BASILSTONE
CONSULTING PRIVATE LIMITED

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Basilstone Consulting is pleased to present to you the **May 2023** issue of atharv, covering regulatory insights as well as discussion papers. This issue covers the following areas:

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1.1. Securities & Exchange Board of India

1.1.1. Introduction of Legal Entity Identifier (LEI) for issuers who have listed and/or propose to list non-convertible securities, securitized debt instruments, security receipts, and municipal debt securities; and securities receipts

a. LEI is a unique global identifier for legal entities, participating in financial transactions. It is 20 characters code to identify legally distinct entities that engage in financial transactions. As per RBI Directions, it mandates non-individual borrowers having aggregate exposure of above Rs. 25 crores, to obtain LEI code.

b. Time limit in order to obtain/ report LEI code in the Centralised Database of the corporate bonds is tabulated below-

Category of security	Relevant Regulation	Applicability	Timeline
Non-convertible Securities	SEBI (Issue and listing of Non-convertible Securities) Regulations, 2021	Issuer proposing to issue and list non-convertible security	On or after September 1, 2023
		Issuer having outstanding listed non-convertible security as on August 31, 2023	On or before September 1, 2023
Securitised Debt Instruments and Security Receipts	SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008	Issuer proposing to issue and list Securitised Debt Instruments or Security Receipts	On or after September 1, 2023
		Issuer having outstanding listed Securitised Debt Instruments and Security Receipts as on August 31, 2023	On or before September 1, 2023

c. The requirement of LEI for issuer proposing to list/have outstanding municipal debt securities shall be specified later.

d. Entities can obtain LEI from Legal Entity Identifier India Ltd. (LEIIL), a subsidiary of Clearing Corporation of India (CCIL), which has been recognized by the RBI as an LEI issuer. The depositories shall map the LEI Code to existing ISINs by September 30, 2023.

Impact:
LEI is designed to create a global reference data system that uniquely identifies every legal entity, in any jurisdiction, that is party to a financial transaction. This will be useful to map all the issuance of the securities.

1.1.2. Additional Requirements for the Issuers of transition bonds.

a. "Transition bonds" is one of the sub-categories of the revised definition of "green debt security". As per SEBI (Issue and Listing of Non-Convertible Securities), transition bonds comprise of "funds raised for transitioning to a more sustainable

form of operations, in line with India's Intended Nationally Determined Contributions"

b. There are in total four disclosure requirements, one in the Offer Document for public issues/ private placement of such bonds; in the Centralised Database for corporate bonds; disclosures to the stock exchanges, in case of a revision in the transition plan; disclosure in the Annual Report.

c. With reference to disclosure in the offer document for public issue, the insurer shall use a denotation "GB-T" it shall be disclosed in the offer document on the cover page and in the type of instrument field in the term sheet. They shall also mention the details of the transition plan.

d. With respect to disclosure in the Centralised Database, the issuer shall use denotation GB-T in point 10(6) in the others section, i.e., Type of Instrument of Annex-XIV-A to Chapter XIV. And shall also update the denotation GB-T as a prefix in "instrument details".

e. In terms of disclosure to the Stock Exchange, in case of a revision of the transition plan. An issuer shall disclose a revised trading plan along with an explanation of any such revision to the already disclosed plan, if any.

f. There are also disclosure requirements for the transition in the transition plan along with a brief on the progress of implementation of the transition plan in the Annual Report.

Impact:
In order to facilitate transparency and informed decision-making amongst the investors in the transition bonds that are not being misallocated, it has been decided to prescribe certain additional requirements for the issuance and listing of transition bonds.

1.1.3. Testing Framework for the Information Technology (IT) Systems of the Market Infrastructure Institutions (MIIs)

a. It is an operational circular that is issued by SEBI, after consultation with the recommendations of the Technology Advisory Committee (TAC). As MIIs are systemically important institutions since they provide the infrastructure necessary for the smooth and uninterrupted functioning of the securities market.

b. MIIs are required to do extensive testing, validation, and documentation whenever new systems/applications or changes to the existing systems are introduced before deployment in the production/live environment.

c. A detailed procedure and set of actionable are provided in the circular to be followed for testing IT Framework.

1.1.4. Registration with the FINNET 2.0 system of Financial Intelligence Unit-India (FIU-India)

a. In the previous circulars they had addressed to designated directors and principal officers of Debenture Trustee. Which specified the guidelines including red flags indicators for detecting suspicious transactions.

b. All the reporting entities falling under Debenture Trustee already registered are required to re-register themselves in FINNET 2.0 system/module. Those who have not yet registered are directly required to register under the FINNET 2.0 system of FIU-India immediately in light of the FATF mutual evaluation.

c. SEBI registered debenture trustees are also advised to register/re-register themselves in FINNET 2.0 system as soon as possible.

1.1.5. Direct Market Access (DMA) to SEBI registered Foreign Portfolio Investors (FPIs) for participating in the Exchange Traded Commodity Derivatives (ETCDs)

a. DMA facilitates the client of a broker to directly access the exchange trading systems through broker infrastructure to place/execute orders without manual intervention by the broker.

b. Based on the representation received for enabling DMA facilities to FPIs in ETCDs and deliberations by the Commodity Derivative Advisory Committee (CDAC) of SEBI, it was decided to allow extending DMA facilities to FPIs. They are required to adhere to provisions stipulated in the SEBI circular issued earlier.

c. The stock exchanges are also advised to follow the prescribed guidelines as mentioned in the circular.

Impact:
In September 2022, SEBI allowed FPIs to practice in the ETCDs in order to increase depth and liquidity in the market. And now stock exchanges are allowed to extend DMA facilities to FPIs. This would increase the volume of the transactions to an extent and in return would help to grow the market at large.

1.1.6. Investment in the Units of Mutual Funds in the name of the minor through a guardian.

a. In the earlier circular issued by SEBI dated December 24th 2019, they had prescribed a uniform process to be followed across Asset Management Companies (AMCs) with respect to investments made in the name of the minor by the guardian.

b. With regard to that, some of the changes are made with respect to the mode of payment like payment can be accepted through the bank account of the minor or from a joint account. For existing folios, the AMCs shall insist upon a change of pay-out Bank mandate before redemption is processed.

c. Irrespective of the source of payments, all redemptions shall be carried through the verified bank account of the minor holding with parents/guardian after completing KYC formalities. These changes shall be applicable from 15th June 2023.

1.1.7 Consultation Paper on Special Rights to Unitholder and Role of Sponsor in REITs & InvITs

a. The consultation Paper has three objectives, first the proposal to strengthen governance norms for REITs and InvITs; second is the proposal to make applicable principles of stewardship code to members; the third part deals with the role of the sponsor in REITs/InvITs and also propose the concept of Self-sponsored REIT/InvITs.

b. First proposal talks about the need for the superior right to nominate directors on the board of Managers/Investment Managers who are required by the institutional investors to protect their investments.

   This is done in order to seek rights to protect their interests not to impact day-to-day functioning and not to seek control of Investment Managers/Managers of REITs/InvITs in any manner.

   It was proposed to provide such rights subject to the approval of the majority of public unitholders at the first unitholder meeting held after the initial offer. It is proposed that every person holding a minimum of 10% of units for every 10% shall be entitled to nominate one director to the board.

   The concern over here was that rights granted immediately after the initial offer could continue in perpetuity even after significant dilution of stake, which is undesirable. Two options are provided by them one is board nomination rights to unitholders and the second one is the constitution of unitholders council.

c. Second proposal talks about the importance of institutional investors is increasing over the world so they are expected to shoulder greater responsibilities towards clients/beneficiaries by enhancing monitoring and engagement with their investment entities. In order to address such issues a Stewardship Code shall be made applicable and intended to protect the interest of clients as it is an important step towards improved corporate governance. They have also proposed a set of prescribed principles that shall be made applicable to the Stewardship Code for aligning with the interest of unitholders.

d. Third proposal talks about the sponsor's role in REITs and InvITs. The sponsor plays a very important role right from the inception till the operations are in place and is also required to hold a minimum of 15% of units for the period of three years.

It was noted that most of the sponsors have significant holdings in the REITs/InvITS giving them the right to appoint directors on the board of Managers/Investment Managers.

From the market participants it was concluded that while the perpetual holding requirement of the sponsor may be suitable for early-stage REITs and InvITs, there may be certain REITs and InvITs which have matured beyond financial and structural reliance on the sponsors and have demonstrated a strong track record of financial stability and independence from the Sponsor. So, the requirement of the sponsor which is more in the initial is not the same over the years as REITs/InvITs mature.

In order to address these alternatives have been provided to give additional flexibility in terms of minimum holding requirements i.e., first to put a maximum cap on locked-in units in terms of the amount and second provision of Self-sponsored REITs/InvITs. They have provided a proposed table regarding the maximum cap on locked-in units in terms of the amount to be followed.

It has proposed the separation of sponsors from REITs/InvITs to gauge whether they can stand on their own. Certain REITs/InvITs which have evolved beyond substantial dependencies and linkages with the sponsor. It has proposed whether to permit self-sponsored REITs and InvITs. It would not only create space for mature and independent professionally managed Managers/Investment Managers to emerge but shall also provide for a further exit option for the Sponsor in addition to the exit option through a change of sponsor presently envisaged in the REIT Regulations & InvIT Regulations.

The primary principle governing the framework for self-sponsored REIT/InvIT is that the Manager/Investment Manager shall be able to meet all the sponsor-related eligibility requirements as prescribed.

1.1.8 Consultation Papers on Expanding the Definition of Qualified Institutional Buyers for Debt Securities

a. QIBs are an important source of funding, as the corporate bond market has been dominated by private placements (almost 98% of total issues), QIBs subscribe to around 94% of the total funds raised through the issuance of corporate bonds by way of a private placement. It has been serving as an important source of funding for issuers seeking to raise funds through the private placement of listed debt securities.

b. SEBI has received recommendations to expand the scope of the term "QIB" in order to increase the potential investor base for the issuer of debt securities and for further developing debt markets.

c. Given the limitations on and restrictions which are applicable to the QIBs. Notably, many investors, with large corpus, financial sophistication, and the ability to evaluate investment opportunities have emerged. There are also existing entities that could be considered recognized as QIBs for the same reason.

d. Taking into account the reasons stated above, SEBI has proposed that the definition of QIBs shall be expanded to the categories as prescribed. They have also provided conditions to be followed by them for being eligible as QIBs.

1.1.9 Consultation Paper on Delisting of Non-Convertible Debt Securities

a. There is no specific provision for the delisting of non-convertible debt securities in the extant provisions, a need has been expressed to specify a mechanism for the delisting of non-convertible debt securities. The objective is to develop a mechanism for delisting of non-convertible debt securities.

b. SEBI has sought views on the proposed mechanism for voluntary delisting of the non-convertible debt securities. The operational procedure has been mentioned in the Consultation paper. There has also been a requirement for in-principal approval requirement from the stock exchanges. Disclosure requirements have also been laid down, in that case, to be followed by the listed entity. The final application shall be provided to the recognized stock exchange. The stock exchange shall monitor compliance by them.

c. This has several benefits such as it will benefit listed entities in a way by specifying a well-defined framework for delisting and shall also augment the ease of doing business for listed entities proposing to delist. With respect to non-convertible debt securities, it shall bring more clarity to them in terms of roles and responsibilities as well as rights owned by them. It shall also bring parity in terms of availability to all stakeholders.

1.1.10 Master Circular for all registered Registrars to an Issue and Share Transfer Agents (RTAs)

a. SEBI has come up with Master Circular this month for registered Registrars to an Issue and Share Transfer Agents (RTAs) in which SEBI has complied with all the applicable previous circulars and also added reporting requirements (Formats) and Annexures. SEBI has provided ease by compiling all the matters in one place.

1.1.11 Master Circular for Stock Brokers

a. SEBI has issued Master Circular this month for Stock Brokers, incorporating all the required changes and compiling regulations, and Annexures together in one place for providing ease to the users. Previously in June 2018 SEBI issued Master Circular and post that all the circulars that have been issued are compiled in this place.

1.1.12 Consultation Paper on draft SEBI (Prohibition of Unexplained Suspicious Trading Activities in the Security Market) Regulations, 2023

a. SEBI is looking into the matter of a New Framework to deal with Unexplained Suspicious Trading Patterns, to address the challenges taking a cue from the referral legal provisions and practice. A new framework is to be conceptualized wherein a person or group of the connected person exhibiting an unexplained suspicious trading pattern, would be deemed to be violating the securities laws unless they prove it otherwise.

b. There has been prepared an outline which shall contain things like Unusual Trading Pattern (UTP), Deemed Trading Pattern (DTP), Material Non-Public Information (MNPI), Suspicious Trading Activities (STA), Unexplained Suspicious Trading Activity (USTA) such changes have been proposed.

1.1.13 Consultation Paper on streamlining regulatory framework for Registration of Foreign Venture Capital Investors (FVCIs)

a. As per FVCI Regulations, FVCI shall invest at least 66.67% of the investible funds in unlisted equity shares or equity-linked instruments of VC Undertaking or investee company and not more than 33.33% of investible funds shall be invested in other prescribed sources.

b. Currently, the processing of applications for granting registration to FVCIs was carried out by SEBI. Based on the recommendation, it is proposed to make the procedure speedier, Designated Depositary Participants (DPPs) shall be entrusted with the responsibility of carrying out registration and surrendering them, subject to conditions specified by SEBI. This proposed change shall bring consistency in the process of registration and post-registration for FPIs and FVCIs.

c. It is proposed to review the eligibility criteria for registration as FVCI, it was observed that there was a requirement for more clarity. Therefore, a need is felt to replace existing eligibility criteria with a clear and precise set of criteria, so as to enable DPPs to process the FVCI applications without ambiguity.

d. There are several proposals such as a review of eligibility criteria for FVCIs, application form for grant of certificate of Registration as FVCIs, Dematerialisation of Assets of FVCIs, and renewal of registration of FVCIs. In a way there are several

changes proposed in the FVCI space, a close watch is required to see what shape it takes.

1.1.14 Risk Disclosure with Respect to Trading by Individual Traders in Equity Futures and Options Segment.

a. With a view to facilitating informed decision-making by the investors trading in the derivatives segment, it has been decided to introduce “Risk Disclosure” with respect to trading in the equity Futures and Options (F&O) Segment.

b. All the stock brokers shall display the “Risk Disclosure” given in Annexure-I on their website and to all clients in the manner specified in the circular. It shall be disclosed prominently covering at least 50% of the screen.

c. All Qualified Stock Brokers (QSBs) shall maintain the profit and loss (P&L) data of the clients on a continuous basis as per the given format in Annexure- II. The P&L shall data of the client shall be retained for at least Five Years. This circular shall be applicable with effect from July 1st 2023.

Impact:
In the past few years, there has been increased participation of persons in the derivative segment. Investors are expected to make investment decisions based on their own due diligence and risk appetite. It is as well important for them to empower them with detailed information about the risk associated with trading in derivatives. With this disclosure requirement in place, help to take a more informed decision and have a better trading view.

1.1.15 Consultation Paper on Enabling direct participation by Clients/Participants in the Limited Purpose Clearing Corporation- tri-party repo for corporate bonds.

a. One of the pre-conditions of the development of the corporate bond market is to develop an active repo- market which will assist in improving liquidity in the underlying securities. A well-developed repo market in corporate bonds will facilitate improved liquidity in underlying debt securities, the ability of the holders of debt securities to monetize them without selling the underlying, and meeting the temporary requirement of funds.

b. SEBI came out with the proposal for enabling direct participation by the clients in the Tri-Party repo rate Segment for corporate bonds. This proposal shall facilitate direct participation in repo transactions in corporate bond entities which cannot take direct membership of the stock exchange, clearing corporations such as NBFCs, insurance companies, mutual Funds, etc.

c. In the consultation papers, it has been suggested to facilitate transactions directly between clients and Limited Purpose Clearing Corporation (LPCC) in the tri-party

repo segment as well as to enable contribution by such clients directly to the Core SGF (Settlement Guarantee Fund).

1.1.16 Consultation Paper on Strengthening of Investor Grievance Handling Mechanism through SCORES and linking to the online dispute resolution mechanism approved by SEBI.

a. SEBI already has Investor Grievance Handling Mechanism SCORES in place, but there is always a requirement to strengthen it in order to make it more efficient and faster to resolve such complaints.

b. Efforts have been taken to strengthen the mechanism by proposing changes such as changes in the registration of Intermediaries by mandating them to redress complaints in a timely manner, SEBI has issued Investor's Charter in order to get services in a timely and effective manner which incorporates points relating to complaint redressal.

c. In addition to these policies, a Mediation/Conciliation/Arbitration mechanism has been created to ease-out things. There has been a proposal for two levels of review that investors can opt for, plus the option for referral to the Online Dispute Resolution Mechanism which is recently approved by SEBI.

1.1.17 Consultation Paper on the proposed review of the definition of Unpublished Price Sensitive Information (UPSI) under SEBI (PIT) Regulations, 2015 to bring greater clarity and uniformity in the Ecosystem.

a. Unpublished Price Sensitive Information (UPSI) is defined under SEBI (PIT) Regulations 2015, this definition plays a very important role in PIT Regulations, in order to bring greater clarity and uniformity in the compliance ecosystem.

b. There have been cases seen in the events where, information/event which should have been categorized as UPSI was not done by the company, due to which there was alleged insider trading. In such a case, the employee contended that if the company itself did not consider the information as UPSI, then how the employee could have considered it to be so. This highlighted the fact that companies were not exercising due care in that manner. Even this was backed by SEBI Research in this area as well.

c. SEBI's efforts towards curbing Insider Trading are hampered by the non-categorization of material information as UPSI by listed companies.

d. As per Regulation 30 of SEBI LODR, it requires listed entities to disclose material events or information. Part A of Part A of Schedule III of LODR is deemed to be material events that listed entities are mandatorily required to disclose.

e. Further events under Part B of Part A of Schedule III of LODR are required to be disclosed based on the application of guidance for materiality, which listed companies are required to be framed as per regulation requirements.

f. It is proposed to include the disclosure requirements as required under Regulation 30 of LODR to be brought into it. Additionally, changes also include the introduction of a Quantitative Threshold for determining the "materiality" of events/information, and disclosure for certain types of agreements binding listed entities.

1.1.18 Consultation Paper on Institutional Mechanism for Asset Management Companies for Deterrence of possible market abuse and fraudulent transactions.

a. As per the recommendations from the Committee on Fair Market Conduct which was constituted in 2017 mechanism to prevent market abuse and fraudulent transactions in securities was proposed for prevention of fraud or market abuse.

b. Consultation paper has proposed setting up of surveillance system and internal control procedure for deterrence and detection of possible misconduct, the procession of alerts relating to possible misconduct, and taking required actions.

c. Another proposal proposed is the review and updation of systems and procedures, sharing of resources/infrastructure/ systems may be permitted, whistle-blower policy, Responsibility, and accountability, and there were few relaxations proposed.

1.1.19 Consultation paper on the reduction of timeline for listing of shares in Public Issue from existing T+6 days to T+3 days.

a. SEBI has proposed a few changes in the consultation paper mainly regarding the reduction of the time frame for the issue of shares through Public Issue from existing six days to three days.

b. The reduction in the timeline will benefit both issuers as well as investors. In a way, the issuer shall have faster access to the capital raised thereby enhancing the ease of doing business and the investors will have an opportunity for having early credit and liquidity of their investments.

c. In order to bring change in a reduction in timeline, changes have to be brought in other processes as well which has been mentioned in the consultation paper.

1.1.20 Consultation Paper on Price Band formulation for scrips in the Equity Derivatives segment to strengthen volatility management and minimize information asymmetry.

a. Price band for a derivative contract reparents the boundaries within which the competing orders of buyers and sellers are accepted for the day by the trading

system of the stock exchange. For scrips having derivative contracts on them, these price bands are dynamic and can be flexed depending on trading during the day.

b. Earlier SEBI had specified individual scrip band price of 20% for all scrips except for scrips on which derivative is not applicable. Later in order to prevent erroneous ordering it was mandated dynamic price bands at 10% of the previous day's closing price on a few types of securities. Dynamic price bands are to be flexed by the stock exchange in increments of 5% in the event of a market trend in either direction.

c. SEBI has proposed, a cooling period after which there is movement in futures and options of 20% either way shall be gradually increased from 15 minutes to a maximum of one hour. Once the cooling-off period is over, the scrip would be allowed to move only an additional 2% as opposed to the existing limit of 5%. These measures shall serve as a tool to control excessive market volatility and help limit single-day fluctuations in scrips.

1.1.21 Dematerialisation of Securities of Holding Companies and SPVs held by Real Estate Investment Trusts (REITs)

a. Units of REITs shall be issued only in the dematerialized form to all applicants. It has been decided that henceforth to hold the securities of Hold Cos and SPVs in dematerialized form only. The manager shall ensure the same. Existing securities shall be directed to dematerialize on or before June 30, 2023.

Impact:
This change, is expected to promote dematerialization, encourage and improve ease of doing business, and to an extent transparency increase transparency.

1.1.22 Dematerialisation of Securities of Holding Companies and SPVs held by Infrastructure Investment Trusts (InvITs)

a. Units of InvITs shall be issued only in the dematerialized form to all applicants. It has been decided that henceforth to hold the securities of Hold Cos and SPVs in dematerialized form only. The manager shall ensure the same. Existing securities shall be directed to dematerialize on or before June 30, 2023.

Impact:
This change, is expected to promote dematerialization, encourage ease of doing business, improve ease of doing business, and to an extent transparency can also be increased.

1.1.23 Revision in the computation of Core Settlement Guarantee Fund in Commodity Derivative Segment

a. SEBI had already prescribed norms related to Core Settlement Guarantee Fund (Core SGF) in the previous circulars which provided detailed guidelines relating to

the computation of the minimum required corpus level of core SGF which was mandated to a minimum amount of 10 crores for stock exchanges having commodity Derivative Segment (CDS).

b. Clearing Corporations were mandated to augment their core SGF/ earmark additional funds to the respective target corpus level in the subsequent years based on overall risk, peak open interest in the previous period as well as the expected growth of business in the future.

c. In light of representations received from clearing corporations that in light of the turnover and the open interest observed at the stock exchanges in recent times, the target corpus level prescribed at the time of recognition of Clearing Corporations may be reviewed, and the methodology for computation of core SGF corpus in Commodity Derivatives Segment may now be harmonized with that of other segments.

d. Based on these deliberations, it was decided that clearing corporations in the commodity derivatives segment may align their core SGF as per the previous circular issued by SEBI, and excess contributions, if any, may be returned to the contributing stakeholders on a pro-rata basis, post approval of SEBI.

Impact:
There was a requirement from clearing corporations regarding the change in methodology for computation of core settlement guarantee fund in commodity derivative, as it was last changed in 2018. Now with the new method of computation, excess contributions can be returned to contributing shareholders on a pro-rata basis.

1.1.24 Consultation paper on proposed amendment to SEBI (Alternative Investment Funds) Regulations, 2012 to strengthen governance mechanisms of Alternative Investment Funds

SEBI has proposed following amendments to SEBI (AIF) Regulations: -

a. To specify the guidelines for borrowing by Category I and II AIFs;
- It is proposed that Category I and II AIFs may undertake leverage for the purpose of meeting shortfall in drawdown while making investment in an investee company subject to certain conditions as prescribed.

b. To mandate AIFs to hold their securities/investments in demat form only;
- It is proposed to mandate that AIFs shall hold the instruments/securities of their investments only in dematerialised form. The requirement shall not be applicable in case of investment in such types of instruments/securities for which dematerialisation is not available.

c. To extend the mandate for appointment of custodian to all AIFs and to prescribe role of custodians appointed by AIFs;

- It is proposed that Category I and II AIFs with corpus of less than Rs. 500 crores shall appoint a custodian.
- It is proposed that Manager of the AIF shall ensure that the custodian appointed by AIF is not an associate of manager / sponsor / trustee of the AIF.
- It is proposed that custodians shall also be responsible for monitoring investments of AIFs with regard to investment conditions and other related requirements under AIF Regulations.

d. To specify maximum extension of tenure by Large Value Fund for Accredited Investors (LVFs); and

- It is proposed that LVFs be permitted to extend their tenure up to four years, subject to approval of two-thirds of the unit holders by value of their investment in the LVF.

e. To mandate renewal of registration of AIFs.

- AIF's manager shall ensure that AIF pays renewal fee equal to 50% of its applicable registration fee for the subsequent block of five years from the date of grant of registration, within three months before expiry of the said block period.
- AIFs shall not accept any fresh commitment or make investment in a new investee company in any of their schemes, and shall not launch new schemes.
- Custodian of the AIF shall monitor the compliance by AIF/Manager with the above provisions.

Impact:

- Obtaining Leverage to meet up for any shortfall in drawdown for Cat I and II AIF will ensure that no investment opportunities are missed due to shortfall in drawdown.
- Investment by AIF in dematerialised security would enhance standards of transparency.
- Additional monitoring by Custodians on AIFs with respect to Investment Restrictions would improve investor confidence.

1.1.25 Consultation paper on proposal with respect to pro-rata and pari-passu rights of investors of Alternative Investment Funds (AIFs)

a. It recommended that the Priority Distribution (PD) model may be permitted where both the following conditions are satisfied:

- The AIF has been set up by acquisition of assets or refinancing of assets of an unrelated third party, and;
- None of the Limited Partners, directly or indirectly, are associates or group entities of the parties from whom assets are being acquired or being refinanced at all times, provided however, that the contributor of the assets may be permitted to hold up to 10% of the AIF units.

b. Additionally, when adopting such PD Model, the contributor in the PD Model shall continue provisioning 'as if' the assets which were contributed to the AIF continued to be held by the contributor.

c. With respect to pari-passu charge, it is proposed that: -

- All investors of the AIF/scheme shall be treated equally with respect to economic rights of the investors i.e., no differential rights shall be provided to investors of AIF/scheme which would affect economic rights of other investors.
- It shall not apply in case of differential rights provided on terms with respect to hurdle rate of return, performance linked fee/additional return and management fees.

Impact:

- The PD model would enable AIFs to effectively participate in refinancing of outstanding debt obligations.
- Pari-Passu terms for investors will ensure that the interest of all the investors is protected thus enabling healthy participation in AIF schemes.

1.1.26 Consultation Paper on the proposal to review Qualified Institutional Buyer status of Alternative Investment Funds, Venture Capital Funds and Foreign Venture Capital Investors

It is proposed to include the following within the ambit of QIB: -

a. AIFs and VCFs, other than those having 50% or more contribution from a single investor or investors belonging to the same group. ('Same Group" shall mean relatives and related parties as defined in Companies Act 2013)

b. FVCIs, other than those FVCIs who are corporate bodies and family offices

Impact:

As AIFs have similar process of investing as an institutional investor, granting of QIB status to AIFs will bring them at par with other institutional investors like in case of participation in Initial Public Offering of Shares.

1.1.27 Consultation Paper on Review of Total Expense Ratio charged by Asset Management Companies (AMCs) to unitholders of schemes of Mutual Funds to facilitate greater transparency and accrual of benefits of economies of scale to investors

Following is proposed for Mutual Funds: -

a. TER limit shall be inclusive of all expenses like Brokerage and Transaction costs, etc.

b. To allow AMCs to obtain limited purpose membership with stock exchanges for executing trades for own mutual fund schemes.

c. Additional TER charged to the investors for distribution commission for inflows from B-30 cities would subject to prescribed conditions.

d. Additional expenses not exceeding 0.05 per cent of daily net assets due to credit of any exit load to the scheme.
e. Goods and Service Tax (GST) on Investment and Advisory Fees should be part of TER.
f. The TER slabs should be at AMC level and not at the scheme level. Additionally, AUM of open-ended schemes, wherein slab based TER is presently applicable, may be bucketed into Equity based AUM (equity & equity related instruments) and other than equity-based AUM of the AMC (other than equity & equity related instruments). Overnight funds of AMCs invest in securities with maturity of 1 day, the AUM of such schemes may not be considered in any of the above referred buckets for the purpose of calculation of TER. However, TER rate derived based on all investments other than equity & equity related product shall be the maximum TER for Overnight funds also.
g. Revised slabs for TER are proposed to cover all costs and expenses.
h. Payment of upfront commission by investor directly and transaction costs deductible from investments of investors, may not be permitted.
i. Trail distribution commission model with additional conditions is proposed for switch transactions between mutual fund schemes.
j. Exit load of an open-ended scheme may be lowered to a maximum permissible limit of 2%.
k. Any expense other than those specified in Regulations 52(2) and 52(4) of Mutual Fund Regulations, including initial expenses of launching schemes, shall be borne by the AMC or Trustees or Sponsors. It is proposed that after the announcement of winding-up of the scheme, unless the decision is reversed by the investors, the expenses charged to the scheme/investors shall be restricted to such recurring expenses permitted under Regulation 52(4)(b), which pertain to winding up of a scheme.
l. Performance based TER
m. Introduce additional incentive for investment by women in Mutual Fund.
n. Unitholders may be given an option to exit at the prevailing NAV without any exit load when there is an increase in TER.
o. Uniformity in charging of each and every expense to the investor of regular plan and direct plan and the only difference between the TER of regular plan and direct plan should be the expenses towards distribution commission.

Impact:
SEBI proposals are mainly towards regulating the Total Expense ratio in a manner that better clarity can be provided to investors about the proposed expenses of the fund at the onset and measures have been proposed to control such expenses. Such steps may lead to higher inflows into the mutual fund industry.

1.1.28 Master Circular for Mutual Funds

SEBI has introduced compilation for Circulars, AMFI Best Practices and Policy related Letter/Emails issued by SEBI applicable registered Mutual Funds

1.1.29 Informal Guidance sought by Spice Jet Limited with respect to SEBI (ICDR) Regulations, 2018

a. In this case Spice Jet has dues payable to its vendors, aircraft lessors, and creditors. For the same, the company has proposed to issue equity shares on a preferential basis in order to restructure its outstanding lease liabilities towards certain aircraft lessors.
b. Company has proposed to issue equity shares on a preferential basis to the aircraft lessor. Consequent upon conversion of their existing outstanding lease liability payments equivalent to the amount in equity shares.
c. The proposed issuance of equity shares will offset monetary obligations owed to the aircraft lessor; it will not be covered under the provisions of Regulation 163(3) of the ICDR Regulations.
d. It is further observed, that regulation 167(2) shall apply to the proposed issuance of securities of equity shares and lock-in period of six months shall be imposed on such aircraft lessor from the date of trading approval.

1.1.30 Model Tripartite Agreement between the issuer Company, Existing Share Transfer Agent and new India Share transfer as per Regulation 7(4) of SEBI (LODR) Regulation, 2015

a. As per LODR Regulation 7(4) there is a requirement for entering into tri-partite when there is a change or appointment of a new share trade agent. The agreement shall be entered between the issuing company, the existing share transfer agent, and the new share transfer agent.
b. This model tri-partite agreement is prepared in consultation with the Registrar Association of India (RAIN) and some issuer companies. And the such model agreement is placed in **Annexure- A**
c. With this circular in place, RTAs and listed companies are advised to-

- Publish the format on their respective website.
- Comply with the conditions laid down in the circular.
- Make necessary and required amendments to the relevant bye-laws, rules, and regulations.

1.1.31 Comprehensive Guidelines for Investor Protection Fund and Investor Service Fund at Stock Exchanges and Depositories

a. SEBI has previously issued a circular dated October 28, 2004 about comprehensive guidelines for IPF and also advised stock exchanges to establish ISF. These guidelines are amended from time to time, so are these changes brought by SEBI in this circular.

b. It talks about comprehensive guidelines which are to be followed by IPF and ISF which includes,
   - Constitution and management of the Fund.
   - Contribution to the fund by Stock Exchange/ Depositories.
   - Utilisation of fund money and interest or income received.
   - Deployment of Fund Money Corpus by Stock Exchange/ Depositories
   - Review of the Corpus
   - Disbursement/ Disclosures/ Miscellaneous.

c. The circular also includes Standard Operating Procedures (SOP) for handling claims of Investors from IPF of Stock Exchange, which includes various actionable procedures to be followed in the timeline which is prescribed.

d. This circular has covered all the previous circulars and submerged into one.

1.1.32 Consultation framework for Mandating additional disclosures from foreign Portfolio Investors (FPI) that fulfil certain objective criteria, to 1) Guard against possible circumvention of Minimum Public Shareholding ("MPS") and 2) To guard against possible misuse of the FPI Route to circumvent the requirements of Press Note 3 ("PN3")

a. It was seen that some FPIs concentrate substantial wealth into a single Investee Company/ Company Group and this substantial holding has been near static for a long time. SEBI has a view that it is possible that promoters are taking these routes to circumvent regulatory requirements such as MPS.
b. GOI realized the inherent risk of the opportunistic takeover of Indian Companies, so to tackle with that SEBI came up with a rule that those who invest and shares land borders with India shall invest through Government Route Only. This is not applicable to FPI in such cases it can be misused, so disclosures are proposed to end this.
c. With respect to the requirements of PMLA it provides a framework for Identifying Beneficial Owners of legal entities which are in line with the FATF Framework. There have been thresholds prescribed exceeding which reporting shall be done by FPIs and any changes shall also be communicated.
d. In order to address the potential flags mentioned above, SEBI has proposed for additional disclosures to be provided by FPIs. In such cases, the existing Category I and Category II FPIs shall be categorized into Low-Risk FPIs, Moderate-Risk FPIs, and High-Risk FPIs. This classification coupled with investment concentrations shall be base for providing disclosure requirements.
e. For now, it has been proposed that High-Risk FPIs holding more than 50% equity AUM concentrated in a single corporate group shall be required to provide additional disclosures.
f. Separately, it is proposed that existing high-risk FPIs with an overall holding in Indian equity markets of over Rs. 25,000 Cr. shall also be required to comply with

additional granular disclosure requirements within 6 months, failing which the FPI should bring down its AUM below the said threshold within that time frame.

Impact:
With this requirement of additional Granular disclosures around ownership, economic interest, and their control it shall foster trust among people and investor protection. It would also curb the instances of circumvention and misuse of provisions. On the other hand, FPIs has to comply with stringent compliance requirements.

1.2. Reserve Bank of India

1.2.1. Amendment to KYC Master Direction

The Reserve Bank of India [RBI] amended the Master Direction on Know Your Customer (KYC) on April 28, 2023. The amendments were made to align the KYC Direction with the Recent changes in the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (PMLA Rules), The Government Order and instructions titled "Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (WMD Act, 2005)" and The Financial Action Task Force (FATF) Recommendations.

Key Highlights of the amendments include:

1. Harmonising with the Amendment to the PMLA Rules:
   Amongst the amendments, several changes have been made to align the KYC Directions with the recent amendments to the PMLA Rules, including:

   I. The level of controlling ownership for determining the beneficial owner for both a Company and trust has been reduced from 25% and 15%, respectively, to 10%.

   II. Politically Exposed Persons and Non-profit Organisation [NPO] definitions have been harmonised with the PMLA Rules.

   III. Under the KYC Directions, a new concept of "group" has been proposed. Regulated Entities [REs] must develop a group-wide policy to fulfil their obligations under the PMLA and the rules made thereunder, including combating money laundering, terrorist financing, and other relevant risks.

   IV. Other requirements include REs submitting data of the appointed director and chief officer to the RBI, registering NPO clients on the NITI Aayog DARPAN Portal, and maintaining such registration records

2. Customer Due Diligence via CKYCR registry
   The ability for REs to retrieve records and/or information online by downloading them from the Central KYC Records Registry ["CKYCR"], subject to receipt of explicit agreement from the consumer along with the KYC identification, is a welcome feature. While the KYC Directions previously prescribed the process for REs to download Customer Due Diligence

[CDD] data from CKYCR and allowed REs to rely on such CDD data obtained from the said CKCYR registry through another RE, it has now been made abundantly clear that such data can be retrieved by the RE itself, for the purpose of opening customer accounts.]

3. Cloud deployment for Video based Customer Identification Process (V-CIP) Apart from the previously stated requirement for REs to house their V-CIP technology infrastructure in their own premises and ensure that interaction with V-CIP originates from the RE's own secured network domain, REs deploying cloud-based models must also ensure: (a) ownership of the CDD data is always with the RE; (b) all customer data, including video recordings, is transferred to the RE's exclusive owned/leased server; and (c) no customer data is retried.
4. Improved due diligence for non-face to face customer accounts:
   The RBI has also introduced incremental due diligence requirements for REs onboarding customers without any physical verification (i.e., onboarding customers through CKYCR, Digi Locker, equivalent e-documents, etc.), on a non-face to face basis (excluding CDD vide OTP based e-KYC). REs are required to undertake enhanced monitoring for accounts (opened in non-face to face mode) until such accounts are verified through face-to-face customer identification process or V-CIP.

Impact: The KYC amendments will have a significant impact on regulated entities. The new requirements will increase the cost and complexity of compliance for NBFCs, and will also require REs to invest in new technology and systems to support the new requirements. The REs will also need to revise their internal KYC Policy and facility documentation for provisioning of the enhanced due diligence measures, additional obligations, periodic updation of KYC etc.

1.3. International Financial Services Centre Authority

1.3.1. Guidance framework on Sustainable and Sustainability linked lending by financial institutions

On April 20, 2023, the International Financial Services Centres Authority (FSCA) released a clarification regarding the Guidance Framework on Sustainable and Sustainability Linked Lending by financial institutions. The initial framework was issued on April 26, 2022, followed by a set of frequently asked questions (FAQs) on February 22, 2023, providing guidance on the calculation methodology for the five percent target of loans and advances to be adopted by International Banking Units (IBUs) and Foreign Currency/Financial Units (FC/FUs).

To provide further clarity, the authority has reiterated that the initial circular's five percent (5%) target should be computed as a percentage of fresh loans and advances disbursed during the previous year, which remain outstanding as of the end of that financial year. This calculation method will be applicable starting from the financial year commencing on April 01, 2023, and onwards.

I. Discussion Papers

Emergence of ESG Framework in India

Introduction-

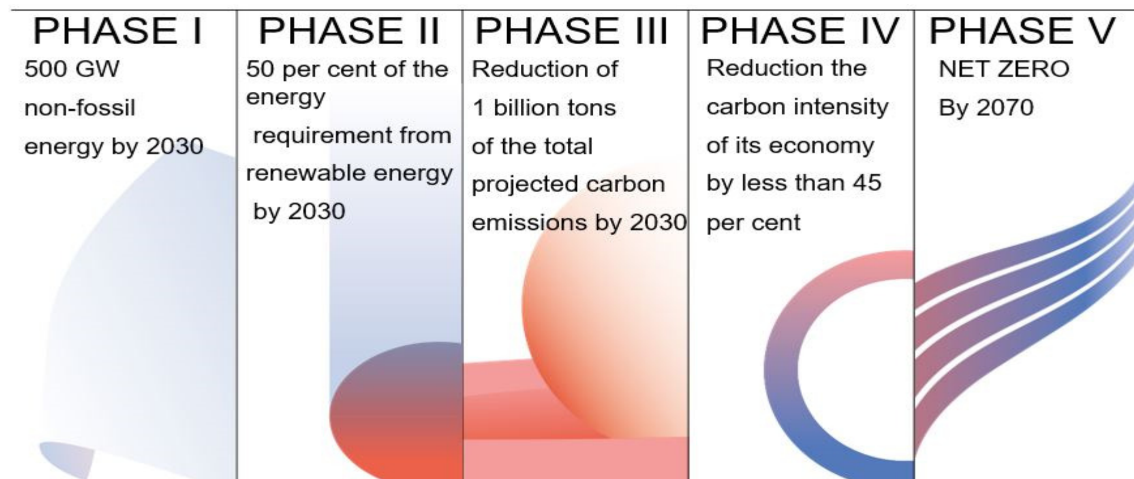
While sustainability remains core to ESG however, the reporting and the regulatory framework involved are quintessential to understand the significance and importance in the Indian Context and the benefits it shall accrue.

Regulatory Architecture of ESG Reporting in India-

In line with the policies adopted by the Indian regulators over the past few years, India has made an aggressive move towards decarbonization, by nudging required changes as well as mandating market players to adopt sustainable ways of doing business. One such indicator is to push companies to look beyond the traditional finance-centric models and move their focus to non-finance-centric models as well. These disclosures are highly relevant for all stakeholders involved in business practice including Investors, Businesses, consumers, etc. These steps are taken with the serious inclination to align the nation to participate in making the planet sustainable for the generations to come, and also to support India's commitment to be Net Zero Carbon emission by 2070.

India's Participation in COP26 & G20 Activities-

India's Stand at Cop-26 included the following five elements (called "Panchamrit") for India's Climate Action Plan and to support India's goal to be net zero carbon by 2070



Source: https://www.roedl.com/insights/india-modi-panchamrit-cop26-implication-industrial-perspective

G20 countries represent a selected group of 19 countries with the biggest Gross Domestic Product (GDP) plus the European Union that respond exclusively to economic and industrialization criteria. Countries in G20 represent 85% of the Global Economy. The countries deal mainly with issues such as global security, the global financial system, and industrialization. They are also committed to work for the environment, as climate change is

one of the factors which has influenced all the countries around the globe. As they represent the majority of the world's GDP, their responsibility is exponential.

Key environmental issues discussed in the G20 series highlight the importance of: -

1. Climate Finance under sustainable finance working group.
2. Climate Resilience as part of disaster risk reduction working group.
3. Lifestyle and consumption under the development working group.
4. Energy transition under the energy working group.

Evolution of ESG Disclosures in India-

ESG found its first ground of recognition to various stakeholders by way of reporting and disclosures, which are continuously evolving over a period of time. In 2013, the Companies Act introduced the requirement for ESG Disclosures for companies. which mandates including a report by the board of directors on the conservation of energy, along with annual financial requirements.

In addition to this, SEBI has mandated companies to include disclosures on opportunities, threats, risks, and concerns as part of their annual reports under the SEBI (LODR) Regulations 2015.

In 2017, the SEBI circular on 'Disclosure Requirements for Issuance and Listing of Green Debt Securities', introduced the regulatory framework for the issuance of green debt securities in India has enhanced investor confidence.

The Indian Banks' Association (IBA) has also released the National Voluntary Guidelines for Responsible Financing, laying down broad and general principles towards 'integrating ESG risk management into Financial Institution's (FIs) business strategy, decision-making process, and operations.' Though it is mandatory for selected listed companies, the regulator is encouraging voluntary disclosures and ESG-friendly practices by other corporates as well as a measure of good governance practice.

SEBI's BRSR Framework-

In order to support the initiatives and commitment taken to be carbon neutral by 2070, SEBI has amended Regulation 34(2)(f) of the LODR Regulation to introduce the Business Responsibility Social Reporting (BRSR) framework in May 2021. BRSR framework is the first Environmental, Social and Governance (ESG) regulatory disclosure framework in India. BRSR is aligned with nine principles of the National Guidelines for Responsible Business Conduct (NGRBC). The BRSR disclosures related to ESG Reporting have been made mandatory for the top 1,000 listed companies by market capitalization from the financial year 2022-23, which was earlier voluntary to disclose. SEBI has also come up with BRSR Core, which has a limited set of KPIs on which listed companies are required to have reasonable assurance, which is as of now applicable to only the top 150 listed companies by market capitalization. This disclosure requirement provides standardization so that investors can take a more informed decision.

ESG Rating Providers-

Many investors do take their decisions on the basis of ESG reporting done by the company. As per a recent study, more people are inclined towards investing in those companies which provide ESG Reporting and are taking initiatives towards sustainability. ESG Rating Providers rate the companies on the basis of their ESG Reports and initiatives taken, and it has been observed that companies having high ESG ratings are more likely to get investments. Even there are special funds only for ESG-compliant companies. SEBI has a separately created category of Rating called "Core ESG Rating" for the ESG rating providers which is in line with BRSR Core.

SEBI has also approved a new framework for ESG Rating providers relating to enhanced transparency, mitigating conflict of interest, augmentation of transition finance, and facilitating ratings based on accurate data.

Benefits of ESG Reporting-

- Improved risk management by the companies following ESG reporting as they are better equipped to identify and address potential risks to their operations and reputation.
- ESG Reporting compliant companies have increased access to capital as investors are more inclined towards investing in such companies which are environment friendly.
- Companies with strong ESG Practices are often viewed as responsible corporate citizens, which helps them to enhance reputation and brand value as well.
- Clear communication, accurate disclosures, and tangible actions regarding these important topics are important in establishing and building trust with both direct and indirect stakeholders which helps to build improved stakeholder relationships.

Impact on Profitability by Adopting ESG Reporting-

- Nine out of ten company executives said their ESG spending led to moderate to significant financial returns and most of them (66%) said that they see this happening in the next three years.
- A ten percentage profit points increase in ESG Spending co-relates with a one percentage point increase in profit growth and a company that spends 5% of its budget on ESG can expect a one percentage point profit increase if it aligns operating or capital budget.
- Even though not all businesses are applying ESG Reporting, they need to accept ESG Reporting as a value creator to reap the financial benefits of ESG Reporting, and in order to achieve maximum impact in creating a better and more sustainable world.
- Employers with high-level ESG scores are rated as attractive by both employees and potential future hires according to reports.
- Companies across the world that claim to place importance on ESG Reporting. They saw revenues significantly outperform those companies that openly disregard its importance between 2019 and 2022. Those companies that did place importance, saw a revenue bump of 9.7% versus only 4.5% for those that didn't.

Way Forward:

India has taken a holistic approach to implementing ESG requirements to make each company accountable since it is the need of the hour and India is committed to achieving their environment-related goals. However, understanding ESG would be incomplete, if we don't look at the global standards followed and their requirements. In the world of finance, ESG is playing an important role which is very intriguing and worth understanding. As the existence of our planet is important for the survival of mankind, similarly implementation of ESG practices in its true spirit is important to save our planet.

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Basilstone Consulting Private Limited ('Basilstone") has been promoted to partner with the society and its businesses to achieve their true potential and help realize their vision. We work closely with our clients and enrich their growth by offering them solution driven consultancy services in the areas of strategic planning, incubation, impact analysis, idea validation, product validation, feasibility study, synergy evaluations, fund raising, restructuring, transaction advisory, representation – guiding on regulatory / non-regulatory meetings, succession planning, Inbound and outbound investment, due diligence, dealing with regulatory / statutory authorities, etc.

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The Purpose of Basilstone is to provide simple solutions and create value backed by:

We clearly resonate ourselves with the ever-growing Basil, inspiring us to imbibe the quality of being natural and pure while we adapt to changing conditions and innovation. The rock-solid Stone is representative of our endurance, stability, permanence and our determination, paving the path of value creation for our clients and our firm allegiance to our principles.

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