



THE INSTITUTE OF  
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भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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# SUPPLEMENT EXECUTIVE PROGRAMME (NEW SYLLABUS)

*for*

*June, 2021 Examination*

## SECURITIES LAWS AND CAPITAL MARKETS

### MODULE 2, PAPER-6

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**Students appearing in Examination shall note the following:**

*Students are also required to update themselves on 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

### Depositories Act, 1996

#### 1. **RECORDING OF ALL TYPES OF ENCUMBRANCES IN DEPOSITORY SYSTEM** (Circular No. SEBI/HO/MRD2/DDAP/CIR/P/2020/137 dated July 24, 2020)

##### **Background**

SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 requires promoters of a company to disclose details of their encumbered shares. In this regard, it was observed that apart from pledge, hypothecation and non-disposal undertakings<sup>1</sup> (NDUs), currently there is no framework to capture the details of other types of encumbrances in the depository system.

##### **System for capturing and recording encumbrances**

Depositories shall put in place a system for capturing and recording all types of encumbrances<sup>2</sup>, which are specified under Regulation 28(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as amended from time to time.

Towards this end, Depositories shall follow processes and other norms similar to that stipulated for the purpose of capturing and recording NDUs in Depository system. This is apart from pledge and hypothecation, whose processes and specific norms are separately provided in SEBI (Depositories & Participants) Regulations, 2018 and circulars issued thereon.

The freeze and unfreeze instructions executed by the Participant for recording all encumbrances will be subject to 100% concurrent audit. The Depository Participant shall not facilitate or be party to any type of encumbrance outside the Depository system as outlined herein. The Depositories shall implement the provisions of this circular within one month from the date of this circular.

##### **The Depositories accordingly should**

- i. make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision, as may be applicable/necessary;
- ii. to carry out system changes if any to implement the above;
- iii. disseminate the provisions of this circular on their website;
- iv. communicate to SEBI, the status of implementation of the provisions of this circular in their Monthly Development Report.

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1 NDUs are undertakings given by a shareholder to another person (generally a lender) undertaking not to transfer or otherwise alienate the securities held by such shareholder in a company. Considering that dematerialized shares are fungible, tracking NDUs were practically impossible.

2 As per the said Regulation, “encumbrance” shall include,  
(a) any restriction on the free and marketable title to shares, by whatever name called, whether executed directly or indirectly;  
(b) pledge, lien, negative lien, non-disposal undertaking; or  
(c) any covenant, transaction, condition or arrangement in the nature of encumbrance, by whatever name called, whether executed directly or indirectly

(For details, please click on <https://www.sebi.gov.in/legal/circulars/jul-2020/recording-of-all-types-of-encumbrances-in-depository-system-47140.html>)

## 2. **PRESERVATION OF RECORDS BY DEPOSITORIES**

(Circular No. SEBI/HO/MRD2/DDAP/CIR/P/2020/153 dated August 18, 2020 related to Corrigendum to Master Circular for Depositories dated October 25, 2019 on Preservation of Records)

In terms of Regulations 54 and 66 of the SEBI (Depositories and Participants) Regulations, 2018 (herein referred to as D&P Regulations, 2018) notified on October 03, 2018, Depositories and Depository Participants are required to preserve the records and documents for a minimum period of eight years.

In terms of point no 4.6(i) of SEBI master Circular on Depositories dated October 25, 2019, Depositories and Depository Participants are required to preserve the records and documents for a minimum period of 5 year.

In order to align the provisions of the D&P Regulations, 2018 with that of Master Circular for Depositories dated October 25, 2019, Section 4.6 (i) - Preservation of Records shall be replaced with the following:

*“Depositories and Depository Participants are required to preserve the records and documents for a minimum period of 8 years”*

Accordingly, Depositories and Depository Participants are required to preserve the records and documents for a minimum period of 8 years. SEBI has issued a corrigendum to its Master Circular issued dated October 25, 2019, wherein it was mentioned that such records need to be maintained for five years.

(For details, please click on <https://www.sebi.gov.in/legal/circulars/aug-2020/corrigendum-to-master-circular-for-depositories-dated-october-25-2019-on-preservation-of-records-47344.html>)

## 3. **EXECUTION OF POWER OF ATTORNEY (POA) BY THE CLIENT IN FAVOUR OF THE STOCK BROKER / STOCK BROKER AND DEPOSITORY PARTICIPANT**

(Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/158 dated August 27, 2020)

### **Background**

SEBI, via its circular dated April 23, 2010, issued Guidelines for execution of Power of Attorney (PoA) by the client favouring Stock Broker / Stock Broker and Depository Participant (hereinafter referred to as “Guidelines”).

It has been observed that PoA is invariably obtained from the investors as part of the KYC and account opening process. Such PoA executed by clients has further found to have been misused by the stock brokers by taking authorization.

### **Brief Analysis**

SEBI, via its circular dated April 23, 2010, issued Guidelines for execution of PoA by the

client favouring Stock Broker / Stock Broker and Depository Participant. The guidelines stands modified which, inter alia, provides that PoA is optional and should not be insisted upon by the stock broker / stock broker depository participant for opening of the client account. Further, Stock Exchanges and Depositories shall ensure that PoA is not used by TM/CM/DPs for any purpose other than as specified.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/aug-2020/execution-of-power-of-attorney-poa-by-the-client-in-favour-of-the-stock-broker-stock-broker-and-depository-participant\\_47423.html](https://www.sebi.gov.in/legal/circulars/aug-2020/execution-of-power-of-attorney-poa-by-the-client-in-favour-of-the-stock-broker-stock-broker-and-depository-participant_47423.html))*

**4. OPERATIONAL GUIDELINES FOR TRANSFER AND DEMATERIALIZATION OF RE-LODGED PHYSICAL SHARES**

**(Circular No. SEBI/HO/MIRSD/RTAMB/CIR/P/2020/236 dated December 02, 2020)**

SEBI, vide its circular dated September 07, 2020, has fixed March 31, 2021 as the cut-off date for re-lodgment of transfer requests and has stipulated that such transferred shares shall be issued only in demat mode. In this regard the operational guidelines for crediting the transferred shares into the respective demat account of the investor are provided under this circular.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/dec-2020/operational-guidelines-for-transfer-and-dematerialization-of-re-lodged-physical-shares\\_48336.html](https://www.sebi.gov.in/legal/circulars/dec-2020/operational-guidelines-for-transfer-and-dematerialization-of-re-lodged-physical-shares_48336.html))*

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## LESSON 4

### An overview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

#### 1. **SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (FOURTH AMENDMENT) REGULATIONS, 2020 (September 28, 2020)**

**(Read with Rationalization of Eligibility criteria and Disclosure requirements for Rights Issues PR No.51/2020 dated September 23, 2020)**

#### **Background**

SEBI has amended SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 to rationalise eligibility criteria and disclosure requirements for Rights Issues' with an objective to make the fund raising through this route, easier, faster and cost effective.

#### **Amendments in Brief**

1. Issuer shall be eligible to make truncated disclosures in terms of Part B :
  - i. where it has been filing periodic reports/ statements/ information in compliance with Listing Regulations as applicable, for last one year instead of last three years as required earlier.
  - ii. where three years have passed after change in management pursuant to acquisition of control or Listing consequent to a scheme of arrangement.
2. All other issuers not satisfying Part B eligibility conditions shall make disclosures in terms of new set of proposed disclosures i.e. Part B-1. Part B-1 disclosures would be more detailed than Part B, but truncated compared to Part A, which is meant for IPO/FPO offer document.
3. Disclosure requirements under Part B have been rationalized to avoid duplication of information in letter of offer, especially the information which is already available in public domain and is disclosed by the companies in compliance with the disclosure requirements under SEBI Listing regulations.
4. Threshold increased from Rs. 10 crores to Rs 50 crores, for filing requirement of Rights issue draft letter of offer with the Board for its observations.
5. Mandatory 90% minimum subscription criteria for Rights Issue shall not be applicable to those issuers where object of the issue involves financing other than financing of capital expenditure for a project, provided that the promoters and promoter group of the issuer undertake to subscribe fully to their portion of rights entitlement.
6. Issuer shall be eligible to make Fast Track Rights Issue, in case of pending show cause notices in respect to adjudication, prosecution proceedings and audit qualification, provided

that necessary disclosures along with potential adverse impact on the issuer are made in the letter of offer.

**The amendments will be effective from September 28, 2020.**

*(For details, please click on*

[https://www.sebi.gov.in/media/press-releases/sep-2020/rationalization-of-eligibility-criteria-and-disclosure-requirements-for-rights-issues\\_47638.html](https://www.sebi.gov.in/media/press-releases/sep-2020/rationalization-of-eligibility-criteria-and-disclosure-requirements-for-rights-issues_47638.html)

[https://www.sebi.gov.in/legal/regulations/sep-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-fourth-amendment-regulations-2020\\_47712.html](https://www.sebi.gov.in/legal/regulations/sep-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-fourth-amendment-regulations-2020_47712.html))

2. **ADDITIONAL PAYMENT MECHANISM (I.E. ASBA, ETC.) FOR PAYMENT OF BALANCE MONEY IN CALLS FOR PARTLY PAID SPECIFIED SECURITIES ISSUED BY THE LISTED ENTITY**

**(Circular No. SEBI/HO/CFD/DIL1/CIR/238/2020 dated December 08, 2020)**

**Background**

SEBI, in its endeavour to protect investors' interest and reduce investor grievances relating to refund, introduced Application Supported by Blocked Amount (ASBA) as the sole payment mechanism in the IPO and Rights issues.

Considering that payment through ASBA mechanism is investor friendly and enables faster completion of the process, it has been decided to introduce additional payment mechanism (i.e. ASBA, etc) for making subscription and/or payment of calls in respect of partly paid specified securities through self-certified syndicate banks (SCSBs) and intermediaries such as Trading Members/ Brokers - having three in one type account and Registrar and Transfer agents (RTA).

**Additional Channels for making subscription and/or paying call money**

For the purpose of making payment of balance money for calls in respect of partly paid specified securities, the additional channels are tabulated below:

<b>Additional Channels for making subscription and/or paying call money</b>		
<b>Channel I</b>	<b>Channel II</b>	<b>Channel III</b>
Online ASBA: Through an online portal of the SCSB.  The SCSBs shall send the application to RTA and block funds in shareholders account.	Physical ASBA: Physically at the branch of a SCSB  The SCSBs shall send the application to RTA and block funds in shareholders account.	Additional Online mode: using the facility of linked online trading, demat and bank account (3-in-1 type accounts), provided by some of the brokers.

**Period of subscription:** The payment period for payment of balance money in Calls shall be kept open for fifteen days



**Disclosures in the Letter of Offer:** The intermediaries including the issuer company and its RTA shall provide necessary guidance to the specified security holders in use of ASBA mechanism while making payment of calls.

This circular shall be applicable for all Call Money Notice wherein the payment period opens on or **after January 01, 2021.**

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/dec-2020/additional-payment-mechanism-i-e-asba-etc-for-payment-of-balance-money-in-calls-for-partly-paid-specified-securities-issued-by-the-listed-entity\\_48378.html](https://www.sebi.gov.in/legal/circulars/dec-2020/additional-payment-mechanism-i-e-asba-etc-for-payment-of-balance-money-in-calls-for-partly-paid-specified-securities-issued-by-the-listed-entity_48378.html))*

**3. FRAMEWORK FOR ISSUE OF DEPOSITORY RECEIPTS – CLARIFICATIONS**  
(Circular No. SEBI/HO/MRD2/DCAP/CIR/P/2020/243 dated December 18, 2020)

**Background**

SEBI vide its Circular dated October 10, 2019 laid down a Framework for issue of Depository Receipts. SEBI has revised Para 2.15 of the abovementioned Circular.

**Brief of the Circular**

**The revised Para 2.15 of the abovementioned Circular is as under:**

Permissible holder means a holder of DR, including its Beneficial Owner(s), satisfying the following conditions:

- a) who is not a person resident in India;
- b) who is not a Non-Resident Indian (NRI)

Provided that the restriction under this Clause shall not apply in case of issue of DRs to NRIs, pursuant to share based employee benefit schemes which are implemented by a company in terms of SEBI (Share Based Employee Benefits) Regulations 2014;

Provided further that the restriction under this Clause shall also not apply in case of issue of DRs by the company to NRIs pursuant to a bonus issue or a rights issue;

Explanation 1: For the purpose of this Circular, ‘Beneficial Owner’ shall have the same meaning as provided in proviso to sub-rule 1 of rule 9 of Prevention of Money Laundering (Maintenance of Records) Rules, 2005, as amended by the Central Government vide notification no. G.S.R. 669(E) dated September 18, 2019.

Explanation 2: The Permissible holder, including its Beneficial Owner(s), shall be responsible for ensuring compliance with this requirement.

Explanation 3: Except as permitted under the provisos above, NRIs shall neither subscribe to any further issue of DRs nor make any further acquisition of DRs (including of DRs issued prior to October 10, 2019).

**Further, the following shall be inserted as Para 2.12A after Para 2.12:**

The onus of identification of NRIs holders, who are issued DRs in terms employee benefit scheme, would lie with the listed company. The listed company shall provide the information of such NRI DR holders to the designated depository for the purpose of monitoring of limits.

**Brief Analysis**

SEBI has relaxed to non-resident Indians in respect of holding of depository receipts (DRs) issued by India-listed companies. NRIs can now hold DRs issued by the company under the employee stock option schemes, bonus issue and rights issue, the regulator said.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/dec-2020/framework-for-issue-of-depository-receipts-clarifications\\_48477.html](https://www.sebi.gov.in/legal/circulars/dec-2020/framework-for-issue-of-depository-receipts-clarifications_48477.html))*

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## LESSON 5

### SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

#### 1. **CLARIFICATION ON APPLICABILITY OF REGULATION 40(1) OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 TO OPEN OFFERS, BUYBACKS AND DELISTING OF SECURITIES OF LISTED ENTITIES**

(Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/144 dated July 31, 2020)

##### **Background**

The proviso to regulation 40(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations') states that "...except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository."

Investors have not been able to participate in open offers, buybacks and delisting of securities of listed entities since the securities held by them were not in dematerialized form.

It is clarified that shareholders holding securities in physical form are allowed to tender shares in open offers, buy-backs through tender offer route and exit offers in case of voluntary or compulsory delisting. However, such tendering shall be as per the provisions of respective regulations.

(For details, please click on [https://www.sebi.gov.in/legal/circulars/jul-2020/clarification-on-applicability-of-regulation-40-1-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-to-open-offers-buybacks-and-delisting-of-securities-of-listed-entities\\_47216.html](https://www.sebi.gov.in/legal/circulars/jul-2020/clarification-on-applicability-of-regulation-40-1-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-to-open-offers-buybacks-and-delisting-of-securities-of-listed-entities_47216.html))

#### 2. **SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2020 (AUGUST 5, 2020)**

##### **Brief of the Circular**

SEBI has amended the provisions of Regulation 42 of the SEBI (LODR) Regulations, 2015, which, inter alia, provide that the listed entity shall intimate the record date for the events to all the stock exchange(s) where it is listed or where stock derivatives are available on the stock of the listed entity or where listed entity's stock form part of an index on which derivatives are available.

##### **Brief Analysis**

A listed entity was previously required to intimate the record date to the Stock Exchange, merely where the entity was listed. However by virtue of this amendment a listed entity is required to make such intimation not only where it is listed on the stock exchange but also where stock derivatives are available on the stock of the listed entity or where listed entity's stock form part of an index on which derivatives are available.

(For details, please click on [https://www.sebi.gov.in/legal/regulations/aug-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2020\\_47274.html](https://www.sebi.gov.in/legal/regulations/aug-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2020_47274.html))

### 3. **RE-LODGE MENT OF TRANSFER REQUESTS SHARES**

(Circular No. SEBI/HO/MIRSD/RTAMB/CIR/P/2020/166 dated September 07, 2020)

#### **Background**

In terms of Regulation 40 (1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, transfer of securities held in physical mode has been discontinued w.e.f. April 01, 2019. Subsequently, vide Press Release No. 12/2019 dated March 27, 2019, it was clarified that transfer deeds lodged prior to deadline of April 01, 2019 and rejected / returned due to deficiency in the documents may be re-lodged with requisite documents.

With this circular, it has been decided to fix **March 31, 2021** as the cut-off date for re-lodgement of transfer deeds. Further, the shares that are re-lodged for transfer (including those request that are pending with the listed company / RTA, as on date) shall henceforth be issued only in demat mode.

(For details, please click on [https://www.sebi.gov.in/legal/circulars/sep-2020/re-lodgement-of-transfer-requests-shares\\_47500.html](https://www.sebi.gov.in/legal/circulars/sep-2020/re-lodgement-of-transfer-requests-shares_47500.html))

### 4. **SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (THIRD AMENDMENT) REGULATIONS, 2020 (OCTOBER 8, 2020)**

The SEBI has carried out the following amendments under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

#### **Asset Cover**

Regulation 54(1) of SEBI LODR has been substituted and now listed companies have been permitted to maintain asset cover in respect of its listed non-convertible debt securities, at 100% asset cover or asset cover as per the terms of the offer document/ Information Memorandum and/ or Debenture Trust Deed, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.

#### **Documents and Intimation to Debenture Trustee**

Regulation 56(1) SEBI has included a new intimation to be made by the listed entity to their Debenture trustee, namely: “All covenants of the issue (including side letters, accelerated payment clause, etc.)”

Under Regulation 56(1)(d), listed entities shall mandatorily submit a half-yearly certificate regarding maintenance of 100% asset cover to the Debenture Trustee. Now in line with the amendment a half-yearly certificate regarding maintenance of 100% asset cover as per the terms of the offer document/ Information Memorandum and/or Debenture Trust Deed, including compliance with all the covenants, shall be forward to the debenture trustee.

Moreover, the listed entities could earlier obtain this certificate from a practicing chartered accountant or a practicing company secretary, now this has to be mandatorily obtained from the Statutory Auditor of the Company.

#### **Forensic Audit Disclosure**

Para A of Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, requires the listed companies to disclose certain events or information upon occurrence without any application of the guidelines for materiality.

As per the amendment, companies will now be required to disclose to Stock Exchange about the forensic audit initiated along with the details as prescribed.

**These amendments shall come into force on the date of their publication in the Official Gazette i.e. October 8, 2020.**

*(For details, please click on [https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2020\\_47821.html](https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2020_47821.html))*

## **5. NON-COMPLIANCE WITH PROVISIONS RELATED TO CONTINUOUS DISCLOSURES**

**(Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/231 dated November 13, 2020)**

In order to ensure effective enforcement of continuous disclosure obligations by issuers of listed Non-Convertible Debt Securities or NCRPS or Commercial Papers, it has been decided to lay down a uniform structure for imposing fines for non-compliance with continuous disclosure requirements.

In view of the above and in the interests of investors and the securities market, it has been provided that-

- The Stock Exchanges shall levy fine and take action in case of non-compliances with continuous disclosure requirements by issuers of listed Non-Convertible Debt Securities and/ or NCRPS and/ or Commercial Papers as specified in Annexure I and Annexure II of this circular respectively.
- Stock Exchanges may deviate from the above, if found necessary, only after recording reasons in writing.
- In case a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action under this circular in consultation with each other.
- The recognized stock exchanges shall take necessary steps to implement this circular and shall disclose on their website the action(s) taken against the entities for non-compliance(s); including the details of the respective requirement, amount of fine levied/ action taken etc.
- The amount of fine realized as per the structure provided in Annexure I of this circular shall be credited to the "Investor Protection Fund" of the concerned recognized stock exchange.
- The fines specified in Annexure I of this circular shall continue to accrue till the time of rectification of the non-compliance and to the satisfaction of the concerned recognized stock exchange. Such accrual shall be irrespective of any other disciplinary/enforcement action(s) initiated by recognized stock exchange(s)/SEBI.
- The recognized stock exchanges may keep in abeyance the action or withdraw the action in specific cases where specific exemption from compliance with the requirements for continuous disclosures /moratorium on enforcement proceedings has been provided for under any Act, Court/Tribunal Orders etc.
- The above provisions are without prejudice to the power of SEBI to take action under the securities laws.

- This provisions mentioned in this circular shall come into force for compliance period ending on or after December 31, 2020.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/nov-2020/non-compliance-with-provisions-related-to-continuous-disclosures\\_48171.html](https://www.sebi.gov.in/legal/circulars/nov-2020/non-compliance-with-provisions-related-to-continuous-disclosures_48171.html))*

## **6. E-VOTING FACILITY PROVIDED BY LISTED ENTITIES**

**(Circular No. SEBI/HO/CFD/CMD/CIR/P/2020/242 dated December 09, 2020)**

### **Background**

Under Regulation 44 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, listed entities are required to provide remote voting facility to its shareholders, in respect of all shareholders' resolutions. However, it has been observed that the participation by the public non-institutional shareholders/retail shareholders is at a negligible level.

Currently, there are multiple e-voting service providers (ESPs) providing e-voting facility to listed entities in India. This necessitates registration on various ESPs and maintenance of multiple user IDs and passwords by the shareholders.

### **Brief of the Circular**

In order to increase the efficiency of the voting process, pursuant to a public consultation, it has been decided to enable e-voting to all the demat account holders, by way of a single login credential, through their demat accounts/ websites of Depositories/ Depository Participants. Demat account holders would be able to cast their vote without having to register again with the ESPs, thereby, not only facilitating seamless authentication but also enhancing ease and convenience of participating in e-voting process. The same shall be implemented in a phased manner as prescribed under the circular.

### **Applicability**

- The aforementioned facility shall be available to all individual shareholders holding the securities in demat mode.
- ESPs may continue to provide the facility of e-voting as per the existing process to all physical shareholders and shareholders other than individuals viz. institutions/ corporate shareholders.
- Depositories and Exchanges are advised to bring the circular to the notice of its Depository Participants and listed companies respectively.
- All listed companies are advised to notify the above process available to demat account holders for e-voting in the notice sent to the shareholders.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/dec-2020/e-voting-facility-provided-by-listed-entities\\_48390.html](https://www.sebi.gov.in/legal/circulars/dec-2020/e-voting-facility-provided-by-listed-entities_48390.html))*

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## LESSON 6

### An Overview of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

#### 1. **SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVER) (THIRD AMENDMENT) REGULATIONS, 2020 (JULY 1, 2020)**

SEBI has notified amendments to SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 vide circular dated July 01, 2020

##### **Brief Analysis**

The Amendment is brought under regulation 17 which deals with provision to escrow under which, in sub regulation 1, new proviso shall be inserted which provides that, in case of indirect acquisitions where public announcement has been made, an amount equivalent to hundred per cent of the consideration payable in the open offer shall be deposited in the escrow account.

Further, under regulation 18(11) in case, the acquirer is unable to make payment to the shareholders who have accepted the open offer within such period, the acquirer shall pay interest for the period of delay to all such shareholders whose shares have been accepted in the open offer, at the rate of 10% per annum.

*(For details, please click on [https://www.sebi.gov.in/legal/regulations/jul-2020/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-third-amendment-regulations-2020\\_46990.html](https://www.sebi.gov.in/legal/regulations/jul-2020/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-third-amendment-regulations-2020_46990.html))*

#### 2. **DISCLOSURES ON MARGIN OBLIGATIONS GIVEN BY WAY OF PLEDGE/ RE-PLEDGE IN THE DEPOSITORY SYSTEM**

**(Circular No. SEBI/HO/CFD/DCR-2/CIR/P/2020/164 dated September 02, 2020)**

##### **Background/Brief of the Circular**

Regulation 29 (4) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (herein after referred as “Takeover Regulations”) provides that for the purposes of disclosure under regulation 29(1) and (2), shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified.

SEBI vide circular dated February 25, 2020 issued guidelines on acceptance of collateral from clients in the form of securities by Trading Member(TM) / Clearing Member (CM), only by way of ‘margin pledge’, created in the Depository system.

In this regard, for ease of doing business it has been decided that disclosures specified under Regulation 29(4) of Takeover Regulations, in relation to shares encumbered with TM /CM as a collateral from clients for margin obligation in the ordinary course of stock broking business are dispensed with.

##### **Brief Analysis**

Entities will not be required to make disclosures about shares encumbered with trading and clearing members by way of pledge or re-pledge in the depository system as part of improving the ease of doing business.

(For details, please click on [https://www.sebi.gov.in/legal/circulars/sep-2020/disclosures-on-margin-obligations-given-by-way-of-pledge-re-pledge-in-the-depository-system\\_47476.html](https://www.sebi.gov.in/legal/circulars/sep-2020/disclosures-on-margin-obligations-given-by-way-of-pledge-re-pledge-in-the-depository-system_47476.html))

3. **SYSTEM-DRIVEN DISCLOSURES (SDD) UNDER SEBI (SAST) REGULATIONS, 2011**

(Circular No. SEBI/CIR/CFD/DCR1/CIR/P/2020/181 dated September 23, 2020)

**Brief of the Circular**

SEBI has issued this Circular on System-Driven Disclosures (SDD) under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST) with an aim to implement SDD in SAST disclosures too. That shall be done by aligning the practices of PAN capture as mentioned under earlier Circular (SEBI/HO/ISD/ISD/CIR/P/2020/168 dated September 09, 2020 is given under Lesson 11 - SEBI (Prohibition of Insider Trading) Regulations, 2015) dated September 09, 2020 under Regulation 7(2) SEBI (PIT) Regulations, 2015.

The said Circular dated September 09, 2020 required the capture of PAN of the promoters from the listed companies itself, rather than through the RTAs. SEBI has decided to use the procedure of capturing the PAN of the promoters from listed companies as mentioned in the circular dated September 09, 2020 for SAST disclosures.

(For details, please click on [https://www.sebi.gov.in/legal/circulars/sep-2020/system-driven-disclosures-sdd-under-sebi-sast-regulations-2011\\_47632.html](https://www.sebi.gov.in/legal/circulars/sep-2020/system-driven-disclosures-sdd-under-sebi-sast-regulations-2011_47632.html))

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## LESSON 11

### SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

1. **ALLOWING OFFER FOR SALE (OFS) AND RIGHTS ENTITLEMENTS (RE) TRANSACTIONS DURING TRADING WINDOW CLOSURE PERIOD.**  
(Circular No. SEBI/HO/ISD/ISD/CIR/P/2020/133 dated July 23, 2020)

#### **Background**

Vide Gazette Notification No. SEBI/LAD-NRO/GN/2020/23 dated July 17, 2020, Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) have been further amended.

Clause 4 (3) (b) of Schedule B read with Regulation 9 of PIT Regulations, inter-alia, states that trading window restrictions shall not apply in respect of transactions mentioned therein or transactions undertaken through such other mechanism as may be specified by the Board from time to time.

#### **Brief of the Circular**

It has been decided that in addition to the transactions mentioned in Clause 4 (3) (b) of Schedule B read with Regulation 9 of PIT Regulations, trading window restrictions shall not apply in respect of OFS and RE transactions carried out in accordance with the framework specified by the Board from time to time.

#### **Brief Analysis**

Listed companies need to use a trading window to monitor transactions by designated persons in a bid to prevent insider trading.

The compliance officer is responsible for closing the trading window, in case the designated persons are expected to be in possession of unpublished price sensitive information.

In a circular, SEBI said "trading window restrictions shall not apply in respect of OFS and RE transactions carried out in accordance with the framework specified by the Board from time to time.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/jul-2020/allowing-offer-for-sale-ofs-and-rights-entitlements-re-transactions-during-trading-window-closure-period\\_47120.html](https://www.sebi.gov.in/legal/circulars/jul-2020/allowing-offer-for-sale-ofs-and-rights-entitlements-re-transactions-during-trading-window-closure-period_47120.html))*

2. **REPORTING TO STOCK EXCHANGES REGARDING VIOLATIONS UNDER SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015 RELATING TO THE CODE OF CONDUCT (COC).**  
(Circular No. SEBI/HO/ISD/ISD/CIR/P/2020/135 dated July 23, 2020)

#### **• Reporting to Stock Exchange**

In terms of clause 13 of Schedule B (in case of listed companies) and clause 11 of Schedule C (in case of intermediaries and fiduciaries) read with Regulation 9 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations), the listed companies, intermediaries and fiduciaries shall promptly inform the Stock Exchange(s) where the concerned securities are

traded, regarding violations relating to CoC under PIT Regulations in such form and manner as may be specified by the Board from time to time.

SEBI, vide its Circular dated July 19, 2019, had specified the standard format for reporting of violations related to CoC. The said format has been suitably modified and placed at Annexure A of this circular. The listed companies, intermediaries and fiduciaries shall inform the violations of PIT Regulations relating to CoC as per the revised format to the Stock Exchange(s).

• **Amount remitted to Investor Protection and Education Fund (IPEF)**

Further, in terms of clause 12 of Schedule B and clause 10 of Schedule C read with Regulation 9 of the PIT Regulations, any amount collected by the listed companies, intermediaries and fiduciaries under these clauses for violation(s) of CoC shall be remitted to the Board for credit to the Investor Protection and Education Fund (IPEF) administered by the Board under the Securities and Exchange Board of India Act, 1992.

As per Regulation 4(2) of SEBI (Investor Protection and Education Fund) Regulations, 2009, such amounts shall be credited to the IPEF through the online mode or by way of a demand draft (DD) in favour of the Board (i.e. SEBI – IPEF) payable at Mumbai. The bank account details of SEBI – IPEF for online transfer has given in this circular.

*(For details, please click on <https://www.sebi.gov.in/legal/circulars/jul-2020/reporting-to-stock-exchanges-regarding-violations-under-securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-relating-to-the-code-of-conduct-coc-47121.html>)*

3. **AUTOMATION OF CONTINUAL DISCLOSURES UNDER REGULATION 7(2) OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015 - SYSTEM DRIVEN DISCLOSURES.**

**(Circular No. SEBI/HO/ISD/ISD/CIR/P/2020/168 dated September 09, 2020)**

**Background**

Vide Gazette Notification No. SEBI/LAD-NRO/GN/2020/23 dated July 17, 2020, Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) have been further amended.

SEBI, vide circular no. CIR/CFD/DCR/17/2015 dated December 01, 2015, CFD/DCR/CIR/2016/139 dated December 21, 2016 and SEBI/HO/CFD/DCR1/CIR/P/2018/85 dated May 28, 2018, implemented the system driven disclosures in phases, under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and PIT Regulations.

**Brief of the Circular**

Pursuant to the aforesaid amendment of PIT Regulations, it has now been decided to implement the system driven disclosures for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of company (hereinafter collectively referred to as entities) under Regulation 7(2) of PIT Regulations.

To begin with, the system driven disclosures shall pertain to trading in equity shares and equity derivative instruments i.e. Futures and Options of the listed company (wherever applicable) by

the entities.

The procedure for implementation of the system driven disclosures has been prescribed under this circular.

The Depositories and Stock Exchanges shall make necessary arrangements such that the disclosures pertaining to PIT Regulations are disseminated on the websites of respective stock exchanges with effect from **October 01, 2020**.

The system would continue to run parallel with the existing system i.e. entities shall continue to independently comply with the disclosure obligations under PIT Regulations as applicable to them till **March 31, 2021**.

As currently done, the disclosures generated through the system shall be displayed separately from the regular disclosures filed with the exchanges.

This circular supersedes the earlier circulars dated December 01, 2015, December 21, 2016 and May 28, 2018 with respect to implementation of System driven disclosures under PIT Regulations.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/sep-2020/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures\\_47523.html](https://www.sebi.gov.in/legal/circulars/sep-2020/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures_47523.html))*

#### **4. SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) (SECOND AMENDMENT) REGULATIONS, 2020 (OCTOBER 29, 2020)**

The SEBI has carried out the amendments under Securities and Exchange Board of India Prohibition of Insider Trading) Regulations, 2015.

In Regulation 7A(1)(h)(iii), an explanation has been inserted to the definition 'Original Information' which provides that "Information shall be considered timely, only if as on the date of receipt of the duly completed Voluntary Information Disclosure Form by the Board, a period of not more than three years has elapsed since the date on which the first alleged trade constituting violation of insider trading laws was executed"

As per Regulation 7B, an Informant shall submit Original Information by furnishing the Voluntary Information Disclosure Form to the Office of Informant Protection of the Board in the format and manner set out in Schedule D. With the amendment, SEBI has provided that the details that must include in the Voluntary Information Disclosure Form with respect to:

- (i) details of the securities in which insider trading is alleged;
- (ii) the unpublished price sensitive information based on which insider trading is alleged;
- (iii) date on which the unpublished price sensitive information was made public;
- (iv) details of circumstances/evidence leading to possession of unpublished price sensitive information by the alleged violator(s);
- (v) details of insiders/suspects and their trades (i.e. purchase/sale and quantity purchased/sold) along with dates/period of trades.

*(For details, please click on [https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-prohibition-of-insider-trading-second-amendment-regulations-2020\\_48084.html](https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-prohibition-of-insider-trading-second-amendment-regulations-2020_48084.html))*

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## LESSON 12: MUTUAL FUNDS

### 1. TRANSACTION IN CORPORATE BONDS/COMMERCIAL PAPERS THROUGH RFQ PLATFORM AND ENHANCING TRANSPARENCY PERTAINING TO DEBT SCHEMES

(Circular No. SEBI/HO/IMD/DF3/CIR/P/2020/130 dated July 22, 2020)

#### Background

Mutual Fund Advisory Committee (MFAC) advises SEBI on the matters relating to regulation of mutual funds for ensuring investor protection, Disclosure Requirements, Measures required to be taken for change in the legal framework to introduce simplification and issues related to development of the mutual fund industry.

In order to enhance the transparency and disclosure, SEBI based on the recommendation of Mutual Fund Advisory Committee (MFAC) came out with certain measures pertaining to debt schemes and investments by mutual funds in Corporate Bonds/Commercial Papers.

#### Circular in Brief

##### A. In order to increase the liquidity on exchange platform,

- i. On monthly basis, Mutual Funds shall undertake at least 10% of their total secondary market trades by value (excluding Inter Scheme Transfer trades) in the Corporate Bonds by placing/seeking quotes through one-to-many mode on the Request for Quote (RFQ) platform of stock exchanges. The percentage as specified shall be reckoned on the average of secondary trades by value in immediate preceding three months on rolling basis.
- ii. All transactions in Corporate Bonds and Commercial Papers wherein Mutual Fund is on both sides of the trade shall be executed through RFQ platform of stock exchanges in one-to-one mode.
- iii. Any transaction entered by mutual fund in Corporate Bonds in one to many mode and gets executed with another mutual fund shall also be counted for the aforesaid 10% requirement.

B. SEBI, in partial modification of its circular dated September 13, 2012 decided that certain disclosures for debt schemes should be done on a fortnightly basis, within five days of every fortnight. In addition to the current portfolio disclosure, yield of the instrument shall also be disclosed. The disclosure shall be made in the format mentioned in the aforementioned circular.

**The above shall come into force with effect from October 1, 2020.**

#### Brief Analysis

This will enhance the transparency and disclosure pertaining to debt schemes and investments by mutual funds in corporate bonds and commercial papers.

The RFQ platform shall aid in enhancing liquidity in the market system where market participants can negotiate their deals in any of the eligible securities over an electronic platform. It is ought to offer better features and flexibility than over the-counter (OTC) markets and will offer a lot more transparency and better efficiency.

(For details, please click on <https://www.sebi.gov.in/legal/circulars/jul-2020/circular-on->

[transaction-in-corporate-bonds-commercial-papers-through-rfq-platform-and-enhancing-transparency-pertaining-to-debt-schemes 47116.html\)](https://www.sebi.gov.in/legal/circulars/sep-2020/circular-on-resources-for-trustees-of-mutual-funds-47116.html)

## 2. **RESOURCES FOR TRUSTEES OF MUTUAL FUNDS**

(Circular No. SEBI/HO/IMD/DF4/CIR/P/2020/0000000151 dated August 10, 2020)

### **Background**

SEBI has notified the 'Resources for Trustees of Mutual Funds' after interactions with the Trustees who had requested for providing administrative assistance to Trustees in monitoring various activities of the Asset Management Companies. Regulation 18 (25)(B)(i) of SEBI (Mutual Funds) Regulations, 1996 states that the Trustees shall obtain internal audit reports at regular intervals from independent auditors appointed by the Trustees.

### **Circular in brief**

SEBI has decided that –

- Trustees must appoint a dedicated officer having professional qualification and minimum 5 years of experience in finance and financial services related field.
  1. The officer appointed shall be an employee of the Trustees and directly report to the Trustees.
  2. The scope of work for the said officer shall be specified by Trustees from time to time to support the role and responsibilities of the Trustees. The officer shall accordingly assist the Trustees and discharge the activities assigned to him.
  3. The said officer shall be treated as access person in terms of SEBI Circular No. MFD/CIR No.4/216/2001 dated May 08, 2001.
- Further, Trustees have the standing arrangements with independent firms for special purpose audit and/or to seek legal advice in case required.

Notwithstanding the above, the Trustees shall however continue to be liable for discharge of various fiduciary responsibilities as cast upon them in the SEBI (Mutual Funds) Regulations, 1996.

The circular shall be applicable with effect from October 01, 2020. (Upon consideration of the subsequent representation received from AMFI, SEBI has been decided that compliance of the aforesaid Circular shall be applicable from January 01, 2021.)

(For details, please click on <https://www.sebi.gov.in/legal/circulars/aug-2020/resources-for-trustees-of-mutual-funds-47291.html>  
<https://www.sebi.gov.in/legal/circulars/sep-2020/circular-on-resources-for-trustees-of-mutual-funds-47630.html>)

## 3. **MASTER CIRCULAR FOR MUTUAL FUNDS**

(Circular No. SEBI/HO/IMD/DF2/CIR/P/2020/156 dated August 24, 2020)

### **Background**

For effective regulation of the Mutual Fund Industry, SEBI has been issuing various circulars from time to time. In order to enable the industry and other users to have an access to all the applicable circulars at one place, SEBI has prepared Master Circular for Mutual Funds.

## **Brief about Circular**

The SEBI has issued Master Circular on Mutual Funds. This Master Circular is a compilation of all the circulars issued by SEBI with regard to mutual fund, which are operational as on date of this circular and shall supersede the previous Master Circular No.SEBI/HO/IMD/DF5/CIR/P/2018/109 dated July 10, 2018.

(For details, please click on [https://www.sebi.gov.in/legal/master-circulars/aug-2020/master-circular-for-mutual-funds\\_47382.html](https://www.sebi.gov.in/legal/master-circulars/aug-2020/master-circular-for-mutual-funds_47382.html))

#### **4. ASSET ALLOCATION OF MULTI CAP FUNDS**

(Circular No. SEBI/HO/IMD/DF3/CIR/P/2020/172 dated September 11, 2020)

### **Background:**

To bring uniformity in the characteristics of similar type of schemes launched by different Mutual Funds, SEBI had categorized and rationalized the mutual fund schemes vide circular dated October 06, 2017. The purpose was to evaluate the different options available before taking an informed decision to invest in a scheme by an Investor.

### **Circular in brief**

In order to diversify the underlying investments of Multi Cap Funds across the large, mid and small cap companies and be true to label, SEBI has partially modified the scheme characteristics of Multi Cap Funds under: **Minimum investment in equity & equity related instruments -75% of total assets in the following manner:**

- I.** Minimum investment in equity & equity related instruments of large cap companies  
- 25% of total assets
- II.** Minimum investment in equity & equity related instruments of mid cap companies  
- 25% of total assets
- III.** Minimum investment in equity & equity related instruments of small cap companies  
- 25% of total assets

All the existing Multi Cap Funds shall ensure compliance with the above provisions within one month from the date of publishing the next list of stocks by Association of Mutual Funds in India (AMFI), i.e. January 2021.

All other conditions specified in aforesaid circular dated October 06, 2017 shall remain unchanged.

### **Details of Change**

As per SEBI Circular dated October 06, 2017, Minimum investment in equity & equity related instruments of Multi cap fund was 65% of total assets, Now, SEBI, in partial modification, has mandated Multi Cap Funds to allocate least 25 per cent of their portfolios in large-, mid- and small-caps each by February 2021.

(For details: [https://www.sebi.gov.in/legal/circulars/sep-2020/circular-on-asset-allocation-of-multi-cap-funds\\_47542.html](https://www.sebi.gov.in/legal/circulars/sep-2020/circular-on-asset-allocation-of-multi-cap-funds_47542.html))

(For details: <https://www.sebi.gov.in/media/press-releases/sep-2020/clarification->



[pursuant-to-circular-dated-september-11-2020-regarding-asset-allocation-of-multi-cap-schemes-of-mutual-funds\\_47546.html](https://www.sebi.gov.in/legal/circulars/sep-2020/circular-on-pursuant-to-circular-dated-september-11-2020-regarding-asset-allocation-of-multi-cap-schemes-of-mutual-funds_47546.html))

## 5. **CIRCULAR ON MUTUAL FUNDS**

(Circular No. SEBI/HO/IMD/DF2/CIR/P/2020/175 dated September 17, 2020)

### **Background**

In order to increase penetration of mutual fund products and to energise the distribution network while protecting the interest of investors, SEBI, vide its circular dated September 13, 2012 decided to implement the various steps to re-energise the mutual fund industry on recommendations of Mutual Fund Advisory Committee (MFAC). SEBI has made certain modifications with respect to above mentioned circular and introduced other changes vide circular dated September 17, 2020.

### **Circular in Brief:**

The SEBI has introduced following modifications:

#### **Uniformity in applicability of Net Asset Value (NAV) across various schemes upon realization of funds**

It has been decided that in respect of purchase of units of mutual fund schemes (except liquid and overnight schemes), closing NAV of the day shall be applicable on which the funds are available for utilization irrespective of the size and time of receipt of such application.

#### **Trade Execution and Allocation**

It has been decided that AMCs shall have a written down policy which inter-alia detail the specific activities, role and responsibilities of various teams engaged in fund management, dealing, compliance, risk management, back-office, etc., with regard to order placement, execution of order, trade allocation amongst various schemes and other related matters.

AMCs shall use an automated Order Management System (OMS), wherein the orders for equity and equity related instruments of each scheme shall be placed by the fund manager(s) of the respective schemes.

#### **Monitoring of Compliance**

AMC shall have a system based monitoring mechanism to ensure compliance. Audit trail of activities related to order placement, trade execution and allocation shall be available in the system. Further, there should be time stamping with respect to order placed by fund manager, order placed by dealer, order execution and trade allocation.

**The circular shall be applicable with effect from January 1, 2021.** *(Upon consideration of the subsequent representation received from AMFI regarding operational challenges, SEBI has been decided to extend the date of applicability of the aforementioned provision to February 1, 2021 vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2020/253 dated December 31, 2020.*

*(For details, please click on <https://www.sebi.gov.in/legal/circulars/sep-2020/circular-on->*

[mutual-funds 47574.html](#)

<https://www.sebi.gov.in/legal/circulars/dec-2020/circular-on-mutual-funds 48630.html>

## 6. **REVIEW OF DEBT AND MONEY MARKET SECURITIES TRANSACTIONS DISCLOSURE**

(Circular No. SEBI/HO/IMD/DF4/CIR/P/2020/163 dated September 01, 2020)

SEBI vide circular dated February 28, 2012 prescribed format to disclose all details of debt and money market securities transacted (including inter scheme transfers) in its schemes portfolio on daily basis with a time lag of 30 days.

In order to further enhance transparency, it is now decided that the details of debt and money market securities transacted (including inter scheme transfers) in its schemes portfolio shall be disclosed on daily basis with a time lag of 15 days in a revised format as prescribed by SEBI.

The above disclosure shall be in a comparable, downloadable (spreadsheet) and machine readable format.

This circular shall come in to effect from **October 01, 2020**.

(For details, please click on <https://www.sebi.gov.in/legal/circulars/sep-2020/review-of-debt-and-money-market-securities-transactions-disclosure 47465.html>)

## 7. **REVIEW OF DIVIDEND OPTION(S) / PLAN(S) IN CASE OF MUTUAL FUND SCHEMES**

(Circular No. SEBI/HO/IMD/DF3/CIR/P/2020/194 dated October 05, 2020)

### **Background**

Some Asset Management Companies (AMCs) offer the same percentage of dividend every month on investments made in a few Mutual Fund (MF) schemes to make the schemes look like regular income instruments as also to make them attractive. During an economic slowdown, for companies having portfolios of the schemes having little surplus to distribute, paying regular dividends may result in the erosion of the capital invested.

### **Rationale behind the Circular**

Take the example of Mohan Sharma, who retired from a PSU about 10 years ago and invested part of his retirement corpus in one such fund after the employees of the bank, in which he had fixed deposits (FDs), convinced him to do so for a better monthly return.

While Mohan was happy with the amount of dividend he received every month, but after a few years, he found that the capital invested had been eroded by a few lakhs. Now, he wants to shift the corpus to another investment option, where the capital will remain protected. To help investors like Mohan to make an informed decision before investing in a scheme that offers regular monthly dividend, Securities and Exchange Board of India (SEBI) wants a review of dividend option(s) / plan(s) in case of MF schemes.

### **Circular in Brief**

1. Please refer to Ninth and Eleventh Schedule of SEBI (Mutual Funds) Regulations, 1996 and SEBI circular No. SEBI/IMD/CIR No 18 / 198647 /2010 dated March 15, 2010,



which provide the accounting policies to be followed for determining distributable surplus and accounting the sale and repurchase of units in the books of the Mutual Fund.

2. The aforesaid regulatory requirements, inter-alia, mandates that when units are sold, and sale price (NAV) is higher than face value of the unit, a portion of sale price that represents realized gains shall be credited to an Equalization Reserve Account and which can be used to pay dividend.
3. There is a need to clearly communicate to the investor that, under dividend option of a Mutual Fund Scheme, certain portion of his capital (Equalization Reserve) can be distributed as dividend.
4. Based on the recommendations of Mutual Funds Advisory Committee (MFAC), it is decided to stipulate the following:
  - 4.1. All the existing and proposed Schemes of Mutual Funds shall name / rename the Dividend option(s) in the following manner:

Option / Plan	Name
Dividend Payout	Payout of Income Distribution cum capital withdrawal option
Dividend Re-investment	Reinvestment of Income Distribution cum capital withdrawal option
Dividend Transfer Plan	Transfer of Income Distribution cum capital withdrawal plan

- 4.2 Offer documents shall clearly disclose that the amounts can be distributed out of investors capital (Equalization Reserve), which is part of sale price that represents realized gains. Further, AMCs shall ensure that the said disclosure is made to investors at the time of subscription of such options/plans.
- 4.3 AMCs shall ensure that whenever distributable surplus is distributed, a clear segregation between income distribution (appreciation on NAV) and capital distribution (Equalization Reserve) shall be suitably disclosed in the Consolidated Account Statement provided to investors as required under Regulation 36(4) of SEBI (Mutual Funds) Regulations, 1996 and SEBI Circular No. CIR/MRD/ DP/ 31/2014 dated November 12, 2014.
5. The aforesaid changes shall not be treated as Fundamental Attribute Change in terms of Regulation 18 (15A) of SEBI (Mutual Funds) Regulations, 1996.
6. All other conditions specified in this regard shall remain unchanged.
7. **The provisions mentioned under paragraph 4 shall be effective from April 01, 2021.**

*(For details, please click on <https://www.sebi.gov.in/legal/circulars/oct-2020/circular-on-review-of-dividend-option-s-plan-s-in-case-of-mutual-fund-schemes-47795.html>)*

## 8. **PRODUCT LABELING IN MUTUAL FUND SCHEMES – RISK-O-METER**

(Circular No. SEBI/HO/IMD/DF3/CIR/P/2020/197 dated October 05, 2020)

### **Background**

In order to address the issue of mis-selling, it has been decided that all the mutual funds shall 'Label' their schemes on the parameters prescribed by SEBI vide circular dated March 18, 2013 and April 30, 2015. SEBI, based on the recommendation of Mutual Fund Advisory Committee (MFAC), has reviewed the guidelines for product labeling in mutual funds and has announced new guidelines.

### **Circular in brief**

- Risk Level of a scheme will be depicted by "Risk-o-meter", which shall have following six levels of risk for mutual fund schemes:
  - i. Low Risk
  - ii. Low to Moderate Risk
  - iii. Moderate Risk
  - iv. Moderately High Risk
  - v. High Risk and
  - vi. Very High Risk
- Based on the scheme characteristics, Mutual Funds shall assign risk level for schemes at the time of launch of scheme/New Fund Offer.
- Risk-o-meter shall be evaluated on a monthly basis and Mutual Funds/AMCs shall disclose the Risk-o-meter along with portfolio disclosure for all their schemes on their respective website and on AMFI website within 10 days from the close of each month.
- Mutual Funds shall disclose the risk level of schemes as on March 31 of every year, along with number of times the risk level has changed over the year, on their website and AMFI website.
- Mutual Funds shall publish the following table of scheme wise changes in Risk-o-meter in scheme wise Annual Reports and Abridged summary:

<b>Scheme name</b>	<b>Risk-o-meter level at start of the financial year</b>	<b>Risk-o-meter level at end of the financial year</b>	<b>Number of changes in Risko-meter during the financial year</b>

- Product label shall be disclosed on:
  - a. Front page of initial offering application form, Scheme Information Documents (SID) and Key Information Memorandum (KIM).
  - b. Common application form – along with the information about the scheme.
  - c. The product label with respect to (a) & (b) above shall be placed in proximity to the caption of the scheme and shall be prominently visible.
  - d. Scheme advertisements – placed in manner so as to be prominently visible to investors.
- Change in risk-o-meter will not be considered as a Fundamental Attribute Change of the scheme in terms of regulation 18(15A) of SEBI (Mutual Fund) Regulations, 1996.

**This circular shall be in force with effect from January 1, 2021**, to all the existing schemes and all schemes to be launched on or thereafter. However, mutual funds may choose to adopt the provisions of this circular before the effective date.

(For details, please click on <https://www.sebi.gov.in/legal/circulars/oct-2020/circular-on-product-labeling-in-mutual-fund-schemes-risk-o-meter-47796.html>)

## **9. GUIDELINES ON INTER SCHEME TRANSFERS OF SECURITIES**

(Circular No. SEBI/HO/IMD/DF4/CIR/P/2020/202 dated October 8, 2020)

### **Background**

Presently, transfers of securities from one scheme to another scheme in the same mutual fund is allowed only if such transfers are done at the prevailing market price for quoted instruments on spot basis and the securities so transferred are in conformity with the investment objective of the scheme to which such transfer has been made.

In order to ensure that such Inter Schemes Transfers (ISTs) of securities are in conformity with the above objective, the SEBI has made some additional safeguards.

### **Circular in Brief**

1. In case of Close Ended Schemes, IST purchases would be allowed within “three” business days of allotment pursuant to New Fund Offer (NFO) and thereafter, no ISTs shall be permitted to/from Close Ended Schemes.
2. In case of Open Ended Schemes, ISTs may be allowed in the following scenarios:

### **3. For meeting liquidity requirement in a scheme in case of unanticipated redemption pressure:**

AMCs shall have an appropriate Liquidity Risk Management (LRM) Model at scheme level, approved by trustees, to ensure that reasonable liquidity requirements are adequately provided for. Recourse to ISTs for managing liquidity will only be taken after the following avenues for raising liquidity have been attempted and exhausted:

- I.** Use of scheme cash & cash equivalent
- II.** Use of market borrowing
- III.** Selling of scheme securities in the market
- IV.** After attempting all the above, if there is still a scheme level liquidity deficit, then out of the remaining securities, outward ISTs of the optimal mix of low duration paper with highest quality shall be effected.

The use of market borrowing before ISTs will be optional and Fund Manager may at his discretion take decision on borrowing in the best interest of unitholders. The option of market borrowing or selling of security as mentioned at para .2.a.II & 2.a.III above may be used in any combination and not necessarily in the above order. In case option of market

borrowing and/or selling of security is not used, the reason for the same shall be recorded with evidence.

#### **4. For Duration/ Issuer/ Sector/ Group rebalancing**

- I.** ISTs should be allowed only to rebalance the breach of regulatory limit.
  - II.** ISTs can be done where any one of duration, issuer, sector and group balancing is required in both the transferor and transferee schemes. Different reasons cannot be cited for transferor and transferee schemes except in case of transferee schemes is being a Credit Risk scheme.
  - III.** In order to guard against possible mis-use of ISTs in Credit Risk scheme, trustees shall ensure to have a mechanism in place to negatively impact the performance incentives of Fund Managers, Chief Investment Officers (CIOs), etc. involved in process of ISTs in Credit Risk scheme, in case the security becomes default grade after the ISTs within a period of one year. Such negative impact on performance shall mirror the existing mechanism for performance incentives of the AMC.
5. No ISTs of a security should be allowed, if there is negative news or rumors in the mainstream media or an alert is generated about the security, based on internal credit risk assessment during the previous four months.
  6. AMC shall ensure that Compliance Officer, Chief Investment Officer and Fund Managers of transferor and transferee schemes have satisfied themselves that ISTs undertaken are in compliance with the regulatory requirements. “Template” (Annexure – A) and documentary evidence in this regard shall be maintained by the AMC for all ISTs.
  7. If security gets downgraded following ISTs, within a period of four months, Fund Manager of buying scheme has to provide detailed justification /rationale to the trustees for buying such security.
  8. **The circular shall be applicable with effect from January 1, 2021.**

*(For details, please click on : [https://www.sebi.gov.in/legal/circulars/oct-2020/circular-on-guidelines-on-inter-scheme-transfers-of-securities\\_47817.html](https://www.sebi.gov.in/legal/circulars/oct-2020/circular-on-guidelines-on-inter-scheme-transfers-of-securities_47817.html))*

#### **10. SECURITIES AND EXCHANGE BOARD OF INDIA (MUTUAL FUNDS) (SECOND AMENDMENT) REGULATIONS, 2020 (OCTOBER 29, 2020)**

The SEBI has carried out the amendments under Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 in Regulation 18, Regulation 24, Regulation 25 and in the Fifth Schedule, “Code of Conduct” pertaining to regulations 18(22), 25(16), 68(h)

*(For details: [https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-mutual-funds-second-amendment-regulations-2020\\_48053.html](https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-mutual-funds-second-amendment-regulations-2020_48053.html))*

## 11. **ENHANCEMENT OF OVERSEAS INVESTMENT LIMITS FOR MUTUAL FUNDS**

(Circular No. SEBI/HO/IMD/DF3/CIR/P/2020/225 dated November 05, 2020)

### **Brief about the Circular**

- SEBI vide its circular dated November 05, 2020 enhanced the investment limits per Mutual Fund as under:
  - i. Mutual Funds can make overseas investments subject to a maximum of US \$ 600 million per Mutual Fund, within the overall industry limit of US \$ 7 billion.
  - ii. Mutual Funds can make investments in overseas Exchange Traded Fund (ETF(s)) subject to a maximum of US \$ 200 million per Mutual Fund, within the overall industry limit of US \$ 1 billion.
- The allocation methodology of the aforementioned limits shall be as follows:
  1. In case of overseas investments specified at Para 1.1, US \$ 50 million would be reserved for each Mutual Fund individually, within the overall industry limit of US \$ 7 billion.
  2. A mutual fund launching a New Fund Offer (NFO) and intending to invest overseas will be required to specify the amount it will invest outside India and use the limit specified within six months.
  3. For existing schemes, Sebi specified a headroom of 20% of the assets under management (AUM) in the previous three months in overseas securities, for investment in foreign securities subject to maximum limits specified at Para 1, as the case maybe.

AMCs would have to report the utilization of the foreign limit to Sebi on a monthly basis, within 10 days from the end of each month.

### **Details of Change:**

Earlier, mutual funds can make overseas investments subject to a maximum of US \$300 million per mutual fund which now doubled by SEBI. Also, overall ceiling for investment in overseas ETFs that invest in securities was US \$ 1 billion subject to a maximum of US \$50 million per mutual fund which now enhanced to US \$ 200 million per Mutual Fund.

(For details, please click on [https://www.sebi.gov.in/legal/circulars/nov-2020/circular-on-enhancement-of-overseas-investment-limits-for-mutual-funds\\_48090.html](https://www.sebi.gov.in/legal/circulars/nov-2020/circular-on-enhancement-of-overseas-investment-limits-for-mutual-funds_48090.html))

## 12. **INTRODUCTION OF “FLEXI CAP FUND” AS A NEW CATEGORY UNDER EQUITY SCHEMES**

(Circular No. SEBI/HO/IMD/DF3/CIR/P/2020/228 dated November 06, 2020)

### **Background:**

To bring uniformity in the characteristics of similar type of schemes launched by different Mutual Funds, SEBI had categorized and rationalized the mutual fund schemes vide circular dated October 06, 2017. In order to give more flexibility to the mutual funds and taking into account the recommendations of Mutual Fund Advisory Committee (MFAC), SEBI has

allowed mutual fund houses to launch a new category named ‘Flexi Cap Fund’ under Equity Schemes.

### **Brief about the Circular**

- A new category named “Flexi Cap Fund” under Equity Schemes will be available with the following scheme characteristics.

<b>Category of Scheme</b>	<b>Scheme Characteristics</b>	<b>Type of scheme (uniform description of scheme)</b>
Flexi Cap Fund	Minimum investment in equity & equity related instruments - 65% of total assets	An open ended dynamic equity scheme investing across large cap, mid cap, small cap stocks

- The AMC shall ensure that a suitable benchmark is adopted for the Flexi Cap Fund.
- For easy identification by investors and in order to bring uniformity in names of schemes for a particular category across Mutual Funds, the scheme name shall be the same as the scheme category.
- Mutual Funds have the option to convert an existing scheme into a Flexi Cap Fund subject to compliance with the requirement for change in fundamental attributes of the scheme in terms of Regulation 18(15A) of SEBI (Mutual Funds) Regulations, 1996.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/nov-2020/circular-on-introduction-of-flexi-cap-fund-as-a-new-category-under-equity-schemes\\_48108.html](https://www.sebi.gov.in/legal/circulars/nov-2020/circular-on-introduction-of-flexi-cap-fund-as-a-new-category-under-equity-schemes_48108.html))*

### **13. CIRCULAR ON MUTUAL FUNDS**

**(Circular No. SEBI/HO/IMD/DF2/CIR/P/2020/253 dated December 31, 2020)**

In exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, SEBI has modified its Circular dated September 17, 2020 pertaining to Uniformity in applicability of Net Asset Value (NAV) across various schemes upon realization of funds (paragraph 1), Trade Execution and Allocation (Clause a) of paragraph 2.2.1, Clause d) of Paragraph 2.2.1 and Paragraph 2.3.2 )

All other conditions specified in SEBI circular dated September 17, 2020 shall remain unchanged.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/dec-2020/circular-on-mutual-funds\\_48630.html](https://www.sebi.gov.in/legal/circulars/dec-2020/circular-on-mutual-funds_48630.html))*

**LESSON 14**  
**SEBI (Ombudsman) Regulations, 2003**

**1. INVESTOR GRIEVANCES REDRESSAL MECHANISM – HANDLING OF SCORES COMPLAINTS BY STOCK EXCHANGES AND STANDARD OPERATING PROCEDURE FOR NON-REDRESSAL OF GRIEVANCES BY LISTED COMPANIES.**

**(Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2020/152 dated August 13, 2020)**

**Background**

This circular is issued in continuation of SEBI circulars dated 26 March, 2018 regarding redressal of investor grievances through SEBI Complaints Redress System (SCORES) platform and dated 22 January, 2020 on non-compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ( Listing Regulations).

In terms of above-mentioned SEBI circular dated 22 January, 2020, Stock Exchanges shall, having regard to the interest of investors and the securities market, inter alia take action against listed companies for non- compliance with the provisions of the Listing Regulations and circulars/guidelines issued thereunder, including failure to ensure expeditious redressal of investor complaints under Regulation 13 of the Listing Regulations.

**Brief of the Circular**

This circular lays down the procedure for handling complaints by the stock exchanges as well as standard operating procedure for actions to be taken against listed companies for failure to redress investor grievances covering Handling of complaints by stock exchanges, Action for failure to redress investor complaints and Action after redressal of investor grievance by the company:

The circular shall come into force from 01 September, 2020.

*(For details, please click on <https://www.sebi.gov.in/legal/circulars/aug-2020/investor-grievances-redressal-mechanism-handling-of-scores-complaints-by-stock-exchanges-and-standard-operating-procedure-for-non-redressal-of-grievances-by-listed-companies-47325.html>)*

**2. CLARIFICATION ON SEBI CIRCULAR SEBI/HO/OIAE/IGRD/CIR/P/2020/152 DATED 13 AUGUST, 2020 ON INVESTOR GRIEVANCES REDRESSAL MECHANISM – HANDLING OF SCORES COMPLAINTS BY STOCK EXCHANGES AND STANDARD OPERATING PROCEDURE FOR NON-REDRESSAL OF GRIEVANCES BY LISTED COMPANIES.**

**(Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2020/208 dated October 22, 2020)**

SEBI Issued a Circular SEBI/HO/OIAE/IGRD/CIR/P/2020/152 dated 13 August, 2020 on Investor grievances redressal mechanism – Handling of SCORES complaints by stock exchanges and Standard Operating Procedure for non-redressal of grievances by listed companies.

In respect of Paras 16, 27, 32 and Point 2c of Annexure -1 to the said circular, please read the



words “promoter and promoter group” and “promoter/promoter group” as “promoter(s)”.

### **BRIEF ANALYSIS**

Paras 16, 27, 32 and Point 2c of Annexure -1 to the said circular will now be read as:-

• **Para 16:**

In case the listed entity fails to comply with the aforesaid requirement and or pay fine levied within the stipulated period as per the notices, the DSE shall forthwith intimate the depositories to freeze the entire shareholding of the promoter(s) in such entity as well as all other securities held in the demat account of the promoter(s).

• **Para 27:**

In case the promoters’ shareholding is frozen by the exchange, an intimation shall be given to depositories to unfreeze the promoter(s) holdings from the date of such compliance.

• **Para 32:**

The recognized stock exchanges are advised to bring the provisions of this Circular to the notice of listed entities and the listed entities shall in turn bring the same to the notice of their promoter(s).

• **Point 2c of Annexure-1:**

Freezing of promoters shareholdings (i.e. entire shareholding of the promoter(s) in listed company as well as all other securities held in the demat account of the promoter(s)) in demat account.

*(For details, please click on : <https://www.sebi.gov.in/legal/circulars/oct-2020/clarification-on-sebi-circular-sebi-ho-oiae-igrd-cir-p-2020-152-dated-13-august-2020-on-investor-grievances-redressal-mechanism-handling-of-scores-complaints-by-stock-exchanges-and-standard-operati-47953.html>)*

### **3. INVESTOR GRIEVANCE REDRESSAL MECHANISM**

(Circular No. SEBI/HO/MIRSD/DOC/CIR/P/2020/226 dated November 06, 2020)

#### **Brief of the Circular**

In order to further strengthen the Investor Grievance Redressal Mechanism, the following clarifications have been issued to Circular No. CIR/MRD/DSA/24/2010 dated August 11, 2010, Circular No. CIR/MRD/DSA/2/2011 dated February 09, 2011, and Circular No. CIR/MRD/ICC/30/2013 dated September 26, 2013.

#### **Resolution of complaints by Stock Exchange**

##### **Timeline**

- Stock Exchange shall ensure that the investor complaints shall be resolved within 15 working days from the date of receipt of the complaint. Additional information, if any, required from the complainant, shall be sought within 7 working days from the date of receipt of the complaint. The period of 15 working days shall be counted from the date of receipt of additional information sought.
- Stock Exchange shall maintain a record of all the complaints addressed/redressed within 15 working days from the date of receipt of the complaint/additional



information. If complaint is not resolved within stipulated time frame, then the reason for non redressal in given time frame shall also be recorded.

### **Service related complaints**

- Stock Exchange shall resolve service related complaints at its end. However, in case the complainant is not satisfied with the resolution, the same may be referred to the Investor Grievance Redressal Committee (“IGRC”), after recording the reasons in writing by the Chief Regulatory Officer of the Stock Exchange or any other officer of the Stock Exchange authorized in this behalf by the Managing Director. Service related complaints shall include non-receipt/ delay of Account statement, non-receipt/ delay of bills, closure of account/ branch, technological issues, shifting/closure of branch without intimation, improper service by staff, freezing of account, alleged debit in trading account, contact person not available in Trading member’s office, demat account transferred without permission etc.

### **Complaints to be referred to IGRC**

- For Complaints related to trade, settlement and ‘deficiency in services’, resulting into any financial loss, the stock exchange shall resolve the complaint on its own as per the time lines prescribed. However, if complaint is not resolved amicably, the same shall be referred to the IGRC, after recording the reasons in writing by the Chief Regulatory Officer of the Stock Exchange or any other officer of the Stock Exchange authorized in this behalf by the Managing Director.
- It shall be the responsibility of the Stock Exchange to provide documents/ necessary information after collecting the same from the member and/ or the complainant and provide necessary assistance to IGRC to ensure resolution of complaints in a timely manner.

### **Handling of complaints by IGRC**

- IGRC shall have a time of 15 working days to amicably resolve the investor complaint through conciliation process. If IGRC needs additional information, then IGRC may request the Stock Exchange to provide the same before the initiation of the conciliation process. In such case, where additional information is sought, the timeline for resolution of the complaint by IGRC shall not exceed 30 working days.
- IGRC shall not dispose the complaint citing “Lack of Information and complexity of the case”. The IGRC shall give its recommendation to Stock Exchange.
- IGRC shall decide claim value admissible to the complainant, upon conclusion of the proceedings of IGRC. In case claim is admissible to the complainant, Stock Exchanges shall block the admissible claim value from the deposit of the member as specified in this regard.
- Expenses of IGRC shall be borne by the respective Stock Exchange and no fees shall be charged to the complainant/member.
- The Stock Exchange shall organize regular training program for IGRC members in consultation with National Institute of Securities Markets (“NISM”). The cost of such program shall be borne by Investor Service Fund (“ISF”) of the Stock Exchange.

### **Arbitration**

- For any dispute between the member and the client relating to or arising out of the transactions in Stock Exchange, which is of civil nature, the complainant/ member shall first refer the complaint to the IGRC and/ or to arbitration mechanism provided by the Stock Exchange before resorting to other remedies available under any other law. For the removal of doubts, it is clarified that the sole arbitrator or the panel of arbitrators, as the case may be, appointed under the Stock Exchange arbitration mechanism shall always be deemed to have the competence to rule on its jurisdiction.
- A complainant/member, who is not satisfied with the recommendation of the IGRC, shall avail the arbitration mechanism of the Stock Exchange for settlement of complaints within six months from the date of IGRC recommendation.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/nov-2020/investor-grievance-redressal-mechanism\\_48105.html](https://www.sebi.gov.in/legal/circulars/nov-2020/investor-grievance-redressal-mechanism_48105.html))*

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## LESSON 15

### Structure of Capital Market

#### 1. **MASTER CIRCULAR FOR COMMODITY DERIVATIVES MARKET** (Circular No. SEBI/HO/CDMRD/DNPMP/CIR/P/2020/118 dated July 10, 2020)

SEBI has issued this Master Circular in a compilation of the circulars issued by Commodity Derivatives Market Regulation Department (CDMRD) pertaining to domestic commodity derivatives segment, which have been issued till the date of this circular.

Further, references in the circular to the Statutes/Regulations which now stand repealed have been suitably updated by SEBI.

Further, SEBI has clarified that in case of any inconsistency between the Master Circular and the original applicable circular, the content of the original circular shall prevail. This Master Circular shall supersede previous Master Circular CDMRD/DMP/CIR/P/2018/126 dated September 07, 2018.

*(For details, please click on [https://www.sebi.gov.in/legal/master-circulars/jul-2020/master-circular-for-commodity-derivatives-market\\_47045.html](https://www.sebi.gov.in/legal/master-circulars/jul-2020/master-circular-for-commodity-derivatives-market_47045.html))*

#### 2. **COLLECTION AND REPORTING OF MARGINS BY TRADING MEMBER (TM) / CLEARING MEMBER (CM) IN CASH SEGMENT – CLARIFICATION** (Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/173 dated September 15, 2020)

SEBI with this circular has clarified the issues regarding the Collection and Reporting of Margins by Trading Member (TM) / Clearing Member (CM) in Cash Segment.

##### **Background**

SEBI had issued circulars previously stating that the ‘margins’ for the collection of margins from clients and reporting of short collection / non-collection of margins by Trading Member / Clearing Member shall mean VaR margin, extreme loss margin (ELM), mark to market margin (MTM), delivery margin, special/additional margin or any other margin as prescribed by the Exchange to be collected by TM/CM from their clients.

Henceforth, like in the derivatives segment, the TMs/CMs in the cash segment are also required to mandatorily collect upfront VaR margins and ELM from their clients. The TMs / CMs will have time till ‘T+2’ working days to collect margins (except VaR margins and ELM) from their clients. (The clients must ensure that the VaR margins and ELM are paid in advance of trade and other margins are paid as soon as margin calls are made by the Stock Exchanges / TMs / CMs. The period of T+2 days has been allowed to TMs / CMs to collect margin from clients taking into account the practical difficulties often faced by them only for the purpose of levy of penalty and it should not be construed that clients have been allowed 2 days to pay margin due from them.)

If TM / CM collects a minimum 20% upfront margin in lieu of VaR and ELM from the client, then the penalty for short-collection / non-collection of margin shall not be applicable

### **Brief of the Circular**

In view of the representations received with regard to levy of penalty for non-collection of “other margins” (other than VaR and ELM) on or before T+2 days from clients by TM / CM, following is clarified:

- 1) If pay-in (both funds and securities) is made by T+2 working days, the other margins would be deemed to have been collected and penalty for short / non collection of other margins shall not arise.
- 2) If Early Pay-In of securities has been made to the Clearing Corporation (CC), then all margins would be deemed to have been collected and penalty for short / non-collection of margin including other margins shall not arise.
- 3) If client fails to make pay-in by T+2 working days and TM / CM do not collect other margins from the client by T+2 working days, the same shall also result in levy of penalty as applicable.

CC shall continue to collect upfront VaR plus ELM and other margins from TM / CM as applicable from time to time.

SEBI circulars dated November 19, 2019 and July 31, 2020 are modified to the extent of the above. All other provisions of the said SEBI circulars dated November 19, 2019 and July 31, 2020 shall continue to remain applicable.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/sep-2020/collection-and-reporting-of-margins-by-trading-member-tm-clearing-member-cm-in-cash-segment-clarification\\_47557.html](https://www.sebi.gov.in/legal/circulars/sep-2020/collection-and-reporting-of-margins-by-trading-member-tm-clearing-member-cm-in-cash-segment-clarification_47557.html))*

### **3. LISTING AND TRADING OF UNITS OF INFRASTRUCTURE INVESTMENT TRUSTS (INVITS) AND REAL ESTATE INVESTMENT TRUSTS (REITS) ON RECOGNIZED STOCK EXCHANGES IN INTERNATIONAL FINANCIAL SERVICES CENTRES (IFSC)**

**(Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/174 dated September 16, 2020)**

#### **Background**

Securities and Exchange Board of India (International Financial Services Centre) Guidelines, 2015 were notified by SEBI on March 27, 2015, which came into force on April 01, 2015.

Clause 7 of SEBI (IFSC) Guidelines, 2015 specifies the types of securities in which dealing may be permitted by stock exchanges operating in IFSC.

#### **Brief of the Circular**

SEBI has permitted ‘Units of InvITs and REITs by whatever name called in the Permissible Jurisdictions’ as permissible security under sub-clause (vi) of Clause 7 of SEBI (IFSC) Guidelines, 2015.

‘Units of InvITs and REITs by whatever name called in the Permissible Jurisdictions’ meeting the following conditions may be permitted to list on stock exchanges operating in IFSC:

- Such InvITs and REITs which are incorporated/settled in Permissible Jurisdictions, as may be notified by the Government of India from time to time pursuant to notification no. G.S.R. 669(E) dated September 18, 2019 in respect of sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005; In this regard, the Government of India vide notification dated November 28, 2019, has notified the list of Permissible Jurisdictions in pursuance of notification dated September 18, 2019. Accordingly, a list of Permissible Jurisdictions for the purpose of this clause is placed at Annexure A.
- Such InvITs and REITs are regulated by the securities market regulator(s) in the Permissible Jurisdictions.
- Such InvITs and REITs are listed on any of the specified international exchanges in the Permissible Jurisdiction. A list of International Exchanges for the purpose of this clause is also placed at Annexure A.

Stock exchanges in IFSC shall evolve a detailed framework prescribing the initial and continuous listing requirements for such InvITs and REITs whose units are listed/proposed to be listed on stock exchanges in IFSC.

The applicability of this circular is subject to such conditions that may be prescribed by SEBI, Reserve Bank of India and other appropriate authority from time to time.

*(For details, please click on <https://www.sebi.gov.in/legal/circulars/sep-2020/listing-and-trading-of-units-of-infrastructure-investment-trusts-invits-and-real-estate-investment-trusts-reits-on-recognized-stock-exchanges-in-international-financial-services-centres-ifsc-47569.html>)*

#### **4. RECOVERY OF ASSETS OF DEFAULTER MEMBER AND RECOVERY OF FUNDS FROM DEBIT BALANCE CLIENTS OF DEFAULTER MEMBER FOR MEETING THE OBLIGATIONS OF CLIENTS / STOCK EXCHANGE / CLEARING CORPORATION**

**(Circular No. SEBI/HO/MIRSD/DPIEA/CIR/P/2020/186 dated September 28, 2020)**

##### **Brief of the Circular**

In the case of default by Trading Member (“TM”) / Clearing Member (“CM”), it has been noted that in certain cases there is shortfall of funds/securities with defaulter member to meet the obligation of clients / Stock Exchange (“SE”) / Clearing Corporations (“CC”). The bye-laws of SE/CC provide for the procedure for declaring a member as defaulter when, amongst other reasons, the member is not able to fulfil its obligations and also provide for initiation of proceedings in a court of law whenever a member is declared as a defaulter and there is a shortfall of funds/securities with the defaulter member.

The SE/CC are advised to initiate suitable actions for liquidating the assets (movable and immovable) of defaulter member including that of debit balance clients (to the extent of debit balance), within six months of declaration of defaulter, for recovery of the assets not in possession of the SE/CC, before appropriate court of law.

(For details, please click on <https://www.sebi.gov.in/legal/circulars/sep-2020/recovery-of-assets-of-defaulter-member-and-recovery-of-funds-from-debit-balance-clients-of-defaulter-member-for-meeting-the-obligations-of-clients-stock-exchange-clearing-corporation-47695.html>)

5. **SECURITIES AND EXCHANGE BOARD OF INDIA (ALTERNATIVE INVESTMENT FUNDS) (AMENDMENT) REGULATIONS, 2020 (OCTOBER 19, 2020)**

The SEBI has carried out the amendments under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012,

**The amendment prescribes the following qualifications to the key investment team of the Manager of Alternative Investment Fund:**

(i) adequate experience, with at least one key personnel having not less than five years of experience in advising or managing pools of capital or in fund or asset or wealth or portfolio management or in the business of buying, selling and dealing of securities or other financial assets; and

(ii) at least one key personnel with professional qualification in finance, accountancy, business management, commerce, economics, capital market or banking from a university or an institution recognized by the Central Government or any State Government or a foreign university, or a CFA charter from the CFA institute or any other qualification as may be specified by the Board:

Provided that the requirements of experience and professional qualification as specified in regulation 4(g)(i) and 4(g)(ii) may also be fulfilled by the same key personnel.”

**The amendment also provides for constitution of an investment committee as follow:**

The Manager shall be responsible for investment decisions of the Alternative Investment Fund:

Further it is provided that the Manager may constitute an Investment Committee (by whatever name it may be called), to approve investment decisions of the Alternative Investment Fund, subject to the following:

(i) The members of Investment Committee shall be equally responsible as the Manager for investment decisions of the Alternative Investment Fund.

(ii) The Manager and members of the Investment Committee shall jointly and severally ensure that the investments of the Alternative Investment Fund are in compliance with the provisions of these regulations, the terms of the placement memorandum, agreement made with the investor, any other fund documents and any other applicable law.

(iii) External members whose names are not disclosed in the placement memorandum or agreement made with the investor or any other fund documents at the time of on-boarding investors, shall be appointed to the Investment Committee only with the consent of at least

seventy five percent of the investors by value of their investment in the Alternative Investment Fund or scheme.

(iv) Any other conditions as specified by the Board from time to time.

**These amendments shall come into force on the date of their publication in the Official Gazette i.e. October 19, 2020**

*(For details, please click on <https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2020-47914.html>)*

## **6. PROCESSING OF APPLICATIONS FOR REGISTRATIONS OF AIFS AND LAUNCH OF SCHEMES**

**(Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/209 dated October 22, 2020)**

### **Background**

While processing applications for registration of AIFs and launch of new schemes, it has been observed that the Manager of AIF often proposes to set up an Investment Committee with the mandate to provide investment recommendations or advice to the Manager. In some applications, the Investment Committee is mandated to approve the investment decisions of the AIF. Such Investment Committees may consist of internal members (employees, directors or partners of the Manager) and/ or external members.

Pursuant to the approval of SEBI Board, the SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”) have been amended to provide that the Manager may constitute Investment Committee (by whatever name it may be called) to approve investment decisions of the AIF, subject to certain conditions.

Further, SEBI has written to Government and RBI seeking clarity on the applicability of clause (4) of Schedule VIII under FEM (Non-debt Instruments) Rules, 2019 to investment made by an AIF whose Investment Committee approves investment decisions and consists of external members who are not ‘resident Indian citizens’.

### **Brief of the Circular**

Pending clarification as mentioned at Para 3 above, the applications for registration of AIFs and launch of new schemes shall be dealt with as under:

1. The applications wherein Investment Committee proposed to be constituted to approve investment decisions of AIF includes external members who are ‘resident Indian citizens’, shall be duly processed.
2. The applications wherein Investment Committee proposed to be constituted to approve investment decisions of AIF includes external members who are not ‘resident Indian citizens’, shall be considered only after receipt of clarification as stated in Para 3 above.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/oct-2020/processing-of-applications-for-registrations-of-aifs-and-launch-of-schemes\\_47956.html](https://www.sebi.gov.in/legal/circulars/oct-2020/processing-of-applications-for-registrations-of-aifs-and-launch-of-schemes_47956.html))*



## LESSON 16

### SECURITIES MARKET INTERMEDIARIES

#### 1. **SEBI (INVESTMENT ADVISERS) (AMENDMENT) REGULATIONS, 2020 (JULY 3, 2020)**

SEBI has notified amendments to SEBI (Investment Advisers) Regulations, 2013. These amendments are intended to strengthen the regulatory framework for investment advisers.

**Some of the key regulatory changes include:**

##### **A. Segregation of Advisory & Distribution Activities**

- Segregation of Advisory & Distribution Activities at client level to avoid conflict of interest.
  
- An individual shall have the option to register as an Investment Adviser or provide distribution services as a distributor.
  
- A non-individual investment adviser shall have client level segregation at group level for investment advisory and distribution services and maintain an arm's length relationship between its activities by providing advisory services through a separately identifiable department or division.

##### **B. Implementation services**

- Investment Advisers are allowed to provide implementation services (Execution) through direct schemes/ products in the securities market.
- However, no consideration can be received directly or indirectly, at investment adviser's group or family level for these services.

##### **C. Agreement between Investment Adviser and client**

- Mandatory agreement to be entered between Investment Adviser and the client for ensuring greater transparency with reference to advisory activities.

##### **D. Fees**

- The fee charged by the Investment Adviser for providing Investment Advice from a client shall be in the manner as specified by SEBI.

##### **E. Eligibility Criteria for IAs**

- Enhanced eligibility criteria for registration as an Investment Adviser including net worth of Rs.50 lakhs for non-individuals and Rs. 5 lakhs for individuals.
  
  - Individual investment adviser or a principal officer of a non-individual investment adviser to have enhanced professional or post-graduate qualification in relevant subjects and relevant experience of five years while grandfathering existing Individual Investment Advisers from complying with the enhanced qualification and experience as specified by SEBI.
  
  - Individuals registered as investment advisers whose number of clients exceed 150 in total, shall apply for registration with SEBI as non-individual investment adviser.
- These amendments shall come into force on the ninetieth day from the date of their publication in the Official Gazette.



(For details, please click on [https://www.sebi.gov.in/legal/regulations/jul-2020/sebi-investment-advisers-amendment-regulations-2020\\_47007.html](https://www.sebi.gov.in/legal/regulations/jul-2020/sebi-investment-advisers-amendment-regulations-2020_47007.html))

## 2. **ADMINISTRATION AND SUPERVISION OF INVESTMENT ADVISERS (CIRCULAR NO. SEBI/HO/IMD/ DF1/CIR/P/ 2020/148 DATED AUGUST 06, 2020)**

### **Rationale behind the Circular**

SEBI, vide Circular SEBI/HO/MRD/DSA/CIR/P/2016/113 dated October 19, 2016, allowed registered Investment Advisers (IAs) to use infrastructure of the stock exchanges to purchase and redeem MF units directly from Asset Management Companies on behalf of their clients.

As per Regulation 14 of the SEBI (Investment Advisers) Regulations 2013 (hereinafter referred to as “IA Regulations”), SEBI can recognize any body/body corporate for the purpose of regulating IAs. It further provides that SEBI may, at the time of recognition of such body or body corporate, delegate administration and supervision of IAs to such body or body corporate on such terms and conditions as may be specified.

Further, the second proviso to Regulation 38 (2) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 states, inter alia, that a recognized stock exchange may engage in activities, whether involving deployment of funds or otherwise that are unrelated or not incidental to its activity as a stock exchange, through a separate legal entity and subject to approval of the Board.

Considering the growing number of registered investment advisers, it is decided to recognize a wholly -owned subsidiary of the stock exchange (stock exchange subsidiary) to administer and supervise IAs registered with SEBI.

**A. Criteria for grant of recognition** - The recognition of stock exchange subsidiary, in terms of the aforesaid Regulation 14, shall be based on the eligibility of the parent entity, i.e. the stock exchange, for which the following eligibility criteria is laid down:

- i. Number of years of existence: Minimum 15 years
- ii. Stock exchanges having a minimum networth of Rs. 200 crores
- iii. Stock exchanges having nation -wide terminals
- iv. Investor grievance redressal mechanism including Arbitration
- v. Capacity for investor service management gauged through reach of Investor Service Centers (ISCs) - Stock exchanges having ISCs in at least 20 cities

### **B. Setting up of requisite systems by stock exchanges for the purpose –**

- i. The stock exchange shall either form a subsidiary or designate an existing subsidiary for the purpose of regulating IAs.
- ii. The subsidiary shall include in its MoA, AoA and bye -laws, requisite provisions to fulfil the below mentioned responsibilities.
- iii. The subsidiary shall put in place systems/process for grievance redressal, administrative action against IAs, governing IAs, maintaining data, sharing of information with SEBI etc.
- iv. The subsidiary shall have the necessary infrastructure like adequate office space, equipment and manpower to effectively discharge the below mentioned activities. Infrastructure may be shared with other group entities where required.

### **C. Responsibilities of subsidiary of a stock exchange –**

The subsidiary of a stock exchange shall have following responsibilities:

- i. Supervision of IAs including both on - site and offsite
- ii. Grievance redressal of clients and IAs
- iii. Administrative action including issuing warning and referring to SEBI for enforcement action
- iv. Monitoring activities of IAs by obtaining periodical reports
- v. Submission of periodical reports to SEBI
- vi. Maintenance of database of IAs

The stock exchanges, fulfilling the criteria stated at para (A) above, may submit the detailed proposal incorporating requisite systems stated at para (B) and mechanism to discharge responsibilities, to SEBI within 30 days from the date of this circular.

*(For details, please click on [https://www.sebi.gov.in/legal/circulars/aug-2020/administration-and-supervision-of-investment-advisers\\_47276.html](https://www.sebi.gov.in/legal/circulars/aug-2020/administration-and-supervision-of-investment-advisers_47276.html))*

### **3. FREQUENTLY ASKED QUESTIONS (FAQ) - PORTFOLIO MANAGERS (August 25, 2020)**

SEBI vide dated August 25, 2020 uploaded Frequently Asked Questions (FAQ) related to Portfolio Managers on its website.

SEBI under its detailed set of FAQ has, inter alia, prescribed that a portfolio manager is a body corporate, which, pursuant to a contract with a client, advises or directs or undertakes on behalf of the client the management of a portfolio of securities or funds of the client.

Further, it is prescribed that portfolio managers cannot impose a lock- in on the investment of their clients but can charge applicable exit fee from the client for early exits.

*(For details, please click on [https://www.sebi.gov.in/otherentry/aug-2020/faq-portfolio-managers\\_47397.html](https://www.sebi.gov.in/otherentry/aug-2020/faq-portfolio-managers_47397.html))*

### **4. OPERATING GUIDELINES FOR PORTFOLIO MANAGERS IN INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC)**

**(Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/169 dated September 09, 2020)**

#### **Background**

SEBI has issued SEBI (International Financial Services Centres) Guidelines, 2015 (hereinafter referred to as 'IFSC Guidelines') on March 27, 2015 for facilitating and regulating financial services relating to securities market in an IFSC set up under section 18(1) of Special Economic Zones Act, 2005. The IFSC Guidelines and related Circulars issued by SEBI from time to time provide for a broad framework for operation of various intermediaries (including Portfolio Managers) therein, as defined in Clause 2(1)(g) of the IFSC Guidelines. Further, in terms of Clause 3(1) of the IFSC Guidelines, SEBI can issue guidelines for any entity desirous of undertaking any other financial services relating to securities market.

It has been decided to put in place 'Operating Guidelines for Portfolio Managers in IFSC'. The detailed guidelines covering applicability, Registration of Portfolio Managers, Operational Compliances, fees have been prescribed under this circular.

*(For details, please click on <https://www.sebi.gov.in/legal/circulars/sep-2020/operating-guidelines-for-portfolio-managers-in-international-financial-services->)*

[centre 47522.html](#))

## 5. **GUIDELINES FOR INVESTMENT ADVISERS**

(Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020)

Securities and Exchange Board of India (SEBI), reviewed the framework for regulation of Investment Advisers (IA) and notified Securities and Exchange Board of India (Investment Advisers) (Amendment) Regulations, 2020 (hereinafter referred as “amended IA Regulations”) on July 03, 2020. These amendments shall come into force on September 30, 2020.

In addition to the above, Investment Advisers shall ensure compliance with the following guidelines:

- (i) Client Level Segregation of Advisory and Distribution Activities
- (ii) Agreement between IA and the client-  
Regulation 19 (1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in Annexure-A to this circular.
- (iii) Fees
- (iv) Qualification and certification requirement
- (v) Registration as Non Individual Investment Advisor
- (vi) Maintenance of record
- (vii) Audit
- (viii) Risk profiling and suitability for non-individual clients
- (ix) Display of details on website and in other communication channels

(The detailed abovementioned guidelines are given under this Circular.)

### **Applicability**

- Client level segregation of advisory and distribution activities, agreement and fees to be charged are aligned together. IA shall ensure compliance with measures stated above at clause (i), (ii) and (iii) latest by **April 01, 2021**.
- Compliance with measures referred above at clause (vi), (viii) and (ix) shall be ensured latest by **January 01, 2021**.
- Further timelines have been specified under clause (iv), (v) and (vii) itself.

(For details: <https://www.sebi.gov.in/legal/circulars/sep-2020/guidelines-for-investment-advisers-47640.html>)

## 6. **OPERATING GUIDELINES FOR INVESTMENT ADVISERS IN INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC) – AMENDMENTS**

(Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/185 dated September 28, 2020)

### **Background**

SEBI, vide its circular dated January 09, 2020 issued Operating Guidelines for Investment

Advisers in International Financial Services Centre (operating guidelines). Subsequently, certain clarifications on operating guidelines were issued vide circular dated February 28, 2020.

Pursuant to SEBI circular dated August 21, 2020 and developments thereafter, it has been decided to amend the provisions of the aforesaid operating guidelines.

#### **Brief of the Circular**

- **The Clause 3 of the operating guidelines read with para 3 of circular dated February 28, 2020 is amended as follows-**

The following persons shall be eligible to apply to the Board for registration as an Investment Adviser in IFSC:

- a. Any entity, being a company or a limited liability partnership (LLP) or any other similar structure recognised under the laws of its parent jurisdiction, desirous of operating in IFSC as an Investment Adviser (IA), may form a company or LLP to provide investment advisory services.
- b. The formation of a separate company or LLP shall not be applicable in case the applicant is already a company or LLP in IFSC.

- **Clause 4 of the operating guidelines is amended as follows-**

Persons seeking registration under the Investment Adviser Regulations read with these Guidelines shall provide investment advisory services only to those persons referred in Clause 9 (3) of the IFSC Guidelines. Further, IAs shall ensure to comply with the applicable guidelines issued by the relevant overseas regulator/ authority, while dealing with persons resident outside India and non-resident Indians seeking investment advisory services from them.

- **Clause 8(c) of the operating guidelines is amended as follows-**

The IA/ parent entity shall fulfil the aforesaid net worth requirement, separately and independently for each activity undertaken by it under the relevant regulations.

- **Clause 9 of the operating guidelines is amended as follows-**

An IA shall ensure to conduct annual audit in respect of compliance with Investment Adviser Regulations and these guidelines from a chartered accountant or a company secretary.

*(For details, please click on <https://www.sebi.gov.in/legal/circulars/sep-2020/operating-guidelines-for-investment-advisers-in-international-financial-services-centre-ifsc-amendments-47694.html>)*

7. **WRITE-OFF OF SHARES HELD BY THE FOREIGN PORTFOLIO INVESTORS (FPIS)**  
(Circular No. SEBI/HO/IMD/FPI&C/CIR/P/2020/177 dated September 21, 2020)

#### **Background**

SEBI, vide its circular dated November 05, 2019, had issued an Operational Guidelines for FPIs and designated depository participants (DDPs) under SEBI (Foreign Portfolio Investors), Regulations 2019. In the said Operational Guidelines, write-off of securities held by FPIs who wish to surrender their registration was permitted only in respect of shares of companies which are unlisted/illiquid/suspended/delisted.

### **Brief of the Circular**

However, it has been decided to permit said FPIs to writeoff shares of all companies which they are unable to sell. In this regard, the process detailed at para 17 of Part C of the said Operational Guidelines shall be complied with.

(For details, please click on <https://www.sebi.gov.in/legal/circulars/sep-2020/write-off-of-shares-held-by-fpis-47608.html>)

## **8. SECURITIES AND EXCHANGE BOARD OF INDIA (DEBENTURE TRUSTEES) (AMENDMENT) REGULATIONS, 2020. (OCTOBER 8, 2020)**

The SEBI has carried out the amendments under the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 ('DT Regulations'), namely: –

### **I. The obligation of Debenture Trustees**

Regulation 14 of SEBI DT Regulations, has been substituted and the Obligation of every debenture trustee shall amongst other matters, is now to accept the trust deeds which shall contain the matters as specified in section 71 of Companies Act, 2013 and Form No. SH.12 specified under the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts:

- a. Part A containing statutory/standard information pertaining to the debt issue;
- b. Part B containing details specific to the particular debt issue.”

### **II. Duties of Debenture Trustee – Debt Recovery Expense Fund**

SEBI has substituted one of the duties of the Debenture Trustee in Regulation 15(1)(h) to make it mandatory for Debenture Trustee to ensure that the issuer company creates a recovery expense fund at the time of issuance of debt securities that may be utilized by DT(s) in the event of default, for taking appropriate legal action to enforce the security.

### **III. Duties of Debenture Trustee – Debt secured by receivables**

The duties of the trustees have been widened in Regulation 15(1)(t) in cases where listed debt securities are secured by way of receivables/ book debt. The DTs shall in such cases:

- **On a Quarterly basis:** Carry out the necessary due diligence and monitor the asset cover in the manner as may be specified by the Board from time to time.
- **On a Half-Yearly basis:** Obtain a certificate from the statutory auditor of the issuer giving the value of receivables/book debts including compliance with the covenants of the Offer

Document/Information Memorandum in the manner as may be specified by the Board from time to time.

#### **IV. Duties of Debenture Trustee – Convening meeting for Breach of covenants**

As per Regulation 15(2) a debenture trustee shall call or cause to be called by the body corporate a meeting of all the debenture holders on the happening of any event, which constitutes a default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

As per the Amendment to SEBI DT Regulations, the Trustees shall also call such a meeting for breach of covenants (as specified in the Offer Document/Information Memorandum and/or debenture trust deed).

#### **V. Duties of Debenture Trustee – New Additions**

In the Amendment to SEBI DT Regulation, SEBI has added two new duties for a Debenture Trustee to fulfill, namely:

- Before creating a charge on the security for the debentures, the debenture trustee shall exercise independent due diligence to ensure that such security is free from any encumbrance or that it has obtained the necessary consent from other charge-holders if the security has an existing charge, in the manner as may be specified by the Board from time to time.
- Subject to the approval of the debenture holders and the conditions as may be specified by the Board from time to time, the debenture trustee, on behalf of the debenture holders, may enter into inter-creditor agreements provided under the framework specified by the Reserve Bank of India.”

**These amendments shall come into force on the date of their publication in the Official Gazette i.e. October 8, 2020.**

*(For details, please click on [https://www.sebi.gov.in/legal/regulations/oct-2020/sebi-debenture-trustees-amendment-regulations-2020\\_47824.html](https://www.sebi.gov.in/legal/regulations/oct-2020/sebi-debenture-trustees-amendment-regulations-2020_47824.html))*

9. **STANDARDISATION OF PROCEDURE TO BE FOLLOWED BY DEBENTURE TRUSTEE(S) IN CASE OF ‘DEFAULT’ BY ISSUERS OF LISTED DEBT SECURITIES**  
(Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/203 dated October 13, 2020)

#### **Background**

SEBI has received representations from Debenture Trustee(s) regarding the process to be followed in case of ‘Default’ by issuers of listed debt securities. After consultation with stakeholders including investors, Debenture Trustee(s), Issuers etc., the SEBI has decided the procedures to be followed by the Debenture Trustee(s) in case of ‘Default’ by issuers of listed debt securities.

### **Brief of the Circular**

This circular prescribes the process to be followed by the Debenture Trustee(s) in case of 'Default' by issuers of listed debt securities including seeking consent from the investors for enforcement of security and/or entering into an Inter-Creditor Agreement ("ICA") and Conditions for signing of ICA by Debenture Trustee(s) on behalf of investors

(For details, please click on [https://www.sebi.gov.in/legal/circulars/oct-2020/standardisation-of-procedure-to-be-followed-by-debenture-trustee-s-in-case-of-default-by-issuers-of-listed-debt-securities\\_47855.html](https://www.sebi.gov.in/legal/circulars/oct-2020/standardisation-of-procedure-to-be-followed-by-debenture-trustee-s-in-case-of-default-by-issuers-of-listed-debt-securities_47855.html))

## **10. CREATION OF SECURITY IN ISSUANCE OF LISTED DEBT SECURITIES AND 'DUE DILIGENCE' BY DEBENTURE TRUSTEE(S)**

(Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020)

### **Background**

In order to secure the interest of investors in listed debt securities and to enable debenture trustee(s) to perform their duties effectively, amendments to the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS Regulations) and SEBI (Debenture Trustees) Regulations, 1993 ("DT Regulations") were approved by SEBI Board and notified vide Notifications dated October 08, 2020.

In furtherance to the abovementioned amendments, SEBI *vide* this circular has issued guidelines on creation of security in respect of listed debt securities and due diligence to be undertaken by DTs. The provisions of this circular shall come into force with effect from January 1, 2021 for new issues proposed to be listed on and after January 1, 2021. (SEBI *vide* circular dated December 31, 2020 extended the implementation date of the provisions of the aforesaid circular to April 01, 2021)

### **Brief of the Circular**

The guidelines cover the Documents/ Consents required at the time of entering into debenture trustee agreement, Due diligence by debenture trustee for creation of security, Disclosures in the offer document or private placement memorandum/ information memorandum and filing of OD or PPM/ IM by the Issuer and Creation and registration of charge of security by Issuer.

(For details, please click on <https://www.sebi.gov.in/legal/circulars/nov-2020/creation-of-security-in-issuance-of-listed-debt-securities-and-due-diligence-by-debenture-trustee-s-48074.html>)

## **11. MONITORING AND DISCLOSURES BY DEBENTURE TRUSTEE(S)**

(Circular No. SEBI/ HO/ MIRSD/ CRADT/ CIR/ P/ 2020/230 dated November 12, 2020)

### **Background**

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI (Debenture Trustees) Regulations, 1993 ("DT Regulations") mandates issuers to submit information/ documents to Debenture Trustee(s). In order to enable debenture trustee(s) to discharge its obligations in respect of listed debt securities, the debenture trustee(s) shall undertake independent periodical assessment of the compliance with covenants or terms of the



issue of listed debt securities including for 'security created'.

**A. Monitoring of 'security created' / 'assets on which charge is created'**

SEBI vide its Circular dated November 03, 2020, has prescribed the manner in which debenture trustees shall carry out due diligence for creation of security at the time of issuance of debt securities and as required under Regulation 15(1)(s) & 15(1)(t) of DT Regulations, debenture trustee(s) shall carry out due diligence on continuous basis. Debenture trustee shall carry out periodical monitoring as prescribed in the circular.

**B. Action to be taken in case of breach of covenants or terms of issue**

In case of breach of covenants or terms of the issue by listed entity, the debenture trustee shall take steps as outlined in SEBI Circular SEBI/HO/MIRSD/CRADT/CIR/P/2020/203 dated October 13, 2020 and thereafter take necessary action as decided in the meeting of holders of debt securities in this regard.

**C. Disclosure on website to be made by debenture trustee shall be as per periodicity and format prescribed.**

**D. Reporting of regulatory compliance**

The formats for periodical reporting prescribed by SEBI Circular No. CIR/MIRSD/25/2011 dated December 19, 2011 stands rescinded and the debenture trustee(s) shall furnish revised periodical reports to SEBI in the prescribed formats.

**Applicability**

**The provisions of this circular shall come into force w.e.f. quarter ended December 31, 2020 for listed debt securities.**

*(For details, please click on <https://www.sebi.gov.in/legal/circulars/nov-2020/monitoring-and-disclosures-by-debenture-trustee-s-48159.html>)*