



Monthly Updates - SEBI APRIL 2019.

1. CIRCULARS

- **Guidelines for determination of allotment and trading lot size for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)** [Circular no. SEBI/HO/DDHS/DDHS/CIR/P/2019/59, dated April 22, 2019]

Real Estate Investment Trusts (REITs) & Infrastructure Investment Trusts

Introduction:

Real Estate Investment Trusts (“REITs”) and Infrastructure Investment Trusts (“InvITs”) are very similar to mutual funds and they basically facilitate investments into real estate and Infrastructure sector where individuals buy units rather than properties and profit from their investment for the same. This is mainly for people who are not looking to buy properties but only looking to invest in this market. REITs and InvITs are governed by the “REIT Regulations” i.e. Securities and Exchange Board of India (“SEBI”) (Real Estate Investment Trusts) Regulations, 2014 and (Infrastructure Investment Trusts) Regulations, 2014

The REIT Regulations were recently amended vide notifications dated April 22, 2019.

Following are the Important Amendments:

The minimum subscription requirement for REITs/InvITs during online public offerings (OPO) has been reduced.

Further, the trading lot has now been changed from Value based to Unit based. Previously, the defined trading lot was one lakh rupees in case of REITs and five lakh rupees in case of InvITs which has now been pegged at 100 units.

For REITS

For determining the allotment in an initial offer, by publicly offered REITs

- The value of each allotment lot shall not be less than Rs 50,000 where such lot shall consist of 100 units.
- Allotment to any investor shall be in the multiples of a lot.

For follow-on offer, by a publicly offered REITs

- Minimum allotment shall be of such number of lots, whose value is not less than Rs 50,000 where each lot shall consist of such number of units as in its trading lot.
- Allotment to any investor shall be in the multiples of a lot.

For InvITs

For determining the allotment in an initial offer, by publicly offered InvITs

- The value of each allotment lot shall not be less than Rs 1 lakh where such lot shall consist of 100 units.
- Allotment to any investor shall be in the multiples of a lot.

For follow-on offer, by a publicly offered InvITs

- Minimum allotment shall be of such number of lots, whose value is not less than Rs 1 lakh where each lot shall consist of such number of units as in its trading lot.
- Allotment to any investor shall be in the multiples of a lot.

Enhanced financial disclosures for InvITs

InvITs having aggregate consolidated borrowings and deferred payments above 49 percent are now required to make additional Financial disclosures as given below:

- Asset cover available;
- Debt-equity ratio;
- Debt service coverage ratio;
- Interest service coverage ratio;
- Net worth;

Circular no. CIR/IMD/DF/127/2016 dated November 29, 2016 prescribes disclosures to be made by an InvIT to the Stock Exchange(s) where its units are listed. InvITs are required to make financial disclosures as specified in Annexure A and Annexure B of the said circular. The above financial disclosures are in addition to already existing disclosures in the said circular.

2. ENFORCEMENT – ORDER OF CHAIRMAN/MEMBERS

SEBI had passed 4 orders on 30th April 2019 in relation to NSE, one among those orders is the matter of NSE Colocation.

Order in the matter of NSE Colocation- WTM/GM/EFD/03/2018-19, April 30, 2019

FACTS

The National Stock Exchange (NSE), between June 2010 and March 2014, had deployed tick-by-tick (TBT) architecture at its colocation (colo) facility. TBT disseminated data feed sequentially, giving preference to trading members (TM) that had connected first to the colo server. It was alleged that taking advantage of the system, broker OPG Securities frequently obtained first access to the exchange system in connivance with certain NSE staffers. The issue was brought to light by a whistle-blower, Ken Fong, who sent three complaint letters to SEBI in January, August and October of 2015 following which the regulator initiated multiple probes and forensic audits into the matter.

A cross-functional team (CFT) of SEBI officials did a preliminary examination and submitted reports to the Technical Advisory Committee (TAC) of SEBI. SEBI set up an expert committee in relation to this matter and, the report from the TAC was accepted by the expert committee. The same was sent to NSE and its response was sought. NSE denied all the findings of the TAC Report and argued that their TBT architecture was not flawed. Subsequently, the TBT committee recommended independent examination appointed by NSE. The NSE Board appointed Deloitte to carry out the investigation. The Deloitte report, in fact, stated that the TBT architecture of NSE gave an unfair advantage to Trade Users logging in first and that the NSE could have implemented “Randomizer” which it had developed in 2010. Randomizer would have randomly picked connections for the dissemination of data which would have negated this issue.

OBSERVATIONS

Whole Time Member, SEBI, made the following observations:

“Even though sufficient evidence is not available to conclude that the NSE has committed a fraudulent and unfair trade practice as contemplated under the SEBI (PFUTP) Regulations, it is established beyond doubt that NSE did not exercise the requisite due diligence while putting in place the TBT architecture. It created a trading environment in which the information dissemination was asymmetric, which cannot be considered fair and equitable.”

Further, it was observed that NSE’s average net profit margin was 77 percent across the years 2010-11 to 2013-14. Applying the margin on NSE’s revenues from colocation facility (excluding rack charges) from 2010-11 to 2013-14, Whole Time Member concluded that the profit from colocation operation came to Rs. 624.89 Crores.

DIRECTIONS

i. NSE

- NSE had to disgorge an amount of Rs.624.89 crores along with interest calculated at the rate of 12 percent per annum from April 01, 2014 onwards to the Investor Protection and Education Fund (IPEF) created by SEBI under Section 11 of the SEBI Act, within 45 days from the date of the order;
- NSE was prohibited from accessing the securities market directly or indirectly for a period of six (6) months from the date of the order;
- NSE had to carry out System Audit at frequent intervals, after thorough appraisal of the technological changes introduced from time to time; reconstitute its Standing Committee on Technology at regular intervals to take stock of technological issues; and frame a clear policy on administering whistle-blower complaints.

ii. Ravi Narain (Former MD & CEO of NSE) & Chitra Ramakrishna (Former MD & CEO)

- Both had to disgorge 25 percent of the salary drawn during their respective tenure to the IPEF created by SEBI under Section 11 of the SEBI Act, through NSE, within a period of 45 days from the date of the order;
- Both were prohibited from associating with a listed company or a Market Infrastructure Institution or any other market intermediary for a period of Five (5) years.

Author(s): Sheshashayee NS, Darshan JP

Email id: Sheshashayee. ns@foxmandal.in, darshan.jp@foxmandal.in

The contents of this publication are for general information only and should not be relied upon as a substitute for professional legal advice, which should always be sought in relation to any specific matter prior to acting in reliance upon any such information. The opinions, estimates and information given herein are made in best judgment, utmost good faith and as far as possible based on data or sources, which are, believed to be reliable. Notwithstanding we disclaim any liability in respect of any claim which may arise from any errors or omissions or from providing such advice, opinion, judgment or information.

Copyright © Fox Mandal & Associates

www.foxmandal.in