



CAPITAL MARKETS

N. A. SHAH **BULLETIN**

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 **N. A. SHAH ASSOCIATES LLP**
Chartered Accountants



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EXECUTIVE SUMMARY

- Category III Alternative Investment Funds (AIFs) are permitted to participate in commodity derivative exchanges subject to the rules and regulations.
- Stock exchanges to now impose fines on companies for non-compliance under SEBI (ICDS) Regulations.
- Amendments have been made to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, a brief gist of the amendments are as follows:
 - NBFCs registered with RBI having a net worth of more than 500 crores would be eligible to be classified as qualified institutional buyer.
 - Provisions pertaining to Monitoring agencies for public and right issues have been amended.
 - Conditions of preferential issue to be now applicable to issue of shares by certain scheduled banks and public financial institutions.

1. Participation of Category III Alternative Investment Funds in commodity derivatives market

SEBI has issued a circular setting out conditions to allow Category III Alternative Investment Funds (AIFs) to participate in the commodity derivatives market. The conditions are as follows:

- a. Category III AIFs shall participate as “clients” in all commodity derivative products in commodity derivatives exchanges and shall be subjected to all rules and regulations applicable to clients, issued by SEBI and Exchanges.
- b. The AIFs cannot invest more than 10% of investable funds in one commodity.
- c. The AIFs are permitted to borrow, subject to consent from its investors and the maximum limit specified by the Board.
- d. The AIFs shall disclose in the private placement memorandum about investment in commodity derivatives. Consent of existing investor must be taken if they intend to invest in commodity derivatives and an exit opportunity should be provided to dissenting investors.
- e. AIFs shall comply with RBI guidelines and SEBI’s reporting requirements as well as SEBI (Alternative Investment Fund) Regulations, 2012.

2. Non-compliance with certain provisions of SEBI Issue of Capital and Disclosure Requirements), 2009 Regulations (“SEBI (ICDS) Regulations”)

As per the SEBI circular, the stock exchanges shall impose fines on the companies for non-compliance with certain provisions of SEBI (ICDS), 2009 Regulations as under-

Violation	Fine
Delay in completion of bonus issue.	INR 20,000 per day of non-compliance till the date of compliance.
With respect to a preferential issue, if the company does not allot the shares on conversion of convertible securities within 18 months from the date of their allotment.	If non-compliance continues for more than 15 days, additional fine of 0.01% of paid up capital of the entity or INR 1 crore,

With respect to listing of securities on stock exchanges, if the issuer does not approach the exchange for listing of equity shares within 20 days from date of allotment.

whichever is less.

For this purpose, paid-up capital shall be the paid up capital as on the first day of the financial year in which the non-compliance occurs.

- - The fines realised above shall be credited to the "Investor Protection Fund" of the concerned recognised stock exchange.
- The stock exchanges shall mention the entities that are liable to pay the above fine on their website along with the amount of fine imposed, details of fine received etc.
- The stock exchange shall issue notice to the entity to pay fine within 15 days from the date of the notice.

With respect to bonus issue delays:

- a. For the purpose of a bonus issue to be considered as completed, the date of commencement of trading shall be considered.
- b. The recognized stock exchange shall grant approvals to the bonus shares allotted to persons other than the promoter(s) in the interest of the investors, subject to compliance with other requirements.
- c. The approvals for the promoters' bonus shares may be granted by the Stock Exchange after payment of the requisite fine by the company.

3. Amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations ("SEBI (ICDR) Regulations")

- a. SEBI has amended the definition of "Qualified institutional buyer" of SEBI (ICDR) Regulations to include "systematically important non-banking financial companies" as Qualified Institutional Buyer. "Systematically important non-banking financial companies" are non-banking financial company registered with RBI having a net worth of more than INR 500 crores as per the last audited financial statements.
- b. Following amendments have been made, pertaining to monitoring agencies for public and rights issues :

Particulars	Extant Position	Revised Position
Appointment of Monitoring agency	The issuer was required to make arrangements for the proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks being a banker of the issuer, if the issue size exceeds INR 500 crores.	The issuer shall appoint monitoring agency, if the issue size exceeds INR 100 crores (excluding the amount for offer for sale)
Applicability	Appointment of monitoring agency was not required in case of issues which are an offer for sale.	Appointment of monitoring agency would be required to issues which are an offer for sale.
Report of utilization of fund	The report of utilization of the issue proceeds were required to be submitted on half yearly basis until all the proceeds were utilised	The report of utilization of issue proceeds would be required to be submitted on quarterly basis until 95% of proceeds (excluding proceeds under offer for sale and amount raised for general corporate purposes) are utilised
Director's comments on the findings of monitoring agency	No such requirement	The board of directors shall now provide the comments on the findings of the monitoring agency. The report shall be uploaded on the issuer's website within 45 days from the end of the quarter.

- c. Now, Scheduled Bank listed under the Second Schedule of the Reserve Bank of India Act, 1934 or a Public Financial Institution as defined in clause 72 of section 2 of the Companies Act, 2013 have been added to the list of persons to whom the following conditions would be applicable in case of preferential issue by such category:
- i. Prohibited to make a preferential issue to persons who have sold the shares of the company 6 months prior to the issue.
 - ii. The entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date up to a period of six months from the date of trading approval.

From:

N. A. Shah Associates LLP

Chartered Accountants

Address: B 41-45, Paragon Centre, Pandurang Budhkar Marg, Mumbai – 400013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: info@nashah.com