

Business Standard

Sebi cracks the whip on Barclays

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Bars FII from issuing offshore derivative instruments on grounds of rules violation



The Securities and Exchange Board of India (Sebi) has barred Barclays Bank from issuing and trading in offshore derivative instruments (ODIs) with immediate effect.

The bank is registered with Sebi as a foreign institutional investor in India.

ODIs are investment vehicles used by overseas investors to park funds in Indian equities and derivatives.

In its order, the regulator said Barclays had not only failed to provide true, fair and complete details of the offshore derivatives activity undertaken by it but also, prima facie, violated the provisions of foreign institutional investor (FII)

regulations by "furnishing false and incorrect information".

The order will be in operation till Barclays satisfies the market regulator by ensuring correct reporting on ODI transactions.

The period under consideration is between January 2006 and January 2008, during which Barclays did not inform Sebi about several ODI transactions in its periodical filings. During this period, Barclays had issued four ODIs to UBS AG with Reliance Communications as the underlying.

However, later Barclays said that it was not UBS AG, but Hythe Securities. This was an entirely new entity which did not form part of any of the earlier periodical submissions made by Barclays to Sebi.

According to the information provided by Barclays, ODIs issued to Hythe Securities were subsequently issued to Pluri, in contravention of regulation 15A(2) of the FII regulations. The regulation mandates that no downstream issue of ODIs will be made to any person other than a regulated entity.

"Given that Barclays was aware that the ODIs were onward/downstream issued to an unregulated entity, it failed to comply with the regulations governing ODIs and provide correct and true picture of the ODIs issued by it," said Sebi in its order today. Sebi also added that there were a few occasions which should have prompted Barclays to have a relook at their reports to Sebi .

Sebi has asked Barclays for its response on or before December 18. In response, Barclays confirmed that it has received the showcause notice from Sebi. In a statement, Barclays said, "Since receiving Sebi's original email request of September 24, 2009, we have been and will continue to cooperate fully with Sebi as it examines certain offshore derivative transactions."

In 2004, Sebi had barred UBS Securities Asia from issuing ODIs on Indian securities for a year. Sebi in its order had said that UBS furnished untrue statements and suppressed material facts on its trading on May 17, 2003. UBS had appealed to the Securities Appellate Tribunal, which eventually set aside Sebi's order, after which the regulator took the case to the Supreme Court. However, during February this year, Sebi settled the case against UBS Securities on consent terms.

Siddharth Shah, head of Fund Practice group at Nishith Desai Associates, said: "The order points to more effective monitoring undertaken by Sebi. It may not trigger off further changes in FII regulations but what might happen is , there could be closer scrutiny of FII's ODI transactions going ahead. Sebi may actually come out with minimum KYC (know your customer) guidelines which will be something more definitive as the current guidelines are too vague."

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