



atharv

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Basilstone Consulting is pleased to present to you the **Nov 2022** issue of **atharv**, covering regulatory insights as well as discussion papers. This issue covers the following areas:

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I. Regulatory updates & its expected impact

I.1. Securities & Exchange Board of India

I.1.1. Circulars/Clarification on Alternative Investment Fund

- a. AIF with priority distribution model (majorly covering senior junior funds) shall not accept further investment and shall not make further investment till SEBI clarification on the same.
- b. First close of the scheme shall be declared not later than 12 months from date of SEBI communication on PPM. In case of open-ended schemes, first close shall construe to be close if initial offer period.
- c. Sponsor commitment on first close shall not be withdrawn by sponsor post first close.
- d. First close of Large Value Fund shall be declared not later than 12 months from date of grant of registration of AIF or date of filing PPM with SEBI, whichever is later.
- e. Tenure of close ended scheme to be counted from date of declaration of First close.
- f. AIF shall ensure assets and liabilities of each scheme are segregated and ring-fenced.

Impact:
 AIFs were used as a tool by Banks and NBFCs to defer booking of NPA losses and convert such losses to loss on investment to ensure better provision coverage ratio.

I.1.2. Framework to address ‘Technical Glitches’ in Stock Brokers’ Electronic Trading Systems

- a. Technical Glitch shall mean any malfunction in the system of stock broker which lasts for a contiguous period of five minutes or more.
- b. SEBI has introduced a framework to ensure systems of stock brokers’ are sufficient to handle client requirement by ensuring:-
 - i. Capacity Planning
 - ii. Software Testing and Change Management
 - iii. Monitoring Mechanism
 - iv. Business Continuity Planning and Disaster Recovery Site
 - v. Reporting Requirement

Impact:
 SEBI has mandated stock brokers to implement such systems which can address requirements more than its peak load, resulting in robust systems.

I.1.3. Circular and Amendment for Online Bond Platform Provider (OBPP)

- a. All the Online Bond Platform Provider are required to obtain stock broker license for functioning as OBPP.
- b. SEBI has prescribed norms in the circular on functioning of OBPP.
- c. OBPPs can only offer listed or proposed to be listed debt securities.



- d. All the transactions in listed securities on OBPP will be executed through RFQ platform wherein settlement will happen through exchange.

1.1.4. Net Settlement of Cash Segment and Futures & Options segment upon expiry of stock derivatives

- a. SEBI has now allowed combined (net) settlement of Derivatives position and Cash Position.
- b. STT and Stamp Duty will continue to be computed segment wise.
- c. Net settlement is enabled for non-institutional clients having same Clearing Member and Trading Member.

Impact:
 Net settlement will ensure reduction in margin requirement on settlement and hence boosting volumes in derivative and cash segment.

1.1.5. Reporting of trades in Non-Convertible Securities

- a. All the OTC trades in non-Convertible securities are required to be reported to SEBI whether executed by SEBI registered intermediary or otherwise.

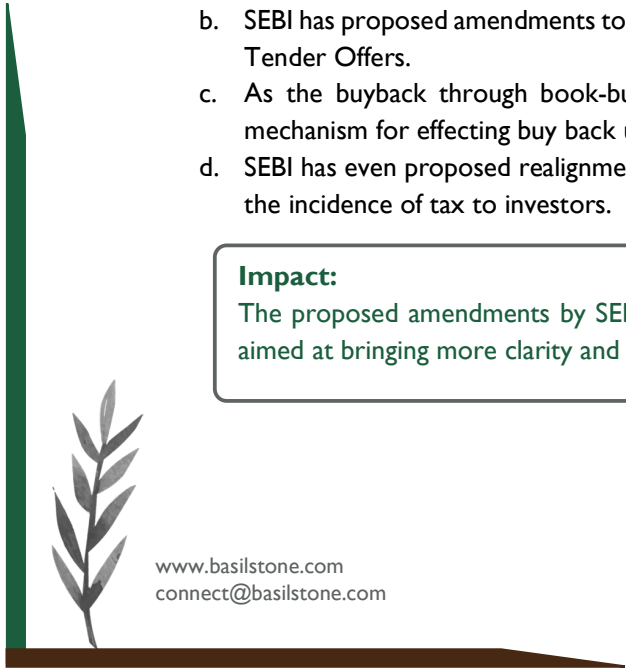
1.1.6. Scheme of Arrangement by entities who have listed their Non-convertible Debt securities (NCDs)/ Non-convertible Redeemable Preference shares (NCRPS)

- a. Companies having listed NCDs and NCRPS shall file draft scheme of arrangement with stock exchange for obtaining no-objection Letter, before filing such scheme with court or tribunal.

1.1.7. Buyback of Securities – Consultation Paper

- a. SEBI has setup a committee to review the existing buyback provisions to resolve the gaps in it.
- b. SEBI has proposed amendments to Buy-Backs through Stock Exchanges and Buy-Backs through Tender Offers.
- c. As the buyback through book-building issue was rarely used, SEBI has proposed revised mechanism for effecting buy back under the said route.
- d. SEBI has even proposed realignment to tax impact on buyback to that of dividends i.e pass on the incidence of tax to investors.

Impact:
 The proposed amendments by SEBI are open for public comments. These changes are aimed at bringing more clarity and equitable treatment in the regulations.



1.1.8. Amendment to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011

- a. In the case of disinvestment of a public sector undertaking by the Central Government or a State Government, for the purpose of determining offer price, the volume-weighted average market price shall not be considered.
- b. Bank Guarantee issued by bank having AAA rating shall be allowed instead of cash for keeping aside entire consideration.

Impact:

This will ensure funds not getting blocked in the escrow account and allowing the acquirer additional time to arrange the same from liquid assets.

1.1.9. Amendment to SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018

- a. SEBI has introduced IPO on Main Board through Pre-Filing of Draft Offer Document.
- b. Entire process along with regulatory formats has been prescribed.
- c. SEBI has also allowed issuers to interact with qualified institutional buyers for limited marketing of the intended issue from the time of pre-filing the draft offer document till SEBI issues any observations.
- d. If the issue size exceeds Rs.100 crores, the issuer shall make arrangements for use of proceeds to be monitored by credit rating agency.

Impact:

This IPO process through Pre-Filing of Draft Offer Document will enable the issuers to keep their information related to business confidential until the final confirmation is obtained and decision is made.

1.1.10. Master Circular on Redressal of Investor Grievances through SCORES platform

- a. SEBI has made it mandatory to first take up their grievances for redressal with the entity concerned. However, if the complaint remains unresolved then the same can be taken up on SCORES platform.
- b. Process, Nature of Complaints and Timelines are prescribed by SEBI.

Impact:

As the complaints are reported to companies and intermediaries, it will ensure faster resolution of complaints.



1.1.11. Amendment to SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015

- a. If the independent director fails to get appointed because of requisite votes not getting met for special resolution, then such director can still be appointed if the votes cast in favour exceed votes cast against and votes cast in favour by public shareholders exceed votes cast against. Additionally, such director can only be removed when votes cast against exceed votes cast in favour.
- b. Audited / Un-audited results of last quarter of FY can be submitted within 60 days from end of quarter.
- c. Along with six monthly results, cashflow and statement of assets and liabilities is to be submitted by way of a note to financial results.
- d. Ratios as prescribed shall be submitted.
- e. Entities with listed NCDs are required to submit details on utilisation of funds raised through NCDs along with quarterly results.
- f. Additional procedure for Scheme of Arrangement is prescribed for listed entities.

Impact:

Additional details required to be submitted may create compliance burden on listed companies, however same will provide better information to investors to make their investment decision.

The following matter is under discussion with SEBI and not yet notified:

- i. SEBI is under discussion to make disclosure of Key Performance Indicators in the offer documents which shall be certified by prescribed personnel.
- ii. SEBI has also proposed to disclose any secondary sale of shares of the issuer entity executed in past 18 months.

The above suggestions will give more clarity to investors on valuation or derivation of issue price.

1.1.12. Amendment to SEBI (Real Estate Investment Trusts) Regulations 2014

- a. Sponsor or Sponsor Group of REIT is required to hold minimum 15% (instead of 25%) of total units of REITs for a period of atleast 3 years from date of listing.
- b. Any holding by sponsor or sponsor group over and above 15%, shall be held for a period of atleast 1 year.
- c. Sponsor and sponsor group will continue to remain liable to REIT, trustees and unit holders for all acts of commission or omission, representation or covenants related to the formation of the REIT and the sale or transfer of assets or holding company or SPV to the REIT.

Impact:

Reduction in the sponsor holding limit will free up the capital of sponsor for further issues, hence more issues of REITs will be seen in future.



1.1.13. Amendment to SEBI (Prohibition of Insider Trading) Regulations, 2015

- a. Mutual Fund Units are covered within the ambit of Mutual Fund Regulations.
- b. Sponsor, Asset Management Company, Trustee, etc are covered within the definition of Insider. Hence, they are prohibited from dealing in respective mutual fund units when in possession of Unpublished price sensitive information.
- c. Mutual Funds Houses will have to implement adequate system of internal control to ensure prevention of insider trading.
- d. AMC will now have to maintain Structured Digital Database and update it based on relevant events.
- e. Relevant Policies like whistle blower policy, etc will have to be framed.

1.1.14. Reduction in time limit in case of Redemption of Mutual Fund Units

SEBI has proposed to reduce the time limit in case of redemption of mutual fund units to T+3 days (except for overseas mutual fund wherein it shall be T+5 days).



1.2. Reserve Bank of India

1.2.1. Goods and Service Tax Network (GSTN) as a Financial Information Provider under Account Aggregator Framework

Inclusion of GSTN as Financial Information Provider for Lending to MSME sector. The information shall be verified from the Department of Revenue.

1.2.2. Nation-wide Awareness Programme: November 2022

RBI as a part of its initiative to improve customer awareness on extant regulations to protect consumer interests, alternative grievance redress mechanisms, safe banking practices, etc., conducted Awareness Programmes in Nov 2022, which intended to target emphasising information on customer rights, customer protection and grievance redress framework, the campaign will also endeavour to deepen percolation of awareness on protection against digital and electronic financial transaction frauds covering dos and don'ts, safeguards and prevention.

1.2.3. Concept Note on RBI's Digital Currency

“e₹” is the Digital Currency proposed by the RBI. The purpose of issue of concept note is to spread awareness. RBI states that it is substantially not different from banknotes, but being digital it is likely to be easier, faster and cheaper.

Reserve Bank lays down its approach of two basic considerations; i) to create a digital Rupee that is as close as possible to a paper currency and ii) to manage the process of introducing digital Rupee in a seamless manner.

The Reserve Bank has, from 1 November 2022, operationalized a pilot programme of the currency for settlement of secondary market transactions in government securities in which 9 Banks namely State Bank of India, Bank of Baroda, Union Bank of India, HDFC Bank, ICICI Bank, Kotak Mahindra Bank, Yes Bank, IDFC First Bank and HSBC shall participate.



1.3. International Financial Services Centre Authority

1.3.1. International Financial Services Centres Authority (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022

Application of KYC & PML guidelines to all the Regulated Entities of IFSC. RE are responsible to formulate AML-CFT Policy and KYC policy and adopt the principles or elements of the guidelines.

The guidelines shall be referred for a detailed view of the topic on <https://ifsc.gov.in/Viewer/Index/356>.

1.3.2. Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) for Market Infrastructure institutions (MIIs)

Applicable to all Stock Exchanges, Clearing Corporations, Depositories in IFSC. It deals with identification of plausible operational risk and measures of mitigation of impact for Business Continuity and Stress Testing for Disaster Recovery.

A detailed view of the guidelines can be accessed vide circular dated 16 Nov 2022, <https://ifsc.gov.in/Viewer/Index/359>

1.3.3. Proposed International Financial Services Authority (Investment by International Financial Service Centre Insurance Office) Regulations, 2022

IFSCA placed the stated regulations for public comments on 21 Nov 2022, considering the significance of investment income for insurers and reinsurers, IFSCA in accordance with Section 27 of the Insurance Act, 1938, proposes to enact a comprehensive regulatory framework on Investment by IFSC Insurance Office (IIO).

The proposed draft IFSCA (Investment by International Financial Service Centre Insurance Office) Regulations, 2022 inter-alia provides for manners and processes of investment of IIOs by the IIOs, in various global jurisdiction including in India. The proposed regulations also provide for various matrix, guidance, limitations on investments.

1.3.4. Proposed IFSCA (Manner of Payment and Receipt of Premium) Regulations, 2022

The Regulator place the above regulations for public comments on 18 November 2022

The regulations are proposed with intent to further strengthen the regulatory framework and to promote ease of doing business so far as payment and receipt of premium, IFSCA is proposing to notify comprehensive regulations. These regulations focus on providing wide avenues for collection of premiums by adopting international best practices.

1.3.5. IFSCA Seeks Public Comments on Draft IFSCA (Insurance Products and Pricing) Regulations, 2022



IFSCA placed the Regulations for Public Demand on 18 Nov 2022, to provide best of global practices and ease of doing business for IFSC Insurance Offices (IIOs) and increase retail participation in insurance sector at IFSC, IFSCA has come out with the consultation paper on draft regulation on insurance products and pricing. These regulations have adopted principle-based approach for product design, filling and pricing.

The draft IFSCA (Insurance Products and Pricing) Regulations, 2022 inter-alia provides for process product approval process and aspects of product management and policy servicing.

1.3.6. IFSCA (Maintenance of Insurance Records and Submission of Requisite Information for Investigation and Inspection) Regulations, 2022

The proposed regulations were placed for Public comments on website on 23rd November 2022. The proposed regulations aim to specify minimum information that is required to be maintained by the IIO and IIIO, for the purposes of investigation and inspection, so as to be enable the investigating officer to discharge his / her functions satisfactorily, under section 33 of the Insurance Act, 1938.

The proposed IFSCA (Maintenance of Insurance Records and Submission of Requisite Information for Investigation and Inspection) Regulations, 2022 inter alia provide for :

1. Maintenance of Policy and Claims records
2. Maintenance of data, records, information etc. as per the provisions Insurance Act, 1938
3. Maintain a record of employees; and
4. Checks and other verifications



2. Discussion Papers

Regulatory Action towards Unauthorized Investment Advisers

In the last few years SEBI has passed a number of enforcement orders regulating Investment Advisers and Investment Advisory activities. Many of these orders have been passed because of Complaints that were made against the Investment Adviser.

During its investigations and inspections before passing their enforcement orders, SEBI finds out about the unregistered Investment Advisory from several sources including Website, WhatsApp and telegram chats and groups, etc. A primary source of this is the website of these organizations. Many of these carry a description of the activities carried out by the organization with such description falling squarely within the definition of Investment Advisory activity as is regulated by the IA regulations. SEBI has also in some cases found out that companies are actively displaying on their website that they hold IA registration when in reality they don't. SEBI then goes on to corroborate the evidence that they have received from their website with information from other sources, such as Bank Accounts and other records maintained with the entity.

There have also been cases where those who have exemption from obtaining registration as an Investment Adviser, such as stockbrokers who provide only incidental advice, have been called upon by SEBI, since they have been providing Investment Advice, beyond the permissible incidental advice. It is becoming essential for the regulator to target and remove such unregistered players from the market. By skipping the requirement of obtaining registration, such players are able to circumvent all the requirements that SEBI has put in place to safeguard investor interest.

SEBI has been more stringent against violations that can directly affect investor interest, than it has been against violations that could be of procedural nature. SEBI, in many cases has prohibited such unregistered players from accessing the securities market directly or indirectly till the time they refund the collected fees, restrained them from selling properties, securities and mutual funds, except for making the refund.

One of the most common violations that has been observed by SEBI is the practice of providing guaranteed or assured returns. Investment Advisers, who are explicitly prohibited from providing such assured returns are doing so directly or indirectly.

A similar issue that plagues this activity, is the charging of ad-hoc fees. While this has been plugged to some extent by the restrictions put in place by the 2020 Amendment to the IA regulations, earlier there was a practice of charging clients fees, that were nowhere appropriate for the client's investment. Another common issue with Investment Advisers noticed through these orders is in their Risk Profiling activities by regulation 16 of the IA regulations, is often not followed in spirit by Investment Advisers.

Other issues that have been noticed, include non-redressal of client grievances (which has been specifically mandated for Investment Advisers in regulation 21 of the IA Regulations, and later strengthened by the circular requiring IAs to display grievance related details of the past month on their website), advice being given by people who do not hold the prescribed qualifications (another requirement that has been fortified by the 2020 Amendment to the IA regulations) and providing incorrect information, while applying for registration as an IA or at later stages.



Investment Advisory activity, whether registered or unregistered is such that affects the smaller investors directly, and since the players are also small and plenty, is not the easiest for the regulator to monitor. It therefore becomes essential for the regulator to ensure that the regulatory system is such that it carries on protecting most investors by itself for which some of the requirements are put in place by the 2020 amendment to the IA Regulations.

One such amendment is recognition of Investment Advisory Administration & Supervisory Body (“IAASB”) for the purpose of regulating Investment Advisers and delegating administration & supervision of the IAs. BSE Administration & Supervision Limited (BASL), a wholly owned subsidiary of BSE Limited, has been granted recognition as IAASB for a period of three years from June 01, 2021.

All existing IAs are required to obtain membership of BASL by 31 October 2021 and failure to do so can result in appropriate action including suspension or cancellation of certificate of registration of such IAs.

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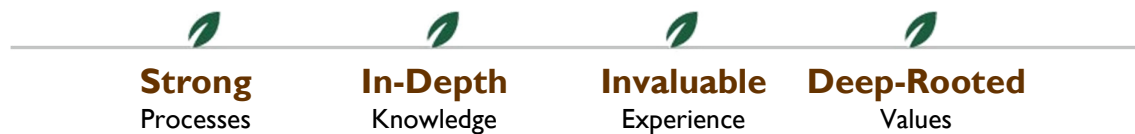


About Basilstone

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We, at Basilstone aim to position ourselves as the 'Go to Consultants' for **Simple Solutions & Value Creation** recognised by our clients for delivering ultimate desired results.

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.

Basilstone is the quintessential blend of traditional values and modern thoughts which are echoed in the experience, enthusiasm and energy of its people and translated in the services rendered to its clients.

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