

ERGO

Analysing developments impacting business

SEBI REVISES RULES ON SEEKING APPROVAL FOR CHANGE IN CONTROL OF PORTFOLIO MANAGERS

16 June 2022

INTRODUCTION

On 26 April 2021, the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020 (PM Regulations) were revised to introduce a prior approval requirement in case of change in control of portfolio managers (PM) registered with Securities and Exchange Board of India (SEBI). Pursuant to this, SEBI issued a circular dated 12 May 2021 (Ref: SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/564) setting out the procedural requirements for seeking a change in control approval (2021 Circular).

Subsequently, on 2 June 2022, SEBI issued circular (Ref: SEBI/HO/IMD-1/DOF1/P/CIR/2022/77) (2022 Circular) superseding the 2021 Circular and introducing additional requirements for seeking a change in control approval. The 2022 Circular is effective from 15 June 2022.

Set out below is our analysis and comments on the 2022 Circular.

ANALYSIS

Key changes introduced by the 2022 Circular are as follows:

- Exit option to existing investors / clients: The 2021 Circular prescribes a requirement to submit an online application for SEBI's approval, and upon receiving such approval (which was valid for 6 months), the PM is required to inform all its existing investors / clients about the proposed change in control prior to effecting it, to enable them to take a well-informed decision regarding their continuance with the changed management.

However, the 2022 Circular now allows investors / clients (on whom the exit load is applicable), an option to exit without any exit load, provided that such exit is sought within a period of 30 calendar days from the date of communication of proposed change in control by the PM.

- Change of control due to scheme of arrangement: The 2022 Circular has introduced additional requirements regarding matters involving change in control which are pursuant to a scheme of arrangement requiring sanction from the National Company Law Tribunal (NCLT) in terms of the Companies Act, 2013 and the rules made thereunder, as amended from time to time (**Companies Act**).

For such matters, the PM is required to (*in addition to the other requirements set out in the 2022 Circular*):

- first, seek an in-principle approval from SEBI before filing an application with the NCLT. SEBI, upon its satisfaction of the regulatory compliances, would grant an in-principle approval to the PM;
- The in-principle approval will be valid for a period of 3 months, within which the PM shall be required to make an application with the NCLT; and
- With 15 days from receiving the NCLT order, the PM is required to submit an application under the 2022 Circular to SEBI along with the following documents: (i) copy of the NCLT order approving the scheme of arrangement; (ii) copy of the approved scheme; (iii) statement explaining modification in the approved scheme *vis-à-vis* the draft scheme; and (iv) details of compliance with the conditions / observations mentioned in the in-principle approval provided by SEBI.

COMMENT

The changes introduced in the 2022 Circular would benefit both the parties (i.e., the PMs and its investors / clients) in a change of control / management scenario. An exit option without any exit load would encourage more investors to invest in PM(s) and discourage PM(s) from undertaking any opportunistic change in control. Further the additional requirement of obtaining in-principle approval will bring in more certainty for PMs intending to be taken over by way of a scheme of arrangement.

- Moin Ladha (Partner), Charu Singh (Associate) and Tanish Prabhakar (Associate)

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).