

Regulatory Hotline

October 05, 2022

SEBI ISSUES MODALITIES RELATED TO INVESTMENT ADVISER APPLICATIONS

The Securities and Exchange Board of India ("SEBI") vide its press release dated September 26, 2022¹ has advised all new and existing Investment Advisers ("IA") to approach BSE Administration and Supervision Ltd. ("BASL") for registration and post registration activities related to IAs.

BACKGROUND

Last year, vide its press release dated June 14, 2021², SEBI recognized BASL, a wholly owned subsidiary of BSE Limited as the Investment Adviser Administration and Supervisory Body ("IAASB") for a period of three years starting from June 01, 2021. A few days later, the market regulator issued a circular – dated June 18, 2021³, (the "Circular") wherein it elaborated on the framework for administration and supervision of IAs under the SEBI (Investment Advisers) Regulations, 2013 ("IA Regulations").

What do the IA Regulations say?

Regulation 14 of the IA Regulations authorizes SEBI to *inter alia* recognize any body or body corporate for the purpose of regulating the IAs and delegate the administration and supervision of the IAs on such bodies on prescribed terms and conditions. Additionally, Regulation 14(3) empowers SEBI to bar a person from acting as an IA unless he is a member of such recognized body or body corporate. Further, in such event, the provisions of the IA Regulations and bye-laws or articles of such body or body corporate are applicable *mutatis mutandis* to the IAs.

BASL was recognised as an IAASB as per the terms of Regulation 14 of the IA Regulations, with the administration and supervision of IAs being delegated to it as per the terms of Regulation 14(2).

WORKING OF IAASB

The Circular lists the responsibilities of IAASBs for performing their function of administration and supervision of IAs, including *inter alia* (i) both on-site and offsite supervision of IAs; (ii) grievance redressal of clients and IAs; (iii) monitoring activities of IAs by obtaining periodical reports; (iv) administrative action including issuing warnings and referring to SEBI for enforcement action; (v) submission of periodical reports to SEBI; and (vi) maintenance of database of IAs.

The Circular also requires the board of the IAASB to be chaired by a public interest director and also have a director bringing investor perspective, at all times.

It is to be noted that even after the due delegation of the supervisory and administrative authority of IAs to IAASB, the SEBI continues to concurrently administer and supervise all registered IAs, while also subjecting IAASB to periodic inspections.

COMPLIANCE BY SEBI REGISTERED INVESTMENT ADVISERS

- Membership of IAASB: Regulation 6(n) of the IA Regulations requires a person applying for a certificate of registration under the IA Regulations to be a member of a recognized body or body corporate as specified under regulation 14 (the IAASB).
- Payment of fees: To keep their registration in force, SEBI registered IAs are required to pay the membership fees to IAASB, at the time of payment of fees to SEBI as per the second schedule to the IA Regulations.
- Reporting: All SEBI registered IAs are required to submit periodic reports to IAASB in the manner specified by such IAASBs.

BASL: ONE YEAR OF ADMINISTERING AND SUPERVISING INVESTMENT ADVISERS

Since its recognition as an IAASB, BASL has been proactive in administering and supervising IAs – mostly through its timely circulars⁴ and regularly updated frequently asked questions⁵.

Vide its latest circular dated September 15, 2022⁶, BASL notified all IAs to submit their annual compliance audit report⁷ for the financial year ended 2021-2022 and cyber security awareness compliance report within the stipulated time period of September 30, 2022.

It also recently revised the process for seeking BASL membership and SEBI registration for IAs⁸, providing a stepwise guide for both, fresh applications for registration of IAs, as well as for renewal of membership / registration

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of existing ones.

TAKEAWAYS

Although conceptually a great idea, the effectiveness of the IAASB, even after more than a year of recognition is yet to be seen. With SEBI recently questioning the permissibility of the activities undertaken by the IAs, the IAASB can be expected to shoulder more responsibilities regarding the supervision of the activities of IAs in the coming future.

However, the introduction of the IAASB is definitely a step in the right direction by the market regulator, particularly for its intermediary specific focus and proactive response towards the reporting and filing issues faced by the IAs.

It might also not be wrong to say that the success, or lack thereof of the IAASB would likely determine if SEBI puts a similar order in place for the administration and supervision of research analysts, considering that the provisions of SEBI (Research Analysts) Regulations, 2014 and IA Regulations are identical when it comes to the recognition of a body or body corporate for regulation of the respective intermediaries.

SEBI AMENDS THE OPERATIONAL GUIDELINES FOR ENTITIES ENGAGING MULTIPLE INVESTMENT MANAGERS

SEBI vide its circular dated September 26, 2022⁹ modified the Operational Guidelines for Foreign Portfolio Investors ("FPIs"), Designated Depository Participants and Eligible Foreign Investors (the "Operational Guidelines") issued under the SEBI (Foreign Portfolio Investors) Regulations, 2019.

Attempting to ease the commotion caused by the erstwhile requirement of entities engaging Multiple Investment Managers ("MIM") for managing their investments to have external investment managers, and to simplify the process of FPI applications by such entities, SEBI has amended the clause¹⁰, doing away with the provision requiring such entities to have external managers.

As per the updated provision of the Operational Guidelines, an entity engaging MIM for managing its investments can obtain multiple FPI registrations by mentioning the name of investment manager for each such registration.

– Ritul Sarraf, Prakhara Dua & Kishore Joshi

You can direct your queries or comments to the authors

¹ PR No. 28/2022, Available at https://www.sebi.gov.in/media/press-releases/sep-2022/modalities-related-to-investment-adviser-applications_63385.html

² PR No. 21/2021, Available at https://www.sebi.gov.in/media/press-releases/jun-2021/bse-administration-and-supervision-limited-granted-recognition-for-administration-and-supervision-of-investment-advisers_50540.html

³ SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/579, Available at https://www.sebi.gov.in/legal/circulars/jun-2021/framework-for-administration-and-supervision-of-investment-advisers-under-the-sebi-investment-advisers-regulations-2013_50605.html

⁴ Available at <https://www.bseasl.com/Circulars.aspx>

⁵ Available at https://www.bseasl.com/FAQs_BASL_Membership.pdf

⁶ Circular No. 20220915-1, Available at <https://www.bseasl.com/jqwertyupihagahas00990nsjdfnds/UploadDocs/Circulars/20220915-1/20220915-1.pdf>

⁷ Regulatory requirement under Regulation 19(3) of the IA Regulations

⁸ Circular No. 20220718-1, Available at <https://www.bseasl.com/jqwertyupihagahas00990nsjdfnds/UploadDocs/Circulars/20220718-1/20220718-1.pdf>

⁹ Circular No. AFD/ P/ CIR/ 2022/ 125, Available at https://www.sebi.gov.in/legal/circulars/sep-2022/modification-in-the-operational-guidelines-for-fpis-ddps-and-efis-pertaining-to-fpis-registered-under-multiple-investment-managers-mim-structure_63378.html

¹⁰ Clause (i) of Paragraph 4 of Part A of the Operational Guidelines

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