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IS SEBI IN CONTROL OF 'CONTROL'?

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INTRODUCTION

The debate around interpretation of the term *control* as defined under SEBI's Substantial Acquisition of Shares and Takeover Regulations 2011 (**Takeover Regulations**) has vexed the Indian corporate & legal circles alike for quite some time now.

Under the extant Takeover Regulations (as in the one before it), an acquirer is required to make a mandatory takeover offer (an open offer) to the public shareholders of a listed entity upon acquisition of (a) substantial stake or voting rights (including and upwards of 25%) in the target (*de facto control*); or (b) *control*[1] of or over the target (*de jure control*). While the former criterion is quantitative and objective in nature, the latter is subjective, and given the broad scope of the definition, accords the regulator with wide discretion to interpret what comprises *control* in varied situations, on a case-to-case basis.

Most private investments in public equity (PIPE) transactions, or other transactions involving substantial acquisitions of stake in a target company, involve the acquirer negotiating for some rights to protect its interests – typically, not with an intention to take over, or in any way influence the management or day-to-day functioning of the company. However, even the slightest excursions beyond what SEBI understands *control* to be, require an acquirer to buy out the other public shareholders of the company as well – even if the actual stake acquired is much lesser than the quantitative thresholds mentioned above.

With varying stances being adopted by the regulator and SAT over a series of judgments in the past two decades, there has been no conclusive answer as to what rights are agreed between an acquirer and the target, which would amount to corporate control under the Takeover Regulations. Further, different approaches of other sectoral regulators (such as, the CCI) in this regard have only added to the confusion.

The gravity of this situation would be appreciated better if regard is paid to it in the context of the Indian mergers and acquisitions space – with stakeholders often left with no option but to give up significant rights while investing, lest they acquire 'too much' *control* in the target. Below, the author analyzes the current position from a regulatory perspective, as well as contemplates if a more objective solution to the elusive concept of *control* can be reached eventually in time.

THE CONTROL CONTROVERSY

Historic Overview

In its earlier decisions like that in *Rhodia SA v Securities and Exchange Board of India*, the SAT found that a right to require approval of acquirer for major matters affecting the company's affairs – an affirmative or veto right – puts the acquirer in a position of *control*. This was a considerably wide and strict construct and was subsequently liberalized to a certain degree in future cases. Deviating from its stance in *Rhodia*, in *Sandip Save v Securities and Exchange Board of India*, the SAT held that affirmative rights to require approval to appoint and remove directors, or for major

[1] The Takeover Regulations define 'control' to include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholder's agreements or voting agreements or in any other manner.

matters etc. do not amount to *control* and exist merely for the limited purpose of protecting the acquirer's stake in the target – a much more positive approach.

However, the most elaborate observations as well as controversy around *control* emerged in the case of *Subhkam Ventures (I) Private Limited v Securities and Exchange Board of India* – wherein an acquisition of 19.90% (more than the trigger threshold under the erstwhile takeover regime) of shareholding in the target, the acquirer made a public announcement for an open offer to the other shareholders.

SEBI, however, deviating again from its older stance, concluded that there was an acquisition of *control* as well in addition to acquisition of a substantial stake, and hence required the draft letter of offer to be revised to reflect the same. The rights which SEBI considered were (a) a right to appoint a nominee on the board of the target; (b) right for presence of acquirer's nominee director in board meetings of the target; and (c) certain affirmative rights. It held that such veto rights are '*negative control rights'* and constitute *control* for the purposes of the erstwhile takeover regulations (which had a similar definition as in the extant regulations).

SAT overturned the decision and held that *control* is a *'proactive and not a reactive power'* –hence, the rights in question do not confer any *control* to the acquirer, instead they merely seek to protect its commercial interests. SEBI appealed to the Supreme Court. Stakeholders strongly anticipated the Apex court to settle the controversy upholding SAT's observations. However, the appeal was disposed-off, as the matter was settled out-of-court by the parties. In disposing-off the appeal, the Supreme Court also held the SAT Order to not have any persuasive value – thereby leaving the question of interpretation of *control* unsettled once again, and SAT's relaxed its view, inconsequential. Interestingly, the Takeover Regulations Advisory Committee which was tasked with recommending and drafting the extant regulations (in supersession of the erstwhile *SEBI Substantial Acquisition and Takeover Regulations 1997*) did not address the question therein as well, considering that the Supreme Court was yet to decide on the then-ongoing *Shubhkam.*

Another noteworthy mention – Etihad's acquisition of a 24% stake, and a right to appoint 2 out of 12 directors on the Board of Jet Airways was held to not amount to acquisition of *control* by SEBI but interestingly, the Competition Commission of India reached a diametrically opposite conclusion by holding that such rights would, in fact, amount to *control* as defined under the Competition Act 2000 (largely similar to the definition under the Takeover Regulations).

Bright Line Test

In light of the ensuing dubiety, SEBI floated a Discussion Paper in March 2016 seeking public opinion over certain proposals it made therein. The paper suggested election of a qualitative or a quantitative bright line criterion for defining *control*. The qualitative criterion enlisted several instances which will not amount to *control* – including affirmative rights. The alternative was a quantitative criterion which recommended a threshold of 25% of voting rights, or a right to appoint majority of non-independent directors, to amount to *control*. However, despite active stakeholder participation, in September 2017, the regulator decided not to amend the Takeover Regulations, for better or for worse.

Recent Observations

In the *matter of Kamat Hotels India Limited,* following an open offer made by acquirers pursuant to conversion of convertible securities held by them in the target – SEBI issued observations indicating that certain rights agreed to between the parties may amount to *control* and urged a revision of the letter of offer. The matter was appealed to SAT which directed SEBI to issue a show cause notice to the target.

The rights under question were regarding (a) restrictions on the promoters from entering into agreements which would conflict with the acquirer's rights; (b) right to appoint a nominee director on the target's board; and (c) certain veto rights.

However, after considering the acquirer's response, SEBI – again differing from its stance in *Shubkam* – concluded that the rights, in fact, are merely protective in nature and do not amount to *control*. While *Kamat Hotels* indicated that the regulator may just be adopting a liberal approach finally much to the stakeholders' relief, it limited the scope of its observations only to the factual matrix of this instant case.

More recently, in June 2018 an order in the *matter of NDTV Ltd.* was pronounced, where the promoters (a body corporate itself) of NDTV Ltd. made an open offer to acquire the company backed by a loan. As per the arrangements for this loan, the lender acquired warrants in the acquirer amounting to around 99.99 percent of its equity, a call option for shares of the acquirer, a call option towards shares held by the acquirer in the target, and veto rights over certain actions of the acquirer. SEBI held that the aforesaid rights amounted to the lender itself indirectly acquiring *control* over the target. – Thus, being obliged to make an open offer.

Dismissing arguments made by the lender in this regard, SEBI concluded that the loan was an acquisition and not a financial transaction, as the lender was empowered to use its rights at any time during or after the facility term – the rights, thereby, being more than mere security for the loan.

WHAT, AFTER ALL, IS CONTROL ACCORDING TO SEBI?

The most confounding part is that SEBI's observations in its most recent orders are contradictory to each other, despite being made hardly a year apart from each other. In *NDTV*, SEBI refused to acknowledge discussions of its other decided cases, most importantly that of *Clearwater's* – the most liberal and acquirer-friendly view SEBI has ever taken –which does not even find a mention.

SEBI's conflicting stances, not including the inter-regulator skirmishes, like the one in *Jet-Etihad*, do little to help the acquirers. In fact, regulatory uncertainty may just prove detrimental to the acquirers, who may at times be prevented from negotiating stronger rights in their favor in transactions.

As on date, only a broad indicative distinction of rights into *protective* and *participative* can be made based on a rough deduction of the regulator's varying approach. Protective rights *may not* (emphasis added) amount to *control*, and participative rights *may* (emphasis added) amount to *control*. Hence, veto or affirmative rights need be clearly understood and sketched out between acquirers and the target in a transaction, lest they be deemed participatory or active in nature. Having said that, there can be no amount of reasonable certainty in this regard until the regulator or the apex court provide an answer in clearer terms.

WAY AHEAD

In the author's view, certain suggestions may be explored to avoid the growing uncertainty – one, the definition of *control* can be narrowed and made objective (if not quantified, which was one of the suggestions of the bright line test). While interpreting the same, the regulator may consciously try marrying the commercial interests of acquirers with those of the minority shareholders, and not be excessively harsh. Broad concepts like *management control* should be made objective enough to only include acquirer's interest in the day-to-day activities of the target (which are participatory in nature) and exclude acquirer's interest in crucial affirmative or veto rights (to ensure protection of its interests). A broad undefined scope may prevent (as it does) the acquirer to effectively structure its entitlements in a transaction or protect its investment value for the fear of acquiring 'too much' *control*.

Two, the definition of *control* can be amended to draw a clear-cut distinction between active and passive rights, as well as positive and negative rights– with the latter ones not amounting to *control* since they are not participatory in nature.

Three, certain exemptions or rebuttable presumptions in favor of the acquirer being *not-in-control* can be envisaged. For example, situations where despite acquiring a substantial stake, if the acquirer is not the biggest shareholder, it may be deemed to not be in *control* of the target.

Fourth, a provision to enable the general body of independent shareholders to take a call on whether a particular acquirer acquires *control* or not, can be added in the Takeover Regulations – shareholder *democracy* may be practiced to determine whether a transaction affects the interests of the public shareholders at all.

Lastly, and most importantly, the regulator may consciously provide consistency in its observations – without, of course, being unreasonably flexible or by compromising on its discretion.

CONCLUSION

The Indian takeover regime, regardless of the discussion around *control* is on a unique footing compared to other jurisdictions. Most jurisdictions, including the European Union, Singapore, Hong Kong etc., have a quantitative threshold for making open offers. While this approach provides objectivity and clarity, the safeguards may be circumvented by structuring the transaction in a way such that the acquirer assumes significant *control* without breaching the numerical thresholds (it cannot be ignored that shareholders with stakes in excess of 4-5% in most advanced jurisdictions are a rarity – hence, quantitative thresholds arguably prove sufficient). Many other jurisdictions like Brazil, Indonesia, etc. have a qualitative criterion wherein regulators or judicial authorities determine whether an open offer needs to be made based on the acquirer assuming board or operational *control* of the target, regardless of the quantity of equity being shared.

India, on the other hand, has a combination of both, as mentioned. Regulation 3 of the Takeover Regulations provides for the former, while Regulation 4 (acquisition of *Control*) provides for the latter. Further, even the quantitative threshold of 25% for an open offer is much lower than in other jurisdictions (averaging between 30-50%). It may seem excessive, but the choice for a combined approach is a result of a well-considered disposition towards protection of minority shareholders and seems well-fitted to the promoter-driven corporate landscape in India.

While it would be deviating from the scope of this article in enumerating the benefits of one approach over the other, or a combination thereof, it can be argued that a combined approach like that of India merits a higher degree of regulatory clarity. In this regard, SEBI's differing approaches may increasingly make (if they have not already) it difficult for acquirers to properly structure their transactions.

While this thought-piece merely explores the approach of the Indian regulator, experiences in most jurisdictions where a qualitative criterion has been prescribed, have been similar. It is an accepted fact that a completely objective criterion is impractical in the Indian context and regulatory discretion is not avoidable on very reasonable grounds. Nevertheless, a more streamlined and consistent approach is desirable and not too much to ask especially when the regulator has had the experience and privilege of two complete overhauls of the takeover regime in a span of just two decades!

UPDATES ON SEBI V. SUBRATA ROY & ORS. (IN SUPREME COURT OF INDIA)

By – Navya Benny, Ayushi Singh

Following the Order dated 7th February, 2018, two reports were filed by the Official Liquidator and the Court Receiver. Mr. Darius Kambhatta, who was appearing for the Court Receiver and Official Liquidator, had filed a note for submissions. It was seen that the architect had carved out five parcels of property in the Aamby Valley City and the valuation judgement for the same had been presented before the Judge which had not been opened till date. An advertisement had also been issued which fixed the last date for submitting the bid as 31st May 2018 and the auction to be held on 2nd June 2018.

Mr. Khambatta submitted that the receipt of the bid commenced on 21st May 2018 and ended on 31st May 2018, with a 10-day duration. It was also impressed by him that the court ought to issue directions such that the statutory -rights available to all parcels of land and in the entirety should be made applicable to all pieces of land so that there wouldn't be any difficulty in the sale of land. The maintenance of lands, buildings and villas was another matter stressed upon by him. He submitted that the other villa owners ought to collect money from the lessees on account of maintenance charges and other revenue generation dues as the Court Receiver was unab-

le to collect the amount.

In pursuance of the same, the counsel for the Respondent, Mr. Vikas Singh, requested that an opportunity is to be given to the Respondent to sell portions of the Aamby Valley properties. Although such an offer had been made on a number of occasions, it had never become fruitful. However, it is pertinent to note that such an offer had never been made in respect of the Aamby Valley Project. When inquired, Mr. Shekhar Naphade, who was assisting as the *amicus curiae*, submitted that it would probably be difficult to get out of Hill City Regulations and other statutory provisions and the prospective sale may take quite a long time. He was of the view that there is absolutely no harm in giving a chance to the Respondent.

Mr. Arvind P. Datar, learned senior counsel who was appearing for the SEBI also agreed to this course of action on certain conditions. Mr. Vikas Singh suggested that if the Respondent is allowed to sell certain lands and properties from any one parcel of the property, the Respondent may be able to fetch the money. Adding to this he also said that it can be done under the supervision of the learned Company Judge and Justice A.S. Oka. Mr. Singh further submitted that the Respondent may be allowed to carry out the maintenance and other charges can be collected by the Court Receiver only.

On being questioned, Mr. Khambhatta, learned senior counsel who was appearing for the Court Receiver, submitted that in all possibility, there would be no difficulty if certain lands and properties from any one particular parcel, as have already been identified by the architect and put up on the website, are sold by the Respondent.

This Hon'ble Court therefore decided that the Respondent should be allowed to sell the portions of one particular parcel, which shall be chosen in consultation with the architect, the Official Liquidator and the Court Receiver. The Court further ordered that at the time of the sale, the Official Liquidator and the Court Receiver shall remain present and the money thus collected from the sale shall be deposited in the SEBI Sahara Refund Account. The learned Company Judge and Justice A.S. Oka shall be apprised with the further developments of the same.

The permission for the sale to take place, in the aforesaid manner, is given up to 15th May 2018. It was ordered that bids, pursuant to public notice for auction, are to be submitted between 21st May and 31st May 2018. The Court also decided that depending on the outcome of the permission of sale given to the Respondent, further orders would be passed in this behalf. It was made clear by the Hon'ble Court that if the Respondent fails in attempt or is not able to realize substantial amounts from sale, the auction shall proceed as had been directed earlier. Regarding the maintenance, it was said that the Respondent can start the maintenance and on commencement of maintenance, he can inform the Court Receiver and after this the Court Receiver can collect the amount from the property owners and pay it to the Respondent. The Court took a moment to highlight the fact that when they talked about 'maintenance', it singularly meant maintenance and it had nothing to do with any kind of revenue generation facet.

It was further said that as far as the movable properties are concerned, it is open to the Respondent to make an offer before the learned Company Judge, who shall then make a decision in that regard.

SEBI EASES NORMS FOR FOREIGN PORTFOLIO INVESTMENTS IN INDIA

By – Rohitesh Tak

In an attempt to attract more investment in the securities market, the SEBI through its latest Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2018, has eased the norms for investment by Foreign Portfolio Investors (referred to as the "FPI") in India. These amended regulations could be perceived as part of a systematic plan to provide access to a variety of instruments for investment by foreign entities and individuals. It is expected that the said amended regulations will act as a major boost for increase in liquidity in the Indian market and will also enhance stability.

1. Widening of Eligibility Criteria for FPI

As per the latest amendment, an exception has been added to Regulation 4 (b) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014. According to the amendment, applicants which fall under the Category I of the FPI, as defined in clause (a) of Regulation 5, which mainly includes the Government and Government related investors such as central banks, Governmental agencies sovereign wealth funds and international or multilateral organizations or agencies, will be considered as eligible for registration, if they are a resident in a country as may be approved by the Government of India. This amendment to Regulation 4 (a) has widened the scope of FPI which prior to the amendment was limited to residents of a country whose securities market regulator

was a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding or a signatory to a bilateral Memorandum of Understanding or a signatory to a bilateral Memorandum of Understanding with the Board.

2. Relaxing of Conditions

Prior to the amendment, all the FPI of category I & II & III as defined under Regulation 5 were subjected to various conditions, in order to be eligible for registration. These conditions were that the FPI had:

- To be legally permitted to invest in securities outside the country of its incorporation or establishment or place of business [Regulation 4 (f)];
- To be authorized by its Memorandum of Association and Articles of Association or equivalent document(s) or the agreement to invest on its own behalf or on behalf of its clients [Regulation 4 (g)];
- To be sufficiently experienced, professionally competent, financially sound and to have had a generally good reputation
- Fairness and integrity and [Regulation 4 (h)];
- That the grant of certificate to the FPI should be in the interest of the development of the securities market [Regulation 4 (i)].

With the latest amendment coming into force, all the aforementioned conditions are being done away with for the investors who fall under the category of I & II as defined under Regulation 5 clause (a) & (b).

Therefore, it is evident that the discretion of the board to assess and evaluate the interest regarding the development of the securities market has been curtailed to an extent, if the FPI qualifies to be in I & II as defined under Regulation 5 clause (a) & (b). Furthermore, the said amendment to the regulation has given a boost to those investors who have not established themselves in the market in terms of financial stability, professionalism etc., but are eager to invest money. Moreover, the amendment has also sought to provide relief to those entities which had to frequently amend their Memorandum and Articles of Association in order to meet the conditions under the regulations.

3. 'Broad Based Funds' Criteria

Under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 the term "Broad Based Funds" has been defined under Regulation 5 as a fund that has been established or incorporated outside India, which has at least twenty investors, and with no investor holding more than forty-nine per cent of the shares or units of the fund. However, in the case of a broad based fund having an institutional investor who holds more than forty-nine percent of the shares or units in the fund, then such institutional investor must itself be a broad based fund.

In accordance with the amendment to Regulation 5, a FPI shall be deemed to be broad based, if its institutional investors such as Banks, Sovereign Wealth Funds, Insurance/ Reinsurance companies or Pension Funds, hold more than fifty percent of the shares or units of the fund, either jointly or separately. Furthermore, exit of some investors from a broad based fund will not result in immediate loss of the Category II status of such a fund. Such a fund may regain broad based status within a period of 90 days.

It is discernible that there has been an expansion of the institutional investors in FPI to include Banks, Sovereign Wealth Funds, Insurance/ Reinsurance companies or Pension Funds. Therefore, this will eventually bring down the compliance requirement on behalf of FPIs as they will already be deemed to broad based. Furthermore, the amendment to the regulation seeks to provide a sense of security to FPIs, by rectifying the defect within 90 days if the required threshold of investment by the institutional investor is not met at any time.

4. Conclusion

On the above analysis of the Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2018, it is clear that the approach to lure foreign portfolio investors to invest in the securities market of India is only possible when the rigorous procedures and due diligence requirements are simplified. Therefore, the present amendment seeks to relax certain stringent conditions for registration in a specific category of FPI. However, this has come at the cost of a loss of discretion for SEBI.

THE FRAMEWORK TO CHECK NON-COMPLIANCE OF LISTING RULES

By – Akhil Kumar

Circular dated May 3, 2018

A circular was issued by the Securities and Exchange Board of India (hereinafter SEBI) on November 302015, having CIR/CFD/CMD/12/2015 as its reference number. This circular specified a uniform structure for imposing fines as the first recourse for

non-compliance. The circular also provided for a standard operating procedure for suspension of trading in cases of repetitive non-compliance in accordance with the provisions of the Listing Regulations and the standard operating procedure.

Another circular was issued by SEBI on October 26 2016, having reference number SEBI/HO/CFD/CIR/P/2016/11. This circular primarily focused on the manner of freezing of holdings of the promoter and promoter group of a listed body which failed to pay the fines levied by the stock exchanges. The present circular (dated May 3, 2018) has been issued to streamline the process and maintain consistency with regards to the two abovementioned circulars on the basis of experience gained over the said period.

The circular also consists of two annexures. The circular states that in cases of non-compliance with the Listing Regulations and while following the Standard Operating Procedure (SOP) for revocation of suspension of trading specified securities, action shall be taken in accordance with Annexure I and Annexure II of this circular. Any deviation from these annexures shall be done only after recording reasons in writing.

1. Annexure 1

The depositories, on receipt of information from the respective stock exchange (recognized), shall freeze or unfreeze respectively, the complete shareholding of the promoter and promoter group in such non-compliant listed entity as well as each of the other securities held in the Demat account of the promoter and promoter group. Also, in case of defaulting entity being listed in more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action under this circular upon consultation with each other. According to the provisions of this circular, the SEBI has instructed the registered stock exchanges to impose penalties (Rs. 1000-5000) per day on violation of certain clauses of the listing agreement. Such violation may be with regard to delay in submission or non-submission of documents related to the company's financial and shareholding details.

2. Annexure 2

Annexure II provides for standard operating procedure for moving the scrip to 'Z' Category along with the Standard operating procedure for suspending the trading. It also calls for the freezing of the entire shareholding of the promoter and promoter group along with other securities held in the Demat accounts during the period of suspension. Upon 15 days of suspension, trading in the shares of non-compliant entity may be allowed on 'Trade for Trade' basis, on the first trading day of every week for 6 months. Annexure II also provides for the Standard operating procedure for revocation of suspension of trading also. However, it is only after three months that unfreezing the entire shareholding of the promoter and promoter group in such entity as well as all other securities held in the Demat account of the promoter and promoter group can take place.

3. Implementation

The circular (Annexure I) also mandates the recognized stock exchanges to take necessary steps to implement the provisions of this circular. compliances.

This shall include various details of the different requirements, amount of fine levied, the period of suspension, details regarding the freezing of shares, etc.

It also directs the stock exchanges to take into account specific cases of exemption from compliance under the Listing Regulations/moratorium which has been provided under any Act, or by an order of a Court/Tribunal. If the abovementioned conditions are met, then the recognized stock exchanges may keep the action in abeyance or withdraw the order in the specific cases alone. Para 8 of the circular also states that the provisions of the circular are without any prejudice to the powers of SEBI to take action under the provisions of Securities Laws.

The circular has also advised the recognized stock exchanges to bring into notice, the provisions of this circular to the listed entities. The listed entities in turn shall inform the provisions to their promoter/promoter group. Lastly, the provisions of this circular shall be effective from compliance periods ending on or after September 30, 2018.

CATEGORIZATION & RATIONALIZATION OF MUTUAL FUNDS

By – Manal Shah

At the end of 2017, the Securities and Exchange Board of India (SEBI) brought in some changes in the composition, classification and characteristics of Mutual Funds vide two circulars titled Categorization and Rationalization of Mutual Funds; *first,* Circular SEBI/HO/IMD/DF3/CIR/P/114 dated 6th October, 2017 and, *second,* SEBI circular SEBI/HO/IMD/DF3/CIR/P/26 dated 4th December, 2017. Several Asset Management Companies (AMC) have amended their operations to be compliant,

including changing names and Base Total Expense Ratios (TER), an exercise likely to be completed by 30th June, 2018.

Most AMCs offered different schemes causing an overlap of strategies. This resulted in there being no uniformity in the norms defining these existing categories, which is what the circulars aim to do away with. So far, there were emerging mutual fund schemes which had their respective novel strategies, such as multi-cap, flexi-cap, etc.

The objective of this move is to create uniformity in the characteristics of similar schemes, enhance transparency, ensure that the underlying investment objective is reflected in the fund schemes and finally to offer flexibility to investors in the nature of investments and risk exposure. Pursuant to this, we may see clearly distinct categories being offered by fund houses.

1. Application and Categories

These norms are applicable to: a) all open-ended schemes of existing mutual funds; b) all such schemes for which SEBI has issued final recommendation but are yet to be implemented; c) all open ended-schemes in respect of which draft documents have been filed and d) schemes for which drafts of scheme are yet to be filed.

Five mutual fund categories have been recognized and these are, *firstly,* **Equity Schemes,** which will predominantly invest in Equity and Equity related instruments; *Secondly,* **Debt Schemes,** which will predominantly invest in debt instruments; *thirdly,* **Hybrid Schemes,** which will invest in a mix of equity, debt and other instruments; *fourthly,* **Solution Oriented Schemes**, such as retirement/children savings schemes (with lock in periods of prescribed five years) and *fifthly,* **Other schemes,** which will include ETFs, Fund-of-Funds and Index Funds.

a) <u>Equity Schemes</u>

The circular recognizes ten sub-categories of Equity Schemes. Schemes wherein 65% of total assets are invested in equity and equity related instruments (across large cap, mid cap and small cap stocks) shall be **Multi Cap Funds**. The top 100 companies of the underlying benchmark would be **Large Cap Funds**, while **Large and Mid-Cap Fund** are recognized as having invested a minimum of 35% of their total assets in equity related instruments of large and mid-cap stocks respectively. A **Mid Cap Fund** on the other hand will be the 101st to 250th companies. Similarly, a **Small Cap Fund** will require 65% of their total assets invested in small cap companies. A **Dividend Yield** shall require a minimum investment of 65% in equity, predominantly investing in dividend yielding stocks. A **Value Fund** should follow a value investment strategy, investing minimum 65% of total assets in equity and related instruments. A Contrarian Fund has been recognized, which should follow a contrarian investment strategy while maintaining a minimum 65% investment in equity and related instruments. A **Focused Fund** shall focus on the number of stocks (max. 30) with similar minimum requirements. A **Sectoral Thematic Fund** shall have minimum investment of 80% in equity and equity related instruments of a particular sector/particular theme. Finally, **ELSS** requires a minimum of 80% invested in accordance with the Equity Linked Saving Scheme, 2005.

b) <u>Debt Schemes</u>

Sixteen sub-categories of debt schemes are recognized. An **Overnight Fund** invests in overnight securities with a day's maturity. A **Liquid Fund** invests in Debt and Money market securities with 91-day maturity. An **Ultra Short Duration Fund** invests in debt & money market instruments such that the Macaulay duration is between three to six months, whereas **Low Duration Funds**, shall have a portfolio with a duration of six to nine months. A **Money Market Fund** invests in instruments having maturity of up to one year. **Short Duration**, **Medium Duration**, **Medium to Long Duration Fund** and **Long Duration Funds** shall invest in Debt and Money Market instruments such that the Macaulay duration of the portfolio is between one to three years, three to four years, four to seven years and greater than seven years. A **Dynamic Bond** would be one which invests across durations. **Corporate Bond Funds** have to have a minimum investment of 80% in Corporate Bonds whereas **Credit Risk Funds** have to have a minimum of 65% investment in Corporate Bonds. A **Banking and PSU Fund** shall invest a minimum of 80% in debt instruments of banks, PSUs and public financial institutions. **Gilt Funds** will hold at least 80% investment in G-secs. A **Gilt Fund with 10year duration** is also recognized. Finally, **Floater Funds** must have at least 65% of total assets invested in floating rate instruments.

c) <u>Hybrid Schemes</u>

Six Hybrid Schemes are recognized such as **Conservative Hybrid Funds** investing predominantly in debt instruments**; Balanced** and **Aggressive Hybrid Funds** invest in equity & debt instruments and equity respectively**,** while Dynamic Asset Allocation/Balanced Advantage and Multi Asset Allocation invest in three different asset classes.

Arbitrage Funds invest in arbitrage opportunities and Equity Savings invest in equity arbitrage debt.

2. Consequences

The outcome of this restructuring process could have an impact on ratings of the Funds as where the change is major, historical returns of the fund will become irrelevant. The result is also going to stop the use of deceptive terms such as Opportunities and Prudence in Fund names. Funds have to include investment mandate, the benchmark rules have been strengthened and investment strategy disclosures of each fund are made robust.

This move is likely to ease the comparison of mutual fund schemes for investors. Even though most AMCs are permitting shuffles without exit load, investors might have to bear tax burdens. Besides, the fund managers may have to reshuffle scheme portfolios every six months, which will increase the costs and impact returns. In another compliance, every six months, fund managers are required to reshuffle portfolios based on investment categorization (large, mid and small) published by the Association of Mutual Funds in India.

All in all, this is a positive attempt and the results may be evident in the latter leg of 2018.

NEW AMENDMENTS IN THE CREDIT RATING AGENCIES REGULATIONS, 1999

By – Utkarsh Jhingan

A credit rating agency is a company that rates debtors on the basis of their capability to pay back their interests and loan amount on time and the probability of them attempting to evade payments. These agencies also evaluate the creditworthiness of debt issuers. In practice, these companies provide credit ratings to organisations and not to individuals. Further the Credit Rating Agencies Regulations, 1999 empower SEBI to regulate these agencies operating in India.

Securities and Exchange Board of India (**SEBI**) in its board meeting held on December 282017, took numerous decisions on prospective proposals, the most important being restricting the credit rating agencies (**CRA's**)from consolidating their shareholding among each other. The amendments to regulation by SEBI on CRA's will raise industry standards and deepen the corporate bond in market.

1. Content of the Decisions

SEBI imposed a 10 percent cap on cross- shareholding of CRA's i.e. it prohibits (a) CRA's and (b) shareholders already holding 10% or more shares or voting rights in a CRA, from holding 10% or more shares or voting rights in any other CRA. Further SEBI's prior approval would be required for acquisition of shares or voting rights that result in change in control. Shareholdings by pension schemes and insurance schemes are excused from this restriction. This step will ensure independence of each of the registered CRA's and prevent control of multiple CRA's by a limited number of people.

SEBI approved the increase of the minimum net worth requirement of CRA's from 50,000,000 INR to 250,000,000 INR. The purpose behind this is to discourage entities from seeking registration as a CRA and inappropriately affecting the quality due to poor competition. Moreover, the cost of capital associated with this requirement will be passed on to the investor. This would also check the nuisance of 'rating shopping' and 'pick and choose'. The promoter of a CRA would have to maintain a minimum 26% shareholding in the CRA for a minimum period of three years.

The amendment will permit the CRA to withdraw the ratings. This withdrawal of ratings is subject to the CRA having rated the instrument continuously for a stipulated period of time and the manner specified by SEBI. Furthermore, any activity other than rating of financial instruments, should branch out into a separate entity from the CRA. Alternative activities undertaken by CRAs may create inbuilt conflicts of interest with the core activity. However, 'Chinese' walls' might be sufficient to deal with this concern rather than establishing a separate legal entity.

In the recent amendment SEBI promotes the enhanced disclosure framework. The agencies should disclose annual consolidated financial results and a statement of profit and loss on a quarterly and yearly basis and statement of assets and liabilities/balance sheet on a half yearly basis.

2. Conclusion

The new amendments in the Credit Rating Agencies Regulations, 1999 will raise the industry standards and will deepen the corporate relationship in India. Further increasing transparency through greater disclosures by issuers of listed debt will enhance investor confidence

decisions. The higher net worth requirement will encourage the CRAs to invest in intellectual capital and build quality infrastructure. The enhanced disclosure by issuers will increase transparency and assist CRAs and debt market investors in closely monitoring the performance of issuers.

SEBI BOARD MEETING – 28TH MARCH 2018 (SUMMARY)

By – Animesh Pandey

The SEBI had a board meeting in Mumbai on 28th March 2018. The following are the various decisions and observations made in the same.

1. Resolution on the suggestions of the Kotak Panel on Corporate Governance

The Board on consensus approved several recommendations of the Kotak Panel without any modification, including reducing the limit on number of directors for listed companies. The reduction in number is planned to be done in phases, i.e., from 10 to 8 by 1 April 2019 and to 7 by 1 April 2020. They also adopted an expanded eligibility criterion for independent directors, as well as other recommendations on the role of the Nomination and Remuneration Committee, Audit Committee, Risk Management Committee, Disclosure of utilization of funds from QIP/preferential issue, Revelation of reasons for resignation of the auditors, audit fee, auditor credentials, etc.

Other proposals of the Panel which were accepted without modification include the requirement to disclose Auditors skills, along with level up disclosure of RPTs and the related parties were given permission to vote against RPTs. Additionally, they approved compulsory disclosure of consolidated quarterly results for the 2019-2020 Financial Year onwards. Also, the increased level of obligation of listed entities with respect to subsidiaries and secretarial audit of mandatory listed entities and their material unlisted subsidiaries under SEBI LODR regulations were also accepted.

Apart from these proposed recommendations of the Panel some of the recommendations were accepted with some modification including having a minimum of 6 directors in the top 1000 listed entities by market capitalization by 1 April 2019 and in the top 2000 listed entities by 1 April 2020; At least one free standing woman director in the top 500 listed entities by 1 April 2020; Quorum for board meetings was adjusted to 1/3rd size of the board or 3 members, whichever is higher. AGMs are to be held within 5 months in the top 100 entities and webcast of the AGM will be compulsory from 2018-2019.

Finally, some of the recommendation were referred to various agencies which include the government, regulators, professional bodies etc.

2. Algo Trading Restrictions

Another topic that was discussed was strengthening the Algorithmic Trading Framework and the board, after discussion, approved several changes. It introduced a shared co-location service which would reduce the cost of trading members who wish to operate from a co-location service facility.

Exchanges are to provide tick-by-tick data feeds to all traders free of cost subject to trading members creating requisite infrastructure for receiving and processing the same.

Under the penalty framework for Order to Trade Ratio (OTR), penalties will be levied on Algo orders that are placed beyond +/- 0.75% of the LTP. Further the equity cash segment and orders placed under LES will also be under OTR.

In addition to all this the stock exchange will allot a unique identifier to each algorithm approved and each order generated by that algorithm would carry the unique identifier with it, for establishing an audit trail and to ensure better surveillance of Algo Trading. The Stock Exchange would publish maximum, mean, and minimum latencies in addition to current disclosure of latencies at the 50th and 99th percentile to ensure greater transparency.

The stock exchange also agreed to provide simulated market environments for testing of software which includes algorithms. This facility would be provided by stock exchange over and beyond the current framework of mock trading.

3. Equity Derivative Market

SEBI took cognizance of two papers which were titled 'Growth and Development of Equity Derivatives Market in India' and 'Physical Settlement in stock derivatives', public comments and the recommendations made by SMAC for the purpose of rationalizing and strengthening of equity derivative market.

For the facilitation of greater alignment of cash and a derivative market, a stage wise procedure for the physical settlement of stock derivatives will be followed.

They decided to strengthen and update the existing criteria for the instigation of the stocks into a derivative segment since the last revision of the criteria was done in 2012. Similarly, the prevailing criteria would be revised upwards for the market wide position limit and median quarter sigma order size. An additional criterion of median daily 'deliverable' value in cash market of Rs 10 crore is also prescribed.

The stocks that are not able to meet any of the enhanced criteria but are in derivatives will be physically settled, and the stocks which are able to meet enhanced criteria and are in derivative will be cash settled. To bespeak global initiatives on product suitability, the members have approved a framework according to which individual investors could freely take on exposure in the market up to an assessed level based on their disclosed income as per their ITR.

4. Mutual Funds part of Go Green Initiative

The board has given its consent to dispense with the requirement of publication of the daily NAV, publication of sale/repurchase prices in the newspaper and of sending physical copies of scheme annual reports or abridged summaries to all investors whose email ID is not available. They also dispensed of the requirement of sending statement of scheme portfolios on a half- yearly basis to the unit holders. This step is taken because of the ongoing digitization of the entire process, and thus the above-mentioned details are now to be published on AMFI and Mutual Funds sites.

(The board discussed total of 12 points during the meeting but the author has restricted himself to the above mentioned 5 decisions only.)

MONITORING OF FOREIGN INVESTMENT LIMITS IN LISTED INDIAN COMPANIES

By – Abhijeet Singh Thakur

The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) notified a circular in furtherance of their powers conferred under Section 11(1) of the SEBI Act, 1992 and in consultation with the Reserve Bank of India (RBI). The circular lays down a new system for monitoring foreign investment limits in order to facilitate compliance with multifarious foreign investment in listed companies. By virtue of the act, infrastructure and IT systems shall be established for monitoring the entire mechanism of depositories which includes the National Depository Limited (NSDL) and Central Depository Services Limited (CSDL) and also major stock exchanges i.e. Bombay Stock Exchange (BSE), National Stock Exchange (NSE) and Metropolitan Stock Exchange (MSEI) for spreading available information.

1. Detailed Analysis

a) Supervision under the Circulation

The Foreign Exchange Management Act,1999(**FEMA**) prescribes various foreign investment limits in the listed companies. These limits are currently monitored by the Reserve Bank of India (RBI).

b) Framework of the new system

The system shall be implemented and housed at NSDL and CSDL. A company shall appoint any one of the depositories as its designated depository, which will monitor the foreign investment limits for that company. Furthermore, by virtue of the circulation, the stock exchanges i.e. BSE, NSE and MSEI shall provide data on the paid-up equity capital of an Indian company on a fully diluted basis to the designated depositories. The depositories shall provide an interface to the company to provide necessary information to its designated depository, such as the company identification number (CIN), name, date of incorporation, pan number, details of shares held by FPI, NRIs and other foreign investors on a repatriable basis, in Demat as well as in physical form. Details of the Demat accounts of Indian companies making indirect foreign investments shall be stored in a Company Master database. If required, additional information can be requested from the company for monitoring the foreign investment limits. Further, in the event of any change in any details pertaining to the company, the company shall intimate the designated depositories regarding such changes.

c) Reporting of trades

The reporting of confirmed trades of FPI clients by the custodian of depositories on a T+1 basis shall continue. For Non-Resident Indian (NRI) and Authorized dealers (AD) banks shall report the transaction of their NRI clients to the depositories.

d) Activation of red flag alert

The system shall calculate the percentage of FPI/NRI holdings/total foreign investments in a company and the investment headroom available at the end of the day w.r.t to the aggregate FPI/NRI investment/ sectoral cap of the company.

If the available headroom is within 3% or less than 3%

or less than 3% of the aggregate FPI/NRI limits or the sectoral cap, a "red flag" shall be activated. Thereafter the depositories and the exchanges shall display the available shares, for all companies against which the red flag has been activated on their, on their respective websites, on a daily basis.

The data on the available headroom shall be updated daily, on an end-of-day basis, as long as the red flag remains activated.

e) Breach of foreign investment limits

The circular further states that once the aggregate FPI/NRI investment limits or the sectoral for a given company has been breached, the depositaries shall inform the exchange about the breach. The exchange shall issue circulars/public notifications on their website and shall halt all further purchases by:

-FPI, if the aggregate FPI limit is breached;

-NRIs, if the aggregate NRI limit is breached;

- All foreign investors, if the sectoral cap is breached. In the event of a breach, the relevant foreign investors shall divest their excess holdings within five trading days from the date of settlement of the trades by selling shares to only domestic investors.

f) Method of disinvestment

A proportionate disinvestment methodology shall be followed for the disinvestment of excess shares. In this method, the disinvestment of the breached quantity shall be uniformly spread across all foreign investors /FPIs/NRIs who are net buyers of the shares in the company on the day of the breach. FPIs/NRIs who are required to disinvest shall be identified and informed through the custodian's/Ad banks respectively. The depositories shall utilize the FPI trade data provided by the custodians and post custodial confirmation on the T+1 day, where T is the trade date. The breach of investment limits (if any) shall be detected at the end of T+1 day, and therefore, the announcement pertaining to the breach shall be made at the end of the T+1 day.

If the foreign shareholding in a company falls within the permissible limit during the time period for disinvestment on account of sale by other FPIs, the original which would have been advised to disinvest on account of sale by others FPI or other group of FPIs, which have been advised to disinvest, would still have to do so within the disinvestment time period, irrespective of the fresh availability of investment headroom during the disinvestment time period. There shall be no annulment of trades that have been executed and are in breach of the sectoral caps/aggregate FPI/ NRI limits.

g) Consequences of failure

If the breach has taken on account of FPIs that have failed to disinvestment as above, necessary action shall be taken by SEBI against such FPI's. The circular primarily codifies the process of monitoring foreign investment limits. The process prescribed is broadly similar to the current process, with certain modifications. More importantly, the circular provides a method for disinvestment in the event of breach of limits. With necessary infrastructure and the new system, monitoring of foreign investment limits in listed Indian Companies is expected to be more efficient.

SECURITIES NEWS UPDATE

March 08, 2018

IMD/FPIC/CIR/P/2018/46

In accordance with the Reserve Bank of India's Statement on Developmental and Regulatory Policies, released on August 02, 2017, which propose to allocate a separate limit of INR 5,000 crore to Foreign Portfolio Investors (FPIs) for taking long position in Interest Rate Futures (IRFs), SEBI allocates a separate limit of INR 5,000 crore to Foreign Portfolio Investors for taking long position in Interest Rate Futures.

March 13, 2018

CIR/IMD/FPIC/47/2018

In view of the queries from the stakeholders on 'Easing of Access Norms for investments by Foreign Portfolio Investors (FPIs)', SEBI issued clarifications in respect of investment by certain category II FPIs that private banks who invest on behalf of their clients have to collect proper KYC details from investors. However, this route cannot be used by Indian citizens or non-resident Indians.

March 14, 2018

CIR/CDMRD/DCE/CIR/P/2018/49

SEBI clarified that the unutilized IPF income accruing during a specific financial year can be carried forward to the next financial year.

CIR/CDMRD/DCE/CIR/P/2018/48

As per the clarifications issued pertaining to Investor Grievance Redressal System and Arbitration Mechanism the National Commodity Derivative Exchanges shall provide training of at least one day to every arbitrator each year and the additional fees payable by members who file their claim beyond the prescribed timelines shall be non-refundable even if the arbitration award goes in favour of the member.

March 20, 2018

SEBI/HO/CDMRD/DRMP/CIR/P/2018/51

SEBI directed exchanges to provide spread benefit in initial margin across futures contracts in a commodity complex if conditions such as : Minimum coefficient of correlation (r) between futures prices of the commodity is 0.90.; Back testing for adequacy of spread margin to cover MTM has been carried out for a minimum period of 1 year; Initial margin after the spread benefit has been able to cover MTM on at least 99% of the days as per the back testing are met.

SEBI/HO/CDMRD/DRMP/CIR/P/2018/52

SEBI decided to streamline norms related to base minimum capital and liquid networth formembers of clearing corporations in commodity derivatives with those applicable for clearing members in equity and currency derivatives.

IMD/ FPIC/CIR/P/2018/53

As per the circular the Reporting Financial Institutions (RFIs) are advised to obtain valid self-certifications/FATCA and CRS declaration forms with documentary evidence and to certify the same to SEBI on an annual basis as well as to create a process/system to capture and validate the information collected through valid FATCA/ CRS declaration forms. Further, the Designated Depository Participants (DDPs) should grantregistration to a foreign Portfolio Investor (FPI) only after obtaining valid self-certification/FATCA/CRS declaration forms.

March 22, 2018

SEBI/HO/MIRSD/DOP1/CIR/P/2018/54

To further strengthen regulatory provisions against un-authorized trades and also to harmonize the requirements across markets, SEBI has decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order.

March 26, 2018

SEBI/HO/CDMRD/DMP/CIR/P/2018/55

SEBI decided to permit Liquidity Enhancement Schemes (LES) in commodity derivative contracts. Sensitive commodities, however, will not be eligible for LES. If there is at least one exchange where the average daily turnover in Options or/and Futures on similar underlying commodity is more than or equal to INR 200 crore for agricultural and agri-processed commodity, and INR 1000 crore for non-agricultural commodity during the last six months, then no other exchange is eligible to launch LES on the same derivative product, unless the exchange where the product is liquid, has itself also launched a LES on the said product.

March 28, 2018

CIR/DDHS/P/59/2018

SEBI issued clarifications with respect to circular on “Specifications related to International Securities Identification Number (ISINs) for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008”.

April 03, 2018

SEBI/HO/CDMRD/DRMP/CIR/P/2018/60

As per the September 27, 2016 circular, SEBI had issued broad guidelines on Algorithmic Trading for National Commodity Derivatives Exchange. The circular required exchanges to place a limit on the number of Orders per second from a particular CTCL ID/ATS User ID to twenty orders per second and to impose disincentives for Orders exceeding twenty per second.

April 05, 2018

IMD/FPIC/CIR/P/2018/61

SEBI, in consultation with RBI has decided to put in place a new system of monitoring the foreign investment limits. The depositories, NSDL and CDSL shall then put in place the necessary infrastructure and IT systems for operationalizing the monitoring mechanisms.

April 09, 2018

SEBI/HO/MRD/DP/CIR/P/2018/62

SEBI has put in place broad guidelines for algorithmic trading in the securities market and also for ensuring fair and equitable access to the Co - location / proximity hosting facility offered by Stock Exchanges. In order to address the concerns relating to algorithmic trading and colocation / proximity hosting facility offered by stock exchanges and to provide a level playing field between Algorithmic/ Co-located trading and manual trading it has been decided to introduce several measures in connection with algorithmic trading and co-location / proximity hosting framework facility offered by stock exchanges.

April 10, 2018

SEBI/HO/MRD/DP/CIR/P/2018/62

SEBI has tightened Know Your Customer (KYC) rules for foreign investors. It has set stiffer rules for Foreign Portfolio Investors (FPIs) from ‘high risk’ jurisdictions and also from People of Indian Origin (PIOs) who control an FPI.

April 11, 2018

SEBI/HO/MRD/DP/CIR/P/2018/67

In order to market integrity and provide better alignment of cash and derivatives segment, SEBI has come up with various measures were decided to be undertaken. It has been decided that physical settlement of stock derivatives shall be made mandatory in a phased/calibrated manner.

April 12, 2018

SEBI/HO/IMD/DF3/CIR/P/2018/69

In order to standardize the disclosure of performance of schemes post-merger, the issue was discussed in Mutual Fund Advisory Committee. Based on this, certain guidelines were adopted.

SEBI/IMD/FPIC/CIR/P/2018/70

SEBI has issued circulars regarding allocation and monitoring of FPI debt investments limits in Government securities. In accordance with this, it has been decided to revise the CDIL and the limit for investment by FPIs in Government Securities and State Development Loans (SDL), for the Financial Year 2018-19.

April 13, 2018

SEBI/HO/DDHS/DDHS/CIR/P/2018/71

SEBI has released guidelines for issuance of debt securities by REITs and InvITs, wherein they need a registered debenture trustee, along with financial disclosure to the stock exchanges. For issuance of debt securities, the REIT (Real Estate Investment Trusts) or InvIT (Infrastructure Investment Trusts) shall appoint one or more debenture trustee registered with SEBI.

April 17, 2018

SEBI/HO/MIRSD/DOSR1/CIR/P/2018/00000000 72

SEBI (STP Centralised Hub and STP Service Providers) Guidelines issued circular to regulate the services and infrastructure setup in respect of Straight Through Processing (STP). The Board amended clause 3 sub clause 2 of the Guidelines by inserting the following: "whether the applicant is a fit and proper person based on the criteria specified in Schedule II of SEBI (Intermediaries) Regulations, 2008".

April 20, 2018

SEBI/HO/MIRSD/DOP1/CIR/P/2018/73

SEBI constituted a Committee on "Strengthening the Guidelines and Raising Industry Standards for RTAs" which included representatives from RTAs, Issuer Companies, Depositories and Bankers to Issue to suggest Guidelines to streamline and strengthen the procedures and processes with regard to handling and maintenance of records, transfer of securities and payment of dividend/ interest/ redemption by the issuer Companies and Bankers to Issue.

April 27, 2018

IMD/FPIC/CIR/P/2018/61

SEBI, via Circular No. IMD/FPIC/CIR/P/2018/61, dated April 5, 2018, introduced a new system of Monitoring of foreign investment limits in listed Indian Companies and prescribed Guidelines with respect to the necessary infrastructure, data to be provided by the listed Indian Companies and other related matters. With regard to this, it has been decided that the deadline for the companies to provide the necessary data to the depositories has been extended to May 15, 2018.

May 02, 2018

SEBI/HO/MRD/DRMNP/CIR/P/2018/75

SEBI issued a circular comprising of a list of additional risk management measures required to be complied with and implemented by the stock exchanges/clearing corporations for derivatives segment.

May 03,2018

SEBI/HO/CFD/CMD/CIR/P/2018/77

SEBI came up with a circular regarding the procedure to be followed on non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of specified securities.

May 04, 2018

SEBI/HO/MRD/DRMNP/CIR/78

SEBI issued a circular by which, pursuant to the approval of the SEBI, Stock Exchanges have been permitted to trade commodity derivatives along with other segments of securities market which will be effective from October 01, 2018. This was done mainly with a view to enable integration of trading of various segments of securities market at the level of exchanges.

May 10, 2018

SEBI/HO/CFD/CMD/CIR/P/2018/79

SEBI issued a circular for implementation of certain recommendations of the Committee on Corporate Governance under the Chairmanship of Shri Uday Kotak, most of which have been made in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide notification dated May 9,2018.

May 21, 2018

SEBI/HO/MRD/DRMNP/CIR/P/2018/82

SEBI issued a circular allowing investment of own funds (excluding funds lying in Core Settlement Guarantee Fund) by Clearing Corporations in International Financial Services Centre (IFSC) in AAA rated Foreign Sovereign Securities. However, the investment shall not exceed a limit of 10% of the total investible resources.

May 24, 2018

SEBI/HO/MRD/DRMNP/CIR/P/2018/83

The SEBI with a view to further facilitate ease of market access for foreign investors in IFSC and based on feedback received from market participants, decided to permit Segregated Nominee Account Structure in IFSC wherein orders of foreign investors may be routed through eligible Segregated Nominee Account Providers for trading on stock exchanges in IFSC while adhering to regulatory requirements relating to identification of end-client, Unique Client Code, order placement at client level, client level margining and position limits.

May 28, 2018

SEBI/HO/CFD/DCR1/CIR/P/2018/85

SEBI proposed the implementation of the next phase of the System-driven Disclosures in Securities Market which was initially introduced according to SEBI circular dated December 1, 2015.

May 30, 2018

SEBI/ HO/ MIRSD/ DOP2/CIR/P/2018/86

SEBI issued a circular related to the Enhanced Disclosure and Transparency Norms for Credit Rating Agencies and certain guidelines are issued.

Jun 01, 2018

Regulations No. SEBI/LAD-NRO/GN/2018/19

SEBI released Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2018 to further amend the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

Regulations No. SEBI/LAD-NRO/GN/2018/20

SEBI released Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018 to further amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Regulations No. SEBI/LAD-NRO/GN/2018/23

SEBI released Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2018 to further amend the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009.

Regulations No. SEBI/LAD-NRO/GN/2018/22

SEBI released Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2018 to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

Jun 05, 2018

SEBI/HO/IMD/DF2/CIR/P/2018/91

The SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2018/18 dated February 05, 2018 on 'Total Expense Ratio – Change and Disclosure', was modified. This came into effect immediately.

SEBI/HI/IMD/DF2/CIR/P/2018/92

Circular on Go Green Initiative in Mutual Funds was made in order to bring cost effectiveness in disclosing and providing information to unitholders and as a green initiative measure.

SEBI/HO/DDHS/DDHS/CIR/P/2018/89

SEBI issued detailed Guidelines for Preferential Issue of Units by Infrastructure Investment Trusts (InvITs).

Jun 06, 2018

SEBI/HO/MIRSD/DOP2/CIR/P/2018/95

SEBI made amendment to Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

Jun 08, 2018

Regulations No. SEBI/LAD-NRO/GN/2018/24

The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2018 was made to further amend the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Prior to this, the Third Amendment Regulations were released on June 01, 2018 vide Regulations No. SEBI/LAD-NRO/GN/2018/21.

Regulations No. SEBI/LAD-NRO/GN/2018/25

The SEBI (Registrars to an Issue and Share Transfer Agents) (Amendment) Regulations 2018 was made to further amend the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993.

SEBI/HO/CDMARD/DMP/CIR/P/2018

After due consultation with various stakeholders and on the basis of recommendations of CDAC (Commodity Derivatives Advisory Committee), SEBI vide its circular No. CDMRD/DMP/CIR/P/2017/84 dated July 25, 2017 had prescribed a principle-based methodology for revising the commodity-wise numerical value of overall client level open position limits for agricultural commodities with reference to the 'deliverable supply' of the such commodities available in the country during a financial year. Further the agricultural commodities have been classified into three categories viz. sensitive, broad and narrow.

Jun 11, 2018

Regulations No. SEBI/LE/5/93

In exercise of the power conferred by section 30 of the Securities & Exchange Board of India Act, 1992 (15 of 1992), SEBI has, with previous approval of the Central Government, made the "Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993.

Jun 12, 2018

PR No. 17/2018

SEBI has constituted a group to look into the existing Institutional Trading Platform (ITP) framework and suggest measures to facilitate listing of start-ups primarily with the objectives of (a) reviewing the need for present ITP framework in the current context, (b) revisiting the current ITP framework and identify the areas, if any, which require further changes, and (c) any other issues relevant to ITP which the group may like to assess.

PR No. 16/2018

SEBI has constituted an Expert Committee, of 9 members, to look into the aspect of facilitating companies incorporated in India to directly list their equity share capital abroad and vice versa. Presently, it is not permitted. Companies incorporated in India can today list their debt securities on international exchanges (Masala Bonds) but their equity share capital can be listed abroad only through the ADR / GDR route. Similarly, companies incorporated outside India can access the Indian capital markets only through the IDR route.

Regulations – S.O. 856 (E).

SEBI has declared the new "Securities and Exchange Board of India (Mutual Funds) Regulations, 1996" in exercise of the power conferred by section 30, r/w Cl. (c) of sub-section (2) of section 11 of the Securities & Exchange Board of India Act, 1992 (15 of 1992).

Also, SEBI has made & declared the new "Securities and Exchange Board of India (Employees' Service) Regulations, 2001" defining the terms and conditions of service of its employees.

Jun 15, 2018

Circular No. IMD/FPIC/CIR/P/2018/101

SEBI decided to withdraw minimum residual maturity restriction of three years for investment by FPIs in G-Secs & SDLs. Further, the auction process being carried out by BSE/NSE shall be discontinued from the date of this circular. The overall monitoring of G-Secs/ SDLs will be done by Clearing Corporation of India Ltd. (CCIL).

Jun 26, 2018

SEBI/LAD-NRO/GN/2018/26

Regulations to further amend the Securities and Exchange Board of India (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008 were released by SEBI in exercise of the powers conferred by section 31 read with section 17A of the Securities Contracts (Regulation) Act, 1956 and section 30 read with sections 11 and 12 of the Securities and Exchange Board of India Act, 1992.

July 03, 2018

SEBI/HO/IMD/DF1/CIR/P/2018/103/2018

SEBI issued a circular on Overseas Investment by Alternative Investment Funds (AIFs) / Venture Capital Funds (VCFs), whereby it has decided to enhance the overseas investment through AIFs and VCFS to the extent of USD 750 million from earlier USD 500 million. Further, AIFs/ VCFs shall mandatorily disclose the utilization of the overseas limit as well as the unutilized overseas limits to the SEBI.

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July 05, 2018

CIR/MRD/DoP-1/P/00108/2018

In the Circular which deals with Review of Adjustment of corporate actions for Stock Options, SEBI declared that the adjustment in strike price shall be carried out in Dividends declared at and above 5% of the market value of the underlying stock or in all cases of dividends, where the listed entity has sought exemption from the timeline prescribed under the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

July 11, 2018

SEBI/HO/CDMRD/DRMP/CIR/P/2018/111

SEBI specified that Clearing Corporations clearing commodity derivatives transactions shall comply with the norms related to Core Settlement Guarantee Fund, default waterfall, stress testing, back testing etc. In addition, the minimum threshold value of MRC for commodity derivatives segment of any stock exchange shall be INR 10 Crores.

July 12, 2018

SEBI/HO/MIRSD/DOP/CIR/P/2018/113

SEBI directed that Stock Brokers shall not accept cash from their clients either directly or by way of cash deposit to the bank account of stock broker and accordingly modified paragraph 3 of the SEBI circular dated August 27, 2003.

July 13, 2018

IMD/FPIC/CIR/P/2018/114

SEBI issued a circular for Investment by foreign portfolio investors (FPI) through primary market issuances for compliance with Regulation 21(7), 23(3) of SEBI (Foreign portfolio investors) Regulations, 2014.

July 16, 2018

SEBI/HO/MIRSD/DOS3/CIR/P/2018/115

SEBI issued clarification on Strengthening the Guidelines and Raising Industry standards for RTAs, Issuer Companies and Banker to an Issue. The timeline for sending the initial letter by Registered and Speed post to physical shareholders was extended to September 30, 2018 to enable companies to send the initial letter along with Annual Reports/notice of AGM. Subsequently, two reminders maybe sent by other modes including ordinary post/courier.

SPECIAL INTERVIEW WITH MR. MURTAZA ZOOMKAWALA

About the author

Murtaza Zoomkawala is a 2014 BBA LLB graduate from Symbiosis Law School, Pune. He holds a diploma in corporate mergers and acquisitions, human rights jurisprudence and cyber law. Murtaza is currently a senior associate at Shardul Amarchand Mangaldas & Co., where he focuses on securities laws including mergers and acquisitions; equity and debt securities offerings; and corporate structuring for listed entities. He is also the founder of Mumbai based NGO, The Little League, which works with underprivileged children in urban areas.

1. **Discuss the evolving regulatory regime of securities laws in India in connection with our capital markets.**

The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations 2009") replaced the erstwhile Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000, with the intention of bringing clarity and resolving identified lacunae in securities and investor protection laws.

The ICDR Regulations 2009 regulates the issue of equity and other convertible securities of a company to its shareholders, the public and institutional investors through primary and secondary market transactions. Over the years,

numerous amendments to the ICDR Regulations 2009 coupled with multiple SEBI notifications and issue-specific SEBI observations highlighted the need for a set of more evolved guidelines, which would encompass all of the changes over time. The sanctity of the regulations was further compromised by their dependence on SEBI's informal guidance and observations, which constitutes an indicative viewpoint and not a binding interpretation.

Accordingly, to provide these guidelines with a statutory backing, SEBI, at a recent board meeting held on June 21, 2018 approved the proposed Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations 2018"), which are expected to come into effect later this year. The ICDR Regulations 2018 attempts to streamline the framework for public and other issues by removing antiquated stipulations, introducing market-driven procedures and simplifying the legislation.

The Issue of Capital and Disclosure Requirements committee ("ICDR Committee"), which was set up to draft the ICDR Regulations 2018, has endeavored to identify policy changes in line with present market practices and the prevailing regulatory environment. The suggestions of the ICDR committee were also taken to the Primary Markets Advisory Committee of SEBI which comprises representatives of the Ministry of Finance, industry market participants, academicians, members of the Institute of Chartered Accountants of India and members of the Institute of Company Secretaries of India. Subsequently, the market regulator, paying heed to the importance of ICDR Regulations 2018, invited public comments on the draft regulations. Typically, the nature of issues faced in transactions, both procedural and technical, are different for different stakeholders. While the primary concern of the regulator is to ensure investor protection, the experience of the stakeholders is of paramount importance while framing the regulations as ironing out anomalies in the law faced by stakeholders results in the ease of conducting business in India.

2. **You recently set up an NGO that works for underprivileged children in urban areas. Tell us about that journey and how managed time between working with a law firm and starting up.**

The Little League (TLL), is a Mumbai-based not-for-profit organisation that works for underprivileged children across the city. As a concept, TLL tries to create a structure similar to the IPL and EPL, where team owners (essentially companies with a large employee base) adopt and administer a football team of underprivileged children, in their localities, for the duration of a season.

Not only has TLL been a fantastic learning experience for me, but it has also been a wonderful outlet to transpose certain skills that I acquired as a practicing lawyer. A lot of the advice provided while counselling clients on various business affairs could be adopted practically. While managing time between work and starting up was indeed challenging; complete support from my team at work and effective time management has made it a fulfilling journey.

3. **What made you to choose law and how was your experience as a law student?**

I enrolled to study law because I was curious to understand the rules that govern our society, why they were formulated and how they have evolved over time. For me, the study of law was not really driven by a choice of career. I believe that it is important for all of us to be conversant with the rules that govern our life, regardless of the sphere in which we finally end up working.

My time at law school was a great learning experience, both academically as well as personally. I endeavored to procure an internship at every possible opportunity, experimenting between the different practice areas before finally finding my feet at a law firm. Once I was certain that I wanted to work with a law firm after graduating, I spent my final year as a paralegal, which escalated what was perhaps the steepest learning curve in my short career. Separately, Pune, being a 'student city', attracts a plethora of students from every state in India. Interacting with fellow students and learning about the diversities within our own country was indeed my biggest take-away from law school. As a corporate lawyer, those experiences and relationships are still immensely valuable while working with clients from across the nation.

4. **Do you feel that extra-curricular activities like mooting, debating and sports help in actual legal practice?**

While there may not be a tangible nexus between extra-curricular activities and actual legal practice (particularly as a corporate lawyer), I believe that each of these activities helps personal development in more than one way. For instance, mooting teaches you a myriad of skills such as research, oration, body language, etc. Public speaking instils a lot of confidence which will stand you in good stead while practicing (both litigation and corporate law). Sports, amongst other things, brings out the competitive edge in you and teaches you to be a team player, which again, is very useful in the legal profession.

5. **What would you like to advise the young students, regarding preparing their CV's for seeking a job at law firms?**

Customize your resume to include information specific to the job you're applying for. Reflect on your target audience. Are you writing to a law firm, an independent counsel, a corporate house or a judge? Find out as much as you can about the types of projects in which you would be involved if hired. Understanding the job profile is key. Based on that information, determine which skills you should highlight. For example, are your drafting and research skills most important, or your diligence, communication and negotiation skills? You may choose to have a few resumes geared toward different types of employers.

Sell yourself, but be honest. Don't exaggerate or overinflate your experience and skills. Be specific about your experience and back it up with details. Always be ready to defend those details with facts and anecdotes in a face-to-face interview.

6. **What made you to specialize yourself in the securities law?**

My interest in securities stems from an interest in business. What I enjoy about securities laws is that it is part transactional (i.e. negotiating commercials in private transactions); part regulatory (i.e. issuance of securities is highly regulated by SEBI); and part litigation (for instance, when the regulators or investors file a lawsuit against an issuer of a security alleging fraud, inadequate disclosure or non-compliance in connection with its purchase or sale).

While working on a fund raising transaction, a securities lawyer is required to draft an offering circular for the issuer of securities. These 'disclosure documents' must contain all the information that an investor must have to make a fair and accurate investment decision. Accordingly, to be able to draft these offering circulars, it is important for me to understand in granular detail the business and functioning of an issuer. This exposes me to businesses from various industries and sectors. Working with and analyzing such businesses helps me learn about how they operate, their capital requirements, the different risks they face and the industry in which they compete, amongst other things. Drafting a 'Management's Discussion and Analysis of Financial Conditions & Results of Operations' chapter in equity offerings requires a securities lawyer to be able to read and analyze trends in the financial statements of an issuer. It is at such instances that my interest in business ties-in with my passion for law.

7. **What do securities lawyers do?**

Securities laws is an extremely complex area that almost always requires the service of a specialist. Lawyers who acquire this specialty are involved with the formation, organisation and financing of corporations through securities such as stock, as well as mergers, acquisitions and corporate takeovers.

Legal reforms in India began with the enactment of the SEBI Act in 1992, which established the Securities and Exchange Board of India with statutory responsibilities to (a) protect the interests of investors in securities; (b) promote the development of the securities market; and (c) regulate the securities market. This was followed by the repeal of the Capital Issues (Control) Act, 1947 and the enactment of the Securities Laws (Amendment) Act in 1995, which extended SEBI's jurisdiction over corporates in the issuances of and transfer of securities, in addition to all intermediaries and persons associated with the securities market. Over the course of time, through various amendments, the market regulator, SEBI, has been given stronger and wider powers to ensure smooth functioning of the Indian securities market. In turn, SEBI has issued various rules, regulations, circulars, guidelines and informal guidances to regulate markets in an orderly manner. The primary responsibility of securities lawyers is helping their clients de-jargon and navigate these complicated rules and regulations.

A securities lawyer's practice revolves around counselling clients, which are typically public or private companies who are trying to raise capital or merchant bankers, brokerage houses and other intermediaries that facilitate such fund raising. Most financial transactions (other than loans) require the issuance of securities. On such transactions, lawyers determine how the transaction should be structured by ascertaining the nature of the security to be issued, negotiating the terms of the security, negotiating agreements with intermediaries who are involved in the financing (such as underwriters, brokers, escrow agents, registrar and share transfer agents etc.) and preparing disclosure documents after conducting a detailed diligence on the issuer.

A lot of a securities lawyer's life is spent on the phone and in conferences with clients. The time not spent on the phone or in meetings may be spent handling litigation or assembling documents needed for capital issuances. Securities litigation work is much like other types of litigation – drafting documents, conducting discovery, doing legal research and preparing material for hearings. However, in-depth subject knowledge is a prerequisite to litigate on the subject. The capital raising work that a securities lawyer may do requires a lot of data gathering – information about the company, its promoters, directors, history, financial statements, business, industry etc.

8. What would you like to advise the young students aspiring to pursue a career in securities law?

Substance over form is a well understood and accepted doctrine when it comes to securities laws. This is why, I believe, that it is of utmost importance to always place reliance on the first principles of law. The very fundamentals that are engrained in you in law school. No matter how complex a situation might seem, every single time, go back to the first principles, objects, intent and purpose of the law that you are handling and it will always help you arrive at a logical conclusion. I would advise young students to read the provisions of an applicable law every time you consider a situation to which they apply.

As a junior lawyer, I was discouraged from working mechanically. No matter how monotonous a particular activity may seem, there is always something to take away from it (in terms of learning and growth), if undertaken with careful consideration (rather than mechanically). I was always encouraged to think on my feet. It was prudent for me to add value every time I was in the room or part of a discussion. At a nascent stage, when I could not contribute with intellectual solutions or experience, I would always be proactive, make meticulous notes, understand my clients concerns and take whatever steps were required to ensure that my contribution on a transaction was of value to my seniors and other members of the deal team.

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