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Welcome to this issue of

CLD NUALS Securities Law e-Newsletter

In this issue, as the lead article, we have **Mr. Kishore Joshi** & **Mr. Prashant Prakhar** from **Nishith Desai Associates**, giving insights on "Reporting under FEMA now being at the discretion of the Authorised Dealer Banks".

Apart from the above, we have also captured the key notifications and circulars issued by the SEBI for the period under review.

Any feedback and suggestions would be valuable in our constant pursuit to improve the e-newsletter and ensure its continued success among the readers.

Please feel free to send any feedback, suggestions or comments to us at cld@nuals.ac.in.

Regards

Editorial Team

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Table of Contents

REPORTING UNDER FEMA NOW AT THE DISCRETION OF THE AD BANKS

By – Mr. Kishore Joshi and Mr. Prashant Prakhar[1]

Mr. Kishore Joshi

Mr. Prashant Prakhar

Reporting regime for inbound investments in India went through an overhaul when the Reserve Bank of India ("RBI") vide its circular no. RBI/2017-18/194 A.P. (DIR Series) Circular No. 30 dated June 7, 2018 introduced the system of Single Master Form ("SMF"). SMF was an integration of nine (out of twelve) different types of reporting requirements prescribed under Regulation 13 of the Foreign Exchange Management (Transfer or Issue of Security by Person Resident Outside India) Regulations, 2017 ("TISPRO Regulations").

The intention of the RBI was to streamline the process of reporting by making it uniform, expedited and transparent. However, its implementation so far has not been on par with the expectations and has been the subject matter of many uncertainties. This article attempts to highlight the practical challenges being experienced by the users of Foreign Investment Reporting and Management System ("FIRMS") while reporting through different Authorized Dealer Banks ("AD Banks").

Role of AD Banks

AD Banks are commercial banks, state co-operative banks and urban co-operative banks that are authorized by the RBI under Foreign Exchange Management Act, 1999 ("FEMA") to deal in foreign exchange transactions, be it current account or capital account. RBI has delegated all the administrative, compliance and reporting formalities to the AD Banks, with the result various reports and forms prescribed by the RBI are required to be submitted by/through the AD Banks.

Reporting under FEMA

Prior to February 8, 2016, form FC-GPR, ARF and FC-TRS were required to be filed in physical form through the AD Bank. Thereafter, the process was made online through the e-Biz portal of the Government of India, under which the AD Banks were required to download the completed forms, verify the contents from the available documents, if necessary by calling for additional information from the customer and then upload the same for RBI to process and allot the requisite registration number.

Subsequently, with effect from September 1, 2018, five forms viz. FC-GPR, FC-TRS, LLPI, LLP-II and CN were made available for filing in SMF. The other three forms viz., ESOP, DI, and DRR were made available for filing in SMF with effect from October 23, 2018, while Form InVi is yet to be made available.

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Single Master Form

SMF regime was implemented in two steps, first being reporting of total existing foreign investments by all Indian investee entities on the FIRMS portal by completing the entity master form within a specified timeline. This exercise allowed the RBI to put in place an updated database of all Indian entities (i.e. Companies and LLPs) with foreign investments for monitoring of future transactions. The second step of its implementation completely replaced the old model of reporting, where the investee entities or the resident transferors/transferees, were required to do the filing on e-Biz portal, with the FIRMS portal.

The new process of reporting under TISPRO Regulations were set out by the RBI in detail in the user manuals uploaded on the FIRMS portal. The user manual states that, any reporting made under TISPRO Regulations (which have been integrated in the SMF) with the AD Bank should be verified, reviewed and acknowledged by the AD Bank, within five working days in accordance with the check-list (listing down the details that need to be verified for acknowledging the return filed) that has been provided to all the AD Banks. In case the reporting is in accordance with aforesaid check-list, the AD Bank shall approve the return else reject the same.

In this regard, it is important to note that the above said checklist of the RBI is not available in public domain. Therefore, the applicant has no choice but to believe in good faith that whatever information has been sought on the FIRMS portal is the final set of information required for the purpose of processing the SMF. While, it is logical that there may be additional information required by the AD Bank to process the application and therefore they should be entitled to request for additional information or documents. However, the user manual clarifies that that there is no provision for resending or attaching any clarification once the SMF is submitted, and the AD Bank may take due caution while approving or rejecting the same.

This has led to practice where if the AD Bank is not satisfied with information uploaded along with the SMF on the FIRMS portal, they reject the SMF in question. There have been cases, where the applicants had to experience rejection with one AD Bank due to non-submission of documents/information such as charter documents, board resolutions or NIC details, in advance (which are otherwise not a pre-requisite for such reporting), whereas another AD Bank has approved a similar SMF with same set of documents. Only difference between the two SMFs were that they were being processed by two different AD Banks, one being more conservative than the other. Consequently, such restraint attitude of the AD Banks is proving detrimental for the applicants.

Under FIRMS, the SMF can only be either accepted or rejected. SMF once rejected, is by definition, treated as if it was not filed. Therefore, in cases where such rejections are made closer to the deadline of reporting under TISPRO Regulations, it results in delayed reporting and hence subjected to compounding and penalty that may be prescribed by the RBI. During M&A transactions, which are often time sensitive, such delays do not just cost the penalty money but can sometimes also lead to contractual damages. Further, rejection of FC-TRS would delay its certification by the AD Bank which, in turn, would delay the Indian company taking on record the transfer.

Conclusion

Short point here is that under the new regime of reporting under TISPRO Regulations, it is the applicant who is ultimately bearing the brunt of the situation due to the restricted approach being taken by some of the AD Banks. Even though the intention of the AD Banks may be bona-fide, the execution is leading to adverse results for the applicant. Such cases wherein SMFs are being rejected for lack of additional documents can be avoided, if the check-list provided by the RBI to the AD Banks is made publicly accessible for ready reference. Alternatively, all the AD Banks should release their own check-list to prevent cases of delayed reporting due to lack of availability of necessary information. One other option could be that instead of rejection, a period of 2 weeks from the date of reporting should be given, to enable AD Banks to seek clarifications / documents.

The comprehensive set of instructions made available by the RBI to the AD Banks is certainly not in resonance with the practice being followed. The entire integration of the reporting system under one head was introduced for the benefit of the users. It should, therefore, be seen and ensured by the RBI that such a system is, in fact, reaping the fruits that were intended. RBI should thus, reassess what is on paper and in practice and accordingly rectify the positions with respect to the same.

CREDIT RATING AGENCIES (RECENT DEVELOPMENTS)

By – *Riya Gulati* (Paralegal, Law Offices of Caro Kinsella & Youth Ambassador for the ONE Campaign, Ireland)

Overview of Credit Rating Agencies

A credit rating agency is a company that appraises a debtor's proclivity to reimburse debt by making timely principal and interest payments and the likelihood of non-payment. These agencies assess enterprises, special purpose entities, federal or local governmental bodies, non-profit organizations and sovereign countries. Ratings accorded by these agencies determine the nature and integrals of the credit (higher the credit rating, lower is the probability of defaults). It assists investors in identifying the risk involved in lending and gives an equitable assessment of the debtor's creditability.

These agencies may gauge the creditworthiness of issuers of debt obligations, financial instruments, the servicers of the underlying debt- exclusive of individual consumers. It is pertinent to note that credit rating agencies differ from credit bureaus. The latter is for investors to determine the risk factor of an undertaking whereas the former is for creditors to determine the creditworthiness of individuals. There are six predominant credit rating agencies in India namely, Credit Rating Information Services of India Limited ("CRISIL"), Investment Information & Credit Rating Agency of India ("ICRA"), Credit Analysis & Research Limited ("CARE"), Onida Individual Credit Rating Agency ("ONICRA"), Brickwork Ratings ("BWR") and Small & Medium Enterprises Rating Agency ("SMERA").

Regulation of Credit Rating Agencies

In 1999, the Securities and Exchange Board of India brought the rating agencies under its regulatory framework. After the 2008 economic crisis, capital markets all over the globe enacted numerous acts, laws and amendments in order to modulate the rating agencies. There have been multiple refinements in the regulatory framework of India and many amendments to the SEBI (Credit Rating Agencies) Regulations 1999 in order to add and revamp certain definitions, regulations and specifications. The most recent amendment is the Securities and Exchange Board of India (Credit Rating Agencies) (Second Amendment) Regulations, 2018.

Credit Rating Agencies ("CRAs") have frequently been caught dozing as they failed to envisage catastrophes in the debt market. The rating agencies were held responsible for the IL&FS crisis which led to NBFCs facing a credit crunch. In response to the IL&FS defaults and failure to foresee crises in the debt markets, new reforms have been introduced for CRAs. The Securities and Exchange Board of India has issued certain guidelines in order to improve the disclosures made by credit rating agencies and ensure that the investors are well informed.

<u>Guidelines Issued by SEBI for enhanced disclosure by Credit Rating Agencies</u>

In order to ameliorate the disclosures made by CRAs, SEBI has introduced new guidelines.

- ***Reinforcing the disclosure norms***

As CRAs have failed to consider cash flows and ground realities of entities while assigning a grading, SEBI has tightened up disclosure norms. This will not only make CRAs more accountable, it will also ensure that the market at large gets information on a timely basis.

- ***Inform investors through various parameters***

As investors rely on the assessments of CRAS while making investment decisions, henceforth, the investors must be well informed. Rating agencies will have to inform investors about the liquidity position of companies. This is based on various parameters such as cash balance of the company, liquidity coverage ratio, access to emergency credit lines, asset liability mismatch etc. These parameters must be identified and disclosed in the credit rating.

- ***Source of funding***

If the grading is based upon the cash inflow into a company and this is the reason for a company having a higher rating, then the CRA must disclose the source of funding. Under source of funding, it must be clearly mentioned where the company has received support from; whether it is a parent company, group of companies or government. The rating agencies must provide the name of the companies and the rationale for such expectation.

- ***List of Consolidation***

When subsidiaries or group companies are consolidated to arrive at a rating then the list of such companies along with the extent, rationale & purpose of consolidation must be provided by the rating agencies.

- ***Rating history***

CRAs will have to disclose their own historical average rating transition rates across various rating categories. This will give investors an idea of how the credit rating of a company has changed.

- ***Publication on Stock Exchange and Depository Website***

The CRAs must furnish information on sharp rating actions in the investment grade rating category on the website on a half yearly basis, within 15 days from the end of the half year.

Structural issues associated with these guidelines

- ***"Issuer pays" model***

The bond issuer (the entity that issues the instrument) pays the rating agency for their initial grading. The CRA assigns a better rating to the entities which remunerate them. The CRAs put the interest of the issuer over the interest of the investors. Hence, the investor's decision is adversely affected.

- ***High barrier to entry***

There are high entry barriers in the credit rating market due to which there is less competition. Due to less competition, the investor's interest is not safeguarded. When there are numerous CRAs, the competition will increase, leading to them providing services at lower rates and giving investors better access.

Conclusion

In order to improve the transparency and credibility of credit rating agencies and safeguard the interest of investors, SEBI has tightened the rules applicable to these agencies. SEBI has issued certain norms for enhanced disclosures by rating agencies in order to make them more accountable. SEBI's new guidelines could make the rating agencies proactive as the grading(s) will be based less on historical data and more on current and future trends. In order to improve the efficiency of the credit rating agencies, they must function on fixed emolument structures, abstain from providing advisory services to the rated entities and refrain from assigning ratings with meagre information.

An Insight to the SEBI (Settlement Proceedings) Regulation, 2018

By – Pinki Mehta (Assistant Professor, School of Legal Studies, CMR University, Bangalore) & *Vivek Raj* (Advocate, Jharkhand High Court, Ranchi)

Background

The Settlement process under the aegis of security law in India was first introduced in year 2007. The Securities and Exchange Board of India has introduced a Settlement Mechanism to make the whole process more rigid and accountable in the form of SEBI (Settlement of Administrative and civil proceedings) Regulation, 2014. Under this SEBI has the power to initiate proceeding both criminal and quasi-judicial, which could be in terms of settlement or Recovery. This ultimately led to both forum shopping and norm shopping, that resulted in unnecessary delay and overlapping. To address this issue, a high level committee was appointed under the chairmanship of Justice Anil. R. Dave, which came out with a report to restore settlement proceedings. After presentation and taking note of public comment, SEBI on September 18th of 2018 has finally agreed and approved the SEBI (Settlement Proceeding) Regulation, 2018 which has replaced SEBI (Settlement of Administrative and Civil Proceeding) Regulation, 2014. The 2018 regulation has come in force from January 1st of 2019.

The Regulation has made best efforts to provide more clarity and to eliminate the existing discrepancies in the settlement mechanism and has bought up some material changes. In light of this the article attempts to highlight the salient features of SEBI (Settlement Proceeding) Regulation, 2018 and narrates the procedure of settlement.

Salient features:

- 'Securities law' – The regulation has redefined the term 'Securities Law' and has widened the scope by including any other law or provision to the extent that they can be administered by SEBI and are also governed by the Settlement Regulation 2018. The regulation has also paved way to the proceeding which is not only initiated by the SEBI, but also those which were pending before it.

- The new regulation has barred application for settlement when the proceedings are still pending before any court of law. Whereas, the Settlement Regulation, 2014 has no such provision, which used to result in overlapping of forum.

- Strict limitation period has been introduced to file a settlement application. Earlier the applicant has 60 days to file settlement application once a show-cause notice has been served, but SEBI had the discretion to accept an application even after the said deadline on being satisfied with sufficient cause of delay. The regulation, 2018 has now introduced a restraint to this, whereby SEBI's power to condone delay for filling application can only be entertained if it is done with 120 days after the expiry of initial 60 days. No condonation for an application beyond the said deadline is permissible.

- The regulation has altered the scope of settlement according to which no application will be entertained if:

    - If the application of same alleged defaulter was rejected earlier or in case where the investigation, audit or inquiry is not completed.

    - In case where the proceeding might have wide market impact or may cause losses to the investors or influence market force.

  While doing so the Board may take account of applicant action of refunding monies or providing exit/purchase option to the investor or any other factor that the Boards deem appropriate. The regulation has also introduced mass Settlement Scheme, which allowed SEBI to deal with defaulters, which constitutes a similar class.

- The Regulation has Restructured High Powered Advisory Committee, which is to be constituted by Board that would consider and recommend the terms of settlement. The committee shall consist of judicial member, who has been judge of either High Court or Supreme Court along with three experts from the field of Securities market. The task of the High Powered Committee and Internal committee has been specifically stated in order to impart transparency and to avoid overlapping or any ambiguity.

- The regulation requires a notice of settlement to be issued in the specified format as prescribed in Schedule-III, indicating the charges by the Board to afford an opportunity to reply to the notice and to file settlement application within 15 days of such notice.

- The regulation has ascertained that no settlement amount would be refunded to the applicant, when the order is passed on the ground of non-compliance or on the failure of true disclosure.
- The Regulation has also adopted the 'Leniency provision', which was initially introduced in India under Competition law. According to the regulation, privilege of confidentiality would be given to the applicant, who agrees and provide material information, make true disclosure of facts and evidence, and provide substantial assistance during investigation and other procedures. The privilege of Confidentiality would only be provided, when disclosure is made before investigation or when the investigation is pending. The regulation has introduced Schedule IV, which specifies a list of information that is to be furnished.
- Settlement Procedure- The regulation has made clear demarcation of roles to be played by each organ. Thus, the settlement procedure is to be done in following steps:
    - The Internal committee examines the application to determine the probable settlement terms. In this process, the committee has the power to call for all relevant information or documents, may also call the applicant or any other relevant person for personal attendance.
    - The applicant has to submit revised settlement terms or may agree to proposed settlement terms within 10 days after the internal committee meeting.
    - The High powered Advisory committee then considers the proposed settlement terms and may either revise or recommend the settlement terms or refer back the application to the internal committee. The HPAC may then place the settlement scheme before panel/ whole time members.
    - The Whole Time Member may reject or accept to same. If the recommendation gets accepted, then the applicant has to make demand notice within 7 days of this decision. And if the recommendation is rejected, then it is sent for re-examination unless the same is rejected on above stated new grounds.

Conclusion

The revised framework, SEBI (Settlement Proceeding) Regulation, 2018 is an attempt to provide Time bound settlement and an effective mechanism. The regulation has kept note of investor's interest and market force, which is commendable. The procedure has not only strengthened the mechanism by bringing accountability norms but has also provided incentives to applicant making disclosure. This recent development towards the settlement proceedings is significant to the Indian capital market mainly because the law attempts to make a settlement without disturbing the market; it prohibits any possibility of settlement with the fugitive offenders or willful defaulters. The added confidentiality clause provides a massive boost to persons assisting in inspection, investigation, etc. The broadening of the definition of the term securities law is definitely aimed to wipe out any possible ambiguity. It may not be inappropriate to expect positive results with this law keeping in mind the ramifications or penalties, be it in the nature of a criminal proceeding, civil quasi-judicial proceeding, recovery or compounding proceeding provided under the provisions of this act.

RE: IMPLICATION OF SEBI (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018

By – *Poorva Kaushik and Shikhar Sthapak*
(LL.M., National Law University, Jodhpur)

Introduction

On the recommendation of Justice Anil R. Dave committee, the Securities and Exchange Board of India ("SEBI") notified Settlement Proceedings Regulations, 2018("Regulations") on 30th November, 2018, with an objective to provide a mechanism for speedy and efficient resolution of disputes and to save cost and time of the parties involved in the dispute. It also aimed at ensuring ease of doing business in India. These regulations set out the terms and procedure for settlement of any proceeding that is initiated or may be initiated before SEBI or any other forum (regulation 2(1)(f) read with regulation 3), for the violation of securities law. These Regulations came into force on 1st January, 2019.

Need of the Regulations

Due to the excessive burden on the Courts, and hindrance caused to the enforcement process within any system, a need was felt for the convergence or integration of the quasi-judicial processes within SEBI with the alternate dispute resolution process of settlement to bring forth a more effective harmonized scheme to operate without any conflict and delay.

These Regulations replaced SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. The reasons for regulatory overhaul was: (i) post 2018 Finance Act, settlement for new defaults relating to financial market infrastructure institutions and regulated entities was required; (ii) regulation 5(2) of the 2014 regulations discouraged the settlement of certain matters such as insider trading, fraudulent and unfair trade practices, open offer defaults, etc.; (iii) absence of explicit guidance to deal with cases where settlement along with composition of corresponding matters or only composition, was required to be done, where SEBI has filed for prosecution; (iv) absence of transparent and predictable method for calculation of profit or loss; and (v) the amounts indicated in the Schedule-II of 2014 regulations required revision with the passage of time.

Scope of the Regulations

The Settlement Proceedings Regulations, 2018 has widened the scope of settlement by including certain subject matters which were earlier not allowed to be settled or were not considered due to last settlement application (regulation 5). Under the present regulatory regime, it is upon the board to decide whether the matter could be taken up for settlement or not and the earlier restriction on consideration of any application within 24 months of last settlement order have been done away with. The board while examining any application looks at the following factors: (i) market wide impact, (ii) loss to large number of investors, or (iii) effects on market integrity. However, certain defaults, like wilful defaulter, fugitive economic offender & person defaulting payment of fees due or penalty imposed under securities law, are not open for settlement.

Further, as opposed to 2014 regulations, where only High Court judge shall be a judicial member of High Powered Advisory Committee ("HPAC"), a judge of Supreme Court can also be a judicial member of HPAC under regulation 11 of Settlement Proceedings Regulations, 2018. These Regulations also provides for settlement under confidentiality (regulation 19), wherein the SEBI satisfies itself whether the applicant has agreed to provide substantial assistance in investigation, inspection, inquiry or audit (ongoing/to be initiated) against any other person in respect of securities law violation or not.

Settlement regulations have introduced an innovative concept of 'settlement schemes' under regulation 26, wherein the SEBI provides for a scheme for a particular class of persons entailing the terms and procedure for settlement of specified proceedings against them. These certain class of persons are involved in similar type of specified defaults. However, due to lack of clarity regarding settlement schemes, this provision is often criticized.

A special feature of these settlement proceedings is that while arriving at settlement terms under schedule II of these Regulations, it put the onus upon the officers in default to bear the burden of paying settlement amount, thereby protecting the innocent investors from unnecessary burden.

A new mechanism of summary settlement procedure (chapter VII) is also developed under new Regulations to ensure speedy disposal of cases. The SEBI board before initiating any proceedings, in case of certain defaults issue a notice of summary settlement calling upon the noticee to file a settlement application and submit the requisite settlement amount.

Limitations

However, these Regulations are not free from any shortcomings and have its own drawbacks and criticisms. The procedure for settlement as provided under these Regulations is quite lengthy. Further, due to the stages [three] involved, it turns out to be a time consuming affair (the matter is first heard by the Internal Committee who decides upon the applicability of these regulations. Thereafter, the proposed terms for settlement [if any] are considered by HPAC. Lastly, HPAC recommendations are placed before the Whole Time Members panel). Since the aim is to provide for terms of settlement on timely basis, a two-step process could have been more beneficial.

Further, the scope and definition of 'Settlement Schemes' is not provided under the regulations and more clarity is required on this aspect from SEBI. Similarly, one of the main aims of settlement proceedings is to ensure outside settlement of disputes and hence, speedy disposal of cases; however, due to heavy penalties as prescribed under the Regulations upon the defaulters/wrong-doer, they are not willing to take recourse of such Settlement Regulations. For example, in case an application for settlement is filed post the limitation period, the settlement amount is to be increased by 25%; however, under 2014 regulations, a simple interest at the rate of 6% per annum was chargeable.

Opinion

Due to urgency in resolving long pending disputes and to reduce the burden of tribunals/courts, it was pertinent to revisit 2014 regulations. A strong need was felt to address those concerns/issues which were not covered under the previous regulations and could have been timely resolved. This is a progressive step by the regulator; however, in our opinion, this initiative by SEBI might not prove to be that successful or beneficial as it was envisaged at the time of drafting, reason being the change in calculation factor and hence, the substantial increase in the penalty amount. This seriously raises a question about the viability of these Regulations, and whether the defaulters will be willing to shell out more money [that is, opt for it] or not.

AN OVERVIEW OF KEY CHANGES IN INSIDER TRADING REGULATIONS

By – Mudit Nigam (IV Year) *& Shikhar Agarwal* (III Year), NLIU – Bhopal

Introduction

The Securities and Exchange Board of India ("SEBI") ended 2018 by notifying the SEBI (Prohibition of Insider Trading) (Amendment) Regulations 2018 ("PIT Amendment Regulations, 2018") on 31st December, 2018. The PIT Amendment Regulations, 2018 seek to prevent market abuse by improving the existing legal framework under the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations"). Furthermore, within less than a month of notifying the PIT Amendment Regulations, 2018, SEBI also notified the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2019 (PIT Amendment Regulations, 2019) on 21st January, 2019. Both of these Amendment Regulations will be effective from 1st April, 2019.

Background

The first initiative to formalize the legal mechanism to curb insider trading was undertaken by SEBI in 1992. However, with a view of strengthening the regulatory framework, SEBI replaced the 1992 Regulations with the PIT Regulations in 2015. Though the PIT Regulations were enforced only 3 years ago, it failed to effectively combat insider trading due to loopholes and technological advances; this forced SEBI to constitute a Committee on Fair Market Conduct, under the chairmanship of Mr. T.K. Viswanathan. The Committee submitted its report in August, 2018 suggesting several changes in the PIT Regulations. These key changes will be discussed and analyzed in this article.

Key Changes

a. Clarifying the key concepts

Regulation 2(1)(c) of the PIT Regulations provides that the compliance officer, who has a crucial role in checking insider trading and ensuring compliances, must be 'financially literate'. However, this term was not defined. The new explanation inserted by PIT Amendment Regulations, 2018, clarifies the meaning of 'financially literate'; it is a person who has the necessary ability and knowledge to read basic financial statements. This is *pari-materia* with the definition in the SEBI (LODR) Regulations, 2015.

The PIT Regulations are also applicable to the companies that are proposed to be listed. However, the term 'proposed to be listed' was not defined either, which lead to multiple conflicting interpretations. The newly inserted Regulation 2(hb) defines the phrase 'proposed to be listed' as referring to the securities of an unlisted company if the unlisted company has filed offer documents or where it is getting listed as a result of a merger or amalgamation. This has brought much needed clarity by resolving the confusion among market players that are yet to be listed.

As per Regulation 3 of the PIT Regulations, legitimate purposes, the performance of duties and the discharge of legal obligations can be a valid justification for communication and procurement of unpublished price sensitive information ("UPSI"). However, none of these terms were defined in the PIT Regulations. This granted offenders a wide protection. The PIT Amendment Regulations, 2018 attempt to clarify the term 'legitimate purposes' by inserting sub-regulations 2(A) and 2(B) along with a needed explanation under Regulation 3 of the PIT Regulations. According to the newly inserted explanation to Regulation 2(A), 'legitimate purpose' includes sharing of UPSI in the ordinary course of business by an insider with persons dealing with the company provided that purpose of such sharing is not to evade or circumvent the prohibitions under the PIT Regulations. However, R. 3(2A) allows the board of directors to create a policy to determine what can be categorized as legitimate purposes. This provision seems to confer wide discretion on the board as the only guiding provision is the explanation discussed earlier.

b. Presumption of Insider Trading

An explanation to Regulation 4 has been inserted which provides that when a person in possession of UPSI trades in securities such trades will be presumed to have been motivated by the knowledge and awareness of such information in his possession. However, this presumption is rebuttable, and as such can be negated by proving one of the defences provided under the proviso to Regulation 4(1).

c. Newly Added Defenses

Prior to the amendment, the inter-se transfer between promoters in possession of same UPSI was a defence against insider trading. The PIT Amendment Regulations 2018, have widened the scope of this defense by replacing word 'promoter' with 'insider' which can include a variety of persons. Moreover, three new defenses have been inserted under the proviso to Regulation 4(1). Firstly, block deal window transactions between persons in possession of the same UPSI. Secondly, a bona fide transaction in compliance with regulatory or statutory obligations. Thirdly, a transaction while exercising a stock option at a pre-determined price. Addition of these defenses is the most remarkable change in the PIT Regulations as it is in parity with the international practices that seek to permit genuine transactions.

d. Code of Conduct

The PIT Amendment Regulations have placed a responsibility on the Boards of companies or the head of intermediaries to ensure the creation of a code of conduct which shall help in compliance with the PIT Regulations by accepting the standards set-out in Schedule B (in the case of a listed company) and the recently inserted

Schedule C (in the case of intermediaries and fiduciaries).

Furthermore, to define the ambit of the twin schedules, a new explanation has been inserted under Regulation 9(1) which clarifies that all listed intermediaries will be required to formulate a Code of Conduct adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C while trading in other securities. The newly inserted R. 9(4) confers responsibility on the board to specify the designated persons to be covered by the code of conduct.

e. Regulation 9A: Institutional Mechanism to prevent insider trading

The PIT Amendment Regulations, 2018 have introduced Regulation 9A which provides for an institutional mechanism to prevent insider trading. As per this regulation, the CEO, MD or other corresponding personnel of a listed company, intermediary or fiduciary shall set up an adequate and effective system of internal controls to ensure compliance with the PIT Regulations to prevent insider trading. Furthermore, Regulation 9A (2) provides a list of internal controls such as categorization of employees with UPSI as designated persons, maintenance of confidentiality of UPSI, lists of all employees with whom the UPSI is shared, periodic review, etc.

The board of directors or heads of the relevant entity have the responsibility to ensure compliance with Regulations 9 and 9A. Furthermore, the Audit Committee of the relevant entity has a mandatory duty to review the compliance and verify the internal control at least once in a financial year. This mechanism is a welcome change as it seeks to prevent insider trading at the grass-root level i.e. as soon as the UPSI originates and is shared, by imposing additional obligations on the entities themselves.

f. Miscellaneous

Apart from the above mentioned changes, the PIT Amendment, 2018 also provides for additional compliances such as formulation of a written policy for inquiry in case of a leaked UPSI, whistle-blower policies, internal co-operation, maintenance of a structured digital database with details of persons who receive UPSI pursuant to a due diligence exercise, disclosure of material financial relationships by designated persons, etc.

Conclusion

The PIT Amendment Regulations, 2018 are clarificatory in nature and are in the furtherance of the broad objective of PIT Regulations. It emphasizes individual responsibility and seeks to involve the entities by emphasizing institutional mechanisms to curb insider trading. It will be interesting to see how this notion of self-governance will play out.

Decoding Significant Beneficial Ownership: The Strengths And The Weaknesses

By – Aman Mehta (IV Year) *& Sakshi Ajmera* (II Year), NLIU – Bhopal

Introduction

The Companies Act, 2013 ("the Act") is an act that regulates the journey of a company which precisely includes its incorporation, registration, memorandum, articles, alteration, rectification, conversion and dissolution. The Companies (Amendment) Act, 2017, under Section 89 and 90, lays down the concept of beneficial interest in shares and significant beneficial owner respectively. These were amended to prohibit misuse of illicit purposes, including money laundering, tax evasion and other illegal activities.

Section 90 of the amended act, read with Section 469(1) of the Act defines a 'significant beneficial owner (hereinafter "the SBO")' as 'every individual, who acting alone or together, or through one or more persons or trust, holds beneficial interest of 25% and more or such percentage as may be prescribed, in the shares of a company or exercises influence or control as defined under section 2(27). For the purposes of this section, 'beneficial interest' under Section 89 includes 'the right or entitlement of one person with another to exercise rights attached to such shares or participate or receive dividend or other distribution in respect of such shares.' The Section recognises that the share rights are separable and assignable.

Intricacies Involved in Recognition

The complexity involved in identification of an SBO was whether the succession of ownership has to be seen right up to the apex level or immediately above the ownership stage. However, through the recommendations of the Company Law Committee of February, 2016, it can be concluded that the chain is to be traced right up to the top level.

Recent Adherence Requirements

(i) The Companies (Significant Beneficial Owners) Rules, 2018

The Ministry of Corporate Affairs, an Indian governmental ministry that administers the Companies Act, 2013, the Limited Liability Partnership Act, 2008 and other allied acts and aims to bring transparency in the consuetude of holding shares and conformity with the recommendations of Financial Action Task Force, had on June 13, 2018, notified the all-inclusive requirements to recognise individuals who are Significant Beneficial Owners of a company.

The Companies (Significant Beneficial Owners) Rule, 2018 (hereinafter the "SBO Rules") have explicated the definitions as prescribed under the Act. The beneficial interest requirement has now been reduced from 25% to 10% holding of the share capital of the company or entitlement of 10% of the profits of a partnership firm and henceforth, an individual holding ultimate beneficial interest of not less than 10% would also be an SBO. In an absence of a natural person holding such beneficial interest, a senior managing official could also be recognised as an SBO. There are 4 form requirements that have to be adhered to. Every SBO has to file a declaration in form BEN-1, the company has to file a declaration under BEN-2 within 30 days from the receipt of this declaration, there is a mandatory provision to maintain a register of SBOs under BEN-3 and if a company is looking for information regarding SBOs, it can file notice under form BEN-4.

Regardless of all clarifications issued by the Ministry, the Rules are not devoid of its own set of limitations. *Firstly*, the rules state that in case of an absence of a natural person having beneficial interest, a senior managing official should be appointed as an

SBO. However, the rules fail to provide a process to identify this senior managing official. It also falls short in addressing the issue of how far up the chain should a senior managing official be recognised. *Secondly*, the rules have brought into force a new set of BEN forms. Whereas, the initial beneficial ownership forms are still existent and therefore whether the new rules will gain primacy over the previous ones or whether both will have to be read together is unclear. *Thirdly*, the ministry should also straighten out the ambit for reporting requirements. Furthermore, the MCA is yet to release a clarification on BEN-1 Form rules.

(ii) <u>SEBI Circular on Disclosure of significant beneficial ownership in the shareholding pattern</u>

In the circular dated December 7, 2018, the SEBI, the regulatory body for securities market in India, has made it mandatory for all listed entities to disclose details pertaining to significant beneficial owners in the format prescribed in the Annexure to the circular. The circular shall come into force from the quarter ended March 31, 2019. The disclosure is with respect to Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, wherein it has modified the said regulation and the format prescribed therein. The first reporting under the format has to be done by April 21, 2019.

The circular has been brought sequential to the SBO Rules which still need clarification as specified by the authors above. As long as a lucid interpretation of the SBO Rules is awaited, it will be difficult for the stakeholders to provide the disclosure within the stipulated time period.

Comparative Analysis

A lot of countries worldwide have adopted different criterion to identify the ultimate beneficial owner(s). The threshold for determining the significant beneficial ownership is the basic point of distinction between the laws in UK, USA, European Union and those in India. The laws in India and the US differ in determining the threshold of shareholding percentage. While in the US, an SBO is an individual who, directly or indirectly, owns 25% or more of the legal entity customer, in India the limit has now decreased to 10%. The UK and Indian laws are distinct regarding the qualification requirements. While in the UK, there is an additional qualification requirement in order to appoint or remove majority of the board of directors, such astringent requirement is absent in the Indian laws. The crucial difference between EU and Indian laws is that the EU laws do not have a prescribed threshold requirement limit, while this is present in the Indian laws. EU laws, though lacking in the threshold requirement essentially accentuate the need of recognition of an ultimate owner behind the corporate veil.

Conclusion

These expeditious developments have unveiled a new phase of transparency, where there is an explicit disclosure of the shareholding patterns by the companies. Innumerable steps have been taken by the Indian government to recognise the significant beneficial owners in a well-ordered pattern. However, a little more refinement and clarity in the rules, as specified by the authors above, is sought. The government can also take note of the SBO rules in other countries and inculcate the positive steps taken by them in this regard.

The SEBI and Growing Need for Cybersecurity in Modern India

By – *Aman Bahl* (III Year Student at Maharashtra National Law University, Nagpur)

Introduction

In this expanding mobile, cloud-based digital world, the old model of thick walls around a centralised information locker has been outmoded. Keeping this in mind, markets regulator Securities and Exchange Board of India ("SEBI") by its notification dated December 03, 2018 has put in place a robust and stringent cybersecurity framework for mutual funds and asset management companies ("AMCs"). The notification contains norms that are formulated with the objective of shielding such companies against unintentional information disclosure and is going to be effective from April 1, 2019.

The notification requires companies to provide SEBI with quarterly reports containing information on cyber-attacks, breaches and threats encountered by them, together with the measures taken to mitigate risks concerning sensitive, confidential or otherwise protected data. In the past decade, the securities market has seen a sudden technological spurt. With this growing reliance on technology, it is crucial to panel robust cybersecurity and cyber resilience framework to preserve the data integrity and guard against data breaches.

SEBI has enlisted that companies are now required to formulate cybersecurity and cyber resilience policy document adhering to the required framework under this notification. This policy document also needs to be approved by the board of AMC and trustees. However, in exceptional cases wherein there are deviations from the recommended framework, the company is required to state the reasons for such deviations. Besides, the policy document is mandated to be reviewed by the board at least once annually with a view to strengthen and improve the cyber security framework. Moreover, SEBI has stated that no person should have any intrinsic right to access confidential data by virtue of their rank or position. This is similar to the EU wide General Protection Data Regulation ("GDPR") which requires companies to report any breach of personal data to the authorities in seventy-two hours.

Need for Cyber security:

According to the survey conducted by security software firm Symantec, India ranked third in the list of countries where the highest number of cyber threats were detected and second in terms of targeted attacks in 2017. This is raising an alarming situation for companies, especially companies which are dealing with sensitive client information. Cyber security and Global Security Attorney, Brian E. Finch, in an interview said that "The biggest risks include monitoring of networks to gain information, manipulate portfolios and impersonate account holders to steal funds."

In 2014, a group of hackers, intruded into JP Morgan Chase's systems, a year later they targeted fourteen other companies, including a Boston-based mutual fund firm, several online brokerages and The Wall Street Journal. In 2016, United Kingdom's Financial Conduct Authority ("FCA") had affirmed that four separate cyber-attacks on wealth management firms were reported.

The authority said that two of the four assaults were ransomware attacks. In 2018, Liberty, a Pan-African financial services company, with business in over fifteen African countries offering asset management, investment and insurance among various other services was also hacked, leading to data breach of over three million people.

Kinds of threats:

Cyber security threats are mushrooming in the landscape of wealth and asset management firms and the need to mitigate these risks has been urged by governments. In order to mitigate cyber security risks, it is essential to understand the kinds of risks a firm may encounter. Listed below are the two most common cyber security threats tackled by these companies:

1. <u>Malware and DDoS Attacks:</u> Malware or malicious software is a programme that is designed to damage the devices, such as laptops, workstations and smartphones. This attack on the device takes places only when a programme is installed. On the other hand, the devices can be remotely attacked without any activity by the user if the device is connected to a server or cloud computing device which makes them more venerable in modern times.

2. <u>Ransomware and Phishing:</u> Ransomware attacks take place in two steps, first they unfold through fake pop-up windows or messages and second they trick the end-user into submitting their personally identifiable information or credentials. It involves restricts a computer's access to data in order to force the victim to pay a ransom to decrypt their data and regain access to their systems. Phishing, however, is painless to execute but painful to detect. It attempts to obtain sensitive information such as usernames, passwords and credit card details by disguising itself as the original page itself. Thus threatening the use of online payment and sharing of confidential information through the web.

Conclusion:

With the increase in dependence on cloud based mechanisms, cyber security concerns have been on the rise. Keeping information secure is the utmost priority of any company, irrespective of its nature, whether mutual funds and asset management companies or otherwise. In such scenarios companies need to tackle both hundreds of cyber-attacks along with human error while saving or sharing this data. In a report by Comparitech.com, a website which deals in security, private advice and comparison, it has been estimated that companies that experience cyber-attacks are likely to underperform in the market by forty percent in the following three years. Therefore, to keep companies stable it is essential that these attacks must be addressed with utmost gravity.

The SEBI has taken its first major step to address this problem, however the policy is not devoid of its shortcomings. The policy lacks a redressal mechanism wherein stakeholders could approach the companies in case of any data loss or breach. Also, the regulation does not address any compensation related aspects in such situations. However, this notification can be considered as a good beginning for paving a great path towards future of Cybersecurity and data protection in India.

The Securities and Exchange Board of India (Settlement Proceeding) Regulations, 2018: A New Corporate Governance Structure

By – Pranay Bhattacharya (II Year Student at Maharashtra National Law University, Aurangabad)

Introduction

In November, 2018 the Securities Exchange Board of India ("SEBI") through a notification issued a new draft as Securities and Exchange Board of India (Settlement proceeding) Regulations, 2018 framed under the chairmanship of Justice Anil Dave, which will come into effect from 2019 replacing and revamping the old provisions of 2007, which was further revised in 2014 as SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. The core end towards this new draft is to remove the ineffective provisions of the old acts with regards to uncertainty of security laws. The new regulations will incorporate criminal, civil, judicial and other settlement and recovery of securities.

Key Changes Under the New Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018

With the recent development in the financial market, the key changes introduced in the new provisions are:

- The new amendments now allow the parties to settle a dispute, in matters of pending cases before a court or tribunal. Further, the applicants compounding the offence or making such settlement were required to file an application of the same before the court, as per the provisions of the old act. This clause has now been removed. Further to widen the scope, an application of notice of settlement can be filed within 15 days, before a show-cause notice issued by SEBI. This will help in getting off with the pending case and further enable delegation of powers between the judiciary and SEBI.

- The new Act provides that applicants can settle their pending cases in confidentiality and lenient terms on the condition that sufficient information is provided by assisting in inquiry or audit of documents (as a fact-finding process). The provision is incorporated keeping in mind the general global security laws.

This will give security to the defaulters that their private information is not leaked in the global or public domain and ensure right to be forgotten or erasure for previously uploaded by the authorities.

It will also assist the defaulters by paying lesser settlement amount by voluntarily providing essential information required for the case so pending. This will allow the parties involved to help in the process of investigation and getting a fast-track resolution of the application, provided he/she rescinds to conceal, manipulate, destroy or remove any information in violation of the security laws.

But, this clause will be restricted by a provision which requires disclosure of essential information required by law or where public disclosure is required. This will allow the general public to get all the relevant information in case of any dealings to be made thereof, further preventing defaulters from misappropriating or miscarriage of funds.

Therefore, as per the new amendments, it will indirectly restrict the alleged defaulters (including fugitive economic offenders) to initiate filing their application for settlement. The settlement plea will not be considered if it has been already rejected for the same alleged default in the ongoing past (depending upon the amount of outstanding liability).

- The High Powered Advisory Committee ("HPAC") will now include a judge of Supreme Court in addition to the Judge of High Court (as per the old act). Now, the meetings can also be held through video conferences. Further amendments have been made to widen the scope of HPAC.

  It will help in fast-track resolution and imparting transparency in the process by allowing judges to make their recommendations and discretions from the previous cases and set a similar precedent. Further, the addition of members in HPAC will widen the ambit and prospect of the committee, in instances of recusal by any member; the other members may submit their recommendations without halting the process.

  The new clause will also include fugitive economic offenders in compliance with Section 12A (read with Sec. 24) of Fugitive Economic Offenders Act, 2018.

  1. Section 12A underlines: Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control
  2. Offences for contravention of the provisions of the Act.

  Owing to the recent financial frauds that came into light such as Nirav Modi, Mehul Choksi, Vijay Mallaya who fled the country and banking scams such as PNB scam has given rise to proceedings pertaining to the inadequate stringent provisions which bring such categorical provisions dealing with the severity of the problem.

  Under the new act, willful defaulters and fugitive economic offenders cannot settle their cases. This provision is specifically introduced due to the frauds and illegal transactions committed by persons and entities in India.

  As per SEBI, proceedings of such nature would not be settled for defaulters having a record of misappropriation of funds that affects the integrity of the market, cause losses to investors and has wide market impact.

- As per the new provisions, all entities falling under promoter and promoter group shall be enlisted separately on the website of the stock exchanges having nationwide trading terminals where the entities are listed, as per SEBI guidelines and formats.

This provision will ensure proper identification of such entities and their respective promoter group and stakeholders giving greater transparency. And, will allow the investors to make a proper inquiry before investing in the respective stock exchange.

- The reclassification of status of persons (as promoter or public), shall only be permitted on receipt of application attached with all relevant documents subject to the regulations of the new Act. In case, the corporations are listed on more than one stock exchange, it will be a joint discretion on part of the concerned stock exchanges to decide the application.

  This will broaden the prospect of old reclassification norms, by allowing a promoter seeking reclassification to present their application for approval from the Board. It will promote greater transparency by allowing the Board to scrutinize the application and place it before the shareholders for approval with majorities view. It will also help in avoiding conflicts among shareholders (for making specific approvals) by duly complying with recommendations made by the Board thereof.

- In case of absence of promoter, the term "professionally managed" will be replaced by "listed entities having no promoter" to give a clear meaning under the new Act. These companies will be recognized as having no promoter or person acting in concert to hold more than one percent of the paid-up equity capital of the company. A similar observation was made by SEBI in August, 2016 on a request for informal guidance from Krebs Biochemical's and Industries.

  The provision will help in rationalizing the existing norms of entities that are "professionally managed" and the introduction of new norms will allow multiple promoters to get him/her classified as a public shareholder of various companies.

- To give more power and greater safety of women at the work place in corporate structure, new amendments have been made to insert the disclosure requirement with respect to complaints filed under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, is a major step towards making a safer workplace for the women in the corporate sector.

  The provision will be included under the non-financial disclosures that will enable the BOD to have direct contact in case of any violation that may require stringent and immediate redressal of complaints as per Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It will enable fast-track conciliation or required disciplinary action to effectively resolve such complaints

- The regulations also include a new term called "*Settlement Schemes*". It is specifically for the persons making similar kind of defaults specified under the act, and this provision will specify the terms and conditions of settlement of proceedings for a class of persons.

  It will enable to classify and categorize the persons of same class by the amount of default or misappropriation made (in case of any), which may be helpful in deciding the course of penalty or approval of reclassification of the application.

Conclusion and Comment

From the aforementioned provision, one may analyze that the new amendment gives a wider scope and extent to the regulatory mechanism of security laws in India from covering Securities Contract (Regulations) Act, 1956, Depositories Act, 1996 to revision of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 in consonance with the old acts. These amendments in the old provision will allow initiating various types of proceedings civil-quasi-judicial proceedings, settlement provisions, disposition of pending cases, preventing negative impacts on markets and investors, compounding and recovery, initiating criminal proceedings all in consonance with the security laws and the amendments made thereof.

The new amendments stipulate an inclusive mechanism pertaining to the defaults and obsolete ambiguities in the earlier Act and are made specifically to revise the settlement provisions of cases and pending disputes as well as stretching it arms by widening the scope of including fugitive offenders as well as willful defaulters.

Pertaining to the amendments, such relaxed norms for defaulters and perpetrators impeding the market conditions would be obstructed with the provisions by such settlement mechanism.

SEGREGATED PORTFOLIO: RECENT DEVELOPMENT IN THE REGULATION OF MUTUAL FUNDS

By – *Mohit Kar* (II Year Student at Maharashtra National Law University, Aurangabad)

Introduction

For investors opting for savings in debt bonds in mutual funds, here is some good news.

In an orchestrated effort to ensure the safety of investor's interests, the Securities and Exchange Board of India ("SEBI") has recently issued a circular on the segregated portfolio, which can be utilized by fund houses in case debt assets are lowered.

This circular was issued on December 28, 2018 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, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Investment in debt bonds is often a less risky option while equity fund involved possible loss of investments under market crash. Investors are assured of minimum return in debt bonds. The segregated portfolio is expected to ensure the larger interest of the investors while leveraging the fund companies.

Segregated portfolio means a portfolio, comprising of debt or money market instrument affected by a credit event, which has been segregated in a Mutual Fund scheme.

Benefits of Segregated Portfolio

Formation of a segregated portfolio is a way in which there is a parting of distressed, illiquid assets from liquid assets in accordance with a mutual fund portfolio to tackle a situation owing to a credit event. Investors who might come under fire when there is a happening of the credit event will get the benefit of the future recovery in case of presence of segregated portfolio. In an attempt to ensure fair treatment to all investors of a credit event and to deal with liquidity risk, SEBI has gone ahead with the creation of segregated portfolio comprising of debt and dealing with money market instruments provided by mutual fund schemes. SEBI has given an alternative to fund houses by allowing them to segregate bad assets.

Practically speaking, the investor's holding in the scheme would be split into two - the good part and the bad part, with an equal number of units in both. One can choose to sell the good units and exit, but the bad units will be frozen until your fund recovers the dues from the bad assets. Both the good and bad (segregated) part of one's scheme will have net asset values ("NAV").

Segregated portfolio assets include assets signifying share premiums, capital reserves, retained earnings, and all other assets ascribable to or held within the segregated portfolio.

Only the assets of every single segregated portfolio are accessible to meet liabilities to creditors with reference to that segregated portfolio; wherein there are liabilities ascending from an issue referable to a precise segregated portfolio, the creditor may only have remedy to the assets attributable to that segregated portfolio.

The creation of the segregated portfolio is a positive move by which the invested amounts could be routed back to the portfolio to meet with the exigencies.

Role of the Fund Managers

The Fund Managers ("FMs") need to decide on the creation of a segregated portfolio on the day of a credit event. A firm would need the approbation of the trustees as soon as it takes a decision to create such a portfolio. The firm should inform the investors through formal communication about its intention to make such a portfolio and how it could affect them.

The appropriate provisions of SEBI (Mutual Funds) Regulations, 1996 and other associated rules handed down by the regulator would also be applicable. The trustees would be required to screen a fund house's efforts to recuperate investments of the segregated portfolio. All reclamations would be distributed to the investors in proportion of their holding in the segregated portfolio.

The FMs managing debt schemes, whose portfolio gets segregated due to a misjudged investment call, will have to let go a portion of the bonus they attain annually, while mutual funds will be incapable to levy fees for handling the separated part of the product. The Securities and Exchange Board of India has issued a circular in this regard to protect investors in these products.

Several fund houses were seeking to be allowed to segregate bad assets, known as side-pocketing in mutual fund parlance, ever since the Infrastructure Leasing & Financial Services Ltd ("IL&FS") calamity erupted in the months of August and September 2018.

Conclusion

The Segregated portfolio will help mutual funds deal with the problem of defaults and help schemes function better. It also gives clarity to investors who are at a loss during an event such as IL&FS and will boost their confidence in debt funds, it is widely believed.

Segregated portfolio option given to funds houses is not free from criticism. The fund houses will give different treatments to the same credit event. Investors will now be subject to different treatments, according to some analysts.

It would have been better on part of SEBI to have made it optional and left open to the fund houses to decide if they want to segregate their assets or not as the matter of fund management strategy varies from fund house to fund house.

SECURITIES UPDATES

NOVEMBER

13.11.2018 SEBI/HO/MIRSD/DOS3/CIR/P/2018/140

Guidelines for Credit rating agencies (CRA) have been given to enhance the quality of disclosures with reference to performance on Stock exchange and Depositories and internal audit of CRAs. A standard format has been prescribed for such disclosures which have been attached as annexure in the same circular.

14.11.2018 SEBI/LAD-NRO/GN/2018/46

This amendment has replaced and added several sections to the original regulation i.e., Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009.

15.11.2018 SEBI/HO/CFD/CMD1/CIR/P/2018/0000000141

The listed entities should disclose their risk management activities during the year, including their commodity hedging positions in a more transparent, detailed and uniform manner for easy understanding and appreciation by the shareholders. The annexure at 9(n) of Part C of Schedule V of the Annual Report contains the format in which it is to be submitted.

16.11.2018 SEBI/LAD-NRO/GN/2018/47

Several clauses have been inserted into the original regulation such as the definition of a fugitive economic offender, conditions for re-classification of and person as promoter/ public, transmission, succession, inheritance of shares held by a promoter /person belonging to a promoter group inter alia other important amendments and insertions.

19.11.2018 CIR/CFD/CMD-1/142/2018

The quarterly and annual financial results are to be submitted by listed entities to stock exchanges within forty-five/sixty days from the end of the quarter/financial year. In case of non-compliance, SEBI has prescribed for levy of penalties, freezing of promoter shareholding, suspension of trading etc. SEBI provides for provision of one working day from the due date of submission for the results as required under Regulation 33.

26.11.2018

SEBI/HO/IMD/DF1/CIR/P/143/2018

The IFSC Guidelines provide for a broad framework for setting up of Alternatives Investment Funds to protect the interests of investors. It helps to protect the interests of investors in securities and to promote the development of and to regulate the securities market. An application should be made for registration of alternate investment funds through an application available in Chapter II of AIF regulations. Guidelines for investments by angel investors and regarding angel funds have also been given. A custodian would be appointed if the corpus is more than seventy million. Other compliance requirements and conditions have been given.

SEBI/HO/DDHS/CIR/P/2018/144

A listed entity, fulfilling the criteria as specified at para 2.2 above, shall be considered as a "Large Corporate" (LC) and such a LC shall raise not less than 25% of its incremental borrowings, during the financial year subsequent to the financial year in which it is identified as a LC, by way of issuance of debt securities. There are various disclosures required to be made for large entities which are to be made according to the annexure given with the circular. Their responsibilities are also enumerated in this section.

27.11.2018

CIR/MRD/DRMNP/CIR/P/2018/145

The circular dated 27 November 2018, speaks about Interoperability among Clearing Corporations through linking of all such corporations which leads to consolidation of their clearing and settlement functions. It is expected that the interoperability among CCPs would lead to efficient allocation of capital for the market participants, thereby saving on costs as well as provide better execution of trades. It shall be applicable to all the recognised clearing corporations excluding those operating in International Financial Services Centre. All products available for trading on the market would come under the framework. It is beneficial to refer to this circular to know more about inter CPP collateral, dispute resolution, CCP Trading Venue Link etc.

30.11.2018

SEBI/HO/CDMRD/DMP/CIR/P/2018/146

The circular is addressed to the Managing directors and CEOs of recognized stock exchanges and clearing corporations which gives the revised trade timings wherein it intends to extend the trade time within which recognized stock exchanges can set their trading hours for their commodity derivatives segment. It is advised to refer to the circular dated November 30th for the list of timings.

DECEMBER

03.12.18

SEBI/HO/MIRSD/CIR/PB/2018/147

SEBI issued a circular whereby it informed the managing directors of all recognized stock exchanges and depositories about the new framework on cyber security and cyber resilience that has been designed to protect the integrity of data and guard against breaches of privacy in the securities market. The circular further stated that this particular framework which shall come into force from April 1, 2019, would be required to be complied by all Stock Brokers and Depository Participants registered with SEBI who shall in turn make necessary amendments to the relevant byelaws, rules and regulations for the implementation of the same.

07.12.18 CIR/MRD/CSC/148/2018

SEBI issued a circular which stated that the Market Infrastructure Institutions (MIIs), shall have a Cyber Security Operation Centre (C-SOC) that would be a 24x7x365 set-up, manned by dedicated security analysts to identify, respond, recover and protect from cyber security incidents. The C-SOC shall function in accordance with the framework specified in SEBI Circular CIR/MRD/DP/13/2015, dated July 06, 2015.

SEBI/HO/CFD/CMD1/CIR/P/2018/00000 00149

SEBI issued a circular in which it specified that in the interest of transparency to the investors in the securities market, all listed entities shall disclose details pertaining to significant beneficial owners in the format prescribed. It further stated that all the terms specified in this circular shall have the same meaning as specified in Companies (Significant Beneficial Owners) Rules, 2018.4. It advised the Stock Exchanges to bring the provisions of this circular, which shall come into force with effect from the quarter ended March 31, 2019, to the notice of listed entities and also to disseminate the same on its website.

13.12.18 SEBI/HO/IMD/FPIC/CIR/P/2018/150

SEBI issued a circular related to the clarification on clubbing of investment limits of Foreign Portfolio Investors (FPIs). SEBI after considering the recommendations of SEBI Working Group under Shri H R Khan in relation to the circular No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on KYC requirements for FPIs and comments received from public, decided in its meeting that Beneficial ownership criteria in Prevention of Money-laundering (Maintenance of Records) Rules, 2005 should be made applicable for the purpose of KYC only and not for clubbing of investments of FPIs. It laid down certain other clarifications with respect to clubbing of investment limits of foreign Government/ foreign Government related entities.

14.12.18 CIR/MRD/CSC/151/2018

SEBI issued a circular wherein it stated that during the discussions held with the market participants, it was gathered that compliance with the cyber security guidelines may be onerous for smaller intermediaries because of the lack of knowledge in cyber security and also the cost factor involved in setting up own Security Operations Centre (SOC). Therefore, it was held that these intermediaries may utilize the services of Market SOC which is proposed to be set up by MIIs with the objective of providing cyber security solution to such intermediaries. The intermediaries' membership in Market SOC is non-mandatory.

17.12.18 SEBI/HO/MRD/DRMNP/CIR/P/2018/155

SEBI has reviewed the Risk Management Framework for Equity Derivatives Segment, wherein it has been clarified that the Margin Period of Risk (MPOR) may be increased to 2 days as compared to the current MPOR of one day. The Short Option Minimum Charge (SOMC) for index option contracts has also been revised to 5% in addition to other recommendations.

SEBI/HO/MIRSD/DOP/CIR/P/2018/153

In order to deal with issues relating to diversion of client securities, SEBI has decided to put in place an early warning mechanism which would help in sharing information between the stock exchanges, depositories and clearing corporations to detect diversion of client securities. This is done at an early stage so as to take appropriate preventive measures.

27.12.18 CIR/MRD/DP/158/2018

SEBI has come out with simplified rules for investors from Karnataka and Punjab for the procedure relating to change of name of Beneficial Owner's account. The directories were directed to implement the same within 3 months and to keep audit trail of the name change in the BO Account similar to that of account change.

28.12.18
SEBI/HO/MRD/DOPI/CIR/P/2018/159

Comprehensive guidelines on Offer for Sale of shares through Stock Exchanges were issued vide Circular CIR/MRD/DP/18/2012 dated July 18, 2012, which have been modified from time to time. The instant circular has been issued to bring clarity on conditions relating cancellation of OFS in light of modification to framework in February 15, 2016 circular and the resultant modifications have been brought about as a result of the market feedback.

SEBI/HO/IMD/DF2/CIR/P/2018/160

SEBI has decided to permit the creation of segregated portfolio of debt and money market instruments by mutual fund schemes, in order to ensure fair treatment to all investors in case of a credit event and to deal with liquidity risk.

31.12.18
SEBI/HO/MRD/DOPI/CIR/P/2018/161

SEBI has issued a framework for making physical settlement of stock derivatives mandatory in a phased manner, which could prove to bring a balance between equity cash and derivatives segment.

JANUARY

04.01.19
SEBI/HO/CDMRD/DNPMP/CIR/P/2019/08

Securities and Exchange Board of India had issued a circular vide which dealt with the issue of Disclosures by Stock Exchanges for commodity derivatives. The circular elucidates upon the topic of importance of transparency and the significance of the same for price signal as well as its correlation with the underlying physical market activities. It was in order to this that the circular provided that all recognized stock exchange shall make additional disclosures on their websites with respect to trading in commodity derivative. This step was taken to enhance transparency to the public in commodity.

SEBI/HO/MIRSD/DOS2/CIR/P/2019/10

SEBI issued a circular vide which was related to Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications and systems offered and used by market intermediaries. The circular gave a brief backdrop of the increasing usage of AI and ML in investor and consumer facing products, as the function of SEBI as under S 11(1) of SEBI Act, 1992 is to safeguard interest of investors in securities and to promote the development of, and to regulate the securities market it (SEBI) is going to conduct a survey and the circulars contained reporting form that has to be filled by all registered stock broker/ depository participant offering or using application as defined under Annexure A of the circular.

SEBI/HO/MIRSD/DOP/CIR/P/2019/05

SEBI issued a circular which was relating to Acceptance of Probate of Will or Will for Transmission of Securities held in dematerialized mode. The circular stated that succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act, 1925 has been prescribed as documentary requirement for transmission of securities held in physical mode. Similarly with regard to securities held in dematerialized mode shall be dealt in line with Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2018. The provisions of this circular will be applicable with immediate effect.

10.01.19

SEBI/HO/IMD/DF3/CIR/P/2019/011

SEBI issued a circular which dealt with the matter of Portfolio Concentration Norms for Equity Exchange Traded Funds (ETFs) and Index Funds. In the circular various norms are laid down to address the risk relating to Portfolio Concentration Norms for ETFs and Index Funds. Accordingly, any ETF/ Index Fund that seeks to replicate a particular Index shall ensure that such index complies with the norms mentioned in the circular. The circular also explained the extent to which this circular would apply, i.e. applicability. It stated that All existing Equity ETFs/ Index Funds in the market should show adherence to the norms and with respect to All the Equity ETFs/ Index Funds where SEBI has issued final observations on the Scheme Information Document, but have not yet been launched there the issuers shall submit the compliance status vis-à-vis these norms to SEBI before launching such ETFs/ Index Funds.

SEBI/HO/IMD/DF2/CIR/P/2019/12

SEBI issued a circular of which the subject matter was Cyber Security and Cyber Resilience framework for Mutual Funds / Asset Management Companies (AMCs). The circular stated that with rapid technological advancement it is necessary to have robust cyber security and cyber resilience to protect integrity of data and safeguard privacy. For this purpose it has been decided that the framework prescribed vide SEBI circular CIR/MRD/DP13/2015 dated July 06, 2015 on cyber security and cyber resilience also be made applicable to all Mutual Funds / AMC. Accordingly, all Mutual Funds / AMCs shall comply with the provisions of Cyber Security and Cyber Resilience as placed at Annexure-1 which is based on the recommendation of SEBI's High Powered Steering Committee -Cyber Security,

SEBI/HO/MRD/DOP2DSA2/CIR/P/2019/ 0000000013

SEBI issued a circular of which the matter that was dealt in that circular was Committees at Market Infrastructure Institution (MIIs).

11.01.19 SEBI/HO/MIRSD/DOP/CIR/P/2019/14

SEBI issued a circular which was relating to uniform membership structure across segments. The Circular states that unification of membership structure across equity cash and derivatives segments of Stock Exchanges is vital to facilitate ease of doing business. Furthermore the circular explains that SEBI has implemented the mechanism of single registration, whereby a registered TM / CM can operate in any segment of the recognized Stock Exchange / Clearing Corporation under the single registration number granted by SEBI and in addition to that In order to implement uniform membership structure across equity cash and derivatives segments various course of action is provided in circular.

16.01.19 CIR/P/2019/17

Circular was on norms for investment and disclosure by mutual funds in Derivatives. It stated Mutual funds schemes were permitted to undertake transactions in equity derivatives in accordance with circular No. Cir/IMD/DF/11/2010. Mutual Funds can now write call options under a covered call strategy as mentioned in the circular. For schemes intending to use covered call strategy, the risks and benefits of the same must be disclosed in the document. For existing schemes, writing of call options shall be permitted, subject to appropriate disclosure and compliance with Regulation 18 (15A) of SEBI (Mutual Funds) Regulations, 1996. All other provisions of the circular dated August 18,2010 in respect of norms for investment and disclosure by Mutual Funds in derivatives shall remain the same.

22.01.19 CIR/P/2019/020

The circular was about revised monthly cumulative report. It stated that from April 2019 onwards, AMCs shall submit the Monthly Cumulative Report (MCR) to SEBI by the 3rd working day of each month. In line with SEBI circular dated October 6, 2017 and December 4, 2017 on "Categorization and Rationalization of Mutual Funds Schemes", the format of MCR has been revised and the same was placed at Annexure A of the circular.

23.01.19 CIR/P/2019/22

The circular stated that for the purpose of Regulation 24(9) and Regulation 24(10) of SEBI (D&P) Regulations 2018, a recognized clearing corporation shall not be considered as a Depository Participant. For the purpose of 24(10) of SEBI (D&P) Regulations 2018, in addition to the directors, employees of entities mentioned in Regulation 24(10) shall not be considered as Depository Participant or their associate. Accordingly, Depositories were directed to take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations.

CIR/P/2019/023

The circular dealt with Alignment of Trading Lot and Delivery Lot size. Based on the recommendation of CDAC it had been decided that the exchanges shall follow the policy of having uniform trading and delivery lot size for the commodity derivatives contracts. Exception to this may be provided on a case to case basis. For existing contracts with different trading lot and delivery lot size, exchanges shall submit their proposal for alignment/exemption to SEBI within one month from the date of this circular.

31.01.19 CIR/P/2019/24

SEBI vide this circular said that it was conducting a survey and creating an inventory of the AI/ML landscape in the Indian financial markets to gain an in-depth understanding of the adoption of such technologies in the markets and to ensure preparedness for any AI/ML policies that may arise in the future.

FEBRUARY

05.02.19

SEBI/HO/MRD/DOP2DSA2/CIR/P/2019/26

For the purpose of complying with the regulations pertaining to Public Interest Director (PID), SEBI has laid down a framework for Market Infrastructure Institutions (MIIs) for performance review of Public Interest Directors (PIDs). The clauses relating to tenure of PID were also amended in a few regulations mentioned in the Circular. The annexure to the circular also specifies the guidelines for MIIs to frame criteria for the performance review of PIDs.

08.02.19 CIR/CFD/CMD1/27/2019

The circular provides the format for annual secretarial audit report and annual secretarial compliance report for listed entities and their material subsidiaries. The circular mentions recommendations of the Committee of Corporate Governance in view of the criticality of secretarial functions to efficient board functioning and also amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in order to implement the regulations.

SEBI/HO/MRD/DOP1/CIR/P/2019/28

The circular specifies a few criteria for stocks, which if satisfied would lead the derivative on such stocks be moved to the physical settlement from the new expiry date. This is in addition to the existing schedule of stock derivatives moving to physical settlement.

11.02.19
SEBI/HO/CDMRD/DNPMP/CIR/P/2019/29

The circular has introduced a framework for the utilization of Financial Security Deposit (FSD) available with Clearing Corporations and WDRA. Norms have been laid down for utilization of security deposit, which requires adherence by the Recognised Clearing Corporations having commodity derivatives in order to rationalise security deposit.

SEBI/HO/MIRSD/DOS3/CIR/P/2019/30

The circular addresses the difficulties faced by non-resident investors (such as NRIs, PIOs, OCIs and foreign nationals). SEBI has decided to grant relaxation to non-residents from the requirement to furnish PAN and permit them to transfer equity shares held by them in listed entities to their immediate relatives with subject to a few conditions.

15.02.19
SEBI/HO/MRD/DOP2DSA2/CIR/P/2019/31

The Circular partially modified the SEBI circular on Committees at Market Infrastructure Institutions (MIIs). Clause 6 of the aforesaid circular provides the overarching principles for composition and quorum of the statutory committee at MIIs. It has been decided that Clause 6 shall not be applicable to the Advisory Committee, along with IGRC. Also, the clauses provided in the composition of Advisory Committee, at point A(5), B(5), and C(5) of the Annexure to the circular dated January 10, 2019.