SEBI (Alternative Investment Funds) Regulations, 2012, which shall come into force on the date of their publication in the Official Gazette i.e. 08-01-2021.

SEBI has amended regulation 20 (6) which states the general obligations where the Manager shall be responsible for investment decisions of the Alternative Investment Fund.

The amendment has provided the exemption from applicability of clause (i) and (ii) of the first proviso to Regulation 20(6) which specify that clauses (i) and (ii) shall not apply to an Alternative Investment Fund in which each investor other than the Manager, Sponsor, employees or directors of the Alternative Investment Fund or employees or directors of the Manager, has committed to invest not less than seventy crore rupees (or an equivalent amount in currency other than Indian rupee) and has furnished a waiver to the Alternative Investment Fund in respect of compliance with the said clauses, in the manner specified by the Board.

For details: https://www.sebi.gov.in/legal/circulars/jan-2021/circular-on-amendment-to-regulation-20-6-of-sebi-aif-regulations-2012_48710.html

(2) **Regulatory reporting by AIFs**

(SEBI Circular No. SEBI/HO/IMD/IMD- I/DOF6/CIR/2021/549 dated April 07, 2021)

In terms of AIF Regulations and Circular No. CIR/IMD/DF/10/2013 dated July 29, 2013, AIFs are required to submit periodical reports to SEBI relating to their activity. AIFs are funds established or incorporated in India for the purpose of pooling in capital from Indian and foreign investors.

To provide ease of compliance, SEBI has decided to review and rationalize the existing regulatory reporting requirements. Accordingly, based on consultation with various stakeholders and recommendation of the Alternative Investment Policy Advisory Committee, the SEBI has decided that-

- for quarter ending December 31, 2021 onwards, all AIFs shall submit reports on their activity as an AIF to SEBI on a quarterly basis within 10 calendar days from the end of each quarter in the revised formats as specified in circular annexed to it. Further, Category III shall also submit reports on leverage undertaken, on quarterly basis in the revised formats as specified in circular annexed to it.
- Further, any changes in terms of private placement memorandum and in the documents of the fund/ scheme should be intimated to investors and SEBI on a consolidated basis, within 1 month from the end of a financial year. Such intimation shall specifically mention the changes carried-out in the private placement memorandum and the documents of the fund/ scheme, along with the relevant pages of revised sections/ clauses. The provisions would be effective immediately.

For details: https://www.sebi.gov.in/legal/circulars/apr-2021/circular-on-regulatory-reporting-by-aifs_49788.html

(3) SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2021 (May 5, 2021)

SEBI vide its Gazette notification dated May 5, 2021, amended the provisions of SEBI (Alternative Investment Funds) Regulations, 2012, which shall come into force on the date of their publication in the Official Gazette.

The following amendments have been made:

- The following new definitions introduced-

“Startup” means a private limited company or a limited liability partnership which fulfills the criteria for startup as specified by the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, vide notification no. G.S.R. 127(E) dated February 19, 2019 or such other policy of the Central Government issued in this regard from time to time.

“Venture Capital Undertaking” means a domestic company which is not listed on a recognised stock exchange at the time of making investments.

- **Regulation 15 (1) (c), which specifies the investments done by Category I and II of AIF, has been substituted, namely:**

“Category I and II of Alternative Investment Funds shall invest not more than twenty five per cent of the investable funds in an Investee Company directly or through investment in the units of other Alternative Investment Funds.”

- **Regulation 15 (1) (d), which specifies the investments done by the Category III of AIF, has been substituted, namely:**

“Category III of Alternative Investment Funds shall invest not more than ten per cent of the investable funds in an Investee Company directly or through investment in units of other Alternative Investment Funds.”

- **Regulation 15 (1) (da), which specifies the investment in other units of AIF, has been inserted, namely:**

“Alternative Investment Funds which are authorised under the fund documents to invest in units of Alternative Investment Funds shall not offer their units for subscription to other Alternative Investment Funds.”

- **Regulation 15 (1) (e), which specifies the approval of authorities for investment, has been substituted, namely:**

“Alternative Investment Fund shall not invest except with the approval of seventy five percent of investors by value of their investment in the Alternative Investment Fund in –

(a) associates; or

(b) units of Alternative Investment Funds managed or sponsored by its Manager, Sponsor or associates of its Manager or Sponsor”

- **Regulation 16 (1) (a), which specifies the investment scope of the category I, has been substituted, namely:**

“Category I Alternative Investment Fund shall invest in investee companies, venture capital undertakings, special purpose vehicles, limited liability partnerships or in units of other Category I Alternative Investment Funds of the same sub category”

- **Regulation 17(a), which specifies the investment conditions for category II, has been substituted, namely:**

“Category II Alternative Investment Funds shall invest in investee companies or in the units of Category I or other Category II Alternative Investment Funds as may be disclosed in the placement memorandum.

Explanation. – Category II Alternative Investment Fund shall invest primarily in unlisted companies directly or through investment in units of other Alternative Investment Funds.

- **Regulation 18(a), which specifies the investment conditions for category III, has been substituted, namely:**

“Category III Alternative Investment Funds may invest in securities of listed or unlisted investee companies, derivatives, units of other Alternative Investment Funds or complex or structured products.”

- **Regulation 18 (aa), which specifies the investment conditions for category III, has been inserted, namely:**

“Category III Alternative Investment Funds may deal in goods received in delivery against physical settlement of commodity derivatives.”

Substituted with ‘General Obligations given under Chapter IV of SEBI (Alternative Investment Funds) Regulations, 2012’

- **Fourth schedule has been inserted, which specifies the code of conduct for AIF.**

For details: https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-alternative-investment-funds-second-amendment-regulations-2021_50089.html

(4) Enhancement of overall limit for overseas investment by Alternative Investment Funds (AIFs)/Venture Capital Funds (VCFs)

(Circular No. SEBI/HO/IMD/DF6/CIR/P/2021/565 dated May 21, 2021)

In consultation with the Reserve Bank of India, the SEBI has revised the overseas investment limit for Alternative Investment Funds (AIFs) and Venture Capital Funds (VCFs) from USD 750 million to USD 1,500 million. Further, all other regulations governing such overseas investment by eligible AIFs/VCFs shall remain unchanged.

For details: <https://www.sebi.gov.in/legal/circulars/may-2021/enhancement-of-overall-limit-for-overseas-investment-by-alternative-investment-funds-aifs-venture-capital-funds-vcfs-50219.html>

LESSON 12: FOREIGN PORTFOLIO INVESTORS

(1) **Guidelines pertaining to Surrender of FPI Registration**

(SEBI Circular No. SEBI/ HO/ IMD/ FPI&C/CIR/ P/ 2021/ 045 dated March 30, 2021)

The SEBI issued the guidelines pertaining for Surrender of Foreign Portfolio Investors (“FPIs”) Registration. In terms of SEBI (Foreign Portfolio Investors) Regulations, 2019, any FPI (‘applicant’) desirous of surrendering the certificate of registration may request for such surrender to the Designated Depository Participants (“DDPs”).

Operational Guidelines for FPIs and DDPs issued vide SEBI circular no. IMD/FPI&C/CIR/P/2019/124 dated November 05, 2019, prescribes the procedural requirements to be followed by the DDP for processing such requests.

In order to have a uniform market practice for processing of such surrender requests, DDPs shall adhere to the various additional guidelines.

Firstly, while making an application to SEBI for seeking “No Objection Certificate” (NOC) for surrender, the DDP shall confirm the Accounts held by the applicant in the capacity of FPI have NIL balance and are blocked for further transactions. Further, the CP code of the FPI is also blocked. There are no dues/fees pending towards SEBI. There are no actions/ proceedings pending against the said applicant with respect to the FPI. Secondly, DDP shall ensure that all the accounts (including bank account and securities account) held by the applicant in the capacity of FPI are closed; and the CP code is deactivated within 10 working days from the date of receipt of NOC from SEBI.

For details: https://www.sebi.gov.in/legal/circulars/mar-2021/circular-on-guidelines-pertaining-to-surrender-of-fpi-registration_49687.html

LESSON 16: REGULATORY FRAMEWORK GOVERNING STOCK EXCHANGES

1. **Securities Contracts (Regulation) Act, 1956 (As amended by the Finance Act, 2021 (13 of 2021) w.e.f. April 1, 2021) – (April 01, 2021)**

The Finance Act 2021, that received the presidential assent on March 28, 2021 made the following amendments to Securities Contracts (Regulation) Act, 1956 (SCRA) :

1. **Definition of Pooled Investment Vehicles ('PIVs') [Section 2 (da)]:**

'Pooled Investment Vehicle' means a fund established in India in the form of a trust or otherwise, such as mutual fund, alternative investment fund, collective investment scheme or a business trust as defined in sub-section (13A) of section 2 of the Income tax Act, 1961 and registered with the Securities and Exchange Board of India, or such other fund, which raises or collects monies from investors and invests such funds in accordance with such regulations as may be made by the Securities and Exchange Board of India in this behalf.

2. **Inclusion of Pooled Investment Vehicles in the definition of security [Section 2 (h)]:**

“securities” include---

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or **a pooled investment vehicle or other body corporate;**

(ida) **units or any other instrument issued by any pooled investment vehicle;**

3. **Pooled Investment Vehicles eligible to issue debt securities (secured or otherwise) [Section 30B (1)& (2)]**

SEBI registered PIVs will now be eligible to borrow and issue debt securities in the manner and to such extent as may be specified under the regulations made by Securities and Exchange Board of India in this behalf. Further, every pooled investment vehicle shall, subject to the provisions of the trust deed, be permitted to provide security interest to lenders in terms of the facility documents entered into by such pooled investment vehicle.

4. **Clarity on enforcement in case of default by Pooled Investment Vehicles [Section 30B (3)& (4)]**

Where any pooled investment vehicle defaults in repayment of principal amount or payment of interest or any such amount due to the lender, the lender shall recover the defaulted amount and enforce security interest, if any, against the trust assets, by initiating proceedings against the trustee acting on behalf of such pooled investment vehicle in accordance with the terms and conditions specified in the facility documents. However, on initiation of the proceedings against the trust assets, the trustee shall not be personally liable and his assets shall not be utilised towards recovery of such debt. The trust assets, which remain after recovery of defaulted amount, shall be remitted to the unit holders on proportionate basis.

For details: <https://www.sebi.gov.in/legal/acts/apr-2021/securities-contracts-regulation-act-1956-as-amended-by-the-finance-act-2021-13-of-2021-w-e-f-april-1-2021-49750.html>

LESSON 19: LISTING AND DELISTING OF SECURITIES

(1) **Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2021 (January 08, 2021)**

SEBI vide its notification amends the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette i.e. 08-01-2021.

In Schedule III, under Part A, in clause 16, the amendment has added to the events, upon the occurrence of which a listed entity shall make the disclosure to the stock exchange in relation to the Corporate Insolvency Resolution Process (CIRP) of a listed Corporate Debtor under the Insolvency Code.

For details: https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2021_48709.html

(2) **Code of Conduct & Institutional mechanism for prevention of Fraud or Market Abuse (SEBI Circular No. SEBI/HO/MRD/DCAP/CIR/P/2021/23 dated March 03, 2021)**

Pursuant to the report of the Committee on Fair Market Conduct ('Committee'), set up inter-alia to recommend appropriate Institutional Mechanism to ensure accountability of the management / designated persons in case of negligence / failure, necessary changes have been carried out in SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations').

Based on the above, SEBI vide this circular provided that the Code of Conduct and Institutional Mechanism for prevention of fraud or market abuse shall be applicable to Stock Exchanges, Clearing Corporations and Depositories ('MIIs') also, on the lines of Regulation 9(1) to 9(4) of PIT Regulations.

For details: https://www.sebi.gov.in/legal/circulars/mar-2021/code-of-conduct-and-institutional-mechanism-for-prevention-of-fraud-or-market-abuse_49374.html

(3) **SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 (May 5, 2021)**

SEBI vide its Gazette notification dated May 5, 2021, amended the provisions of SEBI (LODR) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette.

The brief of the SEBI (LODR) (Second Amendment) Regulations, 2021 is given hereunder as:-

Regulation No.	New Provision
7(3) - Compliance Certificate	With effect from the recent amendment, the listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, <i>within thirty days from the end of the financial year</i> , earlier the same was to be submitted within one month of end of each half of

	the financial year.
21 – Risk Management Committee	<p>Applicability: The provisions of this regulation shall be applicable to top 1000 listed entities earlier the same was to be applicable to top 500 listed entities.</p> <p>Composition: The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.</p> <p>Number of meetings: At least twice in a year, and not more than one hundred and eighty days shall elapse between any two consecutive meetings.</p> <p>Quorum: Two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance.</p> <p>Roles and responsibilities: the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.</p>
24 - Corporate governance requirements with respect to subsidiary of listed entity	A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than <i>or equal to</i> fifty percent without passing a special resolution in its General Meeting
24A – Secretarial Audit and Secretarial Compliance Report	<p>Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice, in such form as specified, with the annual report of the listed entity.</p> <p>Every listed entity shall submit a secretarial compliance report in such form as specified, to stock exchanges, within 60 days from end of each financial year.</p>
27 (2) - Corporate Governance	The corporate governance report to be filed within 21 days from the end of each quarter, earlier it was filed within 15 days, in order of uniformity with the submission of shareholding pattern (Regulation 31) and investor grievance report (Regulation 13).
32 - Statement of deviation(s) or variation(s).	Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency within forty-five days from the end of each quarter.

34 - Annual Report	The requirement of submitting a business responsibility report shall be discontinued after the financial year 2021–22 and thereafter, with effect from the financial year 2022–23, the top one thousand listed entities based on market capitalization shall submit a <i>business responsibility and sustainability report</i> describing quantitative and standardized disclosures on ESG parameters to enable comparability across companies, sectors and time, shall form part of the Annual Report.
40(9) – Transfer or transmission or transposition of securities	Certificate from a practicing company secretary within thirty days of end of the financial year , certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies certificate from a practising company secretary, earlier the same was required to be submitted within one month of the end of each half of the financial year
43A - Dividend Distribution Policy	<p>The top 1000 listed entities based on market capitalization (calculated as on March 31 of every financial year) shall formulate a dividend distribution policy which shall be disclosed on the website of the listed entity and a web-link shall also be provided in their annual reports.</p> <p>The listed entities other than those specified above may disclose their dividend distribution policies on a voluntary basis on their websites and provide a web-link in their annual reports.</p>
44(3) - Voting Results	The listed entity shall submit to the stock exchange, within two working days of conclusion of its General Meeting, details regarding the voting results, earlier it was required to be submitted within forty eight hours of conclusion of its General Meeting
46 - Website Compliance	<p>In addition to the existing website compliance, following new disclosures have been prescribed:</p> <p>1. Audio or video recordings and transcripts of post earnings/quarterly calls, by whatever name called, conducted physically or through digital means, simultaneously with submission to the recognized stock exchange(s), in the following manner:</p> <p>(i) the presentation and the audio/video recordings shall be promptly made available on the website and in any case, before the next trading day or within twenty-four hours from the conclusion of such calls, whichever is earlier;</p> <p>(ii) the transcripts of such calls shall be made available on the website within five working days of the conclusion of such calls.</p>

	<p>The requirement for disclosure(s) of audio/video recordings and transcript shall be voluntary with effect from April 01, 2021 and mandatory with effect from April 01, 2022.</p> <ol style="list-style-type: none"> 2. Secretarial compliance report 3. Disclosure of the policy for determination of materiality of events or information 4. Disclosure of contact details of key managerial personnel who are authorized for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) 5. Disclosures under sub-regulation (8) of regulation 30 of these 6. regulations 7. statements of deviation(s) or variation(s) 8. Dividend distribution policy 9. Annual return as provided under section 92 of the Companies Act, 2013
47 - Advertisements in Newspapers	<p>Now the listed entity will not be required to publish the following:</p> <ol style="list-style-type: none"> 1. Notice of meeting of the board of directors where financial results shall be discussed. 2. Statements of deviation(s) or variation(s) as specified in regulation 32 (1).

For details: https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2021_50100.html

(4) Business responsibility and sustainability reporting by listed entities

(Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 dated May 10, 2021)

SEBI came out with disclosure requirements under Business Responsibility and Sustainability Report (BRSR) covering ESG (Environmental, Social and Governance) parameters.

In terms of amendment to regulation 34 (2) (f) of LODR Regulations vide Gazette notification no. SEBI/LAD- NRO/GN/2021/22 dated May 05, 2021, SEBI has introduced new reporting requirements on ESG parameters called the Business Responsibility and Sustainability Report (BRSR). The BRSR is accompanied with a guidance note to enable the companies to interpret the scope of disclosures. The format of the BRSR and the guidance note are detailed in Annexure I and Annexure II respectively to this circular.

The BRSR seeks disclosures from listed entities on their performance against the nine principles of the 'National Guidelines on Responsible Business Conduct' (NGBRCs) and reporting under each principle is divided into essential and leadership indicators. The essential indicators are

required to be reported on a mandatory basis while the reporting of leadership indicators is on a voluntary basis. Listed entities should endeavour to report the leadership indicators also.

The BRSR is intended towards having quantitative and standardized disclosures on ESG parameters to enable comparability across companies, sectors and time. Such disclosures will be helpful for investors to make better investment decisions. The BRSR shall also enable companies to engage more meaningfully with their stakeholders, by encouraging them to look beyond financials and towards social and environmental impacts.

The filing of BRSR shall be mandatory for the top 1000 listed companies (by market capitalization) with effect from the financial year 2022-2023 and shall replace the existing Business Responsibility Report (BRR). Filing of BRSR is voluntary for the financial year 2021-22.

For details: https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

(5) Format of compliance report on Corporate Governance by Listed Entities

(Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/567 dated May 31, 2021)

As per SEBI (LODR) Regulations, 2015, a listed entity is required to submit a quarterly compliance report on corporate governance in the specified format by SEBI from time to time to recognised Stock Exchange(s).

In order to bring about transparency and to strengthen the disclosures around loans/guarantees/comfort letters/ security provided by the listed entity, directly or indirectly to promoter/ promoter group entities or any other entity controlled by them, the SEBI has decided to mandate such disclosures on a half yearly basis, in the Compliance Report on Corporate Governance as per the format of disclosure annexed to this circular and shall be effective from financial year 2021-22.

For details: https://www.sebi.gov.in/legal/circulars/may-2021/format-of-compliance-report-on-corporate-governance-by-listed-entities_50338.html

LESSON 20: ISSUE OF SECURITIES

(1) **Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2021 (January 08, 2021)**

SEBI vide its notification amends the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which shall come into force on the date of their publication in the Official Gazette i.e. 08-01-2021.

The following amendments shall be made:

1) The amendment is brought under regulation 112 which specifies, the requirements of minimum promoters' contribution shall not apply in the case where the equity shares of the issuer are frequently traded on a stock exchange for a period of at least 3 years immediately preceding the reference date, and the issuer has redressed at least 95% of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date. Further, it is provided that the issuer has been in compliance with the SEBI (LODR) Regulations, 2015, for a minimum period of 3 years immediately preceding the reference date.

However, if the issuer has not complied with the provisions of SEBI (LODR) Regulations, 2015, relating to composition of board of directors, for any quarter during the last three years immediately preceding the date of filing of draft offer document/offer document, but is compliant with such provisions at the time of filing of draft offer document/offer document, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the date of filing the draft offer document/offer document, it shall be deemed as compliance with the condition.

SEBI further laid the condition that where the promoters propose to subscribe to the specified securities offered to the extent greater than higher of the two options available in clause (a) of sub-regulation (1) of regulation 113, the subscription in excess of such percentage shall be made at a price determined in terms of the provisions of regulation 164 or the issue price, whichever is higher.

2) The existing proviso after Regulation 115 (c) which specifies that the excess promoters' contribution as provided in the proviso to clause (b) of regulation 112 shall not be subject to lock-in, has been omitted.

3) The Board further notified the new proviso in the Regulation 167 (4), which specifies that lock-in period shall not be applicable to the specified securities to the extent to achieve 10% public shareholding.

For Details: https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2021_48704.html

(2) **Streamlining the process of IPOs with UPI in ASBA and redressal of investor grievances (SEBI Circular No. SEBI/HO/CFD/ DIL2/CIR/P/2021/2480/1/M dated March 16, 2021)**

The SEBI proposed to streamline the Initial Public Offering (IPO) process with unified payment interface (UPI) in Application Supported by Blocked Amount (ASBA) and redressal of investor grievances. The circular was issued addressing all the Registered Merchant Bankers, Recognized Stock Exchanges, Registered Registrars to an Issue and Share Transfer Agents, Self- Certified Syndicate Banks (SCSBs).

Streamlining the IPO Process

- Lead Managers shall ensure the adherence of timelines, processes, and compensation policy by intermediaries.
- In order to ensure timely response with regard to IPO process, SCSBs shall identify the nodal officer for IPO applications processed through UPI as a payment mechanism and submit the details to SEBI within 7 working days from the issuance of this circular.
- For ease of doing business, Sponsor Banks shall host a web portal for intermediaries (closed user group) from the date of IPO opening till the date of listing with details of statistics of mandate blocks/unblocks, performance of Apps and UPI Handles, downtime/network latency (if any) across intermediaries and any such processes having an impact/bearing on the IPO bidding process.

Reinitiations of UPI Bids

To avoid duplication, the facility of reinitiation provided to Syndicate Members shall preferably be allowed only once per bid/batch and as deemed fit by the concerned Stock Exchange, after bid closure time.

Further, the circular has provided the provisions regarding:

- a. Unblocking of UPI Mandates
- b. Cancelled/Withdrawn/Deleted applications

The new rule would come into force for IPOs opening on or after May 01, 2021.

For details: https://www.sebi.gov.in/legal/circulars/mar-2021/streamlining-the-process-of-ipos-with-upi-in-asba-and-redressal-of-investors-grievances_49522.html

(3) Reduction in unblocking/refund of application money (SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/47 dated March 31, 2021)

SEBI has reduced the timelines for refund of investors' money to 4 working days in case of non-receipt of minimum subscription and the issuer failing to obtain listing or trading permission from the stock exchanges. The timelines have been reduced after taking into consideration that Application Supported by Blocked Amount (ASBA) has been mandated for all applicants in public issues, the application money is not transferred but only blocked in the account of the investor and is debited only upon allotment and unblocked if there is no/part allotment. Further, post introduction of UPI mechanism in public issues, intermediaries are responsible to compensate the investors for any delay in unblocking of amounts in the ASBA Accounts exceeding four working days from the bid/issue closing date.

At present, in case of non-receipt of minimum subscription, the issuer is mandated to refund all the application money within 15 days from the closure of the issue. If the issuer fails to obtain listing or trading permission from the stock exchanges where the securities were to be listed, it shall refund the entire money received within 7 days of receipt of intimation from the exchanges

rejecting the application. These timelines have now been reduced to four days.

For details: https://www.sebi.gov.in/legal/circulars/mar-2021/reduction-in-unblocking-refund-of-application-money_49722.html

(4) SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2021 (May 5, 2021)

SEBI vide its Gazette notification dated May 5, 2021, amended the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which shall come into force on the date of their publication in the Official Gazette.

The brief of the SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2021 is given hereunder as: -

I. General

- ‘Institutional Trading Platform’ rechristened as ‘Innovators Growth platform(IGP)
- ‘Accredited Investors’ rechristened as ‘Innovators Growth Platform Investors’

II. Listing of Securities on IGP [Reg. 282 (4)]

- Issuer issued SR equity shares to its promoters/founders are allowed to make an IPO of only ordinary shares for listing on the IGP subject to compliance with Chapter X and provisions for SR equity shares in accordance with Reg. 6 (3) of ICDR regulations.

III. Allocation of the issue size [Reg. 287(4)]

- Issuers can allocate 60% of the issue size on a discretionary basis, to eligible investors under Reg. 283(1) prior to the issue opening at price not lower than offer price to other applicants.
- The eligible investors shall make an application of a value of at least Rs.50 lakhs

IV. Lock in for SR equity shares [reg.288(5)]

- SR equity shares shall be locked- in:
 - Till conversion into equity shares with voting rights similar to that of ordinary shares, or
 - For a period of 6 months from the date of allotment, whichever is later

V. Exit from Innovators Growth Platform (reg. 290A)

- Issuer whose specified securities are traded on the IGP pursuant to an IPO may exit from IGP subject to the following conditions if-
 - Approved by the BODs and shareholders (SR passed through postal ballot or e-voting by the majority of public shareholders)
 - Delisting price-based on a floor price determined in terms of reg. 8 of SEBI(SAST) Regulations and additional delisting premium justified by acquirer/promoter.
 - The post offer acquirer/promoter together with the shares tendered reaches 75% of the total issued shares of that class.
 - At least 50% shares of the public shareholders are tendered and accepted;
 - Stock Exchanges where shares are listed approves of such an exit.
- Exit shall be pursuant to the SEBI (Delisting of Equity shares) Regulation, 2009.
- Following provisions of the SEBI (Delisting of Equity Shares) Regulation, 2009 shall not apply:
 - Reg 8(1)(a) & (b) relating to conditions and procedure for delisting where exit opportunity is required;
 - Reg 15 relating to offer price, and
 - Reg 17 relating to minimum number of equity shares to be acquired.

VI. Migration to main board [292(3)]

- An entity applying to migrate to the main board and
- Not satisfying the condition laid down in reg.292(2)
- Must have 50% of its capital held by Qualified Institutional Buyers (Earlier requirement- 75%)
- As on date of application for migration under the regular category

For details: https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2021_50078.html

LESSON 21: REGULATORY FRAMEWORK RELATING TO SECURITIES MARKET INTERMEDIARIES

(1) **SEBI (Portfolio Managers) (Second Amendment) Regulations, 2021 (April 26, 2021)**

SEBI vide its notification dated April 26, 2021, amends the provisions of SEBI (Portfolio Managers) Regulations, 2020, which shall come into force on the date of their publication in the Official Gazette.

The amendment has added a clause under conditions of registration mentioning that the portfolio manager shall obtain prior approval of the SEBI in case of change in control in such manner as may be specified by SEBI.

For details: https://www.sebi.gov.in/legal/regulations/apr-2021/securities-and-exchange-board-of-india-portfolio-managers-second-amendment-regulations-2021_49943.html

(2) **Procedure for seeking prior approval for change in control of SEBI registered Portfolio Managers**

(Circular No. SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/564 dated May 12, 2021)

SEBI vide its circular dated April 26, 2021 inserted Regulation 11(aa) in SEBI (Portfolio Managers) Regulations, 2020 which provides that a Portfolio Manager shall obtain prior approval of SEBI in case of change in control in such manner as may be specified by SEBI.

Accordingly, it has been decided vide this circular that all SEBI registered Portfolio Managers shall comply with the procedure in case they propose a change in control. Portfolio managers have to take prior approval from SEBI by applying through the SEBI Intermediary Portal which shall be valid for a period of six months from the date of such approval. Applications for fresh registration pursuant to change in control shall be made to SEBI within six months from the date of prior approval. Pursuant to grant of prior approval by SEBI, all the existing investors/ clients shall be informed about the proposed change prior to effecting the same, in order to enable them to take well informed decision regarding their continuance or otherwise with the changed management.

For details: https://www.sebi.gov.in/legal/circulars/may-2021/procedure-for-seeking-prior-approval-for-change-in-control-of-sebi-registered-portfolio-managers_50116.html

(3) **Monthly Reporting of Portfolio Managers**

(Circular No. SEBI/HO/IMD/DF1/CIR/P/ 2021/02 dated January 08, 2021)

SEBI had mandated certain changes to the regulatory framework for Portfolio Managers vide its circular dated February 13, 2020. Para no. D(11) of the said circular provides that the Portfolio Managers are required to submit a monthly report regarding their portfolio management activity, on SEBI Intermediaries Portal within 7 working days of the end of each month, as per a prescribed format.

In order to broaden the information obtained under monthly reports, certain modifications have been specified in the format enclosed in Annexure A to this circular which shall be applicable for monthly reports submitted for January 2021 onwards.

For details: https://www.sebi.gov.in/legal/circulars/jan-2021/monthly-reporting-of-portfolio-managers_48705.html

(4) SEBI (Investment Advisers) (Amendment) Regulations, 2021. (January 11, 2021)

SEBI vide its notification amends the provisions of SEBI (Investment Advisers) Regulations, 2013, which shall come into force on the date from April 01, 2021. (*Effective date vide Corrigendum No. SEBI/LAD-NRO/GN/2021/06 dated January 20, 2021*)

The following amendments shall be made:

- 1) The amendment has added a clause (n) to regulation 6 whereby it is given that for the purpose of the grant of certificate the Board shall consider whether the applicant is a member of a recognized body or body corporate as specified under regulation 14.

Provided that the existing investment advisers shall comply with the requirement under this clause in such manner as may be specified by the Board.

- 2) SEBI has further relaxed the application fees and registration fee to be paid by every applicant at the time of grant of certificate.

For details:

https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-investment-advisers-amendment-regulations-2021_49541.html

https://www.sebi.gov.in/legal/regulations/jan-2021/corrigendum-to-the-securities-and-exchange-board-of-india-investment-advisers-amendment-regulations-2021_48848.html

(5) SEBI (Portfolio Managers) (Amendment) Regulations, 2021

SEBI (Investment Advisers) (Second Amendment) Regulations, 2021

SEBI (Research Analysts) (Amendment) Regulations, 2021

[SEBI Notifications Dated March 16, 2021]

SEBI approved amendment to SEBI (Portfolio Managers) Regulations, 2020 (PMS Regulations), SEBI (Investment Advisers) Regulations, 2013 and SEBI (Research Analysts) Regulations, 2014 to recognise the Post Graduate Program in Securities Market of not less than one year offered by National Institute of Securities Markets (NISM) as eligible qualification for Portfolio Managers, Investment Advisers and Research Analysts. SEBI also approved amendment to PMS Regulations with respect to NISM certification requirements and provides that a fresh NISM certification shall be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with the certification requirements.

For details:

https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-portfolio-managers-amendment-regulations-2021_49537.html

https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-research-analysts-amendment-regulations-2021_49538.html

https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-investment-advisers-second-amendment-regulations-2021_49542.html

(6) SEBI (Underwriters) (Repeal) Regulations, 2021

(SEBI Notification dated March 30, 2021)

The SEBI vide gazette notification dated March 30, 2021 has made the SEBI (Underwriters) (Repeal) Regulations, 2021 to repeal the SEBI (Underwriters) Regulations, 1993. These Regulations shall come into force on the date of their publication in the Official Gazette i.e March 30, 2021. On and from the commencement of these regulations, the SEBI (Underwriters) Regulations, 1993 shall stand repealed and the certificate of registration granted to any person under it shall be deemed to be surrendered.

For details: https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-underwriters-repeal-regulations-2021_49746.html

(7) SEBI (Merchant Bankers) (Amendment) Regulations, 2021
(SEBI Notification dated March 30, 2021)

The SEBI vide gazette notification dated 30th March, 2021 has issued the SEBI (Merchant Bankers) (Amendment) Regulations, 2021. The amendments inter-alia covers the following:

The following new Definitions have been inserted in Regulation 2, namely—

(g) “Underwriter” means a person who engages in the business of underwriting of an issue of securities of a body corporate.

(h) “Underwriting” means an agreement to subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed.

The following new clause has been inserted in Regulation 9A (1), after clause

(f) namely—

Conditions of registration

(g) Where the merchant banker is acting as an underwriter, it shall enter into a valid agreement with the body corporate on whose behalf it is acting as an underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter.

The following new sub-regulation has been inserted in Regulation 14, after sub-regulation 3 namely—

Maintenance of books of account, records etc.

(4) Every merchant banker acting as an underwriter shall also maintain the following records with respect to—

- (i) details of all agreements entered with a body corporate on whose behalf it is acting as an underwriter;
- (ii) total amount of securities of each body corporate subscribed to in pursuance of an agreement;
- (iii) statement of capital adequacy requirements;
- (iv) such other records as may be specified by the Board from time to time.

The following new regulations have been inserted after regulation 22, namely –

22A - Agreement with clients

The amendment provides that every merchant banker acting as an underwriter shall enter into an agreement with each body corporate on whose behalf it is acting as an underwriter and the said agreement shall, amongst other things, provide for the following, namely—

- i. The period for which the agreement shall be in force;
- ii. The allocation of duties and responsibilities between the underwriter and the client

- iii. The amount of underwriting obligations;
- iv. The period, within which the underwriter has to subscribe to the issue after being intimated by or on behalf of such body corporate;
- v. The amount of commission or brokerage payable to the underwriter;
- vi. Details of arrangements, if any, made by the underwriter for fulfilling the underwriting obligations.

22B - General responsibilities of a merchant banker as an underwriter

- 1) A merchant banker acting as an underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under the agreement for underwriting entered with client.
- 2) At any point of time, the total underwriting obligations under all the agreements shall not exceed twenty times of the net worth of the merchant banker.
- 3) Every merchant banker acting as an underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement for underwriting, shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate.

- The following new clauses have been inserted in schedule III, after clause 32 namely–

Code of Conduct for Merchant Bankers

- 33. A merchant banker or any of its directors, partners or manager having the management of the whole or substantially the whole of affairs of the business, shall not either through its account or their respective accounts or through their associates or family members, relatives or friends indulge in any insider trading.
- 34. A merchant banker acting as an underwriter shall not make any statement, either oral or written, which would misrepresent— (a) the services that the underwriter is capable of performing for its client, or has rendered to any other issuer company; (b) his underwriting commitment.
- 35. A merchant banker acting as an underwriter shall not indulge in any unfair competition, which is likely to be harmful to the interest of other entities acting as underwriters carrying on the business of underwriting or likely to place such other underwriters in a disadvantageous position in relation to the underwriter while competing for, or carrying out any assignment.

For details: https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-merchant-bankers-amendment-regulations-2021_49748.html

**(8) SEBI (Stock Brokers) (Amendment) Regulations, 2021
(SEBI Notification dated March 30, 2021)**

The SEBI vide gazette notification dated 30th March, 2021 has issued the SEBI (Stock Brokers) (Amendment) Regulations, 2021. The amendments inter-alia covers the following:

The following new Definitions have been inserted in Regulation 2, namely–

- i) “Underwriter” means a person who engages in the business of underwriting of an issue of securities of a body corporate.
- j) “Underwriting” means an agreement to subscribe to or procure subscription for

securities, issued or offered for sale, remaining unsubscribed.

- k) **“issue”** means an offer of sale or purchase of securities by any body corporate, or by any other person or group of persons on its or his or their behalf, as the case may be, to or from the public, or the holders of securities of such body corporate or person or group of persons through a merchant banker.

The following new sub-regulation has been inserted in regulation 3, after sub- regulation 3 namely–

Registration of Stock Brokers

(4) Every stock broker holding a valid certificate of registration shall be entitled to act as an underwriter.

The following new clause has been inserted in Regulation 9, after clause (g) namely–

Conditions of Registration

h. Every stock broker who act as an underwriter shall enter into a valid agreement with the body corporate on whose behalf it is acting as underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter.

i. Every Stock Broker shall be entitled to act as an underwriter only out of its own net worth/funds as may be prescribed from time to time.”

The new sub-regulation has been inserted in regulation 17, after sub- regulation 3 containing General Obligations and Responsibilities. Further, the new clause on Code of Conduct for Stock Brokers has been inserted in schedule II, after clause D.

For details: https://www.sebi.gov.in/legal/regulations/mar-2021/securities-and-exchange-board-of-india-stock-brokers-amendment-regulations-2021_49747.html

LESSON 22: INSIDER TRADING- AN OVERVIEW

(1) **Revised disclosure formats under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015**

(Circular No. SEBI/HO/ISD/ISD/CIR/P/2021/19 dated February 09, 2021)

SEBI has revised the disclosure format in light of amendments to the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”) effecting the inclusion of member of the promoter group, and designated persons in place of employee, in Regulation 7 of PIT Regulations. The revised formats (Forms B to D) are annexed to the circular.

For details: https://www.sebi.gov.in/legal/circulars/feb-2021/revised-disclosure-formats-under-regulation-7-of-sebi-prohibition-of-insider-trading-regulations-2015_49068.html

(2) **Compilation of Informal Guidance - SEBI (Prohibition of Insider Trading) Regulations, 2015 (Period October 2015 - March 2021) (May 3, 2021)**

Securities and Exchange Board of India (SEBI) gives guidance under SEBI (Informal Guidance) Scheme 2003, in which a Department of SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by SEBI in the context of a proposed transaction in securities or a specific factual situation. The informal guidance may be sought for and given in two forms: No-action letters and Interpretive letters.

In order to enable the users to have an access to all the Informal Guidance sought/given relating to SEBI (Prohibition of Insider Trading) (PIT) Regulations, 2015 at one place, this document has been prepared, which consolidates all the informal guidance issued relating to SEBI (PIT) Regulations, 2015 during the period October 14, 2015 to February 08, 2021 at a single place. The weblink to each of the informal guidance has also been appended. In case of any inconsistency between this document and the respective informal guidance, the content of the respective informal guidance shall prevail.

For details: https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/may-2021/compilation-of-informal-guidance-relating-to-sebi-pit-regulations-2015-for-the-period-oct-2015-mar-2021_50036.html

LESSON 23: TAKEOVER CODE- AN OVERVIEW

(1) **SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2021(May 5, 2021)**

SEBI vide its Gazette notification dated May 5, 2021, amended the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, which shall come into force on the date of their publication in the Official Gazette.

The brief of the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2021 is given hereunder as: -

I. General

- 'Institutional Trading Platform' rechristened as 'Innovators Growth Platform' (IPG)

II. Disclosure of voting pattern of Committee of Independent Directors (IDs)[reg. 26(6)]

- Committee of IDs formed by the target company to not only provided and publish reasoned recommendation on the open offer but also disclose the voting pattern of the meeting in which the proposal was discussed.

III. Enhanced limits for entities having listed their specified securities on IGP

- Limit of acquiring shares or voting rights requiring public announcement of an open offer enhanced to 49% (reg. 3)
- Limit of holding shares or voting rights requiring voluntarily public announcement of an open offer enhanced to 49% (reg 6)
- Requirement of disclosure of aggregate shareholding or voting rights by the acquirer will be triggered on holding of 10% or more shares.
- Requirement of disclosing change in shareholding or voting rights of the acquirer will be triggered only if such change exceed 5% of total shareholding or voting rights in the target company.

For details: https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-amendment-regulations-2021_50077.html
