SEBI Board Meeting of August 16, 2012

The Securities and Exchange Board of India ("SEBI") issued a press release of the decisions taken at the quarterly board meeting held on August 16, 2012. The decisions ranged from steps to boost the mutual fund industry, increasing retail participation in the primary markets, introduction of a regulatory framework for investment advisors and amendments to the SEBI debt listing regulations. The following are the key decisions taken:

1. *Mutual Fund Industry*

(a) In order to accord flexibility to the asset management companies ("AMCs"), the total expense ratio ("TER") - the ratio of the total fund costs to the total fund assets - is fungible. In order to strengthen the distribution network, SEBI has decided to:

- increase the distributor base to include postal agents, retired teachers etc for smaller products;
- introduce certification and registration at the product or service level as opposed to the fund level; and
- reduce fees for the certification from the National Institute of Securities Markets (NISM) and the Association of Mutual Funds of India (AMFI) registration.

(b) To improve the reach of mutual funds beyond the top 15 cities:

- if the extent of new inflows from locations apart from and beyond the top 15 cities is 30% of the total inflows, the AMCs can charge a TER of 30 basis points, which will be proportionately adjusted.
- The mutual fund will make a half yearly disclosure in the trustee report to SEBI of the extent of efforts taken to increase penetration of the market beyond the top 15 cities.

The list of the top 15 cities has not yet been specified by SEBI.

(c) In order to avoid conflicts of interest between the investors, AMCs and distributors, the following reforms have been proposed:

- Allotment of a portion of asset management fees towards investor education.
- All new investors will be subjected to single expense structure under a single plan except in case of direct investments with a lower expense ratio, which will have a separate plan.
- Cap on brokerage and transactions costs chargeable up to (i) 12 basis points for cash market transactions (ii) 5 basis points for futures and options transactions.
- Cash transactions in mutual fund schemes will be allowed up to Rs. 20,000/- will be allowed subject to compliance with the Prevention of Money Laundering Act, 2002 (PMLA) requirements.
- The service tax payable on the investment management fees shall be charged to the mutual fund scheme.
- The fund distributor may opt out of receiving transaction costs of Rs. 100 or above for transactions of Rs. 10,000 or above.

(d) Measures against issues of mis-selling and churning:

- In a bid to encourage holding assets in the long term and reduce churning it was decided to (i) credit the exit load to the fund scheme and not to the AMC but allow the AMC to charge extra TER up to 20 basis points; and (ii) allow claw back by AMC of additional TER in case of redemption of investment within 1 (one) year.
- In order to avoid mis-selling of products, it has been decided to create a system of identification of actual sales personnel of distributors.
- Evolve a system of 'product labeling'.
- Include mis-selling as a 'fraudulent and unfair trade practice' in SEBI Regulations.

(e) The SEBI has decided on the following ways to strengthen the regulatory framework for mutual funds:

- AMCs are to make monthly portfolio disclosures on their website and are to disclose half yearly financial results of mutual funds on their websites. An advertisement in regard of half yearly disclosures is to be published in at least one national and one regional newspaper.
- Additional disclosures like gross inflows, net inflows, average assets under management, ratio of AUM/ gross inflows distributor wise, by the AMCs.
- Harmonize applicability of NAV across various schemes based on the day on which the funds are available for utilization, for an amount equal to or more than Rs. 2,00,000.
- Setting up of a Self-Regulatory Organisation for regulation of distributors.

(f) SEBI recommended that Rajiv Gandhi Equity Savings Scheme ("RGESS") also provide for investments in equity schemes of mutual funds which have the securities allowed under RGESS as the underlying securities.

(g) SEBI also acknowledged the need to develop a policy for mutual funds including aspects such as enhancing the reach and promoting financial inclusion, tax treatment, obligation of various stakeholders.

2. *Retail Participation in Capital Markets*

(a) With a view to increasing the reach of IPOs to retail investors, SEBI has decided that:

- Electronic IPOs will be allowed and in order to widen the broker network of stock exchanges, more than 1000 locations will be made available for distributing IPOs in electronic form. Applications Supported by Blocked Amount (ASBA) facility will be extended to physical and electronic applicants.
- Banks providing ASBA facility to provide the same in a phased manner in order to reduce time between issue of shares and closure.
- Each retail applicant to an IPO, irrespective of his application size, will get a minimum bid lot. The minimum application size for all investors is being increased from the range of Rs. 5,000-Rs. 7,000 to the range of Rs. 10,000-Rs.15,000.

(b) To facilitate raising of capital, the following reforms have been proposed to assist issuers:

Issue	Earlier Position	Proposed Reform
Average Free	Rs. 5,000 crores	Rs. 3,000 crores.

Float Market Capitalisation		
Minimum Promoter contribution	20%	20%, which can be supplemented by SEBI registered AIFs to the extent of 10%.
Approval of SEBI for variation in issue size	Variation of issue size of more than 10%	Variation of issue size of more than 20%
Discount on QIPs	No provision on discount.	Discount of up to 5% may be offered on the price calculated.

- An annual disclosure statement, to improve transparency, is to be filed by the issuer on the lines of 20F filing prescribed by the Securities and Exchange Commission of the United States of America.

(c) For enhancing market integrity and to ensure quality public offerings, the following reforms have been proposed:
- The profitability route of investments under Regulation 26 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 will only be open to investors with a minimum pre-tax operating profit of Rs. 15 crores.
- The other issuers may access the market through compulsory book building or the SME platform with an increased QIB participation of 75% up from 50%.
- SEBI will be putting in a place a framework for rejection of draft offer documents and for faster clearances of offer documents. It will also bring in mechanisms for monitoring of issue proceeds.
- Non-retail investors cannot withdraw or lower their bids at any stage.
- Price band and relevant financial information is to be provided 5 days prior to opening of issue, as against the current provision of 2 days.
- Not more than 25% of the proceeds of the issue may be allocated towards 'General Corporate Purposes'.
- Employee benefit schemes floated by listed companies will have to be compliant with SEBI (ESOS and ESPS) Guidelines, 1999 and such schemes cannot acquire shares from the secondary market.

3. *Regulatory Framework for Investment Advisors*

(a) SEBI has approved the SEBI (Investment Advisors) Regulations, 2012 for registration and regulation of Investment Advisors ("IA"). The regulations provide for code of conduct, fiduciary duties, record keeping of IAs and risk profiling of the clients and also deal with the issues of suitability and appropriateness of the advice. Requirements relating to experience, qualification, certification and net worth/ net assets have been prescribed for a person to act as an investment advisor.

(b) All individuals, bodies corporate and partnership firms engaged in providing investment advice, including financial planners, are required to be registered and regulated under the abovementioned Regulations. All IAs shall use the words "investment advisors" in their name. Any investment advice given without any consideration through media at large will not be considered as investment advice.

(c) Banks or other institutes which are IAs and also offer distribution, execution or referral services have to offer the investment advisory services through a subsidiary or a Separately Identifiable Department or Division (SIDD).

(d) The following are exempted from consideration as IAs:
- Persons commenting in good faith on trends in the financial or securities market or the economic situation provided they do not specify any particular securities or investment product.
- Persons providing advice exclusively in areas like insurance and pension products provided they are regulated by sectoral regulators.
- Professionals such as lawyers, Chartered Accountants etc.
- Stock Brokers, Sub-brokers, Portfolio Managers and Merchant Bankers registered with SEBI providing investment advice incidental to their primary activity. However, they are required to comply with obligations under these Regulations such as acting in fiduciary responsibility, risk profiling etc.
- AMFI registered distributors providing investment advice incidental to their primary activity.
- The Fund Manager of a Mutual Fund or Alternative Investment Fund.

4. *SEBI (Issue and Listing of Debt Securities) Regulations, 2008*

(a) Amendments have been carried out to the disclosure requirements in the offer documents/ memorandum in connection with the public issue & listing of non-convertible debt as well as privately placed debt securities which are listed or sought to be listed.

(b) The following additional disclosures have to be made:
- Particulars of trustee, auditor, arrangers, registrar and rating agency;
- Details of changes in capital structure over the last five years;
- Details of corporate guarantee and commercial paper issued, if any;
- Details of default and delay in payment on borrowings over the last five years;
- Details of whether debt security is backed by guarantee or letter of comfort, where applicable; and
- Copy of consent letter from debenture trustee.

(c) The following requirements have been standardized:
- Format for presenting financial information;
- Format for presenting history of equity share capital details; and
- Term sheet with details of covenants on security creation, default in payment and delay in listing.