



Updates on few Circulars issued by Securities and Exchange Board of India (SEBI) in the month of December 2018.

Change in criteria for Offer for Sale (OFS) through Stock Exchange Mechanism (Circular no. SEBI/HO/MRD/DOPI/CIR/P/2018/159 dated December 28, 2018)

SEBI had earlier allowed the promoters and large investors to offer shares through Offer for Sale Mechanism, if their shares were of the top 200 companies by Market Capitalisation.

Presently, vide above circular the SEBI has opened OFS Mechanism for companies with Market Capitalisation of Rs.1000 crores and above.

For sake of computing Market Capitalisation, it is prescribed to consider the average daily market capitalization for six months period prior to the month in which the OFS opens.

Further, SEBI has also given a choice to sellers to cancel the offer in case sufficient demand for non-retail investors are not received at or above the floor price on T day. Seller is expected to cancel the offer on T day itself for both retail and non- retail investors.

The other conditions applicable to OFS Mechanism prescribed under various circulars issued earlier are remains un-changed.

Segregated portfolio in Mutual funds to address credit event. (Circular no. SEBI/HO/IMD/DF2/CIR/P/2018/160 dated December 28, 2018)

This circular seems to be issued in order to address situations such as IL&FS Crisis, where IL&FS failed to make payment of interest on commercial papers. On account of such developments, the Mutual Funds Schemes having exposure to such investments came under huge liquidity pressure.

The Circular issued by SEBI attempt to address the liquidity Risk issues and ensure fair treatment to investors on such credit event by allowing segregated portfolio of such debt and money market

Instruments.

Credit Event:

It is defined as downgrade in credit rating by a SEBI registered Credit Rating Agency (CRA), as under:

- a) Downgrade of a debt or money market instrument to 'below investment grade', or
- b) Subsequent downgrades of the said instruments from 'below investment grade', or
- c) Similar such downgrades of a loan rating.

AMC of Mutual Funds can create such "segregated portfolio" if:

- a) Scheme Information Document (SID) has provisions for same with disclosures.
- b) AMC has a written down policy on "Segregated Portfolio" and approved by trustees.

The process of segregation of portfolio envisages issuance of press releases, approvals from trustees, email and sms communication to unitholders, display of NAV for both main portfolio and segregated portfolio, allotment of equal number of units to unitholders in segregated portfolio and listing of segregated portfolio on stock exchange. **However, the subscription and redemption of units in segregated portfolio is not allowed.**

The circular also provides for valuation and disclosures norms with regard to main portfolio and segregated portfolio. The AMC is allowed to charge TER (excluding investment and advisory charges) only upon recovery of investments in segregated portfolio. Further, Legal Charges are allowed subject to cap of TER on proportionate basis of recovery. The AMC is also required to make attempts for recovering the investments in segregated portfolio and Trustees to monitor such attempts and certain reporting structure is put in place.

Note: The Creation of Segregated Portfolio is optional and not mandatory and circular only paves way for addressing such Credit Events.

**The procedure for name changes in Beneficial Ownership Account on account of reasons other than Marriage- State of Karnataka and Punjab.
(Circular no. CIR/MRD/DP/158/2018 dated December 27, 2018)**

The name change in State of Karnataka and Punjab is published by the State Government in the Official Gazette only for Government employees and not for private persons in case of change of name of an individual.

Thus, SEBI has allowed individual to change name in BO Account subject to submission of following documents in state of Karnataka and Punjab instead of publication in Official Gazette.

- a) Request letter for change of name;
- b) Sworn affidavit executed before the Notary Public/ Magistrate of First Class/ Executive Magistrate mentioning the reason for change of name and his complete address;
- c) Paper publication in one local newspaper and one national newspaper; and
- d) KYC in changed name.

However, SEBI has given three months' time to Depositories in order to implement the Circular.

Criteria for Clubbing of Investment Limits for Foreign Portfolio Investors (FPI) (Circular no. SEBI/HO/IMD/FPIC/CIR/P/2018/150 dated December 13, 2018)

Based on recommendation of H R Khan SEBI Working Group, SEBI Board in its meeting dated December 12, 2018 has held that Beneficial Ownership criteria under Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (PMLA Rules) would be applicable only for Knowing your customer (KYC) and not for purpose of clubbing investments of FPI.

In order to club investments of FPI, common ownership of more than 50% or common control is stated to be the basis. In case of public retail funds (PRF) such as mutual funds, unit trusts, insurance companies or pension funds clubbing criteria is not applicable, if those PRF fulfils the criteria stated therein.

Control is defined to include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

Related FPI entities having direct or indirect common ownership of more than 50% or control will be treated to form part of same investment group and investment limits of all such entities would be clubbed at limit of single FPI.

Similar provisions are made applicable to clubbing of investments by Foreign Government and related entities. It is stated that clubbing would not be attracted if the said foreign entities have different ownership and control. SEBI may also specify conditions in case of Government of India entering into agreement or treaties with sovereign Governments and where such agreements and treaties recognize them to be distinct and separate.

In respect of any breach of the investment limit mentioned above, the FPI's shall have the following two options:-

- a) FPI in breach shall have to divest its holding within five trading days from the date of settlement of the trades to bring its shareholding below 10% of the paid up capital of the company, or,
- b) The said investments shall be treated as Foreign Direct Investment from the date of breach.

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