

Consultation paper on draft SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2013.

1. The President of India has promulgated the Securities Laws (Amendment) Second Ordinance, 2013 on September 16, 2013 conferring explicit powers on SEBI to settle administrative and civil proceedings under section 15JB of the Securities and Exchange Board of India Act, 1992(SEBI Act), section 23JA of the Securities Contracts (Regulation) Act, 1956 and section 19-IA of the Depositories Act, 1996.

2. The said Ordinance provides that SEBI may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may determined by SEBI in accordance with the regulations made under SEBI Act. The said Ordinance further provides that the settlement proceedings shall be conducted in accordance with the procedure specified in the regulations made under SEBI Act. A corresponding provision as clause (da) has also been inserted in sub-section (2) of section 30 of SEBI Act enabling the Board to frame regulations providing for the terms and procedure for settlement of administrative and civil proceedings.

3. In the light of the above, SEBI proposes to frame SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2013, a draft of which is annexed. Public comments are invited on the said draft Regulations. Comments may be forwarded by email to 'comments_settlementregs@sebi.gov.in' latest by **October 30, 2013**.

Comments should be given in the following format:

| Name of entity/ person/ intermediary: | | | |
|---------------------------------------|---|-----------------------------|-----------|
| Sr.No. | Pertains to which regulation/sub-regulation | Proposed/ suggested changes | Rationale |
| | | | |

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DRAFT REGULATIONS

EXTRAORDINARY

PART – III – SECTION 4

PUBLISHED BY AUTHORITY

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SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the October, 2013

**SECURITIES AND EXCHANGE BOARD OF INDIA (SETTLEMENT OF
ADMINISTRATIVE AND CIVIL PROCEEDINGS) REGULATIONS, 2013**

No. *.-In exercise of the powers conferred by section 15JB of the Securities and Exchange Board of India Act, 1992, section 23JA of the Securities Contracts (Regulation) Act, 1956 and section 19-IA of the Depositories Act, 1996 read with sections 11 and 30 of the Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India hereby makes the following regulations to provide for the terms of settlement and the procedure of settlement proceedings and matters connected therewith or incidental thereto, namely:—*

**CHAPTER I
PRELIMINARY**

Short title and commencement.

- 1.** (1) These regulations may be called the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2013.
(2) They shall come into force on the date of their notification in the Gazette of India.

Definitions.

2. (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly,—

- (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (b) "alleged default" means an alleged or probable non-compliance of any provision of securities laws;
- (c) "Board" means the Securities and Exchange Board of India established under the provisions of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (d) "high powered advisory committee" means a committee constituted by the Board under regulation 7;
- (e) "internal committee" means a committee constituted by the Board under regulation 8;
- (f) "first time applicant" means an applicant who has not obtained a settlement order where he is a party as on the date of receipt of his application by the Board:

Provided that any applicant who has filed another application under regulation 3 which is pending before the Board shall not be a first time applicant;

- (g) "proceedings" means proceedings which have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I of the Act or section 12A or section 23-I of the Securities Contracts (Regulation) Act, 1956 or section 19 or section 19H of the Depositories Act, 1996, as the case may be;
- (h) "specified" means specified by the Board through circulars or guidelines;
- (i) "Tribunal" means the Securities Appellate Tribunal established under section 15K of the Securities and Exchange Board of India Act, 1992.

(2) Words and expressions used and not defined in these regulations but defined in the Act, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996 or any rules or regulations made thereunder shall have the same meanings respectively assigned to them in those Acts, rules or regulations made thereunder or any statutory modification or re-enactment thereto, as the case may be.

CHAPTER II APPLICATION FOR SETTLEMENT

Application.

- 3.** (1) Any person, against whom any proceedings have been initiated or may be initiated, may file an application to the Board in the Form specified in Part-A of the Schedule.
- (2) The application made under sub-regulation (1) shall be accompanied by a non-refundable application fee to be paid in the manner specified in Part-B of the Schedule.
- (3) The applicant shall submit the waivers and undertakings as specified in Part-C of the Schedule with the application.
- (4) The applicant shall make one application for settlement of all the proceedings where more than one proceedings arising out of the same cause of action is pending.
- (5) An application which is not complete in all respects or does not conform to the requirements of these regulations shall be rejected by the Board:
Provided that an applicant shall be granted not more than one opportunity to submit a rectified application which conforms to the requirements of these regulations within fifteen days from the date of communication in this regard.
- (6) On receipt of an application under sub-regulation (1), the Board or the adjudicating officer, as the case may be, shall keep the passing of the final order in abeyance in the respective proceeding, till such application is disposed of.
- (7) Where the settlement proposal of an application is rejected, the proceedings kept in abeyance in terms of sub-regulation (6) shall revive from the stage where it was pending.

Limitation.

- 4.** (1) No application shall be considered if it is made after sixty days from the date of service of show cause notice or supplementary show cause notices, if any, issued by the Board.
- (2) Notwithstanding anything contained in sub-regulation (1), the panel of whole time members constituted under sub-regulation (1) of regulation 12 may condone the delay, if it is satisfied that there was sufficient cause for not filing the application within the period specified in sub-regulation (1).

(3) This regulation shall not apply in the case of proceedings pending before the Tribunal or any court.

Explanation.- For the purposes of this regulation, where multiple proceedings have been initiated for the same cause of action, the application shall be deemed to have been filed within the limitation period, if the application filed for any one proceeding is filed within the limitation period specified in this regulation.

CHAPTER III SCOPE OF SETTLEMENT

Scope of settlement proceedings.

- (a) **5.** (1) No application shall be made, for settlement of any proceedings – if the alleged default was committed within a period of two years from the date of the last settlement order where the applicant is a party;
- (b) if the applicant has been party to two settlement orders;
- (c) for proceedings arising out of non-compliance of the settlement terms of an earlier settlement order.
- (d) if the application seeking settlement of the same alleged default has been filed earlier and withdrawn;
- (e) if an earlier application with regard to the same alleged default had been rejected by the Board.

(2) The Board may not settle a proceeding if it involves any of the following alleged defaults, namely,-

- (a) commission of insider trading or communication of unpublished price sensitive information in contravention of the provisions of the Act and the regulations made thereunder;
- (b) fraudulent and unfair trade practices including front running, which are serious and which in the opinion of the Board, has a market wide impact or, has caused substantial losses or affects the rights of investors in securities, especially retail investors and small shareholders:

Provided that where the applicant has made or intends to make good the losses due to the investors, his application may be considered.

Explanation.- For the purpose of this clause, front running means usage of non-public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change;

- (c) failure to make an open offer in accordance with the provisions of the Act and the regulations made thereunder:

Provided that where the applicant intends to make the open offer or where making the open offer is found to be not beneficial to the shareholders, his application may be considered;

- (d) defaults or manipulative practices by mutual funds, their sponsors or asset management companies that result in substantial losses to unitholders, except in cases where the applicant has compensated the unitholders for the losses, to the satisfaction of the Board;
- (e) failure to redress investor grievances except where the alleged default is of delayed redressal;

- (f) failure to make disclosures required under the regulations framed by the Board dealing with issue and listing of securities, which in the opinion of the Board materially affect the right of the investors;
 - (g) raising of monies by issuance of securities or pooling of funds, in violation of securities laws where the remedy is refund of such monies;
 - (h) non-compliance of notices and summons issued by the Board or summons issued by the adjudicating officer;
 - (i) non-compliance of an order passed by the Board or by an adjudicating officer.
- (3) An application in respect of proceedings involving alleged defaults referred to in sub-regulation (2) may be rejected by the Board, without examination by internal committee or high powered advisory committee.
- (4) Notwithstanding anything contained in this regulation, the Board may in the interest of the investors and the development and regulation of securities market, consider an application for settlement of the alleged defaults referred to in sub-regulation (2).
- (5) No application shall be considered if the investigation or inspection, if any, in respect of the alleged default, is not complete.
- (6) No application under these regulations shall be considered if a criminal complaint is filed by the Board under sub-section (6) of section 11C or section 24 of the Act, or section 23 or 23M of the Securities Contracts (Regulation) Act, 1956 or section 20 of Depositories Act,

1996.CHAPTER IV TERMS OF SETTLEMENT

Settlement terms.

6. (1) The settlement terms shall include settlement amount or appropriate directions or voluntary suspension of certificate of registration or closure of business or a combination of settlement amount and other such action, in accordance with the guidelines specified by the Board.

(2) Settlement amount shall be credited to the Consolidated Fund of India:

Provided that legal costs, if any, forming part of settlement amount shall be credited to the Securities and Exchange Board of India General Fund:

Provided further that where illegal gains are disgorged as part of the settlement amount, such disgorged amounts shall be credited to the Investor Protection and Education Fund of the Board.

CHAPTER V COMMITTEES

High powered advisory committee.

7. (1) The Board shall constitute a high powered advisory committee for the consideration and recommendation of the terms of settlement.

(2) The high powered advisory committee shall consist of a retired Judge of a High Court and three external experts having expertise in the securities market or for matters connected therewith or incidental thereto.

(3) The quorum of the high powered advisory committee shall be three members.

(4) The term of the members of the high powered advisory committee shall be three years which shall be extendable upto a period of two years.

(5) The high powered advisory committee shall conduct its meetings in the manner specified by the Board in this regard.

Internal committee.

8. (1) The Board shall constitute internal committee(s) for assisting the high powered advisory committee.

(2) The internal committee shall comprise an officer of the Board not below the rank of Chief General Manager and one Division Chief each of the division handling the case in respective operations department and legal or enforcement department of the Board.

(3) The internal committee shall conduct its meetings in the manner specified by the Board in this regard.

Factors to be considered to arrive at the settlement terms.

9. While considering the application, the internal committee and the high powered advisory committee shall have due regard to the objective of the securities laws, the interests of investors and securities market and factors including but not limited to the following:

- (a) whether the alleged default is intentional;
- (b) conduct of the applicant in the investigation and disclosures made thereof;
- (c) the role played by the applicant in case the alleged default is done by a group of persons
- (d) nature, gravity and impact of alleged defaults;
- (e) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;
- (f) whether there were circumstances beyond the control of the applicant;
- (g) whether the alleged default is technical and/or minor in nature and whether it warrants penalty;
- (h) consideration of the amount of investors' harm/loss or applicant's gain;
- (i) processes which have been introduced since the alleged default to minimize future defaults/lapses;
- (j) compliance schedule proposed by the applicant;
- (k) economic benefits accruing to any person from delayed or avoided compliance;
- (l) conditions which are necessary, to deter future non-compliance by the same or another person;
- (m) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;
- (n) compliance of the civil enforcement action by the applicant, if he is an accused in a prosecution launched by the Board;
- (o) applicant has undergone any other regulatory enforcement action for the same violation;
- (p) any other factors necessary in the facts and circumstances of the case.

**CHAPTER VI
PROCEDURE OF SETTLEMENT**

Proceedings before internal committee.

10. (1) The application(s) shall be referred to internal committee for determination of the settlement terms.

(2) For the purpose of determination of the settlement terms, the internal committee may:

- a. call for relevant records pertaining to the alleged default(s) in the custody of the applicant;
- b. permit personal appearance of the applicant in the internal committee meeting;

Provided that a duly authorized representative of the applicant may be permitted to make representation on behalf of the applicant upon receipt of a written request from the applicant:

Provided further that the applicant or his representative shall confirm, to the Enforcement department, his attendance in the internal committee meeting atleast three days prior to the scheduled date of such meeting.

- c. permit the applicant to revise settlement terms within a period not exceeding ten working days from the date of the internal committee meeting.
- (3) The internal committee shall place its proposal including the settlement terms, if any, its views on the nature, gravity and impact of the alleged default and reasons for such proposal before the high powered advisory committee.

Proceedings before high powered advisory committee.

11. (1) The High Powered Advisory Committee shall consider the following for making recommendations to the Board on an application placed before it by the internal committee:

- (a) undertaking and waivers of the applicant;
- (b) factors specified in regulation 9;
- (c) settlement terms or revised settlement terms proposed by the applicant;
- (d) proposal of the internal committee;
- (e) relevant material available on record.

(2) Prior to making a recommendation under sub-regulation (3), the high powered advisory committee may ask the applicant to revise the settlement amount and refer the application back to the internal committee.

(3) The high powered advisory committee vide its proceedings shall recommend to the Board that an application is fit for passing a settlement order upon acceptance of the settlement terms or the application may be rejected.

Action on recommendation of high powered advisory committee.

12. (1) The Board may by general or special order assign a panel of two whole time members of the Board to consider the recommendations of the high powered advisory committee and to pass settlement orders.

(2) Where the panel of whole time members chooses to accept the recommendation of the high powered advisory committee to pass settlement order in an application, the applicant shall remit the amount of money as per the settlement terms as communicated by the Enforcement Department within ten days from the date of receipt of such communication.

(3) Where the panel of whole time members chooses to accept the recommendation of the high powered advisory committee to reject an application, the Enforcement Department shall issue a notice of such rejection to the applicant.

(4) Where the panel of whole time members chooses to reject the recommendation of the high powered advisory committee, the panel of whole time members may:

- (a) return the application to internal committee for revision of settlement amount;
- (b) direct rejection of the application as per sub-regulation (3).

**CHAPTER VII
SETTLEMENT ORDERS**

Settlement orders by the adjudicating officer and the Board.

13. (1) An adjudicating officer may pass settlement orders with respect to proceedings initiated for alleged default(s) wherein he is appointed as the adjudicating officer under section 15-I of the Act or section 23-I of the Securities Contracts (Regulation) Act, 1956 or

section 19H of the Depositories Act, 1996, by an order providing for the settlement terms thereof.

(2) The panel of the whole time members may pass settlement orders with respect to proceedings initiated or proposed to be initiated for alleged default(s) other than the proceedings referred to in sub-regulation (1), by an order providing for the settlement terms thereof.(3) The settlement order under sub-regulations (1) and (2) shall contain, *inter alia*, details of the alleged default(s) including relevant provisions of the securities laws, facts and circumstances relevant to the alleged default and the settlement terms.

Settlement order by the Tribunal or by any court.

14. Where a proceeding is pending before the Tribunal or court, settlement terms arrived at by the Board shall be placed before such Tribunal or court for its consideration and appropriate orders.

Service of settlement order and publication.

15. Settlement orders under regulation 13 shall be served on the applicant and the same shall be published on the website of the Board.

Non-compliance of settlement order.

16. (1) Where the applicant fails to comply with the settlement order under regulation 13 or regulation 14, the Board shall revive the proceedings with respect to which settlement order had been passed.

(2) An applicant who fails to comply with settlement order shall be proceeded against in accordance with the provisions of the Act or the Securities Contracts(Regulation)Act, 1956 or Depositories Act, 1996.

**CHAPTER VIII
MISCELLANEOUS**

Power to remove difficulties.

17. In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars.

Power to specify procedures, etc., and issue clarifications.

18. For the purposes of implementation of these regulations and matters incidental thereto, the Board may specify norms, procedures, processes or manners as specified in these regulations, by way of circulars or guidelines.

Pending Applications.

19. Applications pending under circulars issued by the Board dated April 20, 2007 and May 25, 2012 shall be dealt with in accordance with the corresponding provisions of these regulations.

SCHEDULE
(See regulation 3)

Part-A
FORM-A

Application for Consent

(For Office use only)

Date of receipt of the application :

Application Registration Number :

(Instructions: All the particulars must be filled. Enclosures indicated as “” are mandatory. Put ‘NA’ wherever necessary.)*

Before the Securities and Exchange Board of India

In the matter of

1. Name/Trade name of the applicant:
 - (a) Registration no., if applicable :
 - (b) Date of Registration, if applicable :
2. If stock broker, name of the stock exchange:
3. If sub-broker, name of stock broker with whom affiliated and name of the stock exchange:
4. Name of the segment (Cash/derivative etc.):
5. Form of organization: corporate body/ sole proprietorship / partnership / LLP/ financial institution (if listed co., details of listing) :
6. Names of promoters/directors/proprietors/partners:
7. Key management personnel(s) :
8. Address/correspondence address, contact no./fax no. and email(any changes in aforesaid details shall be communicated to the Board promptly):
9. Name and contact details (including e-mail) of the contact person (s):
10. Other registration(s) with the Board, if applicable :
 - (a) Trade name :
 - (b) Registration type :
 - (c) Registration no. :

11. Case(s) pending with the Board/SAT/Court (Pl. specify) :
12. Case(s) pending under 11B/Adjudication/Enquiry/others (pl. specify):
13. Stage at which pending:
14. Last order in the pending proceedings (gist of the orders passed), if any :
15. Other actions pending/taken by the Board, if any (with their status)
 - (a) Against the applicant :
 - (b) Against its associates :
 - (c) Against its key management personnel(s) :
 - (d) Against its other promoters/directors;
 - (e) Other details, if any:
16. Date of show cause notice/summons/communication indicating probable cause of action, if any, against which the settlement is sought (PLEASE ENCLOSE COPIES)*:
17. Facts of the case, in brief:
18. Specific charges alleged:
19. Terms of settlement:
20. Original documents to be enclosed:
 - (a) Undertakings* (as per enclosed Format).
 - (b) Authority letter/Board resolution*.
21. List of other enclosures:
 - (a) A copy of the notice to show cause/summons/communication/other notices indicating the probable cause of action, if any, against which the settlement is sought;
 - (b) Complete Annual Reports/ Income-tax Returns (of the applicant) / other financial details for the last three financial years and the current year*;
 - (c) In the case of brokers/sub-brokers/Mutual Funds/Venture Capital Fund/Merchant Bankers/Portfolio Managers etc, the applicant must enclose details of brokerage earned/ fee received during the period of default*;
 - (d) A statement showing net worth of the applicant, gross annual income before tax, the amount of gross profit made/loss avoided, including the gross brokerage, fees, management/performance/transaction fee, carried interest, compensation, etc, earned by it in respect of the said default (only for applicants who are required to comply with the networth requirements as specified by the Board or by the stock exchanges);
 - (e) Copy of PAN*;
 - (f) Any other relevant document (s)/submissions.

(Signature of the applicant)

(Stamp/Seal)

Verification

I,son/daughter/wife of (Name in block letters)

Shribeing the applicant/authorised representative (in case of corporate entity) of do hereby verify and affirm on oath that I have been authorised byto make this application and the contents of paras 1 to 21 are true to my personal knowledge and belief and that I have not suppressed any material facts.

(Signature of the applicant)

Date:

Place :

Part-B

Every applicant shall pay fees of five thousand rupees by a demand draft in favour of 'Securities and Exchange Board of India" payable at Mumbai.

Part-C

Undertakings and Waivers

Format of Undertaking

Undertaking to be submitted alongwith the application on Rs. 200/- non-judicial stamp paper-duly notarized.

Undertakings/Waivers:

I/We,, the applicant(s) herein, as a condition for making the enclosed application to the Board for passing of appropriate settlement order, hereby declare that I/we agree and undertake that:

1. Securities and Exchange Board of India (SEBI) may enforce any claims against me/us arising from or relating to any violation of the settlement order passed pursuant to this application.
2. Nothing in this settlement order shall preclude any investor from pursuing any other legal remedy to which the investor may be entitled against me/us.
3. The amount of settlement including settlement charges/legal expenses, if any, shall be paid by me/us to the Board within the period as may be specified.

4. If I/we fail to comply with the settlement order, the Board may vacate the settlement order at its sole discretion, after giving fifteen days notice in this regard without opportunity for any hearing.
5. For any person or entity not a party to these proceedings, Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2013 does not limit or create any private rights or remedies against me/us.
6. The Order and any dispute related thereto shall be construed and enforced in accordance, and governed by, the relevant laws:

Provided, however, that the Board may enforce any claims against me/us arising from or relating to any violation of the settlement order as contained herein.

7. The settlement order passed pursuant to this application shall conclude any/all disciplinary action the Board could bring against me/us for the conduct (cause of action) set forth in this application.
8. I/We agree that once the settlement order is passed in terms of the settlement terms accepted by me, I/We shall not take any action or make or permit to be made any public statement denying, directly or indirectly, any finding recorded in the settlement order or creating the impression that the order is without factual basis. Nothing in this paragraph however affects my/our (i) testimonial obligations or (ii) right to take legal or factual positions in defence of litigation or in defence of a claim or other legal proceeding in which the the Board is not a party.
9. I/We admit the jurisdiction of the Board on the alleged default.
10. I/We neither admit nor deny the findings of fact and conclusions of law to be part of the settlement order, and consent to enter into the settlement order as may be passed by the Board/adjudicating officer as settlement of the proceedings contained in this application, in lines with the settlement terms agreed by me/us.
11. I/We understand that the Board may issue a press release or any other mode of communiqué for public information about the settlement order passed in these proceedings or the rejection of the application and the subject matter thereof as the Board may deem appropriate.

Further,

I/We shall waive my/our right of taking any legal proceedings against the Board concerning any of the issues covered by the settlement order, as more particularly setout herein :

12. All hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;
13. The filing of proposed findings of fact and conclusions of law;
14. Proceedings before S or any officer;
15. All post-hearing procedures; and
16. Appeal/review before/by Tribunal/ courts.
17. Applicability of such provisions of the regulations or other requirements of law as may be construed to prevent any officer of the Board from participating in the preparation of, or advising the competent authority as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the application;
18. Any right to claim bias or prejudgment by the Board based on the consideration of or discussions concerning settlement of all or any part of the internal proceedings;

19. Any plea of limitation for reopening the case, if I/we violate/do not comply with the settlement order subsequently, and the Board shall be free to take any action including initiation of adjudication / prosecution proceedings against me/us for such violation/non-compliance of the settlement order.
20. Any plea of limitation for restarting the case if the matter is not settled by passing of settlement order by the Board or adjudicating officer. I further undertake that in such a case, the time spent during the settlement proceedings shall be excluded for computing the limitation for initiating any legal proceedings against me/us.

(Signature of the applicant with stamp/seal)

before me.

Notary.