

Corpsec Hotline

October 16, 2008

SEBI DISCLOSURE ON OVERSEAS SECURITIES LENDING: FALLING 'SHORT'?

In order to address the current Indian market scenario and the continuous selling on the Indian stock exchange, Securities and Exchange Board of India ("SEBI") has taken certain steps to monitor the selling activity on the Indian stock exchange.

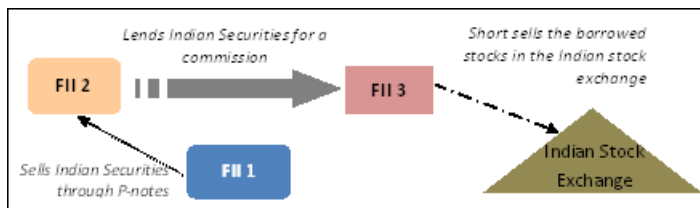
Background

In India, short selling of securities is made permissible provided is in pursuance of the short selling ("SS") framework coupled with the Securities Lending and Borrowing scheme ("SLB") introduced by SEBI recently, which lays down specific guidelines for short selling on the floor of Indian stock exchanges.

But, SEBI had noticed that FIIs had been borrowing and lending securities in the offshore derivatives instruments market resulting to enormous amount of sales by FIIs on the Indian stock exchanges, which were not within the purview of the SS framework and the SLB. Also, there is no form of monitoring for such form of short selling activity. Therefore, SEBI has issued instructions to the FIIs and custodians in by way of a press release on October 15th 2008 the implications of which have been discussed hereunder.

This kind of offshore borrowing and lending may be demonstrated by way of the following example.

Example



Explanation:

- FII 1 holds Indian securities and sells these securities to FII 2 by way of P-notes
- FII 2 now holds the Indian securities by way of P-notes. It further lends these securities, held by way of P-notes to another FII 3 and gets a commission in return
- FII 3 feels that the price of these securities will drop and thus sells these borrowed securities on the Indian stock exchange, with an intention to buy it when the stock price falls and returning the borrowed securities to FII 2

Press release

SEBI has indicated that the FIIs who lend such securities will have to submit a bi-weekly report to SEBI

- This report shall include the position of the securities lent by these entities abroad
- The report shall be submitted Tuesdays and Fridays of every week on a consolidated basis
- Such information will be first provided on the SEBI website on Friday October 17, 2008 covering the activity between Friday October 10, 2008 to Tuesday October 14, 2008

NDA view

We understand that the rationale behind SEBI seeking such information might be:

- SEBI might have sensed that short selling was taking place even outside of the SS and SLB framework by way of transactions involving offshore derivative instruments. Therefore, to assess the impact of overseas lending and borrowing of underlying Indian securities, SEBI might be seeking further information on the same
- Though unlike the other jurisdictions, SEBI has not yet imposed any blanket ban on short selling of securities possibly on the basis that the amount of short selling in the Indian markets through SS and SLB has been

Research Papers

Clinical Trials and Biomedical Research in India

April 22, 2025

Structuring Platform Investments in India For Foreign Investors

March 31, 2025

India's Oil & Gas Sector – at a Glance

March 27, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

[Click here to view Hotline archives.](#)

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia |

insignificant to warrant any such immediate ban, however, SEBI may want to examine the impact of such overseas borrowing and lending undertaken by FIIs and its indirect impact on the Indian stock markets. Depending on the data that comes out based on such reporting obligations, SEBI may consider whether any specific ban on short selling (both direct as well as indirect) is warranted.

- The imposition of such reporting and disclosure obligation in itself may result in some hesitance within the FIIs from engaging into such indirect short selling transactions overseas thereby reducing the volatility in the Indian markets.

Source: [PR-SEBI to disseminate further information on FII activity](#)

- **Divaspati Singh & Anshumita Singhania**
You can direct your queries or comments to the authors

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.