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SEBI's Hammer and the RPT Nail: Navigating SEBI's Principles-Based Oversight of Related Party Transactions

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Main stories

Welcome to this issue of ***Insight***.

The lead article in this issue discusses the Securities and Exchange Board of India's (**SEBI**) principles-based oversight on related party transactions (**RPTs**). It deals with the evolving regulatory stance on RPTs, the impact it could have on listed companies, and some compliance guardrails.

Apart from the above, we have focused on the key circulars and notifications issued by the SEBI, the Reserve Bank of India (**RBI**) and the Ministry of Corporate Affairs (**MCA**) in the July–September 2024 quarter.

Any feedback and suggestions would be valuable in our pursuit to constantly improve Insight and ensure its continued success among readers. Please feel free to send them to cam.publications@cyrilshroff.com.

Regards,

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SEBI's Hammer and the RPT Nail: Navigating SEBI's Principles-Based Oversight of Related Party Transactions

Related party transactions (**RPTs**)[1] potentially represent an inherent conflict of interest between the interests of listed entities on the one hand and 'related parties' on the other. Since Indian listed entities are significantly promoter driven or closely held, SEBI has been constantly reforming the regulatory framework governing RPTs to mitigate the possibility of abuse.

The principles governing RPTs by listed entities are covered in the SEBI (Listing Obligations and Disclosure Requirements) Regulations (**LODR Regulations**) under the following:

- Regulation 4 outlines the principles governing disclosures and obligations of listed entities, highlighting the importance of transparency;
- Regulation 23 mandates disclosure of RPTs and prescribes thresholds for obtaining audit committee and shareholders' approval for material RPTs; and
- Regulation 27 and 30 mandate disclosure of RPTs.

In recent years, SEBI has focused on strengthening the regulatory framework pertaining to RPTs by listed entities. Such reforms can be traced back to the Report of the SEBI Working Group on RPTs, dated January 27, 2020 (**Working Group Report**), wherein SEBI observed that companies were complying with the erstwhile letter of the law while violating it in spirit and therefore, the need to expand the scope of the law. This led to significant amendments to the scope of the RPTs to *inter alia* include transactions with unrelated parties with the "purpose and effect" of benefitting a related party.[2]

In addition to expanding the legislative framework, recent enforcement orders in Linde India Limited (**LIL**)[3] and Reliance Home Finance Limited (**RHFL**)[4], detailed below, indicate that SEBI is moving inexorably toward a stricter enforcement of the LODR Regulations and is considering the purpose and effect of transactions executed by listed companies/ subsidiaries to determine compliance with the RPT framework.

In this article, we deal with the evolving regulatory stance, the impact it could have on listed companies and some compliance guardrails.

Bad Borrowers – SEBI's Order in re RHFL (RHFL Order)

In a voluminous order dated August 22, 2024, wherein SEBI picked and isolated a variety of breaches entity by entity, SEBI penalised 27 companies on the grounds that significant monies were transferred by RHFL, a non-banking financial company (**NBFC**).

The corporate loans were given to borrowers with weak financials and non-existent profit/ cash flows, circumventing the customary due diligence and loan approval related processes.

SEBI alleged that these diversions were the result of an elaborate scheme orchestrated by the promoters, in collusion with KMPs of RHFL, to transfer funds to entities connected to the promoters. Key observations from the order are as follows:

- It was contended by RHFL that the loans were provided in the ordinary course of business in its capacity as an NBFC, at arms' length basis and therefore, did not constitute an RPT.
- SEBI held that the transactions in this case were a part of a coordinated design to benefit connected entities at the expense of public shareholders, without making the requisite disclosures, given that:
- RHFL had been granting loans to 'potentially indirectly linked entities' and while there is no provision in law which provides for this term, SEBI held that the connection between the entities (including the onward borrowers) was established due to various factors such as common directorships, common addresses, common e-mail addresses, etc.
    - the borrowers of RHFL and onward borrowers had 'box-structured shareholding', i.e., there was cross-holding among each other and the shareholding was intertwined

1 Regulation 2(1)(zc) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations: "related party transaction" means a transaction involving a transfer of resources, services or obligations between:
- a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or
- a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023;

regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract.

2 *SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021, (Notification No. SEBI/ LAD-NRO/GN/2021/55) (w.e.f. 01.04.2022)* (**2021 Amendments**).

3 https://www.sebi.gov.in/enforcement/orders/jul-2024/order-in-the-matter-of-linde-india-ltd-_84952.html

4 https://www.sebi.gov.in/enforcement/orders/aug-2024/final-order-in-the-matter-of-reliance-home-finance-limited_86052.html

in a manner that it was difficult to ascertain the ultimate beneficial owners of the companies.

- It was contended that SEBI did not have the jurisdiction to act against RHFL as it was regulated by the National Housing Bank/ the Reserve Bank of India. However, SEBI held that it had jurisdiction on the ground that RHFL was a listed entity and was empowered to penalise the borrower/ related unlisted entities because they had played a role in defrauding public investors.
- Based on the above, SEBI concluded that the entities had violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003, by manipulating investors and the market. The concealment of siphoning of funds by RHFL, on account of inadequate disclosures, was viewed as misleading investors and therefore a violation of the LODR Regulations and principles relating to adequate disclosures.

Allocate and Perish: SEBI's Order in re Linde ("Linde Order")

The order dated July 24, 2024, was in relation to certain agreements between LIL (listed) and Praxair India Private Limited (unlisted) (**PIPL**), entered into following a global merger between Linde AG and Praxair Inc, including for commercial transactions and a JV/ shareholders' agreement setting out business allocation. Investors complained that the transactions were RPTs, not in the interest of public shareholders. Key observations from the order are:

- LIL contended that shareholder approval was not required for commercial transactions because materiality threshold of 10% of the turnover of the listed company under Regulation 23 of the LODR Regulations was not met, as only transactions executed under a 'common contract' are considered while determining the 10% threshold. SEBI disagreed and held that the LODR Regulations establish a clear rule of aggregating the value of RPTs undertaken with a particular related party while assessing materiality, regardless of the same being under different contracts. In concluding so, SEBI relied on settled law as well as the position taken by the independent directors of LIL in other companies in which they were directors.
- LIL contended that product allocation and geographical allocation of business is not a transfer of assets or resources of LIL and therefore did not constitute an RPT under the LODR Regulations. SEBI took the principle-based view that:
- allocation of future business opportunities is synonymous with transfer of business/ assets and therefore needs to be subjected to the same scrutiny as traditional RPTs;
- related parties have a higher degree of influence, which could be used to divert assets of the company/ not be at arm's length, and therefore, higher decisional and disclosure thresholds are prescribed;
- the allocation was agreed to by the board without obtaining a valuation report. Further, no material was placed before the board to determine any gain or loss from the business allocation and only synergy at the holding company level was considered when agreeing to the business allocation;
- such allocation of business has a financial impact, poses a risk to future growth prospects and may not be in the best interests of the public shareholders, if requisite approvals are not taken.
- Based on the above, SEBI directed NSE to appoint a valuer to undertake a valuation exercise for LIL (including for business foregone); and LIL to disclose the board's observations on the valuation report and management comments. SEBI stated that culpability of the directors/ management should be determined post receipt of the valuation report.

Takeaways

The common theme across the 2021 Amendments and the recent orders is that SEBI is adopting a more principle-based approach towards RPTs.

In the RHFL order, SEBI viewed various factors such as circumvention of due diligence measures, involvement of linked/ connected entities, lack of disclosures, etc., as pointing towards a coordinated design to defraud investors. In the Linde Order, it was noted by SEBI that when the shareholder's rejected the RPT, the company sought legal opinions supporting the view that shareholders' approval shall not be required and went ahead with the RPT without shareholder nod. It could be argued that the specific facts of the aforementioned cases were egregious and therefore, warranted high thresholds.

While the parties in these cases are likely to appeal to SAT, as Linde already has[5], to make the case that these orders indicate SEBI's regulatory overreach, a prudent board would be wise to test all RPTs, even those in regular circumstances, against the highest threshold prescribed by the regulator. To this end, set out below are some of the takeaways and the guardrails that companies must adopt in considering and approving RPTs.

Higher regulatory scrutiny

- In the Working Group Report, SEBI had observed that companies are using innovative structures to circumvent regulatory requirements and that there is a need to consider the substance of the relationship and not merely the legal form.
- SEBI has adopted the same principle in examining innovative structures and imposing strictures and penalties for non-compliance in its recent enforcement orders.
- Non-disclosure/ inadequate disclosure of transactions with connected entities shall be perceived as market manipulation, as it affects shareholders' decision to invest or stay invested.
- SEBI can proceed against unlisted entities if the interests of public shareholders are affected.

Compliance/ disclosures in relation to RPTs

- Listed entities should consider the financial impact of obligations while assessing whether RPT related compliance is required. Independent valuation should be undertaken for such assessment.
- Relinquishment of rights or opportunities in favour of related parties (such as the right to carry on a business and allocation of a revenue generating vertical) could also be considered an RPT depending on facts and circumstances. Agreements which include negative covenants on the listed entity would require careful assessment from an RPT compliance perspective.

Need for principle based internal processes and policies governing RPTs

- The board/ management is expected to not only ensure, but also be able to establish that every decision pertaining to RPTs has been taken with great care and prudence, after assessing whether public shareholders will be impacted adversely.
- Listed entities should put in place internal governance frameworks for transactions undertaken with related parties and even with other connected entities, irrespective of it being in the ordinary course of business.
- The policies created should ensure that they take into account not only those RPTs that strictly fall within the definition of RPT under the regulatory framework, but also those transactions that are similar to RPTs in principle or consequence.
- Such processes will enable the board/ management to establish compliance with RPT principles and strike a balance between shareholder interest and the business judgment rule, i.e. the principle that boards/ management of a company are insulated from liability if they acted in good faith and on an informed basis in the best interest of the company.

  The adage 'When all you have is a hammer, everything looks like a nail' seems applicable here. It is highlighted by the SEBI employing its wide powers to raise the bar on governance surrounding RPTs, and also its scrutiny of RPTs in general. As a result, these strict thresholds may become the lowest common denominator for compliance. While care should be taken to ensure that the same does not result in an overly cautious approach, the board/ management of listed companies will continue to have the tall order of balancing the interest of the company and the public shareholders.

5 *Based on publicly available sources, the main appeal before the SAT is pending. In the interim, Linde India had sought a stay on the valuation exercise, citing UPSI concerns and arguing that if the main appeal is allowed, the valuation exercise would be rendered futile. However, in this regard, the SAT has dismissed its application for a stay on the valuation exercise vide an order dated September 13, 2024 and Linde Inda had appealed before the Supreme Court against the SAT order. The Supreme Court has also dismissed the appeal on stay on the valuation exercise (The order can be accessed at: 42770_2024_1_17_56073_Order_23-Sep-2024.pdf (sci.gov.in)). Sources: <Linde India seeks SAT relief on valuation exercise ordered by Sebi | News on Markets – Business Standard (business-standard.com)> and <Linde India moves SC against SAT order in related-party transactions case | Mint (livemint.com)>*

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SECURITIES LAW UPDATES

I. Amendments

1. ***Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2024 (SEBI LODR Amendment Regulations)***

SEBI notified the SEBI LODR Amendment Regulations, which provides for an amendment to Regulation 52 (8) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015. Regulation 52 (8) mandates that a listed entity publish its financial results in an English national daily newspaper within two working days of the end of the board of directors' meeting. SEBI LODR Amendment Regulations provides for an amendment to the proviso allowing the listed entity to publish only a window advertisement in the newspapers that exhibits a QR Code and a link that directs to the website where the financial results are available. Further, by way of such amendment, the listed entity has to obtain prior approval from the debenture trustee in the case of non-convertible securities or it can make a corresponding disclosure regarding the window advertisement in the relevant offer document.

(Notification No.SEBI/LAD-NRO/GN/2024/189 dated July 8, 2024)

2. ***Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2024 (SEBI Non-Convertible Securities Amendment Regulations)***

SEBI notified the Non-Convertible Securities Amendment Regulations, which provides for, among other things, an amendment to Regulation 23 (6) of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities), 2021 (**SEBI Non-Convertible Securities Regulations**). Regulation 23 (6) states that the being undertaken by the issuer company (**Issuer**) in relation to the provision of appointment of a director nominated by its debenture trustee, if applicable, in the Issuer's articles of association. By way of the SEBI Non-Convertible Securities Amendment Regulations, the Issuer shall fix a prior record date of fifteen (15) days for the purpose of payment of interest, dividend, and payment of redemption or repayment amount to the nominee director. Further, Regulation 40 of the SEBI Non-Convertible Securities Regulations has been amended to provide an obligation on the debenture trustee to furnish a due diligence certificate to SEBI and the stock exchanges, in certain prescribed cases. The SEBI Non-Convertible Securities Amendment Regulations also provide for, subject to certain conditions, Issuers whose non-convertible securities are listed as on the date of filing of the offer document to provide only a web link or a QR code of the audited financial statements in the offer document.

(Notification No.SEBI/LAD-NRO/GN/2024/190 dated July 8, 2024)

3. ***Securities and Exchange Board of India (Real Estate Investment Trusts) (Second Amendment) Regulations, 2024***

SEBI, *vide* notification dated July 9, 2024 (**Amendment Regulations**), has amended the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 to establish a systematic method for delivering unit-based benefits, encouraging employee engagement, and protecting the interests of all stakeholders involved. This amendment came into force on July 12, 2024. Some of the key amendments are set out below:

a. ***Introduction of definitions of "employee unit option scheme" and "liquid asset":*** Through the Amendment Regulations, SEBI has inserted the term 'employee unit option scheme' to mean a scheme under which the manager grants unit options to its employees through an employee benefit trust and the term 'liquid asset' to mean cash, units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, government securities, treasury bills, repo on government securities and repo on corporate bonds.

b. ***Insertion of framework for unit -based employee-benefit scheme:*** SEBI has inserted Chapter IVA, which lays down the framework for the manager to implement a unit-based employee-benefit scheme for its employees subject to compliance with the provisions of this chapter. It has outlined the procedures for implementing the scheme through a trust, detailing how the employee-benefit trust will receive the units and how the Real Estate Investment Trust (**REIT**) will allocate the units to the employee-benefit trust. The execution of the scheme will be carried out through a separate employee-benefit trust, which may be established by the manager of a REIT. The units held by the employee benefit trust will be utilised solely with the specific aim of offering the unit-based employee-benefit scheme.

c. ***Insertion of Schedule X (in connection to Chapter IVA):*** SEBI has inserted Schedule X, stipulating, inter alia, minimum provisions in Trust Deed, the terms and conditions of schemes to be formulated by the nomination and remuneration committee, contents of the explanatory statement to the notice and resolution for unitholders' meeting, information required in the statement to be filed with recognised stock exchange(s), disclosures in the annual report of the REIT, etc.

d. ***Modification of Regulation 22:*** SEBI has modified the rights and meetings of unitholders by inserting new clauses in relation to matters concerning the unit-based employee-benefit scheme.

(Notification No.SEBI/LAD-NRO/GN/2024/193 dated July 9, 2024)

4. *Securities and Exchange Board of India) (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2024*

SEBI, *vide* notification dated July 9, 2024 (**Amendment Regulations**), has amended the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, to establish a systematic method for delivering unit-based benefits, encouraging employee engagement, and protecting the interests of all stakeholders involved. This amendment came into force on July 11, 2024. Some of the key amendments are set out below:

a. ***Introduction of definitions of 'employee unit option scheme' and 'liquid asset'***

Through the Amendment Regulations, SEBI has inserted the term 'employee unit option scheme' to mean a scheme under which the investment manager grants unit options to its employees through an employee benefit trust and the term 'liquid asset' to mean cash, units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, government securities, treasury bills, repo on government securities and repo on corporate bonds.

b. ***Insertion of framework for unit-based employee-benefit scheme:*** SEBI has inserted Chapter IVB, which lays down the framework for the manager to implement unit-based employee-benefit scheme for its employees subject to compliance with the provisions of this chapter. SEBI has outlined the procedures for implementing the scheme through a trust, detailing how the employee-benefit trust will receive units and how the Infrastructure Investment Trust (**InvIT**) will allocate the units to the employee-benefit trust. The execution of the scheme will be carried out through a separate employee-benefit trust, which may be established by the investment manager of an InvIT. The units held by the employee benefit trust will be utilised solely with the specific aim of offering the unit-based employee-benefit scheme.

c. ***Insertion of Schedule IX (in connection to Chapter IVB):*** SEBI has inserted Schedule IX, which stipulates, among others, minimum provisions in the Trust Deed, terms and conditions of schemes to be formulated by the Nomination and Remuneration Committee, contents of the explanatory statement to the notice and resolution for unitholders' meeting, information required in the statement to be filed with recognised Stock Exchange(s), disclosures in the annual report of the InvIT, etc.

d. ***Modification of Regulation 22:*** SEBI has modified the rights and meetings of unitholders by inserting new clauses in relation to matters concerning the unit-based employee-benefit scheme.

(Notification No.SEBI/LAD-NRO/GN/2024/192 dated July 9, 2024)

5. ***Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Fourth Amendment) Regulations, 2024***

SEBI on August 26, 2024, published the amendments to the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations), 2018 (**SEBI SECC Regulations**), in the official gazette for insertion of Chapter VIA-Restriction in Dealing with Unregulated Entities to establish regulations in relation to association with certain persons.

Pursuant to the notification, the following amendments have come in force via the insertion of Regulation 44B of the SEBI SECC Regulations:

Restriction on association with certain persons

a. Recognized stock exchange or recognized clearing corporation of their agent in having direct or indirect association with another person who –

i) provides advice or any recommendation, directly or indirectly, in respect of or related to a security or securities, unless the person is registered with or otherwise permitted by the Board to provide such advice or recommendation; or

ii) makes any claim, of returns or performance expressly or impliedly, in respect of or related to a security or securities, unless the person has been permitted by the Board to make such a claim:

Provided such provisions do not apply in respect of an association through a specified digital platform.

- For clarity, the term "specified digital platform" has been defined as which has a mechanism in place to take preventive and curative action to the satisfaction of the Board, to ensure that such a platform is not used for indulging in any activity as referred above.

b. A recognised stock exchange or recognised clearing corporation must ensure that no person associated with them or their agent engages in activities mentioned in (i) or (ii) of (a) above without the necessary permission.

- For clarity, the term "association" has been defined as follows:

a) a transaction involving money or money's worth;

b) referral of a client;

c) interaction of information technology systems;

d) any other association of a similar nature or character.

- For clarity, the term "another person" does not include a person engaged in investor education, provided that such a person does not, directly or indirectly, indulge in any activity as referred in (i) or (ii) of (a) above without the necessary permission; and

c. Further, via insertion of Regulation 44C of the SEBI SECC Regulations, SEBI now has power to take action in case of violation of any provisions of Regulation 44B (mentioned above).

(Notification No.SEBI/LAD-NRO/GN/2024/202 dated August 26, 2024)

6. **Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2024**

SEBI on September 17, 2024, published the amendments to the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (**SEBI NCS Regulations**) in the official gazette.

Pursuant to such notification, the following key amendments have come into force:

a. The requirement of uploading the draft offer document for seeking public comments under Regulation 27 of SEBI NCS Regulations has been reduced from "seven (7) days" to "five (5) days" from the date of filing with stock exchanges. Further, this requirement has been further reduced to "one (1) day" if the specified securities are listed on a recognised stock exchange having nationwide trading terminals.

b. Allowing advertisements for public issues through electronic modes such as online newspapers or website of the issuer or the stock exchange which should be followed by a publication of notice in an English national daily and regional daily newspaper exhibiting a QR Code and a link directing to the complete advertisement.

c. The minimum duration for period of subscription to be kept open has been reduced from "three (3) working days" to "two (2) working days" and in case of a revision in the price band or yield, it has been reduced to "one (1) working day".

d. The disclosure requirement of personal addresses and PAN of the Promoter has been removed.

e. Details of branches or units can be provided in the form of a QR code and web link in the offer document.

f. Details pertaining to the issuer must be disclosed in the offer document, in relation to the use of proceeds (in order of priority): (i) the purpose of the placement; (ii) break-up of the cost of the project; (iii) the means of financing for the project; and (iv) the proposed deployment status at each stage of the project.

g. Explicit mention of the ultimate responsibility of the Board of Directors for the contents mentioned in the offer document must be included.

h. The disclosure details of transactions related to purchase or acquisition of any immovable property, including indirect acquisition of immovable property for which advances have been paid to third parties, as provided under Paragraph 3.3.41 of Schedule I of the SEBI NCS Regulations, are to be limited to top five vendors. Further details for the remaining vendors are to be provided in aggregate basis.

(Notification No. SEBI/LAD-NRO/GN/2024/205 dated September 17, 2024)

7. *Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2024*

SEBI on September 25, 2024, published the amendments to the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 (**SEBI Delisting Regulations**) in the official gazette. These amendments shall be applicable to those delisting offers that have made the initial public announcement on or after the date of publication of the official gazette. Further, an acquirer may make an offer basis the previous regulations until the sixtieth (60) day from the date of publication.

Pursuant to such notification, the following key amendments have come into force:

a. Inclusion of definitions of "fixed delisting price", "floor price" and "Investment Holding Company".

b. Separate categories for the calculation of the amount to be deposit in cases of delisting through the reverse book building process and through the fixed-price process.

c. Requirement of depositing the remaining consideration amount calculated under Regulation 14 of the SEBI Delisting Regulations before making the detailed public announcement.

d. Inclusion of language for applicability basis the pricing method under Regulation 17, 23, and 24 of the SEBI Delisting Regulations.

e. Requirement of prior intimation to the stock exchanges in relation to the reference date for computing the volume-weighted average price under Regulation 37 of the SEBI Delisting Regulations.

f. Inclusion of Regulation 38A dealing with special provision for delisting of investment holding company.

(Notification No. SEBI/LAD-NRO/GN/2024/206 dated September 25, 2024)

8. ***Securities and Exchange Board of India (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2024 (InvIT Amendment Regulations)***

By way of the InvIT Amendment Regulations, SEBI has introduced certain provisions, including those in relation to (i) the trading lot size of INR 25 lakhs for unit trading; (ii) the requirements for distribution declaration, at least semi-annually, for publicly offered InvITs and annually for privately placed InvITs, including specified timelines for such distributions, being five (5) working days from the record date; (iii) calculating the voting threshold based on the unitholders present and voting; (iv) allowing unitholders' meeting to be conducted at a shorter notice; and (v) the investment manager and the trustee ensuring adequate backup systems, data storage capacity and business continuity plans, and a disaster recovery site for the maintenance of electronic records, etc., to maintain data and transaction integrity.

The InvIT Amendment Regulations came into force on the date of their publication in the Official Gazette (i.e., September 27, 2024); however, Regulation 3(2) of these Regulations came into force on November 25, 2024.

(Notification No. SEBI/LAD-NRO/GN/2024/207 dated September 26, 2024)

9. ***Securities and Exchange Board of India (Real Estate Investment Trusts) (Third Amendment) Regulations, 2024 (REIT Amendment Regulations)***

By way of the REIT Amendment Regulations, the SEBI has introduced certain provisions, including those in relation to (i) specified timelines for distributions, which is five (5) working days from the record date; (ii) calculating voting threshold based on the unitholders present and voting; (iii) facilitating video conferencing options for meetings and remote electronic voting; and (iv) the manager and trustee to ensure adequate backup systems, data storage capacity and business continuity plans, and a disaster recovery site for maintenance of electronic records, etc, in order to maintain data and transaction integrity.

The REIT Amendment Regulations came into force on the date of their publication in the Official Gazette (i.e., September 27, 2024). However, Regulation 3 (2) of these Regulations came into force on November 25, 2024.

(Notification No. SEBI/LAD-NRO/GN/2024/208 dated September 26, 2024)

II. Circulars

1. ***Reduction in denomination of debt securities and non-convertible redeemable preference shares***

SEBI, *vide* the circular dated July 3, 2024 (**2024 Circular**), has amended Chapter V (Denomination of issuance and trading of non-convertible securities) of the Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated May 22, 2024. By the 2024 Circular, SEBI has allowed lower ticket size of debt securities issued on a private placement basis by providing the option of reduced denomination of debt securities and non-convertible redeemable preference shares (**Securities**) from INR 1 lakh to INR 10,000.

The aforementioned option is available, subject to (i) the appointment of at least one merchant banker, who shall have the same obligations as in the case of public issue of Securities; and (ii) the condition that Securities shall be interest or dividend bearing security paying coupon or dividend at regular intervals with a fixed maturity without any structured obligations. Further, credit enhancements such as guaranteed bonds, debt backed by pledge of shares or other assets, etc., is permitted for Securities, subject to credit-rating agencies verifying the documentation related to support considerations for ensuring unconditional, irrevocable, and legally enforceable support.

The 2024 Circular is applicable to all issues of Securities on a private placement basis to be listed from July 3, 2024. However, for a shelf placement memorandum or General Information Document, which is valid as on July 3, 2024, the issuer has been allowed to issue Securities through a tranche placement memorandum or Key Information Document at a face value at INR 10,000 by issuing necessary addendum, subject to at least one merchant banker being appointed to carry out due diligence. To this effect, appropriate amendments have been made in Chapter V (Denomination of issuance and trading of Non-convertible Securities) of the Master Circular no. SEBI/HO/DDHS/PoD1/P/CIR/2024/54 dated May 22, 2024.

(Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/94 dated July 3, 2024)

2. ***Amendment to Master Circular for Infrastructure Investment Trusts (InvITs) dated May 15, 2024 – Board nomination rights to unitholders of InvITs***

SEBI issued the Master Circulars for Infrastructure Investment Trusts (**InvITs**), incorporating the circulars issued until May 15, 2024. SEBI has now amended this Master Circular with respect to instructions on board nomination rights to unitholders of InvITs. Paragraph 22.3.1.(b) of Chapter 22 – *"Board nomination rights to unitholders of InvITs"* of the Master Circular for InvITs – states that an eligible unit holder(s) is entitled to nominate only one unit holder nominee director, subject to the unitholding of such eligible unit holder(s) exceeding the specified threshold. If the right to nominate one or more directors on the investment manager's board of directors is available to any entity (or to an associate of such entity) in the capacity of shareholder of the investment manager or lender to the investment manager or the InvIT (or their HoldCo(s) or SPVs), such entity in its capacity as unitholder, shall not be entitled to nominate or participate in the nomination of a unitholder nominee director. To promote ease of doing business and on the request of the industry and the recommendation of the Hybrid Securities Advisory Committee, SEBI has inserted a proviso to Paragraph 22.3.1 (b), stating that the restriction relating to the right to nominate a unitholder nominee director shall not be applicable if the right to appoint a nominee director is available in terms of Clause (e) of sub-regulation (1) of Regulation 15 of the SEBI (Debenture Trustees) Regulations, 1993. This shall come into force with immediate effect.

(Notification No. SEBI/HO/DDHS/DDHS-PoD-2/P/CIR/2024/109 dated August 6, 2024)

3. ***Amendment to Master Circular for Real Estate Investment Trusts (REITs) dated May 15, 2024 – Board nomination rights to unitholders of REITs***

SEBI issued the Master Circulars for Real Estate Investment Trusts (**REITs**) incorporating the circulars issued until May 15, 2024. SEBI has now amended this Master Circular with respect to instructions on board nomination rights to unitholders of REITs. Paragraph 18.2.2.(b) of Chapter 18 – *"Board nomination rights to unitholders of REITs"* of the Master Circular for REITs – states that an eligible unit holder(s) is entitled to nominate only one unit holder nominee director, subject to the unitholding of such eligible unit holder(s) exceeding the specified threshold. If the right to nominate one or more directors on the board of directors of the manager is available to any entity (or to an associate of such an entity) in the capacity of shareholder of the manager or lender to the manager or the REIT (or their HoldCo(s) or SPVs), then such an entity in its capacity as unitholder, shall not be entitled to nominate or participate in the nomination of a unitholder nominee director. To promote ease of doing business and on the request of the industry and the recommendation of the Hybrid Securities Advisory Committee, SEBI inserted a proviso to Paragraph 18.2.2. (b), stating that the restriction relating to the right to nominate a unitholder nominee director shall not be applicable if the right to appoint a nominee director is available in terms of Clause (e) of sub-regulation (1) of Regulation 15 of the SEBI (Debenture Trustees) Regulations, 1993. This shall come into force with immediate effect.

(Notification No. SEBI/HO/DDHS/DDHS-PoD-2/P/CIR/2024/108 dated August 6, 2024)

4. ***Amendment to Master Circular for Infrastructure Investment Trusts (InvITs) dated May 15, 2024 – Review of statement of investor complaints and timeline for disclosure of statement of deviation(s)***

SEBI, by way of the Master Circular for Infrastructure Investment Trusts (**InvITs**) dated May 15, 2024 (**Master Circular**), has collated various circulars, issued by it from time to time, to enable stakeholders to have access to all circulars it has issued in relation to InvITs. SEBI had originally issued this Master Circular on November 29, 2021, and has updated it on April 26, 2022, July 6, 2023, and May 15, 2024, respectively. The Master Circular dated May 15, 2024, contains updates on, among other things, the review of the statement of investor complaints and the timeline for disclosure of statement deviation(s).

(Notification No. SEBI/HO/DDHS/DDHS-PoD-2/P/CIR/2024/114 dated August 22, 2024)

5. ***Amendment to Master Circular for Real Estate Investment Trusts (REITs) dated May 15, 2024 – Review of statement of investor complaints and timeline for disclosure of statement of deviation(s)***

SEBI, by way of its Master Circular for Real Estate Infrastructure Trusts (**REITs**) dated May 15, 2024 (**Master Circular**), has collated various circulars, issued by it from time to time, to enable stakeholders to have access to all circulars it has issued in relation to REITs. SEBI had originally issued this Master Circular on November 29, 2021, and has updated this further on April 26, 2022, July 6, 2023, and May 15, 2024, respectively. The Master Circular dated May 15, 2024,

contains updates on, among other things, the review of the statement of investor complaints and the timeline for disclosure of statement deviation(s).

(Notification No. SEBI/HO/ DDHS/DDHS-PoD-2/P/CIR/2024/115 dated August 22, 2024)

6. ***Review of eligibility criteria for entry/exit of stocks in derivatives segment***

SEBI, *vide* the circular dated August 30, 2024 (**2024 Circular**), has revised the eligibility criteria for the entry and exit of stocks in the derivatives segment provided under Chapter 5 of Master Circular on Stock Exchanges and Clearing Corporations, bearing the reference no. SEBI/HO/MRD2/PoD-2/CIR/P/2023/171, dated October 16, 2023.

a. ***Entry Norms for stocks in derivatives segment:*** The eligibility criteria of stocks for entry into the derivatives segment, based on performance of the underlying cash market, for a continuous period of six months, on a rolling basis, based on the data for previous six (6) months, has been revised as follows:

i) The stock's median quarter sigma order size over the previous six (6) months, on a rolling basis, should not be less than INR 75 lakh, instead of the existing criterion of Rs. 25 lakhs.

ii) The stock's market-wide position limit, over the period of previous six (6) months, on a rolling basis should not be less than INR 1,500 crore, instead of the existing criterion of INR 500 crores; and

iii) The stock's average daily delivery value in the cash market, in the previous six (6) months on a rolling basis should not be less than INR 35 crore, instead of the existing criterion of INR 10 crore.

b. ***Exit norms based on introduction of a Product Success Framework (PSF) for stock derivatives:*** SEBI has also introduced additional exit criteria for stocks from the derivatives segment, by introducing PSF for single stock derivatives as well. The criteria for the said PSF framework are as follows:

i) At least 15 percent of trading members active in all stock derivatives (trading member who has traded during the month) or 200 trading members, whichever is lower, shall have traded in any derivative contract on the stock being reviewed on an average on monthly basis during the review period.

ii) Trading on a minimum of 75 percent of the trading days during the review period.

iii) Average daily turnover (futures + options premium) of at least INR 75 crore during the review period; and

iv) Average daily notional open interest (futures + options notional) of at least INR 500 crore during the review period.

c. ***Exit norms based on performance in underlying cash market:***

i) If a stock in derivatives segment fails to meet any of the above criteria, for a continuous period of three months, on a rolling basis, based on the data for previous six months, then it shall exit from derivatives segment. Further, no new contract shall be issued on stocks that may exit the derivatives segment. However, the existing unexpired contracts may be permitted to trade until expiry and new strikes may also be introduced in the existing contract months.

ii) The aforementioned criteria for exit is applicable to only those stocks that have completed at least 6 months from the date of introduction and the exit from derivatives segment will be after the said gestation period, in the upcoming review cycle. For existing stocks in the derivatives segment, a gestation period of three (3) months has been provided before applicability of the said exit criteria. Further, once a stock is excluded from the derivatives segment, it cannot be considered for re-inclusion for a period of one year from its last trading day in the derivatives segment.

The circular is effective from August 30, 2024.

(Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/116 dated August 30, 2024)

7. ***Modification in the timeline for submission of status regarding payment obligations to the stock exchanges by entities that have listed commercial papers***

SEBI, *vide* its circular dated September 6, 2024 (**Circular**), has amended Paragraph 8.4 of Chapter XVII of the Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated May 22, 2024. The Circular modified the timeline for entities with listed commercial papers to report the status of their payment obligations to stock exchanges within one (1) working day of its payment becoming due, instead of two (2) working days. This was done to align with the timeline of intimating stock exchanges regarding the status of payment obligations for listed non-convertible securities and listed commercial papers under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(Circular No. SEBI/HO/DDHS/DDHSPoD1/P/CIR/2024/117 dated September 6, 2024)

8. ***Enabling T+2 trading of Bonus shares where T is the record date***

SEBI, *vide* its circular dated September 16, 2024 (**Circular**), has streamlined the process for bonus issues under the SEBI ICDR Regulations by reducing the timeline for credit and trading of bonus shares from the record date, to T+2 days, where 'T' is the record date. This will be applicable for all bonus issues announced on or after October 1, 2024.

The operational procedure to implement trading on the (T+2) day as provided is as follows:

a. The issuer proposing a bonus issue will have to apply for the in-principle approval within five (5) working days from the date of the board meeting approving the bonus issue.

b. The issuer, while fixing and intimating the record date to the stock exchanges, will also have to take on record the deemed date of allotment on the next working date of the record date (T+1 day).

c. The stock exchange(s) will have to issue a notification accepting the record date and notifying the number of shares considered in the bonus issue, including the deemed date of allotment (T+1 day).

d. After the stock exchange issues the notification for the acceptance of the record date, the issuer will have to ensure the submission of the requisite documents to the depositories for the credit of bonus shares in the depository system latest by 12 p.m. of the next working day of the record date (T+1 day).

e. The issuer will have to ensure the upload of the distinctive number (DN) ranges in the DN database of the depository and stock exchange(s) shall ensure updation of the relevant dates before the credit of bonus shares.

f. The shares allotted pursuant to the bonus issue shall be made available for trading on the next working date of allotment (T+2 day).

g. The directions issued pursuant to SEBI Circular No. CIR/MRD/DP/21/2012 dated August 2, 2012, and CIR/MRD/DP/ 24 /2012 dated September 11, 2012, requiring credit of bonus shares in temporary ISIN shall be exempted in case of bonus issue of equity shares, and credit of shares directly to the permanent ISIN (existing ISIN) shall be permitted in case of bonus issue of equity shares.

(Circular No. CIR/CFD/PoD/2024/122 dated September 16, 2024)

9. ***Usage of UPI by Individual Investors for making an application in public issue of securities through intermediaries***

SEBI, *vide* its circular dated September 24, 2024 (**Circular**), has streamlined the application process for public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities, and securitised debt instruments with that of public issue of equity shares and convertibles. The Circular mandates individual investors applying through intermediaries (viz. syndicate members, registered stock brokers, registrars to an issue and transfer agents, and depository participants) to use the unified payments interface (**UPI**) for blocking funds, if the application amount is up to INR 5 lakh. While UPI will be mandatory for applications through intermediaries, individual investors shall continue to have the option to apply through other modes through self-certified syndicate banks (SCSBs) and stock exchange platforms.

The provisions of the Circular will be applicable to public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities, and securitised debt instruments opening on or after November 1, 2024.

(Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/128 dated September 24, 2024)

10. ***Reduction in the timeline for listing of debt securities and non-convertible redeemable preference shares to T+3 working days from existing T+6 working days***

To facilitate faster access to funds for issuers and investors to have early credit and liquidity of their investment and to align the listing timeline in case of public issue of debt securities and non-convertible redeemable preference shares with that of non-convertible securities issued on private placement basis and specified securities, SEBI, *vide* the Master Circular dated September 26, 2024 (**Master Circular**), reduced the listing timeline in case of public issue of debt securities and NCRPS to T+3 working days from the existing timeline of T+6 working days.

The listing timeline of T+3 working days is introduced as an option to issuers for a period of one (1) year and on a permanent basis thereafter such that all listings occur on a T+3 basis. During the period of voluntary applicability of the listing timeline of T+3 working days, the provisions of Regulation 37 (2) of Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (**NCS Regulations**), shall become applicable only after T+6 working days, even in cases where the issuer has chosen T+3 as the listing timeline but failed to meet the same. Further, the T+3 timeline for listing shall be appropriately disclosed in the offer documents of public issues.

The provisions of this circular shall be (i) applicable on voluntary basis to public issues of debt securities and NCRPS opening on or after November 1, 2024, and (ii) mandatory for public issues of debt securities and NCRPS opening on or after November 1, 2025.

Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/129 dated September 26, 2024)

III. Consultation Papers

1. ***Consultation Paper on Proposed Legal Provisions for Summary Proceedings***

By way of a consultation paper dated July 16, 2024, SEBI had invited comments from the public on proposed legal changes in the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (**Intermediaries Regulations**) for the inclusion of the provisions for summary proceedings for faster and more efficient handling of the cases of certain violations of the securities laws by intermediaries. Certain key recommendations are as follows:

a. The proposed provisions of the summary proceedings shall include those for identifying the cases for summary proceedings and detailing the summary procedure. Annexure A of the consultation paper contains details of the proposed provisions to be included under Intermediaries Regulations.

b. The summary proceedings will apply to cases involving intermediaries under specific conditions, including (i) expulsion as a member by stock exchange(s) or clearing corporation(s); (ii) termination of depository agreements; (iii) claims of returns or performance not permitted by the SEBI; (iv) claims of returns or performance found to be false or misleading by the SEBI or an agency as may be specified by the SEBI; (v) non-payment of specified fees such as payment of fees for keeping the registration in force; (vi) intermediary not being traceable; (vii) failure to submit periodic reports for three or such consecutive periods as may be specified by the SEBI; and (viii) cases where intermediary has admitted the violation.

c. The summary procedure shall outline the process for issuing notices, submissions and submission timelines,

decision-making criteria, obligations that the intermediary needs to satisfy while passing the order and post-cancellation of certificate and the manner of intimation of the order to the intermediary.

Public comments were invited on the consultation paper until August 6, 2024.

(Consultation Paper on Proposed Legal Provisions for Summary Proceedings dated July 16, 2024)

2. ***Consultation Paper on proposed amendments to the SEBI (Prohibition of Insider Trading) Regulations, 2015 to rationalise the scope of the expression "connected person", while not increasing compliance requirements***

a. SEBI issued a consultation paper on July 29, 2024 (**Consultation Paper**), inviting comments from the public on the proposal to amend the SEBI (Prohibition of Insider Trading) Regulations, 2015 (**PIT Regulations**), with the following objective:

i) Expanding the regulatory scope of "connected persons" under regulation 2(1)(d) of the PIT Regulations by drawing reference to the definition of "related party" under Companies Act, 2013.

ii) Adding regulation 2(1) (hc) by drawing reference to the Income Tax Act, 1961.

b. ***Amendment to the definition of "connected persons":*** The Consultation Paper notes that certain categories of persons not covered in the definition of "connected persons" may also have access to unpublished price-sensitive information due to their close relationship with connected persons. To expand the scope of connected persons the following key changes to "deemed connected persons" defined under regulation 2(1)(d) (ii) have been proposed:

i) Replacing "immediate relative" in regulation 2(1)(d)(ii)(a) with the term "relative" as defined in the Income Tax Act, 1961.

ii) Adding the following additional categories of deemed connected persons under regulation 2(1)(d)(ii) with reference to Section 2(76) of Companies Act, 2013:

- a firm or partner or its employee in which a connected person is a partner;
- a person on whose advice or directions or instructions a connected person is accustomed to act; and

- a body corporate whose board of directors, managing director, or manager is accustomed to act in accordance with the advice, directions, or instructions of a "connected person."

iii) Adding the following additional categories of connected persons:

- persons sharing household or resident with a connected person; and
- persons having material financial relationship with a "connected person" including for reasons of employment or financial dependency or frequent transactions.

c. ***Rationalising the definition of "relative":*** The Consultation Paper proposes to introduce a new regulation 2(1)(hc) defining "relative" in line with the definition of "relative" in the Income Tax Act, 1961. The note to the definition of "immediate relative" is proposed to be omitted. However, the definition of "immediate relative" itself is to be retained as the requirement for disclosures of trade by "immediate relative" but the promoter /directors/designated persons will continue to be with respect to "immediate relative". The concept of "relative" will be relevant only for establishing insider trading.

(Consultation Paper on proposed amendments to the SEBI (Prohibition of Insider Trading) Regulations, 2015 to rationalize the scope of the expression 'connected person', while not increasing compliance requirements dated July 29, 2024)

3. ***Consultation Paper on streamlining the process and reduction in timelines of bonus issue***

SEBI, by way of a consultation paper dated August 5, 2024, had invited comments from the public on the draft circular *"Streamlining the process and reduction in timelines of Bonus Issue (enabling T+2 trading of shares where T being record date)"* to facilitate fast credit and trading of shares allotted pursuant to bonus issue and to reduce investors' risk of market volatility due to any delay in credit of bonus shares. Certain key recommendations on the operations procedures are as follows:

a. Issuers shall make an application for the in-principle approval under Regulation 28 (1) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**SEBI LODR Regulations**), to the stock exchange within five (5) working days from the date of board meeting approving the bonus issue.

b. Issuer, while fixing and intimating the record date (T day) to the stock exchange as required under Regulation 42 (1) of SEBI LODR Regulations, shall also take on record the deemed date of allotment on the next working date of the record date (T+1 day).

c. Upon receipt of intimation of the record date (T-Day) and requisite documents from the issuer, the stock exchange(s) shall issue a notification accepting the record date and notifying the number of shares considered in the bonus issue. The notification shall consist of the deemed date of allotment (T+1 day). Post that, the issuers shall ensure the submission of the requisite documents to the depositories for the credit of bonus shares in the depository system latest by 12 p.m. of the next working day of the record date (T+1 day).

d. Issuers shall ensure upload of the distinctive number (DN) ranges in the DN database of the depository, and the stock exchange(s) shall ensure updation of the relevant dates before the credit of bonus shares. Further, the shares allotted are to be made available for trading on the next working date of allotment (T+2 day).

The directions issued pursuant to SEBI Circular No. CIR/MRD/DP/21/2012 dated August 2, 2012, and CIR/MRD/DP/24 /2012 dated September 11, 2012, requiring the credit of bonus shares in temporary ISIN shall be exempted in case of the bonus issue of equity shares, and the credit of shares directly in permanent ISIN (existing ISIN) shall be permitted in case of bonus issue of equity shares.

Public comments were invited on the consultation paper until August 26, 2024.

(Consultation paper on Streamlining the process and reduction in timelines of Bonus Issue dated August 5, 2024)

4. ***Consultation paper on introduction of liquidity window facility for investors in debt securities through stock exchange mechanism***

To address the issue of liquidity for investors, and pursuant to discussions with issuers/potential issuers of debt securities, SEBI, by way of a consultation paper dated August 16, 2024, had invited comments and recommendation from the public on the draft circular on *"Introduction of liquidity window facility for investors in debt securities through stock exchange mechanism"* (**Draft Circular**). Certain key highlights of the Draft Circular are as follows:

a. ***Issuer discretion and prospective applicability:*** The issuer of debt securities may, at its own discretion, provide the liquidity window facility on an ISIN basis. This facility can be provided only for the prospective issuance of debt securities through the public issue process or on a private placement basis.

b. ***Corporate authorisations:***

i) Prior approval of the board of directors of the issuer is required to provide the liquidity window; and

ii) With respect to entities that have listed their specified securities, the implementation and outcome of the liquidity window shall be monitored by the stakeholders relationship committee (**SRC**). Further, in case of listed debt securities (for whom the constitution of SRC is not mandatory), the monitoring of the implementation and outcome of the liquidity window shall be under the aegis of the board of directors, or such board-level committee.

c. ***Period of operation of liquidity window:*** The issuer shall provide a liquidity window facility only after the expiry of one (1) year from the date of the issuance of the debt securities.

d. ***Eligibility of investors:*** The issuers will have the option to specify the classes of investors for whom the liquidity window shall be provided.

e. ***Aggregate limit of liquidity window facility and per liquidity window sub-limit:*** The issuer shall determine and specify the percentage of the issue size of the eligible securities constituting the aggregate limit for

the exercise of put options by the investors through the liquidity window facility over the tenor of the debt securities, which shall not be less than 10 or 15 percent of final issue size of such debt securities.

f. ***Minimum period of liquidity window:*** The liquidity window shall be kept open for three working days on a monthly/quarterly basis at the discretion of the issuer. The schedule of liquidity window/s shall be disclosed upfront in the offer document.

The Draft Circular also provides provisions with respect to the mode and manner of availing liquidity window facility, and reporting and disclosure requirements.

Public comments were invited on the consultation paper until September 6, 2024.

(Consultation Paper on Introduction of liquidity Window Facility for investors in debt securities through Stock Exchange Mechanism dated August 16, 2024)

5. *Consultation paper on measures towards ease of doing business and streamlining compliance requirements for non-convertible securities – review of LODR Regulations*

SEBI, by way of a consultation paper dated August 16, 2024, invited comments from the public on proposals related to ease of doing business for non-convertible securities (**NCD**) on the following items:

a. ***Alignment of provision regarding approval and authentication of financial results for entities having listed NCDs with that for equity listed entities:*** SEBI has proposed to align the approval and authentication of financial results by debt-listed entities with those of equity-listed entities. Therefore, a recommendation has been made to align the requirement under Regulation 52(2)(b) with Regulation 33(2)(b) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**SEBI LODR Regulations**).

b. ***Alignment of provision regarding disclosure of fraud/default in respect of price sensitive information for entities having listed NCDs with that of equity-listed entities under Schedule III:*** SEBI has proposed for a common definition of "fraud" for equity-listed and debt-listed entities. Thus, it has been recommended to replace the existing Clause A.17 of Part B of the Schedule III of LODR Regulations with Clause A.6 of Part A of Schedule III of SEBI LODR Regulations.

c. ***Reduction in timeline for intimation of record date to stock exchanges by entity having listed NCDs to "at least three working days" from "at least seven working days":*** SEBI has also proposed that the timeline for intimation of record date to stock exchanges by entities having listed NCDs be reduced from "at least seven working days" to "at least three working days", which is also the case in rights issue.

d. ***Filing of all disclosures by entities having listed NCDS with stock exchanges be in XBRL format, in line with provision specified for equity listed entities:*** SEBI has made a recommendation that all disclosures by the debt-listed and equity-listed entities, except financial results to be filed in XBRL format.

e. ***Relaxation from the ISIN restriction limit for unlisted ISINs (outstanding as on December 31, 2023) in case such ISINs are listed:*** SEBI has proposed that unlisted ISINs getting converted to listed ISINs, subsequent to the introduction of Regulation 62A in the SEBI LODR Regulations, should not be considered for calculating the above cap of 14 ISINs.

Public comments were invited on the consultation paper until September 6, 2024.

(Consultation Paper on Measures towards Ease of Doing Business and streamlining compliance requirements for Non-Convertible Securities – review of LODR dated August 16, 2024)

6. *Consultation paper on expanding the scope of sustainable finance framework in the Indian securities market*

SEBI, by way of a consultation paper dated August 16, 2024, invited comments from the public on the proposals related to expanding the scope of sustainable finance framework in the Indian securities market. The main proposals discussed in the consultation paper are as follows:

a. ***Introduction of framework for social bonds, sustainable bonds and sustainability linked bonds to expand the sustainable finance in Indian securities market***

i) Whether the proposal to introduce a framework for social bonds, sustainable bonds, and sustainability-linked bonds (which, together with green debt securities, are termed "ESG Debt Securities") is appropriate and adequate?

ii) Are there any other international frameworks / guidelines in addition to frameworks listed at Paragraph 3.3 of the consultation paper that should be considered?

b. ***Proposals for introduction of sustainable securitised debt instruments***

i) Whether the proposal to introduce a framework for sustainable securitised debt instruments is appropriate and adequate?

ii) Are there any other frameworks/guidelines in addition to frameworks listed at Paragraph 4.5 of the consultation paper that should be considered by ISF for providing a recommendation on sustainable securitised debt instruments?

c. ***Proposals for independent external review***

i) Whether the proposed requirement of an independent external review for ESG Debt Securities and sustainable securitised debt instruments is appropriate and adequate?

ii) Whether SEBI-registered ESG rating providers could also be permitted to undertake such independent external review?

Public comments were invited on the consultation paper until September 6, 2024.

(Consultation paper on Expanding the scope of sustainable finance framework in the Indian securities market dated August 16, 2024)

7. *Consultation paper on streamlining disclosure in respect of appointment of Debenture Trustee (DT) in the offer document*

SEBI, by way of its consultation paper dated August 17, 2024, invited comments from the public on streamlining disclosure with respect to the appointment of a debenture trustee in the offer document. The consultation paper includes the following recommendations:

a. The term "consent letter" in Clause 3.3.32 of Schedule I of Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (**NCS Regulations**) may be replaced with the term "Debenture Trustee Agreement"; and

b. The "Debenture Trust Agreement" shall be made accessible to investors using a "QR code" in the offer document.

Public comments were invited on the consultation paper until 2024.

(Consultation paper on Streamlining disclosure in respect of appointment of Debenture Trustee (DT) in the offer document dated August 17, 2024)

8. *Consultation paper on clarification on the term "pecuniary relationship" of Debenture Trustee (DT) with the issuer as per Regulation 13A of the DT Regulations*

SEBI, by way of its consultation paper dated August 21, 2024, released a consultation paper to clarify the pecuniary

relationship of the Debenture Trustee (**DT**) with the issuer as per Regulation 13A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (**DT Regulations**). Based on the deliberations with the Corporate Bonds and Securitisation Advisory Committee, the main proposals discussed in the consultation paper are as follows:

a. Whether the proposal to exclude pecuniary relationship from computation of remuneration payable to DTs is appropriate and adequate?

b. Whether the proposal of the disclosure of remuneration / revenue received in respect of debenture trusteeship services as a percentage of the total remuneration / revenue received by DT from the said issuer with respect to all services (including services other than the debenture trusteeship services), is appropriate and adequate?

Public comments were invited on the consultation paper until September 11, 2024.

(Consultation paper on Clarification on the term "pecuniary relationship" of Debenture Trustee (DT) with the issuer as per Regulation 13A of the DT Regulations dated August 20, 2024)

9. *Consultation Paper on Faster Rights Issue with flexibility of allotment to Selective Investor(s).*

SEBI, by way of its consultation paper dated August 20, 2024, undertook a review of the existing rights issue process and in this regard, discussions were held with market intermediaries, viz., depositories, stock exchanges, registrar to an issue (**RTAs**), merchant bankers, etc., has identified the following issues and key recommendations to make rights issues a preferred mode vis-à-vis other modes of fund raising:

a. Doing away with the current requirement of filing draft letter of offer (**DLoF**) with SEBI for issuance of observation.

b. Rationalising the content of letter of offer (**LoF**) by reducing the current disclosures to contain some of the relevant information regarding the rights issue such as object of the issue, price, record date, entitlement ratio, etc.

c. Reviewing the role of intermediaries such as merchant bankers and RTAs involved in the rights issue process.

d. Reducing the timelines involved in the rights issue process.

e. Enabling allotment to selective investors in the rights issue.

f. Laying down adequate checks and balances, such as eligibility requirements for making rights issue, applicability of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 on Rights Issue of size less than INR 50 crore, and the appointment of a monitoring agency.

Public comments were invited on the consultation paper until September 10, 2024.

(Consultation paper on Faster Rights Issue with flexibility of allotment to Selective Investor(s) dated August 20, 2024)

10. *Consultation Paper on Review of Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 (MB Regulations)*

SEBI, by way of a consultation paper dated August 28, 2024, invited comments from the public on the proposal to amend the MB Regulations. Certain key recommendations are as follows:

a. ***Review of activities that merchant bankers can undertake***

i) Specifying the activities related to the securities market that merchant bankers, other than banks, public financial institutions, and their subsidiaries, can undertake. This includes (i) managing and/or advisory or consulting services incidental to public issues, qualified institutions placement, and rights issues of securities; (ii) managing acquisitions and takeovers, buyback, delisting, scheme of arrangement, implementation of the scheme, or any other activity as permitted under respective SEBI regulations; (iii) underwriting securities; (iv) private placement of securities listed or proposed to be listed on a recognised stock exchange; (v) managing and advisory or consulting services incidental to international offering of securities; (vi) filing placement memorandum of AIFs; (vii) issuance of fairness opinion; and (viii) any activity specified by SEBI.

ii) Merchant bankers, other than banks, public financial institutions and their subsidiaries, shall be required to segregate all other activities to a separate legal entity within a period of two (2) years from a date specified by SEBI.

iii) Activities that require separate regulatory registration/license like stock broking, portfolio management services, and primary dealership of government securities and activities that do not pertain to the securities market may not be permitted under the MB Regulations. However, if an entity wishes to carry on such activities, it may do so after obtaining registration/license from the respective regulatory authority.

b. ***Merchant bankers to not undertake valuation activities unless specified by the Board***

i) Merchant bankers shall not be permitted to undertake any new assignments of valuation from a date specified by SEBI. However, a period of six (6 months) will be provided to them to complete the existing assignments.

c. ***Review of Capital Adequacy Requirements and introduction of categorisation***

i) Merchant bankers may be categorised into two categories based on the net worth and activities to be undertaken, i.e., (i) Category 1 – net worth is not less than INR 50 crore at all times, permitted to undertake all permitted activities and; (ii) Category 2 – net worth is not less than INR 10 crore at all times, allowed to undertake all permitted activities except the main board issues.

ii) The existing registered merchant bankers shall be given a period of two (2) years from a specified date to increase their net worth progressively.

iii) Any merchant banker who intends to change its category may do so as may be specified by SEBI.

d. ***Cancellation of merchant banking registration for merchant banker not engaged in permitted activity***

i) Registration granted can be cancelled if the merchant banker fails to engage in SEBI permitted activities. Revenue thresholds for determining this failure are as prescribed by SEBI.

e. ***Introduction of minimum liquid net worth***

i) Merchant banker shall maintain liquid net worth of at least 25 percent of the minimum net worth requirement at all times.

f. ***Review of legal structures to be permitted for grant of registration***

i) Exclude (i) body corporates incorporated outside India, except foreign banks licensed by RBI to undertake financial business in India and (ii) One Person Company from being eligible for the grant of registration as a merchant banker.

g. ***Review of multiple merchant banking registration within the same group***

i) Merchant bankers, other than banks, public financial institution, and their group companies, shall ensure that there is single registration within the same group.

h. ***Review of "Merchant banker not to act as such for an associate"***

i) In addition to the provision as per Regulation 21A, merchant bankers may not be permitted to manage their own issue to avoid conflict of interest and ensure independent due diligence.

ii) The present threshold of 15 percent under the explanation (i) of Regulation 21A of shareholding / voting rights may be reduced to 10 percent for the purpose of treatment as an "Associate to an Issuer".

i. ***Directors, key personnel, Compliance Officer, and their relatives not to hold securities in the issuer company***

i) It is proposed that the merchant banker shall not lead manage any issue or be associated with any permitted activity under SEBI Regulations, if its directors or key personnel or the compliance officer or their relative(s), individually or in aggregate, hold more than 0.1 percent of the issuer's paid-up share capital or nominal value of INR 10,00,000, whichever is lower.

j. ***Guidelines on outsourcing of activities by intermediaries***

i) Merchant bankers shall not be permitted to outsource core activities such as due diligence of issuer or preparation of offer document.

11. Consultation paper on the facility for Trading in the Secondary Market using UPI Block Mechanism to be mandatorily offered by Qualified Stock Brokers (QSBs) to their clients (ASBA - like facility for secondary market) and other incidental matters

SEBI, by way of a consultation paper dated August 28, 2024, invited comments from the public on whether the facility of trading supported by the Blocked Amount in the secondary market using the UPI block mechanism (ASBA-like facility) should be mandatorily offered by Qualified Stock Brokers (**QSBs**) to their clients, viz., individuals and HUFs. Certain key aspects are as follows:

a. Commercial arrangements for NPCI and Banks in providing clients with the facility to trade using the UPI block mechanism.

b. Mandating QSBs to offer the facility of trading in the secondary market using the UPI-based block mechanism to their clients.

(Consultation paper on the facility for Trading in the Secondary Market using UPI Block Mechanism to be mandatorily offered by Qualified Stock Brokers (QSBs) to their clients (ASBA - like facility for secondary market) and other incidental matters dated August 28, 2024)

12. Consultation paper on maintenance of record of mandatory communication by regulated entities

SEBI, by way of a consultation paper dated August 29, 2024, invited comments from the public on the requirement of the maintenance of record of mandatory communication by the entities regulated by SEBI. Certain key recommendations are as follows:

a. Regulated entities may be mandated to maintain the records for a period of eight (8) years of all such communication, which are mandated to be communicated under the respective governing regulations and the circulars issued thereunder, by inserting a provision in the respective governing regulations, including the SEBI LODR Regulations, SEBI FPI Regulations, etc.

(Consultation paper on Maintenance of Record of Mandatory Communication by Regulated Entities dated August 29, 2024)

13. Consultation paper on provisions pertaining to appointment of public interest directors

SEBI, by way of a consultation paper dated August 29, 2024, invited comments from the public on certain recommendations for the appointment and ease of doing business of public interest directors (**PID**) on stock exchanges, clearing corporations and depositories (**Market Infrastructure Institutions** or **MIIs**). Certain key recommendations are as follows:

a. ***Process of appointing PIDs***

i) Under the existing process, the Nomination and Remuneration Committee (**NRC**) recommends at least two names to the governing board. Upon further examination, if the governing board finds the candidates suitable, the governing board recommends their names to SEBI, seeking approval for appointment. SEBI either appoints one of the proposed candidates as a PID or asks the MII to submit additional names for appointment as PID.

ii) Shareholders do not have material oversight powers with respect to the functioning of the board of MIIs. In case of decisions of the governing board impacting shareholder wealth, shareholders, in hindsight, may feel aggrieved about not being included in the PID appointment process.

iii) Accordingly, SEBI has suggested two options for the appointment and reappointment of PIDs: (i) The existing process of appointment and reappointment

of PIDs shall continue. However, additionally non-independent directors are required to be part of NRC to ensure adequate representation of shareholders at the identification stage; Or (ii) On the receipt of names from MIIs, SEBI examines the application and gives NOC to the MIIs to take it to their shareholders for approval. Once shareholders approve a candidate, the application will come back to SEBI for final approval. If suitable candidates are not found acceptable to shareholders after two rounds of exercise, SEBI can directly appoint a director deemed as PID under Regulation 23A of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018.

iv) The following are additionally proposed to be adopted: (i) Establish a High Level Appointment Committee (**HLAC**) consisting of reputed external experts. The candidates recommended for approval could be considered by such an HLAC independently, for recommending a name to SEBI; (ii) If eligible, an existing PID could be offered for reappointment (iii) Strive to have NIDs on the MIIs governing board representing minority shareholders.

b. ***Reduction in documentation and names to be sent to SEBI***

i) Currently, candidates proposed by MIIs to SEBI for the purpose of appointment of PID have to go through detailed scrutiny. As per the feedback received from MIIs and PIDs, subjecting the senior officials to such detailed paperwork along with the ambiguity with respect to their selection seems unfair and onerous and could be reviewed.

ii) Accordingly, SEBI proposes a two-stage process for appointment of PID: (i) Stage 1 – Upon receiving the names of candidate and their brief profiles, SEBI shall shortlist one candidate and seek further details. However, in case of reappointment, the name of the existing eligible PID whose term is going to expire may be forwarded to SEBI for consideration. (ii) Stage 2 – The MIIs to collect all the documents details as stated from time to time by SEBI from the shortlisted candidate.

c. ***Payment of remuneration to PIDs***

i) In addition to sitting fees and expenses, a fixed remuneration with a ceiling limit of INR 30 lakh per annum may be paid.

d. ***Review of cooling off period***

i) SEBI has recommended that the cooling-off period of one (1) year shall be applicable if a PID is proposing to join a competitor MII or associate of competitor MII.

(Consultation paper on provisions pertaining to appointment of Public Interest Directors dated August 29, 2024)

14. *Consultation paper on review of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003*

By way of a consultation paper dated August 30, 2024, SEBI invited comments from the public on the proposals to Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 (**IG Scheme**), including the following:

a. Addition of stock exchanges, clearing corporation, depositories, and managers of pooled investment vehicles registered with the board to be included in the list of eligible applicants who may seek guidance under the IG Scheme.

b. Revision of application fee from INR 25,000 to INR 75,000. Further, in case of rejection of an information guidance application, the processing fee, which is deduction while refunding the fee, has been revised from INR 5000 to INR 15,000.

c. Designating a nodal co-ordination cell with centralised e-mail address, which may receive applications in a standard form only through the online mode and monitor the processing of the disposal of application.

d. Providing applicant period of up to fifteen (15) days to respond to the clarification requested by SEBI, failing which the application may be rejected. The period of fifteen (15) days would be excluded from the overall timeline of sixty (60) days to respond to an application. Furthermore, mandating the departments to use e-mail instead of physical letters to seek clarifications from the applicant.

(Consultation paper on review of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 dated August 30, 2024)

15. ***Consultation paper on proposed amendment to SEBI LODR Regulations, 2015 with respect to allowing only electronic mode for payment of dividend or interest or redemption or repayment amounts***

    a. On September 20, 2024 SEBI issued a consultation paper seeking comments from the public on proposal to allow only electronic mode for payment of dividend or interest or redemption or repayment amounts.

    b. Currently, Regulation 12 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR**), mandates electronic mode of payment for dividends, interest, and redemption or repayment; however, where payment through such a mode is not possible, a listed company has an option to use "payable-at-par" warrants or cheques to make such payments. Further, Schedule I of the LODR Regulations also mandates the listed entity or its share-transfer agent to maintain bank details of the investors for the purpose of making electronic payments subject to the exception that if some details are not available, then the payable "payable-at-par" warrants or cheques can be used for making payments.

    c. There are several benefits to electronic mode of transfer, including convenience, low risk of fraud and error, environment friendly, low transaction costs, and easier tracking. Further, *vide* the circular dated November 03, 2021, with effect from April 01, 2024, any payment to investors holding securities in a physical form was mandated to be in the electronic form only.

    d. Thus, the consultation paper proposes to mandate the electronic mode of transfer for demat account holders by omitting the provisos in Regulation 12 and Schedule I of LODR Regulations. This would further encourage investors to provide accurate bank account details to listed companies and enable them to get payments directly in their bank account.

    (Consultation Paper on Proposed amendment to SEBI LODR Regulations, 2015 with respect to allowing only electronic mode for payment of dividend or interest or redemption or repayment amounts dated September 20, 2024)

16. ***Consultation paper on the proposal to exempt certain transactions from trading window restrictions***

    a. In 2019, SEBI had amended the PIT Regulations excluding certain transactions from the trading window restriction such as acquisition by conversion of warrants or debentures, subscribing to right issue, further public issue, preferential allotment or tendering of shares in buy-back, open offer, desilting offer. The guiding principle for these exemptions was that these are pre-decided, regulated transactions that are subject to disclosure and shareholder approval requirements. Subsequently, *vide* the circular dated July 23, 2020, SEBI also exempted Offer for Sale and Rights Entitlements transactions from trading window restrictions based on the same rationale.

    b. On September 26, 2024, SEBI issued a consultation paper seeking comments from public for exempting several transactions from the trading window restrictions including subscription to non-convertible debentures and similar other instruments that meet the guiding principle for previous exemptions.

    c. Non-convertible debentures and several other instruments, such non-convertible redeemable preference shares, perpetual non-cumulative preference shares, perpetual debt instruments are part of Non-Convertible Securities (**NCS**) as defined under SEBI (Issue of Non-Convertible Securities) Regulations, 2021, meet the guiding principle of exemption to trading window restrictions.

    d. In light of this, SEBI has sought comments as to whether subscription to NCS may be exempted from trading window restrictions and whether there are any other transactions to which exemption may be provided based on the preceding rationale.

    (Consultation paper on the proposal to exempt certain transactions from trading window restrictions dated September 26, 2024)

IV. Informal Guidance

1. ***Informal guidance by way of an interpretative letter received from Belstar Microfinance Limited in relation to penal interest payable on delay in listing of securities issued on private placement basis under the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2015 and Master circular dated May 22, 2024.***

    Belstar Microfinance Ltd. (**BML**) is a non-banking finance company incorporated under the provision of Companies Act, 1956. BML had issued 28,300 unsecured, senior, rated, listed, redeemable, transferable non-convertible debentures at a coupon rate of 10 percent p.a. having face value of INR 1,00,000 each and aggregating to INR 283,00,00,000

(**Debentures**) on private placement basis through the BSE EBP platform. The bid was closed on October 5, 2023, and the allotment was made on October 6, 2023. Due to a technical issue in BML's login, the listing for debentures was at 3:31 p.m. October 10, 2023. However, BSE considers that the application was not within the 12:00 noon cut-off and considered the application was submitted as October 11, 2023. Therefore, listing application to SEBI was delayed by a period of six (6) days (i.e., from date of allocation to date of listing). Accordingly, BSE advised BML to pay penal interest of 1 percent p.a. over the coupon for the period of delay to the investor. However, due to ambiguity in the interpretation of the circular, BML paid 11 percent (in addition to the agreed coupon rate) to the investor, which resulted in BML effectively paying a rate of 21 percent during the period of delay.

The queries raised by BML were in relation to (i) whether the cut-off time to submit the application is before 12:00 noon or before 5:00 p.m.; (ii) whether the penal interest is payable at the rate of 1 percent p.a. or at the rate of 11 percent p.a. (in addition to the coupon rate of 10 percent payable to the investor on due date).

Against this backdrop, SEBI provided the following informal guidance:

a. In relation to the preceding point (I), SEBI did not respond to the request. As per Regulation 8 (iv) of Securities and Exchange Board of India (Informal Guidance) Scheme, 2003, which states that SEBI may not respond to the requests where applicable legal provision is not cited.

b. In relation to the preceding point (ii), referring to Paragraph 6 chapter VII of standardisation of timelines for listing of securities issued on a private placement basis of SEBI Master circular dated May 22, 2024, in addition to the coupon/dividend rate payable to the investor, the issuer is required to pay penal interest at the rate of 1 percent p.a. for the period of delay.

(SEBI Informal Guidance No. SEBI/HO/DDHS/DDHS-PoD-1/P/OW/2024/0000022159/1 dated July 8, 2024)

2. ***Informal Guidance request received from Anjani Portland Cement Limited on applicability of Clause 3(b) of Part 1(A) of Securities and Exchange Board of India Master Circular dated June 2023 (Master Circular on Scheme of Arrangement)***

a. Anjani Portland Cement Limited (**the Company**) is a listed company whose promoter Chettinad Cement Corporation Private Limited holds 75 percent of its shares and the public shareholders hold 25 percent of the shares. The Company also has an unlisted subsidiary company viz., Bhavya Cements Private Limited (**Subsidiary**). The Company holds 99.09 percent of the outstanding shares of the Subsidiary and the rest 0.91 percent of the shares are held by "Other non-promoter public shareholders". The Board of Directors of the Company approved a scheme of merger for amalgamation of the Subsidiary with the Company. In consideration of the amalgamation, the Company will allot equity shares on a proportionate basis to 'Other non-promoter public shareholders' of the Subsidiary.

b. Per Part 1(A) Clause 3(b) of SEBI Master Circular on Scheme of Arrangement dated June 20, 2023 (**Master Circular**) in case of a scheme of arrangement between listed and unlisted entity, the percentage of shareholding of pre-scheme public shareholders of the listed entity in the post-scheme shareholding patterns of the merged company should not be less than 25 percent. However, pursuant to the proposed scheme, the percentage shareholding of the public shareholders of the Company was going to reduce to 24.91 percent, i.e., less than the minimum public shareholding requirement. In this context, the Company sought informal guidance on the following questions:

   i) Whether "other non-promoter shareholders" of the Subsidiary can be categorised as "public shareholders" post approval of scheme of amalgamation?

   ii) Can the Promoter of the Company holding shares in excess of 25 percent acquire additional shares in the Company in compliance with Regulation 3(2) of SEBI (SAST) Regulations, 2011 without requiring continued compliance with Part 1(A) and Clause 3(b) SEBI Master Circular?

   iii) Whether any disposal of shares by the promoter of the Company to comply with Part 1(A) Clause 3(b) of SEBI Master Circular would be exempt under Regulation 4(1) (iii) of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

c. Against this backdrop, SEBI gave the following guidance:

   a. In relation to query (a), "promoter", "non-promoter non-public", and "public" are distinct categories of shareholders under different rules and regulations. Since the Subsidiary had categorised holders of 0.91 percent of shares as "other non-promoter public shareholders", they could not be considered "public shareholders" and the shares allotted to them may have to be classified as "promoter and promoter group" under the scheme. The Company may resort to provisions of Regulation 31A of LODR for reclassification of the said shareholders.

   b. In relation to query (b), the requirements of the Master Circular are to be satisfied before the scheme is submitted for sanction. Further, since the Company will continue to be listed even after the scheme of merger, it will have to comply with minimum public shareholding requirement under law on a continuing basis.

   c. In relation to query (c), Regulation 4(1) merely provides circumstances, which may be used to prove innocence rather than an exception to obligations of insiders. Further, Regulation 4(1)(iii) provides for a defence if a transaction is to be carried out pursuant to a regulatory or statutory obligation. In the present case, the transaction proposed to be carried out to comply with Master Circular cannot be construed as transaction carried out pursuant to a statutory or regulatory obligation as there is no mandate under the said clause on the promoter to offload their shares. Therefore, this defence cannot be used in the given circumstances.

(SEBI Informal Guidance No.SEBI/HO/CFD/PoD-2/OW/P/2024/16806/1 dated May 14, 2024)

V. Board Meetings

1. *SEBI board meeting held on September 30, 2024*

SEBI, in its board meeting held on September 30, 2024, approved, *inter alia*, the following:

a. ***Option to investors to trade in the secondary market either through UPI mechanism or 3-in-1 trading facility:*** SEBI approved trading facilities to be provided by Qualified Stock Brokers (**QSB**) either by blocked amount in the secondary market (cash segment) using the UPI block mechanism (ASBA-like facility for the secondary market) or the 3-in-1 Trading Account facility, with effect from February 1, 2025.

b. ***Increase in number of scrips under T+0 settlement:*** SEBI approved the number of scrips eligible for trading under optional T+0 settlement from top 15 to top 100, in a phased manner. Stock Brokers, QSBs, Foreign Portfolio Investors and Mutual Funds can now access the T+0 settlement cycle.

c. ***Review of regulatory framework for Investment Advisers (IAs) and Research Analysts (RAs) to facilitate ease of doing business:*** SEBI approved the proposal of review of the regulatory framework for IAs and RAs to facilitate ease of doing business by providing relaxation in eligibility criteria for registration and simplifying the compliance requirements. Some of the key proposals approved by SEBI are:

   i) relaxation in the eligibility criteria for IAs and RAs, such as reduction in educational and experience qualifications;

ii) ease in compliance requirements, such as flexibility in registration for part time IAs/RAs and dual registration; and

iii) changes in the framework to align with evolving nature of business such as clarity in scope of investment advice, use of AI in services and clarity in applicability of the framework to trading call providers.

d. ***Amendments to the SEBI (Intermediaries) Regulations, 2008:*** SEBI approved amendments to the SEBI (Intermediaries) Regulations, 2008, to handle cases of certain violations of securities laws by intermediaries, in an expeditious and more efficient manner. Key amendments include amendments to the provisions for summary proceedings, including the types of cases, process, timeline, conditions, and the obligations to be followed by the intermediaries.

e. ***Faster Rights Issue with flexibility of allotment to specific investors under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (SEBI ICDR Regulations):*** SEBI approved that a rights issue can be completed in 23 working days from the date of the issuer's board meeting approving the rights issue, as against the current timeline of 317 days. Further, several conditions have been modified to facilitate faster approvals, such as, *inter alia*, the current requirement of filing draft of Letter of Offer with SEBI is discontinued, and issuers can file the same directly with the stock exchanges for their in-principle approval. Additionally, mandatory requirement of appointment of merchant bankers has been removed, subject to the rights issue being completed within the 23 working days timeline and the stock exchanges and depositories can concurrently carry out activities for validation of the application.

f. ***Facilitating ease of doing business under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR Regulations) and SEBI ICDR Regulations:*** SEBI has approved certain key measures for facilitating ease of doing business for listed and to be listed companies such as:

i) changes in the mode of filings with SEBI and the stock exchanges;

ii) system driven disclosure of shareholding pattern and revision in credit ratings by Stock Exchanges thereby reducing the reporting requirements;

iii) detailed advertisements of financial results in newspapers to be optional;

iv) additional time to fill up vacancies in committees;

v) additional time for disclosure of material events; and

vi) combining "pre-issue advertisement" and "price band advertisement"; and

vii) allowing companies with outstanding Stock Appreciation Rights to file DRHP under certain conditions.

g. ***Facilitating ease of doing business under SEBI (Merchant Bankers) Regulations 1992, SEBI (Bankers to an Issue) Regulations 1994 and SEBI (Buy-Back of Securities) Regulations:*** SEBI has approved certain key measures for facilitating ease of doing business:

i) discontinuation of the requirement of submitting a separate statement of the merchant banker's responsibilities;

ii) reduction in the compliance requirements for registration;

iii) allowing Bankers to an Issue to carry out activities such as open offers, buy-backs, and such other activities as may be specified; and

iv) changes to disclosure requirements during the buy-back period.

h. ***Introduction of regulatory framework for a new investment product/asset class:*** SEBI approved amendments to the SEBI (Mutual Funds) Regulations, 1996, for the introduction of a new investment product under the existing Mutual Fund framework. The new product will provide investors with a professionally managed and well-regulated product that offers greater flexibility, higher risk-taking capabilities for higher ticket size, while ensuring that appropriate safeguards such as no leverage, no investment in unlisted and unrated instruments beyond those already permitted, etc.

i. ***Introduction of liberalised Mutual Funds Lite framework for passively managed schemes of Mutual Funds:*** SEBI approved amendments to the SEBI (Mutual Funds) Regulations, 1996, for enabling a relaxed framework with light-touch regulations for entities desirous of launching only passive Mutual Fund schemes, such as relaxed requirements relating to eligibility

criteria for sponsors, responsibility of trustees, approval process, and disclosures.

j. ***Pro rata and pari passu rights of investors of Alternative Investment Funds:*** SEBI approved the proposal to specify in the AIF Regulations that the rights of the investors in the investments and distributions of the returns from a scheme of an AIF shall be pro rata to their commitment in the scheme (subject to specified exemptions) and that the rights of the investors of a scheme of an AIF shall be pari passu.

k. ***Proposal to ensure that Offshore Derivative Instruments (ODIs) and segregated portfolios of FPIs are subject to disclosure requirements on par with FPIs:*** SEBI approved a proposal to apply the additional disclosure framework specified, *vide* SEBI circular dated August 24, 2023, directly to ODI subscribers, sub-fund structures, separate classes of shares, and other equivalent structures of FPIs with such segregated portfolios, to ensure that their disclosure requirements are on a par with the FPIs. Further, SEBI also approved a proposal to prohibit ODI issuing FPIs from (i) issuing ODIs with derivatives as reference/underlying and (ii) hedging their ODIs with derivative positions on stock exchanges.

l. ***Investor-friendly and uniform norms for nomination facilities in the Indian securities market:*** SEBI approved amendments to various regulations to enhance convenience for nomination facilities, such as the increase in the maximum number of nominees, simplifying transmission process, and changes in the existing norms for ensuring consistency.

m. ***Amendments to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) to rationalise the scope of expressions "connected person" and "immediate relative":*** SEBI approved amendments to the PIT regulations to include persons who are expected to have access to UPSI but not currently covered under the definition of "connected person" and "immediate relative".

n. ***Facilitating fund raising by corporates by expanding the scope of Sustainable Finance Framework in the Indian securities market:*** SEBI approved the proposal to specify the frameworks for issuance of social bonds, sustainability bonds, and sustainability-linked bonds, which together with green debt securities, will be termed "Environment, Social, and Governance (ESG) Debt Securities".

o. ***Facilitating growth of the bond market:*** SEBI approved proposals for facilitating the growth of the bond market by streamlining the compliance for listed non-convertible securities and easing disclosures regarding the appointment of the debenture trustee in the offer document, such as the relaxation of limits on the maximum number of ISINs, making copy of the debenture trustee agreement accessible to investors, and bringing several compliance requirements on a par with equity-listed entities.

p. ***Facilitating ease of doing business by allowing for self-attestation:*** SEBI approved amendments to certain SEBI Regulations to substitute the requirement of the attestation of certain documents by a notary public or gazetted officer with self-attestation. These documents include applications for exemption, undertakings, and documents of effecting transfer of securities, among others.

q. ***Facilitating wider access to Informal Guidance from SEBI:*** SEBI approved the proposal to enact Securities and Exchange Board of India (Informal Guidance) Scheme, 2024, which proposes to expand the scope of the scheme to include regulated entities such as stock exchanges, clearing corporations, depositories, and managers of pooled investment vehicles registered with SEBI eligible to seek informal guidance.

(SEBI Press Release No. 25/2024 dated September 30, 2024)

VI. Press Releases

1. ***Clarification on SEBI mandating T+0 settlement cycle for all***

SEBI, *vide* its press release no. 15/2024 dated July 31, 2024, has issued a clarification on erroneous reports of SEBI making the T+0 settlement cycle mandatory for all. The SEBI chairperson, Madhabi Puri Buch, had released a report on "Indian Capital Markets: Transformative shifts achieved through technology and reforms" at an NSE event on July 30, 2024. Responding to a question on the said report, in relation to the ASBA facility being optional and hence, inaccessible to retail investors despite significant potential savings, the SEBI chairperson had stated that SEBI may consider a proposal mandating that "Qualified Stock Brokers" offer ASBA as an option to their clients. She further emphasised that the option to use ASBA would remain with the clients. The aforesaid response was misreported by the press as "SEBI bats for making T+0 system mandatory for all".

(SEBI Press Release No. 15/2024 dated July 31, 2024)

2. ***Advisory regarding investment in securities of the companies listed on the SME segment of stock exchanges***

SEBI, *vide* its press release no. 18/2024 dated August 28, 2024, has cautioned investors against deceptive practices by certain companies listed under the "Small and Medium Enterprises (SME)" segment of stock exchanges. SEBI has noted that such companies and/or their promoters make public announcements aimed at inducing investor interest in the company by projecting an unrealistic picture of the company's operations post-listing. Such announcements are followed by various corporate actions (including bonus issue, stock split and preferential allotment) creating a positive sentiment among investors, thereby providing easy exit opportunities to the promoters of these companies, allowing them to off-load their holdings at inflated prices. Investors have been urged to be aware of the aforesaid patterns before investing in SME companies. Further, SEBI has advised investors against basing investment decisions on unverified social media posts, tips, or rumours.

(SEBI Press Release No. 18/2024 dated August 28, 2024)

3. **SEBI reports key findings of study analyzing investor behaviour in 'Main Board' IPOs**

SEBI, *vide* its press release no. 19/2024 dated September 2, 2024, has reported key findings of its study analyzing investor behaviour across 144 "Main Board" IPOs listed between April 2021 and December 2023. Key findings of the study are as follows:

a. Individual investors exhibited "flipping" behaviour, that is, a tendency to buy and sell assets quickly to make a profit. 50 percent of the shares allotted to individual investors by value were sold within a week of listing, while 70 percent of the shares allotted to individual investors by value were sold within a year of listing.

b. Investors demonstrated a stronger tendency to sell IPO shares that posted positive listing gains, compared to shares that listed at a loss.

c. IPO returns were correlated positively to the selling behaviour of individual investors. Individual investors sold 67.6 percent of shares by value within a week of IPO returns exceeding 20 percent, whereas sold only 23.3 percent shares by value where returns were negative.

d. The creation of demat accounts surged post-COVID (2021 to 2023), with nearly half of the demat accounts that applied for IPOs between April 2021 and December 2023 were opened during the post-COVID period.

e. Oversubscription under the "Non-Institutional Investor" category halved from 38 times to 17 times, following SEBI's policy intervention in the share allotment process for the category and RBI's guidelines on IPO financing by NBFCs in April 2022. Further, the average number of applications by such investors sharply declined from 626 per IPO in the pre-policy period to 20 per IPO post-policy.

VII. Clarifications

1. ***Frequently asked questions on the framework for Small and Medium REITs (SM REITs)***

In order to provide clarity on key differences between SM REITs and Real Estate Investment Trusts (**REITs**), and highlight the nuances of various requirements under the Securities and Exchange Board of India (Real Estate

Investment Trust) Regulations, 2014, SEBI had issued comprehensive frequently asked questions (**FAQs**) on June 18, 2024. These FAQs include various concepts relating to the SM REITs framework, such as (i) differences between a REIT and an SM REIT; (ii) the eligibility criteria for the real estate developers; (iii) rights of SPVs in asset ownership and the size of assets within schemes; (iv) related party transactions; and (v) fees of investment manager (**IM**).

(Frequently asked questions dated June 18, 2024)

2. ***Frequently Asked Questions on Registration and Initial offer of units by Infrastructure Investment Trusts (InvITs)***

To guide market participants on the registration process and initial offer of units by Infrastructure Investment Trusts (**InvITs**), SEBI issued a comprehensive set of frequently asked questions (**FAQs**) on September 12, 2024, which include the procedure for obtaining registration as an InvIT and clarifications on certain processes for an initial offer of units by an InvIT, either through a public issue or a private placement of units.

3. ***Frequently Asked Questions on issuance of units by Real Estate Investment Trusts (REITs)***

To guide market participants on the registration process and initial offer of units by Real Estate Investment Trusts (**REITs**), SEBI issued a comprehensive set of frequently asked questions (**FAQs**) on September 12, 2024. These FAQs include the procedure for obtaining registration as a REIT and clarifications on certain processes for an initial offer of units by a REIT.

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MINISTRY OF CORPORATE AFFAIRS UPDATES

I. Amendments

1. *Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024*

Ministry of Corporate Affairs (**MCA**) has introduced the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024. A new sub-rule has been inserted after sub-rule 4 of rule 25A (Merger or amalgamation of a foreign company with a Company and vice versa), which states that in cases where the transferor foreign company incorporated outside India being a holding company and the transferee Indian company being a wholly owned subsidiary company incorporated in India, enter into merger or amalgamation:

i) Both the companies are required to obtain prior approval of the Reserve Bank of India.

ii) The transferee Indian company shall comply with the provisions of section 233.

iii) An application is to be made by the transferee Indian Company to the Central Government under section 233 and provisions of rule 25 will apply.

iv) The declaration referred to in sub-rule 4 is to be made at the stage of making the application.

(MCA Notification G.S.R. 555 (E) dated September 9, 2024)

2. Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024

MCA has introduced Companies (Allotment of Securities) Amendment Rules, 2024, inserting a new proviso after sub-rule 2 of rule 9B (Issue of securities in dematerialised form by private companies). It provides relaxation to the obligation to dematerialise all shares for producer companies. Producer Companies now have to comply with such requirements within a period of five (5) years of closure of the last day of a financial year, ending on or after March 31, 2023.

(MCA Notification G.S.R. 583 (E) dated September 20, 2024)

II. Circular

1. *MCA further clarifies regarding holding of AGMs/EGMs through VC/OAVM and passing of ordinary/special resolution by companies under Companies Act, 2013*

The MCA has allowed companies, whose Annual General Meetings and Extra-Ordinary General Meetings are due in the year 2024 or 2025, to conduct the same through video conference (**VC**) or other audio-visual means (**OAVM**) on or before September 30, 2024. Additionally, it has allowed companies to conduct their Extra-Ordinary General Meetings through VC or OAVM or transact items through postal ballot up to September 30, 2025.

(MCA General Circular No. 09/2024 dated September 19, 2024)

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RESERVE BANK OF INDIA UPDATES

I. Circulars

1. ***Release of foreign exchange for miscellaneous remittances, July 3, 2024.***

   a. The Reserve Bank of India (**RBI**) on July 3, 2024, issued a circular with a view to streamline the regulatory compliances and procedures with respect to the release of foreign exchange by Authorised Dealers (**AD**). The circular provides that the AD will be required to obtain Form A2 in physical or digital form for all cross-border remittances irrespective of the value of the transaction, doing away with the upper limit of USD 25,000 or its equivalent, laid down in the previous circulars issued by the RBI. Previously, it was also advised that ADs need not obtain any other documents, including Form A2, and that the payment was to be made by the applicant through Demand Draft or a cheque drawn on their bank account. However, this has been revised pursuant to the aforesaid circular requiring ADs to obtain Form A2.

   (A.P. (DIR Series) Circular No. 13 dated July 03, 2024)

II. Amendments/Rules

1. ***Foreign Exchange Management (Non- debt Instruments) (Fourth Amendment) Rules, 2024***

   The Ministry of Finance, Department of Economic Affairs, issued the Foreign Exchange Management (Non-debt Instruments) Fourth Amendment Rules on August 16, 2024. Set out below are the key amendments introduced to the Foreign Exchange Management (Non-debt Instrument) Rules, 2019:

   a. ***Definition of "control":*** The definition of "control" has been amended to give it the same meaning as assigned to it in the Companies Act, 2013. For Limited Liability Partnerships (**LLP**), "control" has been defined as the right to appoint majority of the designated partners, with specific exclusion to others and have control over all policies of the LLP.

   b. ***Definition of "startup company":*** "Startup" means a private company incorporated under the Companies Act, 2013 and identified as a "startup" under the notification of the Government of India number G.S.R. 127 (E), dated February 19, 2019, issue by the Department for Promotion of Industry and Internal Trade.

   c. ***Insertion of Rule 9A, i.e., swap of equity instruments and equity capitals:*** The amendment enables the transfer of equity instruments of an Indian company by a person resident in India and a person resident outside India, in compliance with the rules prescribed by the central government and the regulations issued by the RBI from time to time, by way of the following:

      i) swap of equity instruments; and

      ii) swap of equity capital of a foreign company. in compliance with the rules prescribed by the Central Government including the Foreign Exchange Management (Overseas Investment) Rules, 2022

   Provided prior Government approval shall be obtained for transfer in all cases wherever Government approval is applicable.

d. ***Amendment to Paragraph 1(d) of Schedule I:*** In pursuance to the insertion of Rule 9A, Paragraph 1(d) of Schedule I (purchase or sale of equity instruments of an Indian Company by a person resident outside India) has been amended to allow issuance of equity instruments by an Indian company to a person resident outside India against the following:

   i) swap of equity instruments; or

   ii) import of capital goods or machinery or equipment (excluding second hand machinery); or

   iii) pre-operative or pre-incorporation expenses (including payments of rent etc); or

   iv) swap of equity capital of a foreign company in compliance with the rules prescribed by the Central Government including Foreign Exchange Management (Overseas Investment) Rules, 2022, and the regulations specified by the Reserve Bank from time to time.

e. ***FPI investment limit:*** Prior to the amendment, Paragraph 3(a)(iii) of Schedule I had a cap on the aggregate investment by Foreign Portfolio Investors (**FPIs**) of 49 percent or the respective sectoral cap, whichever was lower. The cap of 49 percent has been removed pursuant to the amendment and FPIs will be permitted to invest up to the respective sectoral cap limit, which may be higher than the stipulated 49 percent.

f. ***100 percent FDI in White Label ATM operations:*** White Label ATMs have now been inserted in the table under Clause 3 of Schedule I (purchase or sale of equity instruments of an Indian Company by a person resident outside India) as a new entry being column F.11, with a 100 percent sectoral cap and an automatic entry route, as also published in the Consolidated FDI Policy of 2020. Any non-bank entity intending to set up a White Label ATM should have a minimum net worth of INR100,00,00,000 (Indian Rupee One Hundred Crore) as per the latest financial year's audited balance sheet, to be maintained at all times.

(S.O. 3492(E) dated 16 August, 2024)

2. ***Foreign Exchange (Compounding Proceedings) Rules, 2024 and directions -***

The Ministry of Finance, Department of Economic Affairs, on 12 September, 2024 issued the Foreign Exchange (Compounding Proceedings) Rules, 2024 (**New Rules**) in supersession of erstwhile Foreign Exchange (Compounding Proceedings) Rules, 2000 (**Erstwhile Rules**). The following are the key changes brought about by the New Rules:

a. ***Compounding filing fees and penalties:***

The following is the broad procedure and operational compliances that need to be followed:

   i) For violations under Section 3(a) (i.e., dealing/transfer of foreign exchange to unauthorised persons) of the Foreign Exchange Management Act, 1999 (**FEMA**) an application will have to be made depending on the quantum of the punishment to the relevant authority in the Directorate of Enforcement as follows, not being below the rank of Deputy Director of the Directorate of Enforcement.

   ii) For all violations, except as under Section 3(a) of FEMA, an application will have to be made to the Foreign Exchange Department, RBI to an officer not below the rank of assistant general manager, and may be compounded by the stipulated authorities of the RBI in accordance with the provision of these rules as stipulated below. Further, as per the Directions – Compounding of Contraventions under FEMA, 1999 (**RBI Compounding Directions**), issued by the RBI, an applicant may submit a compounding application, along with the relevant documents either physically or through the PRAVAAH PORTAL of the RBI, along with the prescribed fee of INR.10,000 (Indian Rupees Ten Thousand) (Plus GST). The RBI Compounding Directions also provide indicative guidelines for calculation of the compounding amount.

   iii) As per the RBI Compounding Directions, a compounding application may be returned, where administrative action has not been completed by the applicant or the application is incomplete, or the stipulated application fee has not been paid *(administrative action being action that may be necessary with respect to the transactions, including corrections that applicants are required to undertake to bring the transaction involved in contravention in compliance with applicable provisions of FEMA)*.

   iv) The sum for which the contravention is compounded, should be paid strictly within fifteen (15) days of issue of the compounding order.

b. Non-compoundable cases

Rule 9 lays down those matters that cannot be compounded, which include *inter alia* the following matters:

i) where the amount is not quantifiable;

ii) where provisions of Section 37A of FEMA are triggered (special provisions related to assets held outside India);

iii) where the Directorate of Enforcement is of the view that the proceeding relates to a serious contravention suspected of money laundering, terror financing, etc;

iv) where the adjudicating authority has already passed an order for adjudicating contravention under Section 13 of FEMA; and

v) where the compounding authority is of the view that the contravention involved requires further investigation by the Directorate of Enforcement to ascertain the amount of contravention under section 13 of FEMA.

vi) Further, as per the RBI Compounding Directions, contravention committed by any person within a period of three (3) years from the date on which a similar contravention was committed and the same was compounded, will not be compounded, and the relevant provisions of FEMA will apply.

c. Consequences of failure in paying sum compounded

In case of failure to pay the compounded sum within the stipulated time period, the person will be deemed to have never made an application for compounding of any contravention under these rules, and the provisions of FEMA for contravention will apply accordingly.

d. Issue of compounding order

The compounding authority will issue an order expeditiously and no later than 180 days from the date of receipt of the application.

(G.S.R. 566 (E), September 12, 2024)

3. *Financial Action Task Force (FATF) High risk and other monitored jurisdictions*

The RBI has intimated that the Financial Action Task Force (**FATF**) *vide* public document "High-Risk Jurisdictions subject to a Call for Action – June 2024", has added Monaco and Venezuela to the list of jurisdictions under Increased Monitoring, while Jamaica and Turkey have been removed from the list.

(Press Release: 2024-2025/712 dated July 16, 2024)

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