

Regulatory Update

India Edition

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1.0 RBI REGULATORY UPDATES & DEVELOPMENTS

1.1 Notifications

1.1.1 Notification to Scheduled Commercial Banks

- **Sovereign Gold Bond Scheme 2018-19**

The Government of India has issued a notification dated 8th October 2018 announcing the Sovereign Gold Bond Scheme 2018-19 (“the Bonds”). Under the scheme there will be a distinct series (starting from Series II) for every tranche, which will be indicated on the bond issued to the investor. The Government of India may, with prior notice, close the scheme before the specified period. The terms and conditions of the issuance of the bonds such as eligibility for investment, denomination, issue price, for example, have been indicated in the scheme.

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11388

RBI has also issued operational guidelines separately on the Sovereign Gold Bond Scheme 2018-2019 containing the details in respect of joint holding and nomination, Know-Your-Customer (KYC) requirements, Lien Marking, Agency Arrangement and so on.

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11389

- **Basel Framework III – on Liquidity Standards – Liquidity Coverage Ratio (LCR), FALLCR against credit disbursed to NBFCs and HFCs**

The Reserve Bank of India has decided that, with immediate effect, banks will be permitted to also reckon Government securities held by them up to an amount equal to their incremental outstanding credit to Non-Banking Financial Companies (NBFCs) and Housing Finance Companies (HFCs) as Level 1 High Quality Liquid Assets (HQLA), under the Facility to Avail Liquidity for Liquidity Cover Ratio (FALLCR) within the mandatory SLR requirement. This would be over and above the amount of such credit outstanding on their books as on 19th October 2018. This will be in addition to the existing FALLCR of 13 per cent of Net Demand and Time Liability (NDTL) and limited to 0.5 per cent of the bank’s NDTL.

The above additional FALLCR will be available up to 31st December 2018.

The single borrower exposure limit for NBFCs which do not finance infrastructure, stands increased from 10 percent to 15 percent of capital funds, up to 31st December 2018.

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11396

1.1.2 Notification to All Authorised Dealers Banks

- **External Commercial Borrowings (ECB) Policy – Liberalisation**

Under the extant policy, ECB can be raised under tracks I and III for working capital purposes if such ECB is raised from direct and indirect equity holders or from a group company, provided the loan is for a minimum average maturity of 5 years. RBI has decided to liberalise the said provision and permit public sector Oil Marketing Companies (OMCs) to raise ECB for working capital purposes with minimum average maturity period of 3-5 years from all recognised lenders under the automatic route.

Further, the individual limit of USD 750 million or equivalent and mandatory hedging requirements as per the ECB framework have also been waived for borrowings under this dispensation. However, OMCs should have a Board-approved forex mark to market procedure and prudent risk management policy, for such ECBs.

The overall ceiling for such ECBs would be USD 10 billion equivalent. This policy came into effect from 3rd October 2018 and all other provisions of the ECB policy shall remain unchanged.

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11384

1.1.3 Notification to All Prepaid Payment Investment Issuer

- **Prepaid Payment Instruments (PPIs) – Guidelines for Interoperability**

The Reserve Bank of India (RBI) has issued Operational Guidelines for Interoperability to be implemented by participating PPI issuers. All participating PPI issuers shall be guided by the technical specifications, standards and requirements for achieving interoperability through the Unified Payments Interface (UPI) and card networks, as per the requirements of National Payments Corporation of India (NPCI) and the respective card networks.

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11393

1.2 Press Release

1.2.1 RBI Cancels Certificate of Registration of 304 NBFCs

Following RBI's cancellation of registration certificates of 304 NBFCs, these companies cannot now undertake the business of a Non-Banking Financial Institution, as laid down under clause (a) of Section 45-I of the Reserve Bank of India Act, 1934.

2.0 SEBI REGULATORY UPDATES & DEVELOPMENTS

2.1 Circulars

2.1.1 Participation of Eligible Foreign Entities (EFEs) in the Commodity Derivatives Markets

SEBI has permitted those foreign entities which have actual exposure to Indian commodity markets, to participate in the commodity derivative segment of recognised stock exchanges for hedging their exposure (Please see SEBI Circular dated 9th October 2018). Such foreign entities would be known as "Eligible Foreign Entities" (EFEs). The salient features of the regulatory framework are as below:

- All commodity derivatives traded on Indian exchanges, except for those contracts defined as "sensitive commodities", will be eligible for the derivatives segment.
- EFEs eligible for the derivatives segment are mandated to have actual exposure to the Indian physical commodity markets with a minimum net worth requirement of \$500,000.
- EFEs desirous of taking hedge positions in the Indian commodity derivatives market would be required to approach Authorised Stock Brokers (ASBs), from among SEBI registered brokers, having a minimum net worth of ₹25 crore and who are authorised by the exchanges for opening of such accounts.
- Such an EFE should be a resident in a country/jurisdiction whose securities market regulator and/or commodity derivatives market regulator is a signatory to IOSCO's MoU or a signatory of a bilateral MoU with SEBI.
- The EFE should not be a resident in a country identified in the public statement of Financial Action Task Force (FATF) as a jurisdiction having strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or a jurisdiction that has not made sufficient progress in addressing the deficiencies, or has not committed to an action plan developed with the FATF to address the deficiencies.
- The EFEs shall be required to meet the KYC requirements as per extant Indian Anti-Money Laundering Laws in line with the KYC approach adopted for the equivalent category of Foreign Portfolio Investors (FPIs).
- Such EFEs would be required to provide their valid Legal Entity Identifier (LEI) issued by organisations accredited by the Global Legal Entity Identifier Foundation (GLEIF), wherever available.
- Hedge limits for an EFE will be determined on a case to case basis, depending on an applicant's actual exposure to the commodity, hedging requirement and other factors which the Exchanges deem appropriate. The EFE shall approach the ASB of the relevant Exchanges for hedge limits in the formats prescribed by those Exchanges.

2.1.2 Monthly Report of FPI Registration on SEBI's Website

In terms of the SEBI Regulations on FPIs, Designated Depository Participants (DDPs) are required to dispose of any applications the certificate granting registration as an FPI not later than thirty days after receipt of application by the DDP or after the information called for under Regulation 6 of the said regulations has been furnished, whichever is later.

It has been decided that the average time taken by the DDPs in processing such applications be disseminated on SEBI's website on a monthly basis. (Please see Circular dated 11th October 2018)

2.1.3 Total Expense Ratio (TER) and Performance Disclosure for Mutual Funds

In terms of the SEBI (Mutual Funds) Regulations, 1996, all scheme related expenses including commission paid to distributors are required to be paid only from the scheme and not from the books of the Asset Management Companies (AMC), its associate, sponsor, trustee or any other entity through any route. Mutual Funds (MFs) and MCs are not permitted to pay any upfront commission or adopt an upfronting of any trail commission, directly or

indirectly, in cash or kind, through sponsorships, or any other route. SEBI has introduced certain changes to the extant provisions (Please see SEBI circular dated 22nd October 2018)

Total Expense Ratio

- Upfronting of trail commission will be allowed only in case of inflows through Systematic Investment Plans (SIPs), in respect of which SEBI has proposed a carve out only for new investors to the MF industry (to be identified based on their Permanent Account Number(PAN)). The up fronting of trail commissions, based on SIP inflows, shall be up to 1% payable yearly in advance, for a maximum period of three years. This will require integration at the end of the Registrars and Transfer Agents and the detailed guidelines will be issued by SEBI at a later date.
- In the meantime, certain interim measures have been introduced by SEBI, as below:
 - The upfronting of trail commission may be for total SIP inflows of up to INR
 - 5,000 per month, per investor, across all schemes of a mutual fund. For this purpose, unique investor at MF level should be identified based on PAN.
 - Such upfronting of trail commission shall be up to 1% of the total SIP inflows for a maximum period of 3 years and shall be paid from the AMC's books.
 - The said commission shall be amortised on a daily basis to the scheme over the period for which the payment has been made. A complete audit trail for payments made from the AMC's books and amortised to schemes would be made available for inspection.
 - The said commission should be charged to the scheme as 'commissions' and should also account for computing the TER differential between regular and direct plans in each scheme.
 - The commission paid shall be recovered on a pro-rata basis from the distributors if the SIP is not continued for the period for which the commission is paid.

The interim measures would be for a period of six months or until the time the proposed new system is put in place, whichever is earlier.

- All fees and expenses charged in a direct plan (in percentage terms) under various heads including the investment and advisory fee should not exceed the fees and expenses charged under such heads in a regular plan.
- No pass back, either directly or indirectly, shall be given by MFs, AMCs or distributors to the investors.
- No rewards or non-cash incentives are permitted to be given to the distributors.
- Further, it has been decided that additional TER shall be based on inflows from individual investors from B 30 cities. Thus, inflows from corporates and institutions from B 30 cities will not be considered for computing the inflows from B 30 cities for the purpose of additional TER of 30 basis points.

Disclosure of scheme performance

AMCs would be required to disclose the performance of all schemes on the website of the Association of Mutual Funds in India (AMFI), as prescribed by SEBI.

2.2 Regulation

2.2.1 SEBI (Appointment of Administrator and Procedure for Refunding to Investors)

On 3rd October 2018, SEBI notified its regulations for appointment of an administrator and outlined the procedure for refunding to investors.

The regulations cover the following aspects:

- Appointment of an Administrator in case of failure to comply with disgorgement or refund orders passed by SEBI
- Sale of properties attached by the Recovery Officer of SEBI.
- Collection of claim documents and verification of claims of investors for effecting refunds
- Procedure to be followed for refund of monies to investors pursuant to disgorgement or refund orders passed by SEBI.

In case an entity is not traceable or is not complying with SEBI directions, the recovery officer can appoint an administrator for the purpose of selling the properties attached. Only an entity registered with the Insolvency and Bankruptcy Board of India (IBBI) as insolvency resolution professional would be considered eligible for appointment as an administrator.

ABOUT CCL

Established in the UK in 1988, 2006 in the UAE and 2012 in India, CCL's Mumbai operation provides specialist compliance services to organisations that are regulated by RBI and SEBI.

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- Regulatory Technology – CCL C.O.R.E

If you wish to discuss how CCL can assist you with any of the issues raised in this Regulatory Update, please contact one of the principals using the details below:

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This Regulatory Update provides information about the consultative documents and publications issued by the RBI and SEBI which are still current, proposed changes to the Rules and Guidance set out by RBI and SEBI, actual changes to Rules and Guidance that have occurred in the months leading up to the update, and other matters of relevance to RBI & SEBI-regulated firms. This Regulatory Update is intended to provide general summarised guidance only, and no action should be taken in reliance on it without specific reference to the particular RBI and SEBI Notifications referred to.