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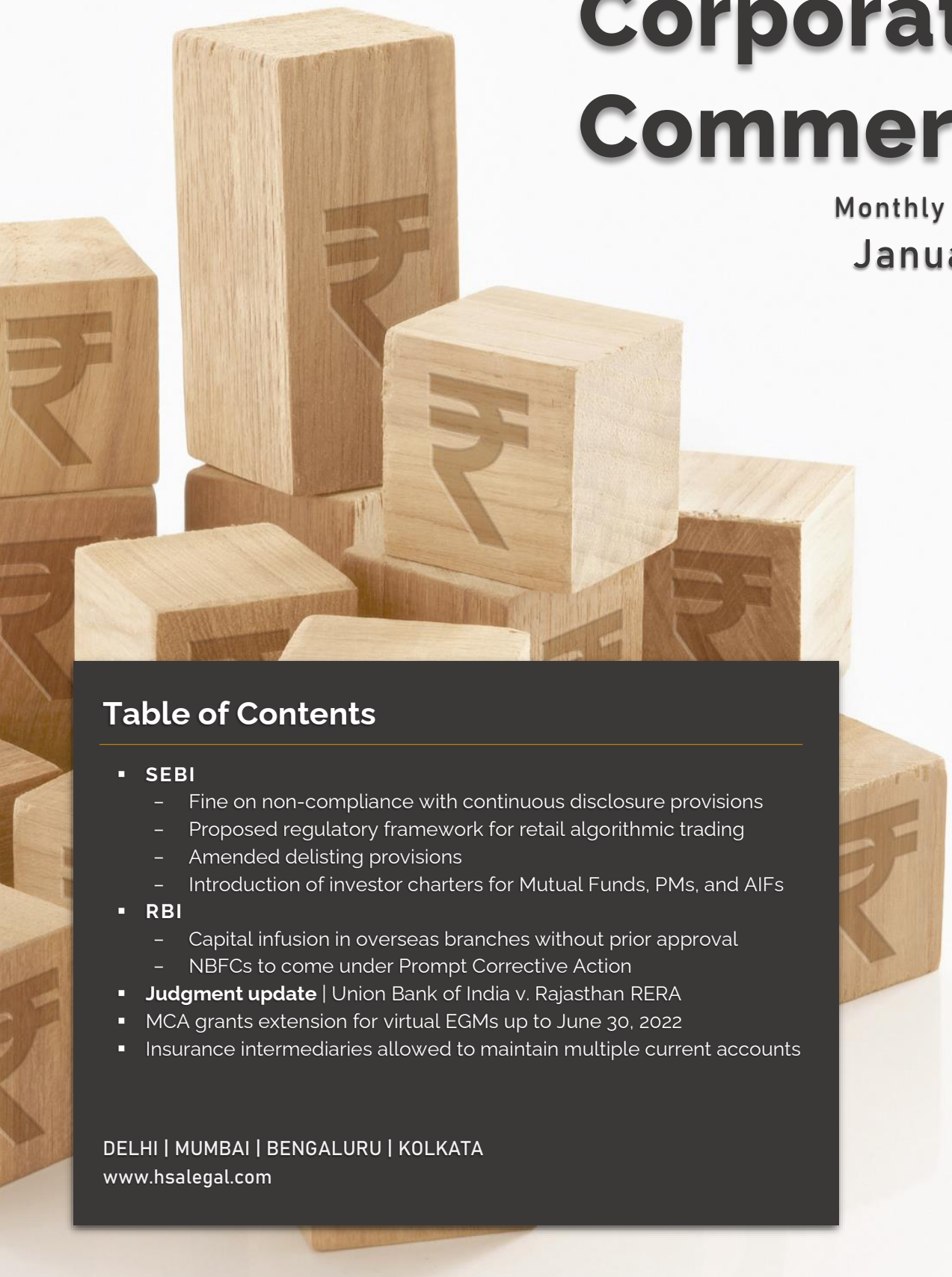

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SEBI | Fine on non-compliance with continuous disclosures provisions

SEBI released a circular dated December 29, 2021 on 'non-compliance with provisions related to continuous disclosures' (**Circular**). The Circular, will take effect on or after February 1, 2022, has been issued to recognized stock exchanges, depositories, issuers of listed non-convertible securities and issuers of listed commercial papers.

Key aspects

- Stock exchange(s) shall levy fine and take action in case of non-compliance with continuous disclosure requirements by the issuers of listed non-convertible securities and/or commercial paper.
- The fines collected must be credited to the concerned stock exchange's Investor Protection Fund.
- The fines specified in the Annexure I of the Circular will continue to accrue until the non-compliance has been remedied and the concerned recognized stock exchange has been satisfied. This accrual will take place regardless of any other disciplinary/enforcement actions taken by recognized stock exchange/ SEBI.
- If a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchange(s) will take uniform action in accordance with the Circular after consulting with one another.
- Recognized stock must publish on their websites, the actions taken against entities for non-compliance. The published details will include details of the corresponding requirement, the amount of fine levied upon the entity and the necessary action taken.
- As per the Annexure of the Circular, few of the instances of non-compliance and their penalties are:
  - In case of delay in furnishing intimation about a board meeting, a penalty of INR 5,000 per instance of non-compliance per item is levied
  - In case of non-submission of the annual report within the period prescribed, a penalty of INR 2,000 per day will be levied
  - For failure to obtain prior approval of stock exchange for any structural change in non-convertible securities, a penalty of INR 50,000 per instance will be levied.
- In specific circumstances, where a specific exception from the requirements for continuous disclosures/moratorium on enforcement proceedings has been allowed for, under any Act, Court/Tribunal Orders, the recognized stock exchanges may maintain the action in abeyance or may also withdraw the action.
- As per the Circular, the actions and measures are without prejudice to the powers of by the SEBI to initiate an action under the securities laws.

SEBI | Proposes regulatory framework for retail algo trading

SEBI proposed a fresh regulatory framework for algorithmic trading or algo trading by retail investors. The objective is to seek comments from stakeholders and the public on algo trading by retail investors, including the use of Application Programming Interface (**API**) access and automation of trades to make such trading safe and prevent market manipulation.

Algorithms leverage user data, behavior, and usage patterns, and take in pre-specified instructions to achieve certain goals. In trading, it uses a predefined set of commands to dictate the exact criteria for buying and selling stocks or other asset classes like futures and options, commodities, and currency derivatives.

Currently, exchanges approve algos submitted by brokers. However, for algos deployed by retail investors using APIs, neither the exchanges nor the brokers can identify if a trade emanating from the API link is an algo or a non-algo trade. These kinds of unregulated/unapproved algos pose a risk to the market and can be misused for systematic market manipulation as well as to lure the retail investors by guaranteeing them higher returns. SEBI has proposed this regulatory framework to ensure appropriate checks and prevent unauthorized altering or tweaking of algos.

Key aspects

- All orders emanating from an API should be treated as an algo order and be subject to control by stockbroker.
- The APIs to carry out algo trading should be tagged with the unique algo ID provided by the approving exchange.
- All algos developed by any entity must run on the servers of broker wherein the broker has control of client orders, order confirmations and margin information.
- Stockbroker is responsible for all algos emanating from its APIs and redressal of any investor disputes.

SEBI | Amended delisting provisions

SEBI released a notification on December 06, 2021 for amending the Shares and Takeover Regulations and released the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 (**Amendment**). The Amendment primarily pertains to the delisting rules for shares of a company and eases the process of mergers and acquisitions.

Key aspects

- The Amendment has inserted a definition of 'delisting regulation' as per the meaning ascribed under the SEBI (Delisting of Equity Shares) Regulations, 2021.
- An acquirer may seek the delisting of a target company by making an offer at the time of issuing the public announcement of an open offer and the comprehensive public statement, provided that such intention to delist needs to be declared. Previously, only the comprehensive public statement for intention to delist was required to be declared.
- The acquirer needs to complete the delisting offer responsibilities by issuing a public announcement, a comprehensive public statement, and a letter of offer that includes the open offer price calculated in compliance with the Regulation 8 and the indicative price for delisting. Further, the acquirer shall notify both the open offer price and the indicative price at the time of issuing the comprehensive public statement.
- Where a delisting offer fails for one of the following reasons – failure to receive prior shareholder approval in accordance with Regulation 11 of the Delisting Regulations; failure to receive prior in-principal approval of the relevant stock exchange in accordance with Regulation 12 of the Delisting Regulations; or failure to meet the threshold of 90% set out in Regulation 21 of the Delisting Regulations – the acquirer shall make an announcement in all newspapers where the comprehensive public statement was published, within 2 working days of the failure, and adhere to all relevant provisions of these regulations relating to the completion of the open offer.
- When a competitive offer is made as per Regulation 20, the acquirer is not allowed to delist the target company and is also not responsible to pay interest to the shareholders because of the competing offer's delay. The acquirer must adhere to all relevant rules of these regulations and publish an announcement in all newspapers where the comprehensive public statement was published within 2 working days from the date of the public announcement.
- Within 5 working days following the date of the announcement, shareholders who have tendered shares in acceptance of the offer shall be able to withdraw their tendered shares.
- If the target company is unable to be delisted following the delisting offer but the acquirer's shareholding exceeds the maximum permissible non-public shareholding threshold of 75%, the acquirer could aim to delist the target company again within 12 months of the open offer's completion, provided that the acquirer's non-public shareholding in the target company remains above the maximum permissible non-public shareholding threshold.
- The following conditions must be followed for another delisting attempt to be successful:
  - The delisting threshold set forth in Regulation 21 of the delisting regulations is met
  - 50% of the remaining public shareholding is purchased
- If a delisting attempt fails, the acquirer shall comply with the target company's minimum public shareholding criteria under the Securities Contract (Regulation) Rules, 1957 within 12 months.
- Further, the floor price for a subsequent delisting attempt shall be higher than the indicative price proposed on the initial attempt at delisting and the company's book value shall be computed as per the Amendment.

SEBI | Introduction of investor charters for Mutual Funds, PMS and AIFs

On December 10, 2021, SEBI released a Circular providing for separate investor charters for Mutual Funds (**MFs**), Portfolio Management Service (**PMS**) providers and Alternative Investment Funds (**AIFs**), assigning rights and responsibilities for investors as well as mandating disclosures that must be made in formats prescribed by the regulator. The move is aimed at bringing further transparency to the investor grievance redressal mechanism. These disclosure requirements are in addition to those already mandated by SEBI. This fresh Circular have come into effect from January 1, 2022.

Key aspects

- MFs, PMS and AIFs will have to disclose the investor charter on their websites.
- Additionally, AIFs should bring investor charter to the notice of investors through Private Placement Memorandum (**PPM**) in case of new schemes; for existing schemes, as a one-time measure, they should disclose the charter to the investors on their registered e-mail.
- MFs are required to disclose the details of investor complaints on their respective websites as well as on the Association of Mutual Funds in India (**AMFI**) website monthly in the prescribed format.
- MFs are advised to display links/options to lodge complaints with them directly on their websites and mobile apps. The link to the SCORES website and the link to download the mobile application shall also be provided on their website.
- Portfolio managers also need to disclose the data on their websites pertaining to complaints including SCORES complaints, on monthly basis.
- This disclosure needs to be mandated within seven days of the close of each month.

RBI | Capital infusion in overseas branches without prior approval

On December 08, 2021, RBI announced that no prior approval from them shall be required by the banks incorporated in India to infuse capital in their overseas branches and subsidiaries along with retention/repatriation/transfer of profits from such overseas branches. Earlier, the banks incorporated in India were obligated to seek a prior approval from RBI; however, with release of this notification, banks have to obtain an approval of their boards.

Key aspects

- The notification is applicable to all scheduled commercial banks other than foreign, small finance, payment, and regional rural banks.
- The notification applies to the banks that meet the regulatory capital requirements, including capital buffers. Banks which do not meet with such requirements are required to seek prior approval of RBI.
- All relevant aspects of such transactions (capital infusion, repatriation/retention or transfer of profits), including regulatory requirements and performance parameters of their overseas center, must be adhered to. Additionally, compliance with national and international laws is mandatory.
- Banks are required to report all instances of infusion of capital and/or repatriation/retention or transfer of the profits within 30 days of the transaction.

RBI | NBFCs to come under Prompt Corrective Action

RBI has decided to bring Non-Banking Finance Companies (**NBFCs**) under the ambit of the Prompt Corrective Action (**PCA**) framework. Under this framework, NBFCs will face restrictions when certain parameters like Non-Performing Assets, Capital Adequacy Ratio and Tier 1 Capital fall below the stipulated levels. It will be applicable for all deposit taking NBFCs, excluding government NBFCs, primary dealers, housing finance companies and other non-deposit taking NBFCs in the middle, upper and top layers. The PCA framework for NBFCs will come into effect from October 1, 2022.

Key aspects

- **Risk thresholds**
  - **Risk threshold 1:** NBFC will be restricted on dividend distribution and promoters will be asked to infuse capital to reduce leverage. RBI will also restrict issuance of guarantees or taking other contingent liabilities on behalf of group companies, in case of core investment companies.
  - **Risk threshold 2:** NBFC will be prohibited from opening branches
  - **Risk threshold 3:** Capital expenditure will be stopped, other than for technological upgradation.
- **Conditions for imposition of PCA**
  - If the net non-performing assets fall in the 6-9% (**risk threshold 1**), 9-12% (**risk threshold 2**) or greater than 12% (**risk threshold 3**) brackets
  - If the capital adequacy ratio falls 300 basis points from the current level of 15-12% (**risk threshold 1**), 300-600 bps from 12-9% (**risk threshold 2**) or 00 bps from 9% (**risk threshold 3**)

According to the RBI, NBFCs have been growing and have substantial inter-connectedness with other segments of the financial system. RBI stated that the objective of the framework is to enable supervisory intervention at appropriate levels to safeguard/restore the NBFC's financial health.

Judgment update | Union Bank of India v. Rajasthan Real Estate Regulatory Authority

Lenders of real estate projects may be exposed to liabilities under RERA in case of being adjudged a 'Promoter'

Recently, the Rajasthan High Court whilst delivering judgement in *Union Bank of India v. Rajasthan Real Estate Regulatory Authority* [1] has exposed the lenders to liabilities under the Real Estate (Regulation and Development) Act, 2016 (**RERA**) in the eventuality of the lender being adjudged a Promoter as defined in the RERA Act. The judgment elucidates a clear view on the accountability of banks under RERA and the interplay between Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (**SARFAESI**) Act and Real Estate (Regulation and Development) Act, 2016 (**RERA**).

The proceedings were initiated in response to complaints filed by the allottees of residential units in a complex that the promoters were developing. However, the developer failed to complete the project and hand over the possession to the allottees and defaulted on the repayment of loans, prompting action by the lender to take over the project. Some of the key issues raised for consideration in this case were whether banks can be made amenable to jurisdiction of RERA and the conflict between applicability of SARFAESI Act and RERA Act.

Analyzing this provision of both the statutes, the Court pointed out the interplay between these Statutes and held that till the bank opts not to take recourse to any measures under sub-Section (4) of Section 13 of

[1] D.B. Civil Writ Petition No. 13688/2021

SARFAESI, they are not amenable to the jurisdiction of RERA. However, the moment the bank takes recourse to any of the measures under sub-Section (4) of Section 13, RERA can have jurisdiction to entertain the complaint filed against the bank and this is because by opting for such recourse the bank steps into the shoe of its borrower and it triggers statutory assignment of right of the borrower in the secured creditor.

RERA has changed the legal landscape of the industry from fairly free play to highly consumer centric. Lenders should ensure solid documentation to reap benefits from RERA and ensure that this new regime does not inadvertently compromise their rights. By force, the lenders would have to rush to their drawing boards to reconfigure their strategies and business models and recalibrate their agreements with the promoters/developers of projects to escape the dragnet of becoming a promoter and be saddled by implications driven by the RERA Act, which we reckon is not in the charter of the lenders.

It is pertinent to note that similar views have been held by other RERA authorities. The final verdict would ultimately come from the SC which would evaluate these pronouncements and conglomeration of rules of interpretation, but the fact remains that the lenders that are mapping developer's metrics and helping weak liquidity profile also deserve to be adequately protected to buttress their business interests.

MCA | Extension for virtual EGMs up to June 30, 2022

On December 08, 2021, MCA granted extension to companies to conduct their Extraordinary General Meetings (**EGM**) through Video Conferencing (**VC**) or Other Audio-Visual Conference (**OAVC**). Due to emergence of Covid-19, MCA had allowed the companies to conduct their EGMs through VC or OAVC first in April 2020 and this has been extended for another 6(six) months, till June 30, 2022.

As per Section 100 of the Companies Act, 2013 (**Act**) read with the Rule 17 of The Companies (Management and Administration) Rules, 2014, directors have the power to call for an EGM for the urgent matters which cannot be held out till AGM. The notification issued last December had divided the companies in two categories - A & B. Companies in category A are those which have more than 1000 shareholders and have a provision of e-voting as per Section 108 of the Act read with Rule 20 of the Companies (Management and Administration) Rules, 2014 whereas companies in Category B are those which have less than 1000 shareholders and thus have a provision of ballot voting as per Section 110 of the Act. A different set of guidelines were issued for both categories of companies.

As per the notification, Category A companies are required to send out a notice with all the details including the agenda, time and date of the meeting to the registered e-mails of the shareholders and e-voting is to be conducted to pass an agenda. The resolutions passed in the meeting need to be then registered with the Registrar of Companies within 60 days. For Category B companies, the voting is to be done by the members through their registered emails. However, if less than 50 members are present, then the voting can be done through a show of hands. Both Category A and Category B companies are required to display the notice of the meeting on their website, record the meeting and keep the transcripts safely.

This extension by the MCA has been highly appreciated as this mode of participation in meeting for shareholders is more convenient.

IRDAI | Insurance intermediaries allowed to maintain multiple current accounts

Insurance Regulatory and Development Authority of India (**IRDAI**) announced that insurance intermediaries, including entities sponsored by them, can maintain current accounts in appropriate number of banks for the purpose of meeting regulatory requirements and reinsurance business.

In August 2020, RBI had instructed banks not to open current accounts for customers who have availed credit facilities in the form of cash credit or overdraft from the banking system. The regulator had received representations from the intermediaries in regard to maintaining current accounts with banks. The Circular has been issued to avoid potential hardship faced by the insurance intermediaries.

IRDAI has asked the insurance intermediaries to review annually the need for having multiple current accounts and rationalization.

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