भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

SEBI seeks public comments on the 'Report on the Settlement Mechanism' submitted by the High Level Committee under the Chairmanship of Justice A. R. Dave (retd.)

1. BACKGROUND

1.1 Settlement for securities laws violations, was introduced in India in the year 2007. It has weathered the challenges in their implementation and facilitated the market regulator to provide a more effective mechanism; the essential concomitants of a legal proceeding, without compromising on deterrence or providing equitable remedies to the affected investors. The Settlement process was codified and the SEBI (Settlement of Administrative and Civil Proceedings) Regulations were notified on January 9, 2014. In pursuit of the objectives of SEBI (to protect the interests of investors in securities and to promote the development of and to regulate the securities market), as new challenges arise it is important to have a convergence or integration of the quasi-judicial processes within SEBI with the alternate dispute resolution process of settlement, to bring forth a more effective harmonized scheme to operate without any conflict and delay. The 2014 Regulations were a major advancement in introducing a mathematical and transparent system of calculating the settlement amount, however certain shortcomings were noticed over a period of time.

1.2 Securities and Exchange Board of India ("SEBI") has constituted a High Level Committee under the Chairmanship of Justice A. R Dave (retd. Supreme Court of India) assisted by Shri Pratap Venugopal, Advocate on Record, Supreme Court of India, as Member of the Committee.

1.3 The High level Committee was constituted to review the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and the Enforcement mechanism of SEBI and to suggest suitable recommendations as it considers necessary. The 2014 Regulations have been examined by the Committee and

comprehensively re-worked after taking into account developments in domestic and foreign jurisdictions.

1.4 The Committee has submitted its 'Report on Settlement Mechanism' to SEBI on August 10, 2018 wherein it has *inter alia* recommended issuance of revised regulations for settlement proceedings

2. PUBLIC COMMENTS

Comments from the public are invited on the recommendations contained in the aforesaid Report in the following format:

Name:			
Sr. No.	**Relevant Chapter and sub-heading/ regulation / clause/ point**	**Comments and suggested changes, if any**	**Rationale**

The comments may either be forwarded by email to settlementdop@sebi.gov.in or may be sent by post to the following address latest by September 1, 2018.

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Issued on: August 13, 2018

HIGH LEVEL COMMITTEE UNDER THE CHAIRMANSHIP OF

JUSTICE A. R. DAVE, FORMER JUDGE, SUPREME COURT OF INDIA,

TO REVIEW THE ENFORCEMENT AND SETTLEMENT MECHANISM.

REPORT ON THE SETTLEMENT MECHANISM

AUGUST 10, 2018

PREFACE

Real success, within any system, especially of an enforcement process depends largely on constant evaluation and evolution of the devices and mechanisms used for that purpose. Courts are overburdened and delay is a major concern, questioning the efficiency of the system. The common man is perplexed by the fact of being at the receiving end despite mechanisms being in place, at considerable expenditure to the exchequer. Public concern over accountability and responsibility has to be addressed in a more cost effective, less time consuming manner by seeking means and devices to arrive at an arrangement relieving the aggrieved of a cumbersome procedure.

This necessarily requires a convergence or integration of the judicial decision making processes with the alternate dispute resolution processes, to bring forth a more effective harmonized scheme to operate without any conflict. The sanctity of judicial decision making cannot be discounted. Legal research, in today's world of better access and more awareness, reveals argumentative possibilities for setting up alternate resolution practices in an organized, non-partisan manner; especially in the context of the present scenario which clamours for a speedier processes for dealing with disputes, be it business, societal or personal.

Courts, Tribunals and Adjudicatory Authorities have to be spared from adjudicating on issues; which could be resolved by facilitating a settlement process which would go a long way in ensuring speedy and efficient resolution of disputes, if leveraged properly, thus contributing to reduction of multiplicity of litigation.

This tool of settlement by consent has been successfully applied, in various disparate jurisdictions, including in the United States of America and the United Kingdom. India too adopted this powerful tool of settlement, as a measure of alternate resolution, but without diluting the aspect of deterrence, which ensures smooth functioning of the financial markets without interruption or hampering legitimate activities of registered participants; often occasioned in regular enforcement proceedings.

Settlement for securities laws violations, was introduced in India in the year 2007. It has weathered the challenges in their implementation and facilitated the market regulator to provide a more effective mechanism, saving time and cost; the essential concomitants of a legal proceeding, without compromising on deterrence or providing equitable remedies to the affected investors. Concerns, however, still crop up challenging the efficacy of the settlement mechanisms; some of which appear to be based on an inadequate understanding of the system and a wrong appreciation of the legal issues arising there from.

This report on the settlement mechanism is meant to review and add to the existing law so as to improve the existing processes and also act as an enabler for ease of doing business in the growing securities market.

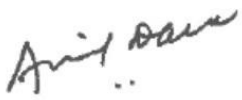
The Committee expresses its gratitude to **Mr. Ajay Tyagi, Chairman, SEBI** for constituting the Committee and entrusting it with the task of reviewing the enforcement and settlement mechanism of SEBI.

The Committee, during the course of its deliberations, held detailed discussions with the Whole Time Members of the Board and their officers, the Enquiry and Adjudication officers and officers from the Departments of Investigation, the Integrated Surveillance as well as the officers of Enforcement Department. A detailed meeting was also held with the members of the High Powered Advisory Committee constituted under the existing settlement regime. These discussions have been immensely useful to the Committee in taking a considered decision.

I would like to place on record my deep appreciation of the valuable inputs of Shri Pratap Venugopal, who has assisted me as Member of the Committee.

The Committee is grateful to all the participants for sharing their expertise. The Committee is also grateful to the senior leadership of SEBI for taking time to share their expertise during several days of interaction with them.

The Committee also extends special thanks to the invaluable support and work on this project to the officers of the Legal Affairs Department, Division of Policy viz. Ms. Babitha Rayudu, Mr. G Vijayakrishnan and in particular, Mr. L. Kajio Mao and Mr. Chaudhary Suraj, as well as their contribution in setting the agenda, identifying and interacting with the participants, conducting the briefings and producing this Report. The Committee also thanks the Board for the administrative and programmatic support provided.



JUSTICE ANIL R. DAVE,
Former Judge, Supreme Court of India,
CHAIRMAN.

Mumbai, August 10, 2018

GLOSSARY OF TERMS USED IN THE REPORT

Sr. No.	Terms Used	Meaning
1	AO	Adjudicating Officer
2	Board	The Securities and Exchange Board of India
3	Depositories Act	Depositories Act, 1996
4	FCA	Financial Conduct Authority
5	HPAC	High Powered Advisory Committee
6	IC	Internal Committee
7	SAT	Securities Appellate Tribunal
8	Settlement Regulations	Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014
9	SCRA	Securities Contracts (Regulation) Act, 1956
10	SEBI	Securities and Exchange Board of India
11	SEBI Act	The Securities and Exchange Board of India Act, 1992
12	SEC	US Securities and Exchange Commission
13	WTM	Whole Time Member

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HIGH LEVEL COMMITTEE TO REVIEW THE ENFORCEMENT AND SETTLEMENT MECHANISM

Justice A.R. Dave, former Judge, Supreme Court of India – **Chairman**

Mr. Pratap Venugopal, Advocate, Supreme Court – **Member**

Core team of SEBI:

1. Mr. Ananta Barua, Whole Time Member;
2. Ms. Babitha Rayudu, Chief General Manager;
3. Mr. G Vijayakrishnan, General Manager;
4. Mr. L. Kajio Mao, Assistant General Manager; and
5. Mr. Chaudhary Suraj, Manager.

TERMS OF REFERENCE

The Committee was formed on December 14, 2017 under the Chairmanship of Justice A. R Dave (Retd.). The terms of reference of the Committee are as follows:

1. Review of the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014;

2. Explore means of legislating a methodology for quantification of the factors indicated in Section 15J of the Securities and Exchange Board of India Act, 1992 Section 19I of the Depositories Act, 1996 and Section 23J of the Securities Contracts (Regulation) Act, 1956;

3. Review the enforcement mechanism of the Board, in particular, the Recovery mechanism under the securities laws; and

4. Any other matter, as the Committee deems fit relating to the terms of reference.

APPROACH TO THE REPORT ON THE SETTLEMENT MECHANISM

The Committee held nine meetings over a period of eight months with the first meeting held on December 14, 2017. This Report sets out the recommendations of the Committee in respect of the first Term of Reference: Review of the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014, along with the rationale for the same while suitably referencing to any other incidental issues as may be required for enhancing the Board's Settlement mechanism as well as the enforcement mechanism as a whole. The Committee's approach to the recommendations has been driven by the primary objective of enhancing settlement as a tool of enforcement. In this regard, the Committee believes that there are certain recommendations which may require implementation by authorities other than SEBI. Therefore, the Committee has suggested that SEBI take up such recommendations with the relevant authorities.

BACKGROUND

The adage "Justice delayed is justice denied" holds utmost significance when the concept of dispensing justice is discussed. The constant struggle to uphold this legal maxim has been a bitter battle in every judicial system to ensure speedy justice but not at the cost of justice.

Over the years, the judicial system has evolved to incorporate methods for dealing with the arrears of cases.

Methods such as plea bargaining have been effective in the United States of America (USA) where majority of the criminal cases are not tried but disposed of through plea bargaining.

The Law Commission of India after thorough examination of the subject of plea-bargaining/compounding/settlement without trial has in its 142nd and 154th Reports made detailed recommendations to promote settlement of criminal cases without trial. The Commission noted that about 75% of total convictions are the result of plea bargaining in USA which contrasted with 75% of the acquittals in India. The Commission also observed that plea-bargaining is a viable alternative to deal with huge arrears of criminal cases and would involve pre-trail negotiations such as "charge bargaining" or "sentence bargaining" that would ultimately result in a reduced sentence and early disposal. The recommendation of the Law Commission on plea bargaining was also supported by the Malimath Committee on Reforms of Criminal Justice System in its report in 2003. Accordingly, it found its way into the Criminal Law (Amendment) Bill, 2003 and became enforceable in 2006 under Section 265A to 265L, Chapter XXIA of the Criminal Procedure Code which deals with the concept of Plea Bargaining as an alternative method introduced to deal with huge arrears of criminal cases.

The Companies Act 1956 provided for a number of dispute resolution fora to provide judicial settlement in a wide range of business issues and the Indian Companies were required to approach these fora for resolving their disputes based on the subject matter in dispute. This resulted in a backlog of a number cases and protracted litigation time, which was considered as a major impediment in ease of doing business in India. With a view to streamlining the process, the Companies Act 2013 effectuated a single forum for adjudication of most of the disputes related to companies in India. Further, over the last few years, the Government of India has also taken a number of steps in reforming the dispute resolution machinery, to ensure the speedy and efficient disposal of corporate/commercial litigation. The establishment of Commercial Courts, amendments in the Arbitration and Conciliation Act, passage of Insolvency and Bankruptcy Code, 2016, constitution of the National Company Law Tribunal and notification of Companies Mediation and Conciliation Rules, 2016 reflects a complete overhaul in the dispute resolution machinery in India's Corporate Litigation.

The Securities and Exchange Commission in the USA also introduced the settlement route that was beneficial for Courts since the settlement or consent judgments would conserve judicial resources, which was the primary reason for the strong policy favoring approval and enforcement of consent decrees in the USA and yet decrease the pendency of cases. By doing so, consent decrees

made it possible for the judicial system to operate more efficiently and more fairly while affording plaintiffs an opportunity to obtain relief more expeditiously.

The Securities and Exchange Board of India has been given the mandate to protect the interest of investors in securities and to promote the development of, and to regulate the securities market. In order to accomplish this mandate, SEBI has been vested with quasi legislative, executive and quasi-judicial powers under the SEBI Act, 1992. During the last 26 years, SEBI has issued various regulations and circulars and taken stringent surveillance, investigation and enforcement measures to ensure protection of interest of investors, effective regulation and development of the securities market.

With a view to deal with accumulated cases, SEBI felt the need to find an alternate enforcement mechanism to expedite the delivery of justice and towards that end, introduced a settlement process in 2007 that would deal with the arrear of cases and simultaneously ensure the protection of interest of investors and effective regulation and development of the securities market.

As is the situation globally, SEBI also witnessed and faced challenges in its settlement mechanism while dealing with issues such as which cases or violations are to be settled and the manner of settlement as also the terms of settlement. Pertinent questions such as what would constitute a serious violation and who may be permitted to apply for the settlement process has been a constant challenge. Like every judicial process, each case with its facts or violations would vary from the other or be similar and yet be differentiated. Thus the need for the applicability of a uniform yet measurable mechanism has been pursued over the years. Cases where monies are to be refunded to investors or cases relating to investor complaints necessitate a more delicate scenario where the interest of investors should always be prioritized. In order to factor in various issues and elements in its enforcement mechanism, SEBI created a system in 2012 to pursue a quantifiable settlement mechanism that shaped into regulations in 2014 and proved to be quite effective.

Yet a need is felt to envisage the ever growing requirements of any free market. Concepts such as whistleblower or immunity are not new but are fast becoming a rising requirement with the simultaneous rise in corporate or market illegalities globally. Similarly, the need for a confidentiality clause as part of the settlement process in order to garner information of defaults or possible violations from defaulters in the securities market may be considered as a step forward to an effective enforcement system. A review of the settlement mechanism is thus much needed and like any effective judicial or enforcement system, it must result in an evolution of the processes to combat the ever changing and growing securities market.

STRUCTURE OF THE REPORT:

This Report is divided in to the following parts:-

a. Part I: Provides a brief background of the evolution of settlement proceedings of the Board and the need for the present review;

b. Part II: Discusses the global scenario in relation to the enforcement proceedings in foreign regulators and in particular their settlement approaches;

c. Part III: Discusses the key recommendations and their rationale in view of the issues deliberated by the Committee;

d. Part IV: Details the comparison between the existing Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and the proposed Regulations; and

e. Part V: Contains the draft of the proposed Regulations.

I. EVOLUTION OF SETTLEMENT PROCEEDINGS

AN INTRODUCTION

To begin any study of a legal system, it is important to first examine its origin and history in order to comprehend the factors that have led to its creation and the factors and circumstances that have led to changes along the way in order to effectively review it. Accordingly, we begin by first examining the enforcement mechanism existing in SEBI.

1. In terms of its mandate to protect the interest of investors and to regulate the securities market, SEBI is empowered to initiate the following types of proceedings:

   A. **Civil quasi-judicial proceedings:** SEBI is empowered to initiate three types of civil quasi-judicial actions under governing legislations:

      (i) **Adjudication proceedings** under Chapter VIA of the SEBI Act and the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (and under the analogous provisions of the SCRA and Depositories Act and Rules issued thereunder) may result in imposition of maximum monetary penalty of Rupees 25 crore or upto 3 times the profit, whichever is higher.

      (ii) **Enquiry Proceedings** under Chapter V of SEBI (Intermediaries) Regulations, 2008 may *inter alia* result in suspension/ cancellation of certificate of registration of the registered Intermediary.

      (iii) **Proceedings before the Board:** The power of issuing directions including under Section 11, 11B, 11D of the SEBI Act (and under the analogous provisions of the SCRA and Depositories Act) has been delegated to the WTM. After making or causing to be made an enquiry, if the Board is satisfied that it is necessary to take any measures, the WTM may issue such directions as deemed appropriate.

   B. **Prosecution (Criminal Proceedings)**: Apart from civil proceedings, SEBI may also choose to initiate criminal proceedings by way of filing a criminal complaint under Section 24 of SEBI Act (and under the analogous provisions of the SCRA and Depositories Act) before the SEBI Special Court, which may result in imprisonment upto 10 years or/and fine upto 25 crore. These proceedings being criminal proceedings, the procedural laws such as the Evidence Act, 1872 and the Code of Criminal Procedure, 1973 are also applicable.

C. **Settlement/Compounding**: Prior to the initiation or during the pendency of any civil/criminal proceedings or pending an appeal pursuant to such proceedings, an entity may choose to settle / compound the pending proceedings, as per the agreed terms and conditions provided in the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and Internal Circular No. ED/LAD/Cir:-1/2016. Such settlement/compounding proceedings are very significant from the perspective of enforcement, since they provide for expeditious disposal of cases saving resources of the regulator with similar benefits to the applicants, while taking into account the public interest.

D. **Recovery**: When a person fails to pay the penalty imposed by the adjudicating officer, or fails to comply with any direction of SEBI for refund of monies or fails to comply with a direction of disgorgement order or fails to pay any fees due to SEBI, in order to recover such amounts, SEBI is empowered to initiate recovery proceedings under Section 28A of SEBI Act, 1992 r/w Section 226 and the Second Schedule of Income Tax Act, 1961 (and under the analogous provisions of the SCRA and Depositories Act).

2. SEBI, whenever a need has arisen, has been improving its quasi-judicial proceedings, by way of issuing internal guidance or circulars in addition to the framework provided by the relevant Act, Rules and Regulations.

3. The present framework of settlement proceedings has evolved over a period of time. The Securities Laws (Second Amendment) Act, 1999 *inter alia* amended Section 15T of the SEBI Act and inserted Section 23A in the Depositories Act on similar lines.

   Section 15T as amended by the Securities Laws (Second Amendment) Act, 1999 reads as follows, -

> "**Section 15T. Appeal to the Securities Appellate Tribunal. –**
> (1) Save as provided in sub-Section (2), any person aggrieved, -
>
> (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or
>
> (b) by an order made by an adjudicating officer under this Act,
>
> may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.
>
> (2) No appeal shall lie to the Securities Appellate Tribunal from an order made__
>
> (a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999;
>
> (b) by an adjudicating officer,
>
> with the consent of the parties.
>
> (3) Every appeal under sub-Section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the

adjudicating officer, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-Section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, the parties to the appeal and to the concerned Adjudicating Officer."

4. By these provisions, the Parliament of India recognized the powers of the Board to pass consent orders under the SEBI Act and the Depositories Act. Further, Section 24A of the SEBI Act, Section 23N of the SCRA and Section 22A of the Depositories Act permit composition of offences.

5. Consent orders provide flexibility of a wider array of enforcement actions which will achieve the twin goals of an appropriate sanction and deterrence without resorting to long-drawn litigation before SEBI, SAT, and Courts. Passing of consent orders also reduce regulatory costs and save time and efforts in pursuing enforcement actions. This effort could more effectively be used for pursuing cases which require the full process of enforcement action and for policy initiatives. Accordingly, the Board issued Circular No. EFD/ED/Cir-1/2007 on 20.04.2007[1] and guidelines under the SEBI Act, SCRA and Depositories Act, for, -
   i. Consent Orders; and
   ii. considering requests for composition of offences,

6. In terms thereof appropriate administrative or civil actions viz. proceedings under sections 11, 11B, 11D, 12(3) and 15I of SEBI Act and equivalent proceedings under the SCRA and the Depositories Act, 1996 and other civil matters pending before SAT and courts could be settled between SEBI and a person (party) who may *prima facie* be found to have violated the securities laws or against whom administrative or civil action was commenced for such violation. Compounding of offences cover appropriate prosecution cases filed by SEBI before the criminal courts. A High-Powered Committee was constituted which made suitable recommendations to the Panel of WTMs for accepting or rejecting settlement proposals.

[1] Available at <https://www.sebi.gov.in/legal/circulars/apr-2007/guidelines-for-consent-orders-and-for-considering-requests-for-composition-of-offences_9254.html>

7. On the basis of the experience gained and in order to provide more clarity on its scope and applicability, the Board issued Circular No. EFD/ED/Cir-1/2012 on 25.05.2012[2] to partially modify the Circular issued in 2007.

8. The salient features of the modified Circular, included the following:

    A. Certain defaults including insider trading, front running, failure to make an open offer, redress investor grievances and respond to summons issued by SEBI, and defaults falling in the category of fraudulent and unfair trade practices which in the opinion of SEBI are very serious and/or have caused substantial losses to the investors were generally excluded from the consent process.

    B. No consent application was to be considered, if any violation was committed within a period of two years from the date of any consent order. However, if the applicant had already obtained more than two consent orders, no consent application was to be considered for a period of three years from the date of the last order.

    C. No consent application was to be entertained by SEBI before the completion of investigation / inspection, if any.

    D. In respect of proceedings pending before SEBI, no consent application was to be considered if filed after 60 days from the date of the service of the show cause notice. However, this condition was not applicable in case of proceedings pending before the Tribunal/Courts.

    E. The consent terms were to be determined in terms of the guidelines (annexed with the above referred circular), which inter alia, provided for the following objective parameters for determining the consent terms:
        a. A minimum Benchmark Amount for each category of default attributable to the default/violation for which the show cause notice issued or to be issued.

        b. The Benchmark Amount to take into consideration the penalty imposed by the AO and the order passed by the WTM as the case may be

        c. Additional amounts for previous defaults/track record of the applicant.

        d. Weightage given to the stage of the proceeding, nature of the default/violation, gravity of the default/violation, volume traded, price impact, networth, profits made, nature of disclosure not made, its impact, etc.

[2] Available at <https://www.sebi.gov.in/legal/circulars/may-2012/amendment-to-the-consent-circular-dated-20th-april-2007_22808.html>

F. The consent terms also included other directives such as disgorgement of ill-gotten profits, etc., if considered necessary.

G. The HPAC/ Panel of WTMs considering the facts and circumstances of the case and the gravity of the charges, were empowered to-
   a. enhance the settlement amount in serious cases as per the scheme of the SEBI Act, or

   b. reduce the settlement amount if the settlement amount is disproportionately higher considering the nature of violation, or

   c. refuse to consider the case under the consent process.

H. The HPAC consisted of a Chairman (a retired judge of a High Court) and three other external experts.

I. Internal Committee/s, comprised of a Chief General Manager not administratively associated with the case and Division Chiefs of the concerned Operational Department and Enforcement Department respectively to assist the HPAC.

J. In case of rejection of the consent application, no subsequent application with respect to the same default was to be considered by SEBI at any stage thereafter.

K. SEBI was to dispose of the consent application expeditiously preferably within a period of six months from the date of registration of the consent application.

9. The legal validity of SEBI's power to settle cases with the consent of the parties has been upheld by Courts, for example by the High Court of Judicature at Bombay, in the case of *Shilpa Stock Broker Pvt. Ltd. & Anr* v *SEBI*.[3] Although Section 15T (2) of the SEBI Act provides that no appeal shall lie from an order made by the Board or the Adjudicating Officer with the consent of the parties, occasionally cases were filed challenging SEBI's consent mechanism. As such, with a view to remove any ambiguity over the validity of the settlement process, in 2014, the Parliament of India passed the Securities Laws (Amendment) Act, 2014 after issuing three antecedent ordinances[4]. The Notes on clauses to the Bill *inter alia* provided that a new clause relating to settlement of administrative and civil proceedings was being inserted with effect from the 20th day of April, 2007. The said clause explicitly empowers the Board to settle administrative and civil proceedings upon payment of such sums or on such other terms as may be determined in accordance with procedures specified in the regulations framed by the Board.

[3] 2012 (3) ALL MR 908.

[4] The Securities Laws (Amendment) Ordinance, 2013; the Securities Laws (Amendment) Second Ordinance, 2013 and the Securities Laws (Amendment) Ordinance, 2014.

10. The Securities Laws (Amendment) Act, 2014 and its antecedent ordinances *inter alia* inserted Section 15JB in the SEBI Act, relating to Settlement of administrative and civil proceedings.

    Section 15JB of the SEBI Act reads as follows, -

    > **"Section 15JB.Settlement of administrative and civil proceedings. -**
    > (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under Section 11, Section 11B, Section 11D, sub-Section (3) of Section 12 or Section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.
    >
    > (2) The Board 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 be determined by the Board in accordance with the regulations made under this Act.
    >
    > (3) The settlement proceedings under this Section shall be conducted in accordance with the procedure specified in the regulations made under this Act.
    >
    > (4) No appeal shall lie under Section 15T against any order passed by the Board or adjudicating officer, as the case may be, under this section."

    Along similar lines, Section 23JA was inserted in the SCRA and Section 19-IA was inserted in the Depositories Act.

11. Pursuant to the Securities Laws (Amendment) Second Ordinance, 2013, the Board issued the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 after public consultation.[5] The Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 essentially cast the existing consent mechanism issued under the 2007 Circular and modified by the 2012 Circular into the form of statutory regulation.

[5] Updated regulations available at, - <https://www.sebi.gov.in/legal/regulations/dec-2017/securities-and-exchange-board-of-india-settlement-of-administrative-and-civil-proceedings-regulations-2014-last-amended-on-december-27-2017-_37185.html>

12. After, the Settlement Regulations were notified in 2014, several settlement applications were disposed of by the Board:

F. Y.	PENDING AT THE BEGINNING OF THE PERIOD	NO. OF APPLICATIONS RECEIVED	NO. OF APPLICATIONS DISPOSED OF BY PASSING ORDER	NO. OF APPLICATIONS REJECTED / WITHDRAWN	PENDING AT THE END OF THE PERIOD	SETTLEMENT AMOUNT REALIZED (IN INR)
2014-15	112	108	41	59	120	3,57,95,389
2015-16	120	177	34	82	181	4,42,26,748
2016-17	187	171	103	23	232	13,50,83,822
2017-18	232	241	200	79	194	30,74,70,566

13. The Settlement Regulations have been amended, from time to time, to include various additional features, -

i. **Settlement Notice**: Parties very rarely apply for settlement before issuance of show cause notice since they are not aware of the probable action. This resultant delays and diversion of resources was sought to be avoided by of possible enforcement action to the parties upon approval of the said actions by the Board, enabling them to seek settlement of proceedings or make voluntary submissions prior to receipt of a detailed show cause notice. Where any party avails such an opportunity to respond to such a notice, the proposed proceedings may be settled (unless rejected) or discontinued on the basis of the submissions of the noticee (if any), where both these eventualities would save the recourses of the Board.

It is relevant to note that on the basis of the recommendations of the Wells Committee, the SEC on September 27, 1972 issued *Securities Act Release No.5310, Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations*. Though, it is not legally required to provide a notice, SEC sends a letter to the persons or firms when a decision is made to bring an enforcement action against them as per the said Release. The said letter is commonly referred as Wells Notice (named after Wells Committee). Upon receipt of a Wells Notice, the person or firm concerned has the opportunity to 'contest' the said notice by making 'Wells submission' to SEC where a prospective defendant can speak directly to the SEC prior to the initiation of regulatory proceedings and should make their case as to why they should not be prosecuted. However, Wells submissions are not mandatory.

Around September, 2014 the Board introduced a notice referred to as 'Settlement Notice'. The Settlement regulations were amended in February 2017 to explicitly recognize Settlement Notice under the regulations.

ii. **Guidance Note in relation to settlement of defaults relating to fraudulent and unfair trade practices**: Sub-clause (b) of clause (2) of Regulation 5 of the Settlement Regulations *inter alia* provides that the Board shall not settle:
"*Fraudulent and unfair trade practices including front running, which in the opinion of the Board are serious and have a market wide impact or have caused substantial losses to or affect 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."

In view of doubts being raised on the interpretation of the above provision, a guidance note was issued in April, 2016 under Regulation 22 of the Settlement Regulations to clarify that the purpose of sub-clause (b) of clause (2) of Regulation 5 is not to prohibit settlements in respect of all kinds of fraudulent and unfair trade practices and that the general rule shall be settlement of such defaults with appropriate terms and rejection in exceptional cases.

The Settlement Regulations were amended in August 2016 and the relevant proviso and clarification in Schedule II of the Settlement Regulations were inserted as per the Guidance Note.

iii. **Summary Settlement Procedure**: In December 2017, in order to expedite the settlement of defaults relating to disclosures and delays in compliance with any direction of the Board, a fast track procedure was introduced by inserting Chapter VIA in the settlement regulations which empowered the Board to issue a settlement notice indicating the settlement amount and/or the non-monetary terms, on the satisfaction of which, the noticee could obtain a settlement order within the specified time.

14. A dedicated Settlement Division has also been created within the Enforcement Department of the Board in October 2016, for dealing with settlement.

NEED FOR PRESENT REVISION

1. Over a period of time while stating the changes discussed previously, both of procedures and practices within the Board and in the Regulations, the following major inadequacies were observed to hinder the application of the existing settlement regulations, -

    i. Sub-regulation (2) of Regulation 5 *was perceived to* discourage the settlement of certain matters deemed to be too important, i.e. defaults relating to insider trading, serious fraudulent and unfair trading, open offer,
    ii. There was no explicit guidance to deal with cases where settlement along with composition of corresponding matters or only composition, was required to be done.

2. The Settlement Regulations, were in letter and spirit, a continuation of the philosophy underpinning the 2012 Amendment Circular. The said Amendment Circular was an advancement over the liberal 2007 Consent Circular. The 2007 Circular essentially followed the approach of major securities jurisdictions across the world, in allowing the possibility of settlement of any violation of securities laws. However, other jurisdictions have not been lacking in their ability to quantify disproportionate gain or unfair advantage made as a result of the default, the loss caused to the investors and other relevant factors.

3. Even though the 2012 Circular and the subsequent Settlement Regulations were a major advancement in introducing a mathematical and transparent system of calculating the settlement amount, they have the following shortcomings, -

    i. There is no transparent and predictable method for calculation of profit or loss;
    ii. All factors were not quantified; Some were entirely left to the discretion of the IC, the HPAC and the Panel of WTMs;
    iii. There is reliance, in many instances, on the residuary amount indicated in Table-XII of the Schedule-II of the Settlement Regulations;
    iv. With the passage of time, the amounts indicated in the Schedule-II needed revision; and
    v. With the passage of the Finance Act, 2018, settlement for new defaults relating to financial market infrastructure institutions and other new instruments and regulated entities need to be provided for.

4. Hence, the existing Settlement Regulations have been examined by this Committee and comprehensively re-worked after taking into account developments in domestic and foreign jurisdictions.

II. GLOBAL SCENARIO

THE UNITED STATES OF AMERICA

1. By virtue of being the most influential financial market in recent times the USA has been a trend setter in the field of securities market regulation. Several provisions of Indian securities laws are based on USA's securities laws. Enforcement of securities laws in the USA, including alternative enforcement through the settlement route, has been a subject of much debate[6] and a broad overview of this jurisdiction is necessary to provide a proper perspective of what is proposed to be achieved in the current exercise.

2. **A Brief History of the Penalty Authority in the SEC**[7]

   a. The SEC was established in 1934. For the first 50 years of its existence, the SEC had no authority to obtain monetary penalties. The SEC could go to court to seek an injunction to stop ongoing violations or prevent future ones, it could seek a court order directing a defendant to hand over ill-gotten gains resulting from violations, and it could bar securities firms and professionals from the securities industry. The same Congress that created the SEC granted prosecutors in criminal cases the authority to seek monetary penalties, but not the SEC.

   b. In 1984, a new, tougher era began. Congress started slowly and cautiously making changes. In the Insider Trading Sanctions Act of 1984, it granted the SEC authority to seek monetary penalties, but only for insider trading violations and only by going to court. It set the maximum penalty at three times the profit gained or loss avoided resulting from the insider trading violation.

   c. Four years later, Congress passed the Insider Trading and Securities Fraud Enforcement Act of 1988. It gave the SEC authority to seek penalties against controlling persons of persons who traded on inside information. Once again, Congress limited the penalty authority to insider trading violations, and required the SEC to go to court to prove its right to a penalty.

   d. Two years later the tiny penalty acorn exploded into a mighty oak. As part of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Congress authorized the SEC to go to court to seek civil monetary penalties against *any*

[6] See *Testimony of Robert Khuzami* on "Examining the Settlement Practices of U.S. Financial Regulators" before the Committee on Financial Services, U.S. House of Representatives (May 17, 2012), available at <https://www.sec.gov/news/testimony/2012-ts051712rkhtm>.

[7] See *K & L Gates LLP* article "Brother Can You Spare $8.9 Billion? Making Sense of SEC Civil Money Penalties", available at <https://www.jdsupra.com/legalnews/brother-can-you-spare-89-billion-maki-87533/ >

person who violated *any* of the four principal securities statutes. In court cases, the SEC could obtain a maximum penalty equal to the amount the defendant made from the violation. Thus, for example, if the SEC proved that a defendant made $10 million from a securities violation, for the first time it could potentially obtain a $10 million penalty on top of the $10 million in disgorgement. Alternatively, it could obtain different tiers of fines in the amounts discussed below for "each violation" of the securities laws.

e. The Act also gave the SEC authority to impose monetary penalties in its own administrative proceedings against regulated persons and companies. Those penalties apply to "each act or omission" violating the securities laws. Depending on the nature of the violation, they now range from a maximum of $7,500 to $160,000 for individuals and from $80,000 to $775,000 for companies for "each act or omission" violating the securities laws.

f. Currently, the law provides two methods for calculating the maximum amount of penalties. The first method for levy of penalty, which is applicable in both federal civil cases and administrative actions, allows a per violation calculation, the amount of which increases by tier based approach on the seriousness of the misconduct. The highest tier available for violations is capped by law at $150,000 per violation for individuals and $725,000 per violation for entities. The second calculation method, generally available only in federal court, allows the imposition of a penalty equal to the "gross amount of the pecuniary gain" to the defendant "as a result of the violation."[8]

g. The three-tier penalty structure (approx) is as follows[9], -

Tier	Individual	Others
Tier 1— **Any Violation**	$7,500	$80,000
Tier 2— **A Violation Involving Fraud, Deceit, Manipulation or Deliberate or Reckless Disregard of Regulatory Requirement**	$80,000	$400,000
Tier 3—	$160,000	$775,000

[8] See *Speech by SEC Commissioner Luis Aguilar*, "Taking a No-Nonsense Approach to Enforcing the Federal Securities Laws", available at <https://www.sec.gov/news/speech/2012-spch101812laahtm>.
[9] See *K & L Gates LLP* article "Calculating SEC Civil Money Penalties", available at <https://corpgov.law.harvard.edu/2016/01/24/calculating-sec-civil-money-penalties/>

A Tier 2 Violation that Also Involves a Substantial Risk of Loss to Others or Gain to the Violator		

h. Finally, in 2010 Congress wrote into Section 929P of the 2,200-page Dodd-Frank Wall Street Reform and Consumer Protection Act yet further the penalty authority for the SEC. For the first time, the SEC could impose monetary penalties in its own administrative proceedings against any person the SEC claims violated the securities laws, regardless of whether that person or firm was in the securities business. The SEC could impose penalty by finding that the violation was "willful" (which in SEC parlance required no culpability at all) and that the penalty was in the "public interest," which is short-hand for a laundry list of factors covering everything from culpability to "such other matters as justice may require."

i. In short, the change in the SEC's penalty authority has been breathtaking. An agency that for 50 years could not even go to court to seek a monetary penalty, and later could seek penalties only for insider trading violations and only by going to court, can now bring its own *administrative* proceedings to assess monetary penalties against *anyone* for *any* alleged securities violation.

j. SEC settlements are essentially court ordered settlements between parties that are either approved by the order of a federal court or the SEC's Administrative Law Judges. Before Dodd-Frank, the SEC could secure civil fines against registered broker-dealers and investment advisers in administrative cease-and-desist proceedings but had to sue in U.S. district court the non-registered firms and individuals, including public companies and executives charged with accounting fraud, or traders charged with insider trading. After Dodd-Frank, except for a few remedies that could only be obtained in court, the SEC could choose the forum in which it prosecutes enforcement actions. Since Dodd-Frank, the SEC has litigated more contested cases before administrative law judges —a move that has received considerable attention. At the same time (and without much notice), the SEC also shifted its settlement filings from District Court to administrative proceedings, just as it shifted litigation in contested actions to Administrative Law Judges. Until Dodd-Frank, the SEC filed most of its settlements in District Court: Only one-third to one-half of settlements were filed in administrative proceedings. In 2013, the practice shifted sharply, and, by fiscal year 2015, the SEC filed five times as many settlements in administrative proceedings as it did in court.[10]

[10] See *Professor Urska Velikonja of Emory University School of Law* "SEC Settlements After Dodd-Frank", available at<http://clsbluesky.law.columbia.edu/2016/10/18/sec-settlements-after-dodd-frank/>.

3. Overtime, the settlement process in USA have also been reviewed.[11] From the earliest days of its existence until 2012, the SEC permitted defendants to settle proposed enforcement actions without either admitting or denying the allegations in the SEC's charging documents, except in a few cases.[12] Importantly, as a critical component of this policy, settling parties were required to agree that they would not make any public statements denying the allegations contained in the SEC order or SEC complaint.[13] This settlement policy has been codified as follows[14], -

> "**(e)** The Commission has adopted the policy that in any civil lawsuit brought by it or in any administrative proceeding of an accusatory nature pending before it, it is important to avoid creating, or permitting to be created, an impression that a decree is being entered or a sanction imposed, when the conduct alleged did not, in fact, occur. Accordingly, it hereby announces *its policy not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings. In this regard, the Commission believes that a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations*.
>
> **(f)** In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice."

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11 For detailed history of the SEC settlement policy on admission and denial along with its consequences, see J. Siegel, *Admit It! Corporate Admissions of Wrongdoing in SEC Settlements: Evaluating Collateral Estoppel Effects*, 103 Georgetown l. Jl. 433, available at <https://georgetownlawjournal.org/articles/61/admit-it-corporate-admissions/pdf>.

12 See, for example, *SEC* v. *Goldman Sachs & Co. and Fabrice Tourre*, 10-CV-3229, available at <https://www.sec.gov/litigation/litreleases/2010/lr21592.htm>, *Goldman Sachs to Pay Record $550 Million to Settle SEC Charges Related to Subprime Mortgage CDO: Firm Acknowledges CDO Marketing Materials Were Incomplete and Should Have Revealed Paulson's Role* (Jul. 15, 2010), available at <https://www.sec.gov/news/press/2010/2010-123.htm>.

13 See U.S. Chamber of Commerce, "Examining U.S. Securities and Exchange Commission Enforcement: Recommendations on Current Processes and Practices", p 25, available at <https://www.centerforcapitalmarkets.com/wp-content/uploads/2015/07/021882_SEC_Reform_FIN1.pdf>

14 See the *SEC's Informal and Other Procedures, Enforcement Activities*, at 17 C.F.R. (Code of Federal Regulations) §202.5, available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=d6f724aa5c49be7f21b98bb11824e90d&mc=true&node=se17.3.202_15&rgn=div8>.

4. In November 2011, Judge Rakoff in the Southern District of New York rejected a proposed SEC settlement with Citigroup and criticized the SEC's "neither admit nor deny" policy.[15] In January 2012, the SEC modified its long-standing settlement policy. The then SEC Enforcement Director Robert Khuzami announced that persons who were criminally convicted or agreed to either non-prosecution or deferred- prosecution criminal agreements, would no longer be allowed to settle with the SEC with the standard language of "without admitting or denying" the SEC's allegations.[16] In a subsequent speech, SEC Chair, Mary Jo White[17] outlined the following characteristics of cases likely to require such admissions, -

    a. Cases where a large number of investors have been harmed or the conduct was otherwise egregious;
    b. Cases where the conduct posed a significant risk to the market or investors;
    c. Cases where admissions would aid investors deciding whether to deal with a particular party in the future;
    d. Cases where reciting unambiguous facts would send an important message to the market about a particular case.

5. SEBI followed suit and in August 2016 amended the Settlement Regulations to provide for settlement with admission of guilt in cases of serious violations.

6. While settlement amount is not a penalty, an endeavor is usually made to ensure that settlement amounts are not seen as business as usual or a trade or leniency compared to the penalties that may be levied on a defaulter. Hence, a comparison between the penalty system in USA and Indian jurisdiction becomes important to understand the subtle differences between the two. The most interesting points of distinction between SEBI and SEC penalty system are as follows, -

    A. Keeping aside instances, where penalties are calculated on the basis of profit and loss, even though Indian securities laws provide for penalties as high as 25 crores which approximately equal or exceed what SEC can impose, SEC penalties (as well as settlement amounts) in fact work out to be much higher (sometimes billions of USD).

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[15] *SEC v. Citigroup Global Markets, Inc.*, 827 F. Supp. 2d (S.D.N.Y. 2011), *reversed and remanded*, 752 F. 3rd 285 (2d Cir. 2014).

[16] See Public statement by SEC Staff: Recent Policy Change, available at https://www.sec.gov/news/public-statement/2012-spch010712rskhtm . Also See *Testimony of Robert Khuzami* on "Examining the Settlement Practices of U.S. Financial Regulators" before the Committee on Financial Services, U.S. House of Representatives (May 17, 2012), available at <https://www.sec.gov/news/testimony/2012-ts051712rkhtm>.

[17] *See* Speech by SEC Chair White, *Deploying the Full Enforcement Arsenal* (Sept. 26, 2013), available at <https://www.sec.gov/news/speech/spch092613mjw>.

a. The SEBI Act borrows certain provisions (with some modifications) from the US law, which provides penalties for **each** 'violation', 'transaction or transactions', 'each act or omission' violating the securities laws. The principal challenge is figuring out what "each act or omission" or "each violation" means in the context of violations that may involve hundreds or even thousands of arguable acts and omissions. The act or omission has to involve a violation of the securities laws, but that tells us very little. For example, as a company that sends an allegedly misleading prospectus to 100,000 investors engaged in a single "act or omission" or "violation" or, instead, 100,000 acts or omissions. Theoretically, that could be the difference between a maximum $775,000 fine and a $77.5 *billion* fine.[18]

b. In *Rapoport v. SEC*[19], the Administrative Law Judge had consolidated each year's violations and levied penalties. This was struck down by the court which held as follows:" These calculations do not follow the formula set by the statute. *To impose second-tier penalties, the Commission must determine how many violations occurred and how many violations are attributable to each person, as the statute instructs.*" In *Steven E. Muth*,[20] the court held that "*we believe that a civil money penalty based on the number of customers that [the respondent] defrauded . . . is appropriate*."

c. The US system further ensures that the penalties should be in 'public interest' to prevent levy of extremely disproportionate penalties. E.g. *In the Matter of Raymond J. Lucia Companies, Inc. and Raymond J. Lucia, Sr.*[21], while determining the penalty, the Administrative Law Judge held that although the respondents "technically violated the statute hundreds of times," imposing penalties on that basis "would plainly be disproportionate and unreasonable."

d. By interpreting the numbering of violations alone, the US judicial system has created sufficient leeway for seeking higher penalties/settlements without amending legislation on a regular basis, for raising the quantum of penalties.

e. In the Indian context, such an approach is common in criminal trials under other laws but is yet to be adopted in the context of securities laws, where violation of statute incurs concurrent civil and criminal liability. The Supreme Court of India

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[18] For a more detailed discussion, see *K & L Gates LLP*, "Calculating SEC Civil Money Penalties: Do Hundreds of Related Acts Constitute a Single Course of Conduct or Hundreds of Separate Violations?", available at <https://www.jdsupra.com/legalnews/calculating-sec-civil-money-penalties-43498/ >; K & L Gates LLP, "Calculating SEC Civil Money Penalties", available at <https://corpgov.law.harvard.edu/2016/01/24/calculating-sec-civil-money-penalties/ > and *Michael J. Missal and Richard M Phillips*, The Securities Enforcement Manual: Tactics and Strategies, 2nd edition, pp 196-197.

[19] *682 F.3d 98 (D.C. Cir. 2012)*

[20] 58 S.E.C. 770, 813 (2005)

[21] *Initial Decision Release No. 540 (Dec. 6, 2013).*

examined the issue of multiplicity of counts of the same offence in case of financial companies in the matter of *Narinderjit Singh Sahni And Anr. v Union of India And Ors*,[22] and held as follows:

> *"As regards the issue of a single-offence, we are afraid that the fact-situation of the matters under consideration would not permit to lend any credence to such as submission. Each individual deposit agreement shall have to be treated a separate and individual transaction brought about by the allurement of the financial companies, since the parties are different, the amount of deposit is different as also the period for which the deposit was effected. It has all the characteristics of independent transactions and we do not see any compelling reason to hold it otherwise. The plea as raised also cannot have our concurrence."*

The result of such an approach, in the context of criminal law, that while it theoretically is open for courts to pronounce separate sentences of imprisonments for 'each and every' count of offence to run concurrently or consecutively; the fine leviable for each offence, if levied, would be equal to the amount levied per count multiplied by the number of each 'complete' offence. This approach, is the approach adopted by the SEC for its civil matters and has relevance for the securities laws in India, as it gives flexibility in arriving at deterrent penalties and settlement amounts. The present practice, has an inequitable result. A person who engages in fraudulent conduct against a few penny stock investors or in a large index scrip or engages in a few transactions or multiple transactions, seems to have the same maximum penalty amount of Rs. 25 crores (and indirectly the same maximum settlement amount). This requires necessary corrections, to sufficiently deter repeat offenders.

f. The Supreme Court in the matter of *The Chairman, SEBI* v *Sriram Mutual Fund and Anr*[23], recognized that the Board is required to take into account the repetitive nature of the default and held as follows:

> *"Section 15-J provides various factors which are to be taken into consideration while adjudging the question of penalty under Section 15-l namely, the amount of disproportionate gain or unfair advantage whenever quantifiable, loss caused to an investor or group of investors and the repetitive nature of default…*
>
> *It is seen that the respondents themselves have admitted the violation of the Regulations during a continuous period of 2 years in 12 instances, covering 6 quarters. Regulation 25 (7)(a) of the Regulation provides that an Asset Management Company shall not through any broker associated with sponsor, purchase or sell securities, which is average of 5% or more of the aggregate purchases and sale of securities made by the Mutual Fund in all its schemes. The second proviso to the said Regulation clearly provides that the aforesaid limit shall apply for a block of 3 months. Hence, there has been a repetitive violation of the said Regulation, and the terms of the Certificate of Registration….*

[22]2001 Supp (4) SCR 114.
[23](2006) 5 SCC 361.

> *The intention of the parties is wholly irrelevant since there has been a clear violation of the statutory Regulations and provisions repetitively, covering a period of 6 quarters. Hence we hold that the respondents have wilfully violated statutory provisions with impunity and hence the imposition of penalty was fully justified."*

Thus, it is clear that it is possible even for a first-time defaulter to commit a 'repetitive default' since the focus is on the nature of the 'default' and not the 'defaulter'.

However, this factor is not applied uniformly in all cases. Hence it is necessary to examine how this important factor which has been specifically provisioned for in the statute should be worked out while examining the defaults in order to properly appreciate the liability of a defaulter.

B. The importance of quantification of 'profits earned/loss avoided' by the violator and 'loss caused' to investors in SEC penalties compared to SEBI.

a. The SEC/US Justice Department regularly calculates the 'profits earned' and 'loss avoided' and 'loss caused to investors' in order to impose higher penalties, fines in addition to disgorgement of profit, as the case may be. The profit/loss caused is important for another reason i.e. the term of imprisonment in criminal proceedings is determined under the US Federal Sentencing Guidelines based on their estimate.

b. **US Federal Sentencing Guidelines**[24]: Before the Sentencing Reform Act of 1984 (SRA) went into effect on November 1, 1987, federal judges imposed "indeterminate" sentences with virtually unlimited discretion within broad statutory ranges of punishment, and the United States Parole Commission would thereafter decide when offenders were actually released from prison on parole.[25] The US Supreme Court recognized that "*the broad discretion of sentencing courts and parole [officials] had led to significant sentencing disparities among similarly situated offenders*."[26] In response to both concern regarding sentencing disparities and also a desire to promote transparency and proportionality in sentencing, Congress created the United States Sentencing Commission, a

[24] Available at <https://www.ussc.gov/>For a simpler discussion and understanding, see "*Federal Sentencing: The Basics*", available at <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/201510_fed-sentencing-basics.pdf> and the "*Primers*" available at <https://www.ussc.gov/guidelines/primers>.
[25] *Mistretta* v. *United States*, 488 U.S. 361, 363-64 (1989) (describing the federal sentencing system before the SRA).
[26] *Peugh* v. *United States*, 133 S. Ct. 2072, 2079 (2013).

bipartisan expert agency located in the judicial branch.[27] The Commission is composed of up to seven voting members, including a chair, who are nominated by the President and must be confirmed by the Senate. No more than four Commissioners can be from the same political party and atleast three have to be federal judges.

In 2005, in *United States* v. *Booker*[28], the United States Supreme Court declared that the existing guideline system violated the Constitution by permitting judges to find facts that raised the maximum guideline range by a preponderance of the evidence (as opposed to juries making such findings beyond a reasonable doubt). The Court in Booker opted to remedy the constitutional defect by striking the provisions of the SRA that made the guidelines "mandatory"; the result was a judicially modified guideline system that the Court described as "effectively advisory."

The United States Supreme Court stressed that the advisory guidelines remain the "starting point and the initial benchmark" in the federal sentencing process and, moreover, "*district courts must . . . remain cognizant of them throughout the sentencing process*."[29]

c. Indian securities laws, as amended by the Finance Act, 2018, require that the penalty imposed by the Board or the Adjudicating Officer take into account the profit made and the loss caused to investors in determining the penalty among other factors. Even the existing Settlement Regulations require that the Board take into account these factors. However, there are no satisfactory guidelines for the same. As a result, it is possible to err while calculating the resultant penalty, ordering disgorgement or arriving at a settlement amount.

d. The Committee is cognizant of the importance of the issue for calculating profit made and loss caused while recommending settlement of even serious violations such as insider trading. A fair settlement is not possible in the absence of a clear and precise methodology for quantification of the factors indicated in Section 15J of the SEBI Act, Section 19I of the Depositories Act and Section 23J of the SCRA. However, in view of the larger issues involved in the issue, this issue will be dealt in detail in another report.

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[27] See *Dorsey* v. *United States*, 132 S. Ct. 2321, 2326 (2012) (". . . [*T]he Sentencing Reform Act of 1984 . . . sought to increase transparency, uniformity, and proportionality in sentencing*."); see also *Mistretta* v. *United States*, 488 U.S. at 379 ("*Developing proportionate penalties for hundreds of different crimes by a virtually limitless array of offenders is precisely the sort of intricate, labor-intensive task for which delegation to an expert body is especially appropriate*.").

[28] 543 U.S. 220 (2005), at 264-65.

[29] *Gall* v. *United States*, 552 U.S. 38, 49 (2007).

C. Maintaining the deterrent effect of settlement vis-à-vis business as usual approach.

a. In recent years, another collateral issue has cropped up. Applicants that received settlement orders from the Board have claimed business deduction of the settlement amount paid to the Board while calculating their taxable income. Under the securities laws, the settlement amount is paid into the Consolidated Fund of India. The Income Tax monies are also revenue of the Central Government and are paid into the Consolidated Fund of India. Recently, the Mumbai Bench of the Income Tax Appellate Tribunal (ITAT) in the case of *DCIT* v. *Shri Anil Dhirajlal Ambani*[30] while dismissing the appeal of the revenue held that the settlement amount paid by the assessee was a payment for the purpose of the profession carried on by the assessee to save the time, cost and hassle of a long-winded litigation and hence is a business expenditure and that the same is allowable u/s 37(1) of the Income Tax Act, 1961 since it is not a penalty or akin to penalty.

b. The result of the aforesaid decision is that the applicant essentially ends up paying far less to the Central Government and is able to 'settle' cases against himself at a substantial discount. The problem invariably lies in how the Income Tax Act, 1961 defines 'penalty' (Explanation 1 to sub-Section (1) of Section 37 of the Income Tax Act, 1961).

c. In this context, the US law is extremely helpful. The US Internal Revenue Code (IRC)[31] §162(a) allows a deduction of "all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." However, IRC §162(f) limits this deduction by providing that "No deduction shall be allowed under sub-Section (a) for any fine or similar penalty paid to a government for the violation of any law."

d. Further, the IRC §1.162-21(b)(1) defines 'fines or similar penalty' as an amount:

   i. Paid pursuant to conviction or a plea of guilty or nolo contendere for a crime (felony or misdemeanor) in a criminal proceeding;
   ii. Paid as a civil penalty imposed by Federal, State, or local law; or

[30]ITA No.3676/Mum/2016, order-dated 23.03.2018 available at <https://indiankanoon.org/doc/168152693/>. See also, *ITO* v. *Reliance Share & Stock Brokers (P.) Ltd.* (2014) 51 Taxmann 215, (2015) 67 SOT 73 (Mum.) (Trib.); *DCIT* vs*Pranav Securities P. Ltd*, Mumbai bench order dated 20.12.2016, available at <https://indiankanoon.org/doc/137939694/>. Also see, *Kaira Can Company Ltd.* vs. *DCIT* (2010) 2 ITR 20 (Mum. -Trib.) [Deduction allowed for payment under SEBI Regulation Scheme, 2002].

[31]US IRC, *Fines and Penalties*, at 26 C.F.R. (Code of Federal Regulations) §1.162-21, available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=6ab14633186e645220eeb85e686683d9&mc=true&node=se26.3.1_1162_621&rgn=div8>.

iii. Paid in settlement of the taxpayer's actual or potential liability for a fine or penalty (civil or criminal).

Thus, settlement amounts are non-deductible under the US law. Since 2003, the SEC has followed a requirement, as a condition to any settlement, that the applicant agree not to seek any indemnification, insurance coverage, any other forms of reimbursement, including tax deduction or tax credit.[32]

e. **RECOMMENDATION**: It may be appropriate for the Board to write to the Central Government to request appropriate changes in the Income Tax Act, 1961 on the lines of the US IRC and explore seeking an undertaking, to be reproduced in settlement orders, in respect of non-tax reimbursements.

[32]*Michael J. Missal and Richard M Phillips*, The Securities Enforcement Manual: Tactics and Strategies, 2nd edition, p 197.

THE UNITED KINGDOM

1. The FCA's Enforcement Guide[33] and the Decision Procedure and Penalties Manual[34] provides for the procedure and principles applied in respect of settlement and penalties. The Settlement Decision Makers (SDMs) is drawn from a pool of FCA Directors and Heads of Department. SDMs decide on behalf of the FCA whether to enter any complete resolution of the matter or any focused resolution agreement (and for that purpose, what issues are resolved). A settlement decision maker does not have been directly involved in establishing the evidence on which the decision is based. Communications exploring resolution of the case between the case team, SDMs and those under investigation are made on a 'without prejudice' basis. SEBI has not followed the UK FCA procedural aspect in this regard and relevant fact-finding authorities can be involved in the settlement process and appropriate waivers form part of the settlement application.

2. This means that if the case proceeds through a contested administrative process to the Regulatory Decision Committee (RDC), the RDC is not told about any admissions or concessions made during the resolution period, except where they are set out in a focused resolution agreement agreed between the parties. Special decision-making arrangements apply in relation to settlement. The person concerned may agree all relevant issues with the FCA (in which case the settlement decision makers will give all relevant statutory notices). Alternatively, a focused resolution agreement may be agreed (in which case the settlement decision makers are responsible for giving the warning notice and the RDC for giving any decision notice).

3. The FCA holds any settlement discussions on the basis that neither FCA staff nor the person concerned would seek to rely against the other on any admissions or statements made if the matter is considered subsequently by the RDC unless those admissions or statements are recorded in a focused resolution agreement. This, however, does not prevent the FCA from following up, through other means, on any new issues of regulatory concern which come to light during settlement discussions. The UK FCA also takes into account *inter alia* the illegal gains while issuing its orders.

4. While the UK is another major financial market, which may have comparable features on account of the common law background, there are limited takeaways for the Indian securities laws due to the commonality of important factors between USA and Indian securities laws. The UK FCA operates a discount scheme on early resolution for financial penalties, suspensions, restrictions, conditions and disciplinary prohibitions. The SEBI Settlement regulations also adopted a scheme for reducing the settlement amounts.

[33]Available at <https://www.handbook.fca.org.uk/handbook/EG.pdf>.
[34]Available at <https://www.handbook.fca.org.uk/handbook/DEPP.pdf>.

III. KEY RECOMMENDATIONS AND RATIONALE

The Committee has examined the existing Settlement Regulations in detail and recommends several changes. In view of the extensive changes proposed, the Committee recommends that existing Settlement Regulations be repealed and revised Regulations be issued after taking into account the Committee's recommendations and public comments.

In this Chapter, the Committee examines the key recommendations for changes in the regulations and the rationale for them.

1. Definition of Securities Laws and Specified Proceedings

Current Regulatory provisions:

At present, the current definition of "securities laws" under the Settlement Regulations is limited to the SEBI Act, the SCRA, the Depositories Act and the rules and regulations made thereunder. There is no mention of the provisions of the Companies Act in so far as it is administered by the Board.

Recommendation and rationale:

Under the securities laws, the Board is empowered to settle, '*notwithstanding anything contained in any other law for the time being, any civil and administrative proceedings that have been initiated or may be initiated*' under the provisions of the securities laws.

Section 24 of the Companies Act, 2013 clearly provides that matters delegated to the Board under sub-Section (1) of that Section [provisions of Chapters III and IV and Section 127 of that Act - *relating to issue and transfer of securities and non-payment of dividend*] and under the proviso to sub-Section (1) of Section 458 of that Act, the Board may exercise powers under sub-sections (1), (2A), (3) and (4) of Section 11,sections 11A, 11B and 11D of the SEBI Act.

As such the exercise of such power involves the initiation of civil and administrative proceedings under the securities laws for *inter alia* directing refund, disgorgement, etc., for the violation of securities laws and other laws administered by the Board, including specific provisions of the Companies Act, 2013.

The Committee is of the opinion that under the present regulations, contravention of the provisions of the Companies Act, in so far as they are administered by the Board, may be settled so long as they have been invoked in a civil and administrative proceeding under the securities laws. Accordingly, the Committee recommends that 'the provisions of any other law to the extent it is administered by the Board', be included in the definition of 'securities laws' to enable settlement of the same.

Regulation No.	**Current provision in SEBI Settlement Regulations**	**Proposed revision to the Settlement Regulations**
2(1)(e)	"securities laws" means the Act, the Securities Contract (Regulations) Act, 1956 (42 of 1956), the Depositories Act,1996 (22 of 1996), and the rules and regulations made thereunder;	"securities laws" means the Act, the Securities Contract (Regulations) Act, 1956 (42 of 1956), the Depositories Act,1996 (22 of 1996), the relevant provisions of the any other law to the extent it is administered by the Board and the relevant rules and regulations made thereunder;

Accordingly, the Committee recommends consequential amendments to the definition of "specified proceedings".

Regulation No.	**Current provision in SEBI Settlement Regulations**	**Proposed revision to the Settlement Regulations**
2(1)(f)	"specified proceedings" means the 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;	"specified proceedings" means the proceedings which may be initiated or have been initiated and are pending before any forum, for the violation of securities laws, 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;

2. Limitation for filing a Settlement Application:

Current Regulatory provisions:

At present, a settlement application may be filed within sixty days from the date of service of the notice to show cause or supplementary notice to show cause. However, an application filed after sixty days may be considered by the Panel of WTMs, provided that in such delayed applications, the settlement amount payable by the applicant is increased by a rate of six percent, per annum from the last date of filing the application.

Recommendation and rationale:

The Committee is of the opinion that a more arduous approach ought to be adopted to ensure that only genuine applications are filed and the settlement process is not adopted as a means of forum shopping and delaying civil and administrative proceedings. To ensure and safeguard the settlement process from such possible unwarranted practices, the Committee recommends a limitation period for filing a settlement application. Accordingly, the Committee recommends that no application should be considered by the Board after hearing is to commence or a period of 120 days from the last date for filing an application as specified in Regulation 4(1) of the existing settlement regulations. Further, the Committee recommends that where an application is filed after 60 days and is considered by the Board, the settlement amount otherwise payable by the applicant shall be increased by twenty five percent per annum.

Regulation No.	Current provision in SEBI Settlement Regulations	Proposed revision to the Settlement Regulations
4(2)	(2) Notwithstanding anything contained in sub-regulation (1), the Panel of Whole Time Members may consider the application, if it is satisfied that there was sufficient cause for not filing it within the period specified in sub-regulation (1) and it is accompanied with an application for condonation of delay and non-refundable fees as specified in Part-B of the Schedule-I. Provided that where the application is filed after sixty calendar days from	(2) Notwithstanding anything contained in sub-regulation (1), the Board may consider the application, if satisfied that there was sufficient cause for not filing it within the specified period and it is accompanied with non-refundable fees as specified in Part-B of the Schedule-I: Provided that, where the application is filed after sixty calendar days from the expiry of the period specified in sub-regulation

	the expiry of the period specified in sub-regulation (1), the settlement amount payable by the applicant shall be increased by a levy of simple interest at the rate of six per cent, per annum, from the expiry of the period specified in sub-regulation (1) till the date of filing.	(1), the settlement amount determined in accordance with Schedule-II of these regulations shall be increased by twenty five percent: Provided further that, no such application shall be considered if the delay exceeds hundred and twenty calendar days from the expiry of the period specified in sub-regulation (1) or after the first date fixed for oral hearing, if any, whichever is earlier.

3. Opportunity for filing application:

Current Regulatory provisions:

In the present settlement regulations, an application cannot be filed if the alleged default has been committed within a period of 24 months from the date of the last settlement order issued to the applicant. Further, an application cannot be filed for the same alleged default again, if the earlier application was rejected, save in exceptional circumstances, such as the lapse of time since the commission of the alleged default, the weight of evidence against the applicant, etc., and subject to the payment of such additional fees and/or interest on the settlement amount from the date of rejection of the earlier application till the date of payment of the settlement amount, as may be recommended by the HPAC.

Recommendation and rationale:

The Committee believes that the settlement process should not be used as a platform for forum shopping. Accordingly, the Committee recommends that an application shall not be filed for the same alleged default again, if the earlier application was rejected. Such a step will ensure that the settlement process is taken seriously by an applicant. Further, the Committee believes that this recommendation would ensure that the Board's time will not be misused or wasted by non-genuine applications.

Further, the Committee also believes that a cooling period after a settlement order should not be applied if the application is with regard to a different cause of action. Accordingly, the Committee recommends that the provision prohibiting an applicant from filing a settlement application for an alleged default if such alleged default was committed within a period of twenty-four months from the date of the last settlement order, should be removed. At the same time, the Committee believes also that pending the completion of an investigation, audit, inquiry or inspection no settlement application should be entertained unless it will help in the Board in completion of such investigation, audit, inquiry or inspection.

Regulation No.	**Current provision in SEBI Settlement Regulations**	**Proposed revision to the Settlement Regulations**
5(1)	(1) No application for settlement of any specified proceedings shall be considered, if: (a)the alleged default was committed within a period of twenty four calendar months from the date of the last settlement order where the applicant was a party; (b) an earlier application with regard to the same alleged default had been rejected: Provided that such an application may be considered in exceptional circumstances, such as the lapse of time since the commission of the alleged default, the weight of evidence against the applicant, etc and subject to the payment of such additional fees and/or interest on the settlement amount from the date of rejection of the earlier application till the date of payment of the settlement amount, as may be recommended by the high powered advisory committee.	1) No application for settlement of any specified proceedings shall be considered, if: (a) an earlier application with regard to the same alleged default had been rejected; (b) the audit or investigation or inspection or inquiry, if any, in respect of any cause of action, is not complete, except in case of applications involving confidentiality; or (c) monies due under an order issued under securities laws are liable for recovery under securities laws.

4. Scope of settlement:

Current Regulatory provisions:

Under the present settlement regulations, applications for settling specified proceedings with regard to defaults involving insider trading, serious cases of fraudulent and unfair practices including front running, failure to make open offer, defaults or manipulative practices by mutual funds, AIFs, CIS etc, failure to redress investor grievances, non-compliance of notices and summons issued by Board or the AO, cases involving refund of monies to investors, etc., shall not be settled. However, such an application may be considered in the interest of the investors and the development of the securities market. Further, the Panel of WTMs shall have the power to reject any application without it being referred to the IC or the HPAC.

Recommendation and rationale:

The existing regulations were drafted with the objective that certain serious violations/defaults should not be settled as the settlement regulations must not become a platform where applicants may willfully violate the securities laws knowing that it may be settled. It was felt that cases involving certain defaults of a serious nature or impacting investors ought not to be settled and such restriction must be expressly stated in the regulations. Further, in the absence of clear manner of quantifying gains made and losses caused, it is difficult to obtain a fair settlement in serious matters.

The power to reject an application without it being referred to the IC or HPAC exists with the Panel of WTMs. Since the interest of the investors should be protected, applications with respect to specified proceedings that may or have had an impact on investors, should be considered only after the applicant has refunded or made good the losses due to the investors, to the satisfaction of the Board. However, the Committee feels that the broad list of defaults which cannot be settled can be made principle based in view of the Committee's ongoing exercise for quantification of gains and loss to enable the Board to arrive at a fair settlement which will take into account the interest of investors. Thus, proceedings relating to fraud (including insider trading, front-running and misstatements in offer documents) may be settled depending on the facts and circumstances of each case.

Regulation No.	**Current provision in SEBI Settlement Regulations**	**Proposed revision to the Settlement Regulations**
5(2)	(2) A specified proceeding, shall not be settled, if it involves any of the following defaults, namely,- (a) defaults involving insider trading and 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 in the opinion of the Board are serious and have a market wide impact or have caused substantial losses to or affect 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. Provided further that the defaults under this clause shall be considered in accordance with these regulations and also the guidelines specified in Schedule-II. Explanation.- For the purpose of this clause, the expression ' 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, except where the applicant agrees to make the open offer or where the Board is of the opinion that the making of the open offer	(2) The Board may not settle any specified proceeding, if it is of the opinion that the alleged default, - i. has market wide impact, ii. caused losses to a large number of investors, or iii. affected the integrity of the market. (3) Without prejudice to the generality of the foregoing provisions, for settling any specified proceeding the Board may *inter alia* take into account the following factors, - (a) whether the applicant has refunded or disgorged the monies due, to the satisfaction of the Board; (b) whether the applicant has provided an exit or purchase option to investors in compliance with securities laws, to the satisfaction of the Board;

	would not be beneficial to the shareholders or is infructuous; (d) defaults or manipulative practices by mutual funds, alternative investment funds, collective investment schemes and their sponsors or asset management companies, collective investment management company, managers, trustees that result in substantial losses to investors, except in cases where the applicant has compensated the investors for the losses, to the satisfaction of the Board; (e) failure to redress investor grievances to the satisfaction of the Board, except where the alleged default is with regard to delayed redressal; (f) failure, by issuers of securities or entities who invite investment, to make material disclosures in offer documents as required under the relevant regulations framed by the Board; (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 any order or direction passed under the securities laws.	(c) <u>whether the applicant is in compliance with securities laws or any order or direction passed under securities laws, to the satisfaction of the Board;</u> (d) <u>any other factor as may be deemed appropriate by the Board.</u> <u>(3) Without prejudice to sub-regulations (1) and (3), the Board may not settle the specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or penalty imposed under securities laws.</u>

5. Withdrawal of Application:

<u>Current Regulatory provisions:</u>

Under the present regulations, an applicant may withdraw its application any time prior to the communication of the decision of the Panel of WTMs and shall thereafter not be permitted to make another application in respect of the same default. However, such application may be considered subject to payment of such additional fees and/or interest on the settlement amount from the date of the withdrawal of the earlier application till the date of payment of the settlement amount, as may be recommended by the HPAC.

Recommendation and rationale:

The Committee believes that an option to withdraw an application and file it at a later stage could lead to forum shopping and delays in enforcement. Therefore, in order to curb such unwarranted practices, the Committee recommends that where the HPAC considers an application that has earlier been withdrawn, such application may be considered subject to an increase of at least 50 percent over the settlement amount otherwise payable.

Regulation No.	Current provision in SEBI Settlement Regulations	Proposed revision to the Settlement Regulations
6(2)	(2) An applicant who withdraws an application under sub-regulation (1) shall not be permitted to make another application in respect of the same default: Provided that such an application may be considered at the next stage of proceedings, as indicated in Table I in Schedule-II, if the applicant makes out adequate grounds and subject to payment of such additional fees and/or interest on the settlement amount from the date of withdrawal of the earlier application till the date of payment of the settlement amount, as may be recommended by the high powered advisory committee.	**7.** (2) An applicant who withdraws an application under sub-regulation (1) shall not be permitted to make another application in respect of the same default: Provided that, as may be recommended by the High Powered Advisory Committee, such an application may be considered subject to an increase of atleast fifty percent over the settlement amount determined in accordance with Schedule-II of these Regulations.

6. Effect of pending application on specified proceedings:

Current Regulatory provisions:

Under the present settlement regulations, where an application is filed for settlement of any specified proceeding, such specified proceedings shall continue and only the passing of final order shall be kept in abeyance till the application is disposed of. However, where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn. Hence, the effect of a settlement application

would be that any proceeding against the applicant that may be initiated would not be initiated till such application is rejected or withdrawn.

Recommendation and rationale:

The present regulatory framework effectively stayed any proceedings that may be initiated against the applicant till such application is rejected or withdrawn. The Committee believes that there may be cases or circumstances where it may be necessary to initiate proceedings for the purpose of issuing interim directions to protect the interests of investors and maintain the integrity of the securities market. In particular, where an application was filed in a pending proceeding, the Board could issue interim orders and only the disposal by way of final orders was kept in abeyance. Hence, the Committee recommends that the same needs to be suitably clarified in the regulations.

Further, the Committee recommends that in cases where proceedings is pending or to be initiated against several persons but only one-person files an application, the filing of such application should not affect the initiation, continuation or disposal of the proceedings against the others who have not filed an application for settlement. Where a noticee has not filed an application for settlement, he should not be allowed to benefit from the application filed by another noticee.

Regulation No.	**Current provision in SEBI Settlement Regulations**	**Proposed revision to the Settlement Regulations**
7	7. (1) Filing of an application for settlement of any specified proceedings shall not affect continuance of the proceedings except that the passing of the final order shall be in abeyance till the application is disposed of. (2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn.	**8.** (1) The filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of. (2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn: <u>Provided that, the filing of an application shall not prohibit the initiation of any proceedings, in so far as may be deemed necessary for the</u>

		purpose of issuance of interim civil and administrative directions to protect the interests of investors and to maintain the integrity of the securities markets. Explanation. - Where any proceeding is pending or to be initiated against several persons but the settlement application is filed only by one or more persons, but not all, the filing of such an application shall not affect the initiation, continuation and disposal of the proceedings against the person who has not filed the application for settlement and any observations made in such proceedings against the applicant shall qua the applicant be subject to the outcome of the settlement application filed such applicant.

7. High Powered Advisory Committee:

Current Regulatory provisions:

Presently, the HPAC consists of a retired Judge of a High Court and three external experts. The quorum of the HPAC has been kept as three members. However, it does not specify or envisage a situation where a member or members of the HPAC may recuse themselves with regard to certain applications for reasons relating to conflict of interests. Therefore, it is felt necessary to specify the course of action to be adopted in the event certain members recuse themselves and the quorum is not met for considering certain applications.

Recommendation and rationale:

The Committee recommends that the HPAC may consist of a Judicial member who has been a Judge of the Supreme Court of India or a High Court and three external experts. Further, the Committee recommends that where a member(s) recuses himself and the quorum of three members is not met, the recommendations of the remaining members may be taken. In the event

that a consensus or majority cannot be arrived at, the recommendations made by the Judicial member shall be considered to be the recommendation of the HPAC. Further, if the Judicial member has recused himself, the views of the remaining members, irrespective of whether a consensus has been reached or not, shall be placed before the Panel of WTMs. The Committee also recommends that in the event all or all but one of the HPAC members recuse themselves in respect of any application, another HPAC may be constituted for such application.

Regulation No.	**Current provision in SEBI Settlement Regulations**	**Proposed revision to the Settlement Regulations**
10	10. (1) The Board shall constitute a high powered advisory committee for 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 securities market or in matters connected therewith or incidental thereto. (3) The quorum of the high powered advisory committee shall be of three members. (4) The term of the members of the high powered advisory committee shall be three years which may be extended for a further period of two years. (5) The high powered advisory committee shall conduct its meetings in the manner specified by the Board in this regard.	**11.** (1) The Board shall constitute a High Powered Advisory Committee for consideration and recommendation of the terms of settlement. (2) The High Powered Advisory Committee shall consist of a Judicial member who has been the Judge of the Supreme Court or a High Court and three external experts having expertise in securities market or in matters connected therewith or incidental thereto. (3) The term of the members of the High Powered Advisory Committee shall be three years which may be extended for a further period of two years. (4) The quorum for a meeting of the High Powered Advisory Committee shall be of three members. Explanation. - Meeting includes meeting through audio-video electronic means or through the medium of electronic video linkage. (5) The High Powered Advisory Committee shall conduct its meetings in the manner specified by the Board in this regard: Provided that, where any member of the High Powered Advisory Committee

		seeks recusal, the remaining members (atleast two) may submit their recommendation on the terms of settlement: Provided further that, in case no consensus or majority can be reached, the recommendation made by the judicial member shall be considered to be the recommendation of the High Powered Advisory Committee and in case of recusal of the judicial member, the recommendations of the remaining members (atleast two) shall be submitted for consideration to the Panel of Whole Time Members: Provided also that, where all or all but one of the members of the High Powered Advisory Committee recuse themselves in respect of an application, the Board may constitute another High Powered Advisory Committee.

8. Settlement Notice:

Current Regulatory provisions:

At present, the regulations provide for the issuance of a Notice of Summary Settlement in respect of specified proceedings to be initiated for certain defaults such as filing of returns, reports etc., non-disclosure in relation to companies exclusively listed on regional stock exchanges which have existed, failure to make disclosures in specified formats, delay in compliance of any of the requirements of law or directions issued by the Board and any such other violations as may be determined by the Board. Accordingly, the applicant may submit the settlement amount or comply or undertake to comply with other non-monetary terms, as may be specified in the summary settlement notice.

Recommendation and rationale:

The Committee feels the need to provide for a Notice of settlement (not summary settlement, where the notice of settlement indicates the terms of settlement) for other defaults whereby the Board may issue a settlement notice prior to the issuance of the notice to show cause, indicating

the substance of the probable charges and enforcement actions that may be issued by the Board, so as to enable the applicant to file a settlement application. The Committee recommends that the applicant will have to make the application for settlement within 15 days from the date of receipt of the settlement notice. Further, the probable charges and enforcement actions stated in the settlement notice shall not be binding and the Board shall be free to modify and include such enforcement actions that may be brought against the noticee. The Committee further recommends that if the noticee does not file a settlement application within the stipulated time period or withdraws its application, the Board may initiate the specified proceedings and the applicant shall thereafter not be permitted to file a settlement application for the specified proceedings until such proceedings are concluded.

Regulation No.	**Proposed addition to the Settlement Regulations**
None	**Settlement Notice.** **18.** (1) A notice of settlement in the format as specified in Part-B of Schedule-III, indicating the substance of the probable charges and enforcement actions, may except in cases covered under Chapter VII, be issued by the Board prior to the issuance of the notice to show cause so as to afford the noticee an opportunity to file a settlement application under Chapter-II, within fifteen calendar days from the date of receipt of the settlement notice. (2) Notwithstanding anything contained in the settlement notice, the Board shall have the right to modify the nature of the enforcement action to be initiated against the noticee and the charges stated in the notice shall not confer any right to seek settlement on the said basis or avoid any enforcement action due to modified charges. (3) Where a noticee does not file a settlement application under this Chapter or withdraws the settlement application at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15, the specified proceedings may be initiated and such a noticee shall only be permitted to file a settlement application in respect of the proceedings pending before a Court or tribunal, after conclusion of the proceedings before the Adjudicating Officer or the Board, as the case may be.

9. Settlement with Confidentiality:

Current Regulatory provision:

The Settlement Regulation do not have a provision for settlement with confidentiality. All settlement orders contain details of the applicant and are published on SEBI website. There is no explicit provisions for an applicant to voluntarily provide information to the Board relating to the fraudulent and unfair trade practices and other serious defaults that would assist the Board in dealing with any inquiry, investigation, inspection, and audit.

Recommendation and rationale:

The USA SEC has a robust enforcement mechanism. The Committee has examined the co-operation program of the USA SEC. On January 13, 2010, the SEC published *Policy Statement Concerning Cooperation by Individuals in Its Investigations and Related Enforcement Actions*.[35] The new Policy Statement is set forth at 17 C.F.R. § 202.12[36]

Under the Policy Statement, the SEC's determination as to the amount and the manner to be adopted to credit cooperation by individuals involves the following considerations:

1. the assistance provided by the cooperating individual in the investigation or related enforcement actions;

2. the importance of the underlying matter in which the individual cooperated;

3. the societal interest in ensuring that the cooperating individual is held accountable for his or her misconduct; and

4. the appropriateness of cooperation credit based upon the profile of the cooperating individual.

Notably, the Policy Statement does not include disclosure of privileged information as a criterion for assessing the nature or value of cooperation. There is a wide spectrum of tools available to the Commission and its staff for facilitating and rewarding cooperation by individuals and entities. These benefits to cooperators may range from reduced charges and sanctions in enforcement

[35]Available at <https://www.sec.gov/rules/policy/2010/34-61340.pdf>; Also See <https://www.sec.gov/spotlight/enforcement-cooperation-initiative.shtml>for more details.

[36] See the *SEC's Informal and Other Procedures, Enforcement Activities*, at 17 C.F.R. (Code of Federal Regulations) §202.12, available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=aa38f859c4b1d066d81e30cc32f40d40&mc=true&node=se17.3.202_112&rgn=div8>

actions to taking no enforcement action at all. The SEC's *Enforcement Manual*[37] has a detailed chapter on co-operation with the SEC.

The U.S. Commodity Futures Trading Commission (CFTC) in August 2004 issued an advisory on *Cooperation Factors in Enforcement Division Sanction Recommendations*[38] for reduced penalties on account of co-operation which was updated in January 2017[39] and September 2017.[40]

While processes adopted by the FCA in the UK are not as elaborately detailed as the USA SEC and CFTC, the FCA's *Decision Procedure and Penalties Manual*[41] and *Enforcement Guide*[42] also consider co-operation during the investigation as a factor to be considered as to issuance of a public censure or levy of financial penalty and the extent of the penalty.

The Committee has preferred the adoption of the Competition Commission of India (Lesser Penalty) Regulations, 2009 which have the added benefit of confidentiality so that the Board may seek the assistance of that regulator and use its learnings in developing internal procedures in case the Board does adopt the revision recommended by the Committee, after taking into account public comments. Schedule II of the Settlement Regulations is also proposed to be revised to provide for lower settlement amounts for applicants who seek confidentiality.

In India, the Competition Commission of India (Lesser Penalty) Regulations, 2009 provide for the detailed manner of receiving information for defaulters who are willing to co-operate against other participants of a cartel. These regulations not only provide for reduced penalty, but also have the added benefit of confidentiality to the information provider.

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[37] See, *Chapter 6 of the SEC Enforcement Manual*, available at <https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>

[38] Available at <https://www.cftc.gov/sites/default/files/files/enf/enfcooperation-advisory.pdf>; Also see CFTC release Release: 4968-04 available at<https://www.cftc.gov/sites/default/files/opa/enf04/opa4968-04.htm> Also see, *Speech of James McDonald, Director of the Division of Enforcement Commodity Futures Trading Commission Regarding Perspectives on Enforcement: Self-Reporting and Cooperation at the CFTC*, available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opamcdonald092517>.

[39] Press Release, *CFTC's Enforcement Division Issues New Advisories on Cooperation(Jan. 19, 2017)* available at <https://www.cftc.gov/PressRoom/PressReleases/pr7518-17>; *Enforcement Advisory: Cooperation Factors in Enforcement Division Sanction Recommendations for Companies (Jan. 19, 2017)* available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisorycompanies011917.pdf>; and *Enforcement Advisory: Cooperation Factors in Enforcement Division Sanction Recommendations for Individuals (Jan. 19, 2017)* available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisoryindividuals011917.pdf>.

[40] *Enforcement Advisory: Updated Advisory on Self-Reporting and Full Cooperation (September 25, 2017),* available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfadvisoryselfreporting0917.pdf>

[41] Available at <https://www.handbook.fca.org.uk/handbook/DEPP.pdf>.

[42] Available at <https://www.handbook.fca.org.uk/handbook/document/EG_Full_20140401.pdf>.

In view of the above, the Committee recommends inserting a Chapter similar to that provided in the Competition Commission of India (Lesser Penalty) Regulations, 2009 for assistance to the Board in its proceedings.

As under Section 15JB of the SEBI Act, 23JA of the SCRA and 19-IA of the Depositories Act, the settlement is '*done on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made by the Board*', a special Chapter is being inserted for providing settlement with confidentiality to an '*applicant who may be guilty of violation of securities laws and willingly assists*' the Board in any investigation, inspection, inquiry, audit and other proceedings under securities laws against any other person. Schedule II has been suitably revised to give benefit of a lower settlement amounts to an applicant seeking settlement with confidentiality.

It is clarified that a whistleblower is not a person guilty of any violation of securities laws and therefore the question of settlement does not arise in such instances. Only a person guilty of a serious violation of securities laws and willing to give assistance to the Board against his accomplices may apply under the proposed Chapter.

Schedule IV is thus proposed to be inserted to provide for a convenient manner for making an application seeking settlement with confidentiality. The Board's processing fees are also proposed to be waived in case of such applications in view of the substantial and continuous assistance provided by the applicant.

Confidentiality is multi-faceted and depends on the nature of assistance provided to the Board. There will not be any public disclosure unless such disclosure is made by the applicant himself or agreed to by the applicant in writing. Such applications and information pertaining to applicants and the assistance provided by them to the Board are already protected from disclosure under clauses (g) and (h) of sub-Section (1) of Section 8 of the Right to Information Act, 2005 which read as follows, -

> "**Section 8. Exemption from disclosure of information.** — (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, —
>
> ...
>
> (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
>
> (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
>
> ..."

Further, the confidentiality also depends upon the nature of the assistance provided to the Board. If the assistance is in nature of a clue or information, such as indicating the relevant bank account details, phone numbers or any other information which can be independently proven the information pertaining to the applicant will not be revealed either to the public or during the relevant proceedings to the accomplices who are charged by the Board.

In all other cases, where the applicant may be required to give testimony or other evidence for laying the foundation of any evidence that is required to be admitted in proceedings under securities laws, the Board may require the applicant give such testimony.

It is recommended that the Board should supplement the proposed Chapter by issuing a General Order directing any recipient of information relating to an applicant seeking confidentiality, during proceedings under securities laws from making a disclosure of the identity of the applicant, save for the purpose of any appeal under securities laws.

Further, the copy of the settlement order made available to the public by the Board and any order issued against the accomplices shall expunge all details identifying the applicant by name or description as well as the assistance provided by him. In any event, the regulatory record of the applicant shall not be impacted by his admissions and assistance provided to the Board.

The applicant is required to make a true and full disclosure and co-operate with the Board in the providing evidence, as may be available or which he is in a position to obtain. Once the Board is broadly satisfied with the co-operation provided the Board provides a written *assurance* to applicant. If the Board does not require the applicant to give evidence in proceedings under securities laws that it has begun against other participants, it may forthwith pass an order of settlement, in all other cases the order of settlement may be passed after such evidence has been given to the satisfaction of the Board.

However, the Committee is also mindful that proposed Chapter seeks to target serious violations such as fraud, insider trading am the in securities markets, where the information may come from pre-dominantly from individuals - relatives, employees, business partners and friends - rather than corporate entities.

In order to allay any fears of assurances being withdrawn after reasonable assistance is provided, the Committee recommends the issuance of a public Circular similar to SEC's *Policy Statement Concerning Cooperation By Individuals In Its Investigations And Related Enforcement Actions,* detailing the nature of assistance that the Board will consider. A draft of the Circular detailing the relevant factors is as follows, -

Circular on factors for considering
an
application for settlement with confidentiality

Circular-/2018

Relevant factors for grant of confidentiality

1. The Board may assess the applicant's cooperation in the investigation, inquiry, inspection or audit or during other proceedings under securities laws by considering, among other things, -

(a) *Assistance provided by the individual,* -

(1) The value of the applicant's cooperation to the investigation, inquiry, inspection or audit or during other proceedings under securities laws including, but not limited to:

(i) Whether the applicant's cooperation resulted in substantial assistance to the conclusion of the proceeding;

(ii) The timeliness of the applicant's cooperation to the Board or to an internal compliance or reporting system of business organizations committing, or impacted by, the securities violations, including whether the applicant was first to report the misconduct to the Board or to offer his or her cooperation, and whether the cooperation was provided before he or she had any knowledge of a pending investigation, inquiry or related action;

Explanation. - A *related action* is a judicial or administrative action in respect of the same cause of action that is brought by:

I. The Union or State Government;
II. A regulatory authority established by or under any law;
III. A self-regulatory organization; or
IV. A recognized stock exchange.

(iii) The quality of cooperation provided by the applicant, including whether the cooperation was truthful, complete, and reliable; and

(iv) The time and resources conserved as a result of the applicant's cooperation.

(2) The nature of the applicant's cooperation, but not limited to:

(i) Whether the applicant's cooperation was voluntary or required by the terms of an agreement with another law enforcement or regulatory organization;

(ii) The types of assistance the applicant provided to the Board;

(iii) Whether the applicant provided non-privileged information, which information was not requested by the staff or otherwise might not have been discovered;

(iv) Whether the applicant encouraged or authorized others to assist the staff who might not have otherwise participated in the investigation or inquiry; and

(v) Any unique circumstances in which the applicant provided the cooperation.

(3) Any unique hardships experienced by the applicant as a result of his or her reporting and assisting in the enforcement action.

(4) Whether the applicant gave the Board original information that was sufficiently specific and credible, to cause the Board to commence an examination, open an investigation or inquiry, inspection, audit or to inquire concerning different conduct as part of a current examination or investigation or inquiry,

inspection or audit, and the Board brought a successful judicial or civil and administrative action based in whole or in part on conduct that was the subject of your original information.

Explanation. - Information to be considered *original information,* it must be:

I. Derived from an independent knowledge or independent analysis;
II. Not already known to the Board from any other source, unless the applicant is the original source of the information;
III. Not exclusively derived from an allegation made in a judicial or civil and administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the applicant is a source of the information;
IV. Independent knowledge means factual information in possession of the applicant that is not derived from publicly available sources but may include his experiences, communications and observations in his business or social interactions; and
V. Independent analysis means applicant's own analysis, whether done alone or in combination with others. Analysis means examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.
VI. The Board will not consider information to be derived from applicant's independent knowledge or independent analysis, in case it is privileged information under the Indian Evidence Act, 1872 [Act 1 of 1872].

(b) *Importance of the underlying matter, -*

(1) The character of the investigation, inspection, audit or inquiry or a proceeding including, but not limited to:

(i) The type of securities violations;
(ii) The age and duration of the misconduct; and
(iii) The isolated or repetitive nature of the alleged default.

(2) The dangers to investors or others presented by the underlying violations involved including, but not limited to, -

(i) The amount of harm or potential harm caused by the underlying violations;
(ii) The type of harm resulting from or threatened by the underlying violations; and
(iii) The number of persons harmed.

(c) *Interest in holding the applicant accountable, -*

(1) The severity of the applicant's misconduct assessed by the nature of the violations and in the context of the individual's knowledge, education, training, experience, and position of responsibility at the time the violations occurred;
(2) The culpability of the applicant;
(3) The degree to which the applicant tolerated illegal activity including, but not limited to, whether he or she took steps to prevent the violations from occurring or continuing, such as notifying the Board or other appropriate law enforcement

agency of the misconduct or, in the case of a violation involving a business organization, by notifying members of management not involved in the misconduct, the board of directors or the equivalent body not involved in the misconduct, or the auditors of such business organization of the misconduct;
(4) The efforts undertaken by the applicant to remediate the harm caused by the violations including, but not limited to, whether he or she paid or agreed to disgorgement to injured investors and other victims or assisted these victims and the authorities in the recovery of the fruits and instrumentalities of the violations;
(5) The sanctions imposed on the applicant by other central or state authorities and industry organizations for the violations involved in the investigation or inquiry;
(6) Whether the applicant was aware of the relevant facts but failed to take reasonable steps to report or prevent the violations from occurring or continuing.
(7) Whether the applicant was aware of the relevant facts but only reported them after learning about a related inquiry, investigation, or enforcement action;
(8) Whether there was a legitimate reason for the applicant to delay reporting the violations; and
(9) Whether the applicant knowingly interfered with an entity's established legal, compliance, or audit procedures to prevent or delay detection of the reported securities violation.

(d) *Personal and professional* p*rofile of the* applicant*,* -
(1) The applicant's history of lawfulness, including complying with securities laws;
(2) The degree to which the applicant has demonstrated an acceptance of responsibility for his or her past misconduct; and
(3) The degree to which the applicant will have an opportunity to commit future violations of the securities laws in light of his or her occupation—including, but not limited to, whether he or she serves as: A licensed individual, such as an attorney or accountant; an associated person of a regulated entity, such as a broker or dealer; a fiduciary for other persons regarding financial matters; an officer or director of listed companies; or a member of senior management— together with any existing or proposed safeguards based upon the individual's particular circumstances.

2. This circular shall not bind the Board in any investigation, inquiry, audit, inspection or other proceedings under securities laws.

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Proposed Revision to the Settlement Regulations:

Present Regulations	Suggested Revision
None	**(New Chapter)** **CHAPTER IX** **SETTLEMENT WITH CONFIDENTIALITY** **Seeking Settlement with confidentiality.** **19**. (1) An applicant seeking the benefit of confidentiality in return for admitting for the limited purpose of settlement of specified proceedings to be initiated and agreeing to provide substantial assistance in the investigation, inspection, inquiry or audit, initiated or ongoing, against any other person in respect of a violation of securities laws, shall fulfil the conditions of this Chapter, including – (a) cease to participate in the violation of securities laws from the time of the disclosure of information, unless otherwise directed by the Board; (b) provide and continue to provide complete and true disclosure of information, documents and evidence, which is in his possession or he is able to obtain, to the satisfaction of the Board in respect of the alleged contravention of the provisions of securities laws; (c) co-operate fully, continuously and expeditiously throughout the investigation, inspection, inquiry or audit and related proceedings before the Board; and (d) not conceal, destroy, manipulate or remove the relevant documents in any manner that may contribute to the establishment of the alleged violation. *Explanation*. – Violation of securities laws in this Chapter refers to defaults other than those of disclosure and reporting requirements detailed in Schedule II. Provided that an application made under this chapter shall be made only in cases prior to or pending investigation, inspection, inquiry or audit.

	(2) Notwithstanding anything contained in this Chapter, where an applicant fails to comply with the conditions mentioned in this regulation, the Board may rely upon the information and evidence submitted by the applicant in any proceedings (3) Without prejudice to sub-regulations (1) and (2), the Board may subject the applicant to further restrictions or conditions, as deemed fit, after considering the facts and circumstances of the case. (4) For the purpose of seeking confidentiality, the applicant or its authorized representative may make an application containing all the relevant disclosures pertaining to the information as specified in Schedule-IV for furnishing the information and evidence relating to the commission of any violation of securities laws. (5) Upon being satisfied the Board may assure the benefit of confidentiality and shall thereupon mark the status of the application depending upon its priority and convey the same to the applicant in writing. (6) The Board may, for reasons to be recorded in writing, at any stage, reject the application if the information, documents or evidence is found to be incomplete or false to the knowledge of the applicant. (7) The rejection of the application for confidentiality shall be communicated to the applicant. **Procedure. —** **20**. (1) The provisions of Chapters IV to VI of these regulations may be applied *mutatis mutandis* to a settlement application filed under this Chapter and a settlement order passed accordingly. (2) The information, documents and evidence provided by the applicant under this chapter shall be submitted in the manner specified by the Board. **Confidentiality and assurance. —** **21**. For the purposes of providing the applicant with interim confidentiality and assurance from being proceeded with, the Board may not initiate regulatory measures when the Board has a reasonable belief that the information provided to it relates to a possible securities law violation that has occurred, is ongoing or about to occur.

	Confidentiality. — **22**. Notwithstanding anything contained in Chapter X, the following shall be treated as confidential, - (a) the identity of the applicant seeking confidentiality; and (b) the information, documents and evidence furnished by the applicant under this Chapter: Provided that, the identity of the applicant or such information or documents or evidence may not be treated as confidential if, — (i) the disclosure is required by law; or (ii) the applicant has agreed to such disclosure in writing; or (iii) there has been a public disclosure by the applicant.
None	**(New Schedule)** **SCHEDULE IV** **(*see* Regulation 19)** **Application for confidentiality** 1. The application for confidentiality shall be in the format convenient to the applicant and shall inter-alia, include the following, - i. name and address of the applicant or its authorized representative as well as of all other known participants involved in the alleged default; ii. the address of the applicant for communication including the telephone numbers and the e- mail address, etc.; iii. a detailed description of the alleged arrangement, including its aims and objectives and the details of activities and functions carried out for securing such aims and objectives; iv. the commencement and duration of the default; v. the names, positions, office locations and, wherever necessary, home addresses of all persons who, in the knowledge of the

	applicant, are or have been associated with the alleged defaulters, including those persons who have been involved on behalf of the applicant; vi. the details of other authorities, forums or courts, if any, that have been approached or are intended to be approached in relation to the alleged violation; vii. a descriptive list of evidence regarding the nature and content of evidence provided in support of the application for confidentiality; and viii. any other material information as may be directed by the Board. (Signature of the applicant) (Stamp and Seal of body corporate applicant) **Verification** I, ...son/daughter/wife of (Name in block letters) Shri .....being the applicant/authorised representative (in case of body corporate) of ..... do hereby verify and affirm on oath that this application and the contents thereof are true to my knowledge and belief and as per the records and that I have not suppressed any material facts and shall keep the Board informed without delay, of any other relevant information that may come to my notice. (Signature of the applicant) Date: Place : 2. The undertaking and waiver as specified in Part C of Schedule-I shall be annexed to the application for confidentiality.

10. Service and Publication of settlement Orders:

Current Regulatory provisions:

At present, under regulation 17 the 'settlement orders shall be served on the applicant and shall also be published on the website of the Board'. Such orders shall contain the name of the applicant.

Recommendation and rationale:

Pursuant to the inclusion of the chapter on seeking settlement with confidentiality, the Committee recommends that even the settlement order in cases of settlement with confidentiality will need to be published. However, the identity of the applicant may not be disclosed. This would be in line with the recommendations given for including a chapter for settlement with confidentiality.

Regulation No.	Current provision in SEBI Settlement Regulations	Proposed revision to the Settlement Regulations
17	**17.** Settlement orders shall be served on the applicant and shall also be published on the website of the Board.	**25.** Settlement orders shall be served on the applicant and shall also be published on the website of the Board: Provided that settlement orders in matters relating to confidentiality shall not, directly or indirectly, disclose the identity of the applicant, but shall indicate the provisions of securities laws which the applicant is alleged to have violated.

11. Settlement Scheme:

Current Regulatory provisions:

At present, there is no provision for having a settlement scheme to regularize/settle in case a large number of defaulters. Prior to the Settlement Regulations, the Board has issued various settlement schemes in the past.[43]

Recommendation and rationale:

The Committee recommends that the Board may provide for a settlement scheme for any class of persons involved in similar specified defaults, if the Board considers it appropriate to frame such a settlement scheme. A settlement scheme would enable SEBI to deal with various defaulters who may constitute a certain class of persons. The procedure and settlement terms may be specified by the Board in such scheme.

Regulation No.	**Proposed revision to the Settlement Regulations**
None	**Settlement Schemes.** **26.** Notwithstanding anything contained in these regulations, the Board may specify the procedure and terms of settlement of specified proceedings under a settlement scheme for any class of persons involved in respect of any similar specified defaults. *Explanation*. - A settlement order issued under a Settlement scheme shall be deemed to be a settlement order under these regulations.

12. Effect of settlement on third party rights or other proceedings:

Current Regulatory provisions:

[43]See, *SEBI Regularization Scheme, 2002* for non-compliance with regulations 6 and 8 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, available at <https://www.sebi.gov.in/acts/takeoverregu2002.html>; *Sebi (Interest Liability Regularisation) Scheme, 2004*available at <https://www.sebi.gov.in/acts/brokerscheme.html>and *Rameshchandra Bansal* v *SEBI & Anr*, (2006) 2 CompLJ 93 Guj, (2005) 3 GLR 2734, 2006 67 SCL 404 Guj, *inter alia* holding that, '*The SEBI (Interest Liability Regularization) Scheme, 2004 floated by SEBI is sort of settlement scheme, which does not purport, to adjudicate, any rights and liabilities of the stock brokers*.'

Under the present regulations, a settlement order shall not affect the rights of third parties arising out of the alleged default. The Committee feels that the regulations need to further elucidate on the issue and the effect of the settlement on other proceedings.

Recommendation and rationale:

It is possible that settlement orders may be used as evidence of a default as the settlement order specifies the provisions of the Act, regulations or rules and the scrip or the nature of violation alleged to have been committed by the applicant. If such orders can be used as evidence, it would defeat the very purpose of these regulations for settlement of proceedings. Hence, the Committee recommends that a settlement order should not be admissible as evidence in any other proceedings relating to an alleged default not covered under the settlement order.

However, the Committee is also of the view that in specified proceedings against third parties, the AO or the Board may make necessary observations in respect of the applicant, if required for proving the act of the third parties. Such observations should be subject to the settlement order passed against the applicant. This would ensure that proceedings against other co-accused are not affected adversely due to settlement by one of the accused and thus leading to a situation where violations cannot be established against third parties without the applicant's involvement being observed in an order against the third parties. This would be necessary to prevent a situation where only one person in a group comes for settlement, thereby affecting the proceedings against the others in the group. Therefore, the Committee recommends that such observations against the applicant should be permissible in third party proceedings and will be subject to the settlement order of the applicant.

Further, the Committee is of the view that any observations in a settlement order in respect of any other person for the commission of an alleged default, should not in itself be admissible as evidence against such other person.

Regulation No.	**Current provision in SEBI Settlement Regulations**	**Proposed revision to the Settlement Regulations**
18	**18.** A settlement order under these regulations shall not affect the right of third parties arising out of the alleged default.	**27.** (1) A settlement order under these regulations shall not be admissible as evidence in any other proceeding relating to an alleged default not covered under the settlement order nor affect the right of third parties arising out of the alleged default.

		(2) Where any applicant who obtains a settlement order, is also noticee along with any other person in any civil and administrative proceeding, the Adjudicating Officer or the Board while disposing proceedings against such other person may make necessary observations in respect of the applicant in so far as is necessary to prove the act of another: Provided that, unless the settlement order is revoked, such observations qua the applicant shall be subject to the settlement order obtained by the applicant. (3) Where any person has obtained a settlement order, which contains observations in respect of any other person for the commission of an alleged default, such an order shall not in itself be admissible as evidence against such other person.

13. Revocation of the settlement order:

Current Regulatory provisions:

Under the present regulations, a settlement order may be revoked if the applicant fails to comply with the settlement order or the applicant has not made full and true disclosure or has violated the undertakings or waivers. Accordingly, the proceedings against which such settlement was applied for would be restored against the applicant.

Recommendation and rationale:

The committee is of the view that failure to comply with settlement order or failing to make full and true disclosure or has violated the undertakings or waivers, should be taken seriously as revocation of a settlement order would have been a complete waste of time and resources of the regulator as it may also have mala fide intentions in delaying proceedings. Therefore, the

committee recommends that any amount paid under the regulations for settlement should not be refunded when a settlement order is revoked.

Regulation No.	**Current provision in SEBI Settlement Regulations**	**Proposed revision to the Settlement Regulations**
19	**Non-compliance of settlement order.** **19.** If the applicant fails to comply with the settlement order or at any time after the settlement order is passed, it comes to the notice of the Board that the applicant has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed.	**Revocation of the settlement order.** **28.** (1) If the applicant fails to comply with the settlement order or at any time after the settlement order is passed, it comes to the notice of the Board that the applicant has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed. (2) Whenever any settlement order is revoked, no amount paid under these regulations shall be refunded.

14. Irregularity in procedure:

<u>Recommendation and rationale:</u>

The Committee is of the view that at times there may be inadvertent discrepancies in the calculation of the settlement amount or the constitution of a committee or any procedure in the settlement process. The Committee therefore recommends that such discrepancies should not render a settlement order void. Procedural discrepancies should not render a proceeding void if they can be rectified following due process. The Committee feels that such a provision would be necessary to avoid unnecessary difficulties that may be caused if settlement orders become void on grounds of procedural discrepancies.

Regulation No.	Proposed revision to the Settlement Regulations
None	**Irregularity in procedure** **31.** No settlement order or rejection of a settlement application shall be void on ground of any defect in procedure or calculation of the settlement amount or on account of any vacancy or any defect in the constitution of any committee under Chapter V: Provided that, nothing in these regulations shall prohibit the Board from revoking the settlement order where the applicant fails to pay any difference due to any discrepancy in calculation of the settlement amount: Provided further that, the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of initiating or continuing or restoring of any legal proceeding and the waivers given in sub-paras (d), (e) (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.

15. Part B of Schedule I:

Current Regulatory provisions:

Under the present regulations, every applicant shall pay a processing fee of rupees ten thousand irrespective of whether it is an individual or a body corporate. Further, every application for condonation shall be accompanied with additional processing fees of rupees two thousand.

Recommendation and rationale:

The Committee is of the view that a higher processing fee of rupees twenty five thousand may be paid by body corporates. Further, processing fee will be non-refundable for both individuals and body corporates. The Committee also felt that the additional processing amount for condonation need not be levied on the applicant.

Regulation No.	Current provision in SEBI Settlement Regulations	Proposed revision to the Settlement Regulations
Part B of Schedule I	**Part-B** Every applicant shall pay processing fees of ten thousand rupees and every application for condonation shall be accompanied with additional processing fees of two thousand	**Part-B** Every applicant under Chapter II of these regulations shall pay a non-refundable processing fee of fifteen thousand rupees, by way of a demand draft in favour of

	rupees, by way of a demand draft in favour of 'Securities and Exchange Board of India' payable at Mumbai or by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI.	'Securities and Exchange Board of India' payable at Mumbai or by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI. Provided that, where the applicant is a body corporate, the non-refundable processing fee shall be Twenty five thousand rupees.

16. Chapter I of Schedule II:

Current Regulatory provision:

Chapter I provides the general guidelines that lay the foundation of a transparent approach of settlement by the Board. These guidelines simultaneously preserve the discretion of the Board to deviate from the same if required in the facts and circumstances of the same.

Recommendation and rationale:

The Committee is of the view that if a transparent approach is implemented to determine even the profit gained and loss caused to investors, then it is possible to settle even cases like insider trading and fraud. Also, the minimum settlement amounts have been raised incrementally.

Further, the guidelines have been amended to provision for a lower Proceeding Conversion Factor for applications filed seeking confidentiality. In cases where a body corporate violates securities laws, the guidelines now provision for the possibility of payment of the settlement amount by the management except where the act of the body corporate was an act ratified by the members or by the majority of the public share-holders in case of a listed company.

Schedule-II has been completely reworked and the categorization of minor, major and miscellaneous defaults is no longer required. This change is reflected in the revision of Chapter I of the Schedule II.

Proposed Revision to the Settlement Regulations:

Existing Chapter I	Suggested Revision
SCHEDULE-II	**SCHEDULE-II**

(*See regulation 8***)**	**(***See regulation 10***)**
GUIDELINES FOR ARRIVING AT SETTLEMENT TERMS	**GUIDELINES FOR ARRIVING AT SETTLEMENT TERMS**
CHAPTER I	**CHAPTER I**
1. The settlement amount (SA) *shall* comprise of the Indicative Amount (IA) arrived at in terms of these guidelines and the factors provided in regulation 9, wherever applicable.	1. The settlement amount (SA) shall comprise of the Indicative Amount (IA) arrived at in terms of these guidelines and the factors provided in regulation 10, wherever applicable: Provided that, wherever applicable, the SA in relation to an adjudication proceeding shall not be less than the minimum penalty that may be levied under securities laws by an adjudicating officer.
2. Except for persons treated as name lenders, the IA shall not be less than Rupees 2 lakh for first time applicants or Rupees 5 lakh for others, as the case may be. Explanation.-A 'first time applicant' is a person who has never obtained a settlement order from the Board as on the date of the present application.	2. The IA shall not be less than Rupees 3 lakh for first time applicants or Rupees 7 lakh for others, as the case may be: Explanation 1.-A 'first time applicant' is a person against whom no order has been passed by the adjudicating officer or by the Board or who has never obtained a settlement order from the Board as on the date of the present application. Explanation 2. - Individual applicants who submit to the satisfaction of the IC or HPAC or Panel of WTMs that, without knowledge of the illegal activity, they had lent the use of their securities account to the key operator or intermediary or securities market infrastructure institution involved in such activity, the SA may not exceed the minimum penalty under securities laws.
3. Based on the stage at which the proceeding(s), for which the application is made, is/are pending, the proceeding conversion factor (PCF) shall be applied when calculating the IA.	3. Based on the stage at which the proceeding(s), for which the application is made, is/are pending, the proceeding conversion factor (PCF) shall be applied when calculating the IA.
4. In cases, where an existing business or activity of a person is either corporatized or converted into an LLP or partnership or merged or taken over by a new management, the existing record of the erstwhile entity shall be deemed to be the record of the new entity. Considerations such as change of name or management or ownership shall be irrelevant when determining the liability of the said entity.	
5. Where an entity desires to obtain the benefit of a lower PCF, in relation to any alleged default it may, *suo motto*, before the receipt of any notice to show cause, intimate the Board of such default hereinafter referred to as	

'intimation defaults' and co-operate with SEBI in the investigation, inquiry, inspection or audit. It may thereafter file a settlement application, upon completion of the investigation, inspection, etc. The application shall be deemed to have been made 'Pre- issue of notice to show cause' for the purpose of calculating the PCF.	4. In cases, where an existing business or activity of a person is either corporatized or converted into an LLP or partnership or merged or taken over by a new management, the existing record of the erstwhile entity shall be deemed to be the record of the new entity. Considerations including insolvency, change of name or management or ownership, etc., shall be considered in accordance with the guidelines issued by the Board, if any, from time to time.
6. The IA is to be calculated for each applicant. In a case where multiple applicants apply in respect of a default arising from the same cause of action, the IA will be calculated for each applicant, as per the applicable formula except in the following cases where the applicants may be considered to have joint and several liability,- (a) the acquirer and persons acting in concert (PAC) under the Takeover Regulations; (b) in case of directors, where by reason of commission or omission they have only acted collectively for an act of the company; (c) any other group of persons, based on the facts and circumstances of each case, which the IC/HPAC may so recommend.	5. PCF for Applications made voluntary or seeking settlement with confidentiality: Where an entity desires to obtain the benefit of a lower PCF, it may, suo motto, before the receipt of any notice to show cause, intimate the Board of such default hereinafter referred to as 'intimation defaults' and co-operate with the Board in the investigation, inquiry, inspection or audit. Such an application shall be deemed to have been made 'Pre- issue of notice to show cause' for the purpose of calculating the PCF.
7. While considering the application, the alleged default(s) detailed in the Inspection Report or the Investigation Report or the Report of the Designated Authority (DA) or the notice to show cause, including any supplementary notice to show cause issued by any authority in a pending proceeding, or the facts/findings detailed in the order of the Designated Member (DM) or the Whole Time Member (WTM) or the Adjudicating Officer (AO) or the Securities Appellate Tribunal (SAT), as applicable, may be the basis for calculating the IA. In case, the Internal Committee (IC) or the High Powered Advisory Committee (HPAC)or the Panel of Whole Time Members (WTMs) are of the view that the facts disclose a different default, the same may be taken into account.	6. The IA shall be calculated per count of default, jointly or separately as per the facts and circumstances of the case, in accordance with these guidelines. 7. While considering the application, the alleged default(s) detailed in the Inspection Report or the Investigation Report or the Report of the Designated Authority (DA) or the notice to show cause, including any supplementary notice to show cause issued by any authority in a pending proceeding, or the facts/findings detailed in the order of the Designated Member (DM) or the Whole Time Member (WTM) or the Adjudicating Officer (AO) or the Securities Appellate Tribunal (SAT), as applicable, may be the basis for calculating the IA.

8. The alleged defaults shall, wherever applicable, be categorised based on the facts and circumstances as major, minor, serious or miscellaneous, etc., by the IC or HPAC or the Panel of WTMs.	In case, the Internal Committee (IC) or the High Powered Advisory Committee (HPAC) or the Panel of Whole Time Members (WTMs) are of the opinion that the facts disclose a different default, the modification of the charge(s) may be sought.
9. Notwithstanding anything contained in these guidelines, the IC or HPAC or Panel of WTMs shall have the discretion to recommend acceptance or rejection or accept or reject an application, to recommend a amount, lower or higher than the amounts arrived at in terms of these guidelines, in accordance with the provisions of securities laws, considering the facts and circumstances of the case and the gravity of the charges.	8. The alleged defaults shall, wherever applicable, be categorised based on the facts and circumstances by the IC or HPAC or the Panel of WTMs. 9. Notwithstanding anything contained in these guidelines, the IC or HPAC or Panel of WTMs shall have the discretion to recommend acceptance or rejection or accept or reject an application, to recommend an amount, lower or higher than the amounts arrived at in terms of these guidelines, for reasons to be recorded, in accordance with the provisions of securities laws, considering the facts and circumstances of the case and the gravity of the charges.
10. In cases where the formulae for calculating the IA are inapplicable or cannot be adapted due to the nature of the default or the facts and circumstances of the case or where the defaults detailed in the Tables in these guidelines are not covered, the IC or HPAC or Panel of WTMs may arrive at the SA, as they deem fit.	10. In case the applicant is body corporate, the IC or HPAC or Panel of WTMs may require that the SA payable by a body corporate is to be paid by the officers in default including the persons in charge of the body corporate to avoid burdening investors holding securities issued by the body corporate.
11. It is hereby clarified that— (a) the purpose of sub-clause (b) of clause (2) of regulation 5 is not to prohibit the settlements in respect of all kinds of fraudulent and unfair trade practices. (b) clause (b) of sub-regulation (2) of regulation 5 disqualifies only the defaults which are 'serious' and — (i) have market wide impact, or (ii) cause substantial losses to investors in securities, or (iii) affect the rights of investors in securities, especially retail investors and small shareholders.	11. In cases where the formulae for calculating the IA are inapplicable or cannot be adapted due to the peculiar nature of the default or the facts and circumstances of the case or where the defaults detailed in the Tables in these guidelines are not covered, the IC or HPAC or Panel of WTMs may arrive at the SA, as they deem fit. 12. In case of an amendment(s) or repeal of the securities laws, these guidelines shall

(c) Thus, in order to fall in disqualification of clause (b), the default must be serious and it must fall in any or all of the categories mentioned in points (i), (ii) and (iii) above. Notwithstanding the same, where both these criteria are attracted, the application may be considered for settlement, if the applicant has made or intends to make good the losses to the investors in terms of the first proviso to clause (b), provided he undertakes in writing that,— *'for the limited purpose of settling the administrative and civil proceedings I/We admit the charge before the Securities and Exchange Board of India*.' (d) While considering its 'seriousness', the default shall be seen in the context of its specific nature and the role played by the applicant. The charges against the applicant in the show cause notice or the investigation report or the report of the designated authority, as the case may be, may not be the only deciding factor in this regard. The weight and sufficiency of the evidence and the basis of the charge levelled against the applicant or the extent of his co-operation during the investigation /inquiry / inspection, etc., if any may also be taken into account. (e) Further, the fact that the case has been referred to the Serious Frauds Investigation Office by the Central Government or the fraudulent and unfair trade practices, directly or indirectly, pose a systemic risk to the functions of any banking or micro-finance institution or a systemically important non-banking financial company or stock exchange or clearing corporation or a depository shall be relevant	continue to apply to similar provisions under the amended or new laws, *mutatis mutandis*.

factors for considering the 'seriousness' of the default. (f) Market wide impact: shall mean the defaults which have a bearing on the securities market as a whole and not just the listed security and its investors which is under investigation/inquiry/inspection, etc. (g) The defaults which affect the right of investors: shall refer to the qualitative and quantitative impact on the rights of investors, including the number of complaints received, especially from retail investors and small shareholders. A qualitative impact refers to an indirect impact on the rights of investors, such as reduction in rating of a scrip as a result of the fraudulent and unfair trade practices or an increase in promoter holdings through a fraudulent private placement to related parties in default of minimum public shareholding norms, etc. A quantitative impact refers to the quantifiable losses to investors, to the extent determinable. 12. In case of an amendment(s) or repeal of the securities laws, these guidelines shall continue to apply to similar provisions under the amended or new laws, *mutatis mutandis*.	

17. Chapter II of Schedule II:

Current Regulatory provision:

Chapter II of Schedule II of the existing Settlement Regulations provides the formula for arriving at the indicative amount which when accepted becomes the settlement amount, along with some rules relating to cases where a penalty order has already been issued and in cases of multiple proceedings.

Recommendation and rationale:

The Committee does not propose to change the basic formula for settlement. The Committee recommends the following changes, -

1. The guidelines to provision for reduction of the indicative amount in case of an applicant seeking settlement with confidentiality;

2. The manner of computation of the Benchmark Amount is also to be defined in Chapter II in a uniform manner instead of calculating it under separate Chapters later in the Schedule as was the case earlier;

3. The Benchmark Amount to take into account the 'repetitive nature of a default';

4. The manner of arriving at the term in relation to a compounding application has to be provided for; and

5. Legal costs may include costs incurred in the filing and conducting any proceedings before a Tribunal or Court as well as costs that may be incurred in obtaining the necessary orders after the terms of settlement/compounding are placed before the Tribunal or Court. Accordingly, the word 'incurred' is proposed to be deleted.

Proposed Revision to the Settlement Regulations:

Existing Chapter II	Suggested Revision
CHAPTER II **INDICATIVE AMOUNT AND THE SETTLEMENT AMOUNT**	**Chapter II** **INDICATIVE AMOUNT AND THE SETTLEMENT AMOUNT**
Indicative amount (IA) shall be calculated as follows:	Indicative amount (IA) shall be calculated as follows:
IA= A×B + Legal Costs#	**IA= A×B + Legal Costs#**
#Legal costs as incurred by the Board shall be applicable to a application made at the stages mentioned in points "d" and "e" as provided in Table I.	**#Legal costs of the Board may be applicable to an application made at the stages mentioned in points "b", "d" and "e" as provided in Table I.**

'**A**' = **PCF + RAF** **A** : Multiplying Factor **PCF** : Proceeding Conversion Factor **RAF** : Regulatory Action Factor Where **'PCF'-** The value assigned on the basis of the stage of the proceedings, as on the date of the application; and **'RAF'-** Values for prior orders and regulatory directions issued to the applicant. '**B**' - Benchmark Amount, is the amount which is attributable to the alleged default for which a proceeding under securities laws may be or has been initiated by the Board; it is determined separately for each category of default and in case of multiple defaults, the total sum thereof, determined in terms of these guidelines; 1. (a) Where the AO has already awarded penalty to the applicant, then 'B' shall be equal to the amount calculated by these guidelines or the penalty awarded by the AO, whichever is higher; (b) In case more than one proceeding arising from the same cause of action has been initiated against the applicant, the IA shall be increased by 15%; (c) In cases where the WTM or DM has issued directions debarring or suspending the applicant, the RAF shall take into account the value of Y as per Table III.	Where: **'A' = PCF + RAF** **A**: Multiplying Factor. **PCF**: Proceeding Conversion Factor. **RAF**: Regulatory Action Factor. '**B**' = **BV x BA** **B**: *Applicable Benchmark Amount*, is the amount attributable to every count of the alleged default in accordance with these guidelines; '**BV**': Aggregate of the base values given to the relevant aggravating and mitigating factors in respect of a particular charge. '**BA**': Base amount attributable to every count of the alleged default in accordance with these guidelines. 1. (a) Where an order of penalty has been passed prior to making an application, then 'B' shall not be less than the penalty so awarded; (b) In case more than one proceeding arising from the same cause of action has been initiated against the applicant, the IA shall be increased by 20%; 2. In case of grant of confidentiality, the IA arrived in accordance with this Schedule shall, be further reduced as follows, - i. those marked first in priority status may be granted reduction

2. The amount which is finally recommended by the HPAC after taking into account the IA, any mitigating or aggravating factors etc; and approved by the Panel of Whole Time Members is the **SA.** 3. After payment of the SA, the settlement order along with other directives, if any, shall be passed accordingly.	<u>of up to or equal to ninety percent of the IA;</u> ii. <u>those marked second in priority status may be granted reduction of upto or equal to fifty percent of the IA; and</u> iii. <u>those marked third or subsequent in the priority status may be granted reduction upto or equal to twenty five percent of the IA.</u> 3. The amount which is finally approved by the Panel of Whole Time Members is the **SA.** 4. <u>Notwithstanding anything in this Schedule, -</u> i. <u>where a compounding application has been filed in respect of an offence under securities laws for non-payment of penalty, the proposal agreeing to the composition of the offence may be made to the court only on receipt of such penalty and interest as deemed appropriate along with legal charges as determined by the Board; and</u> ii. <u>where a compounding application is filed after framing of the charges by the court, the proposal agreeing to the composition may be made after increasing the amount calculated under this Schedule by atleast twenty-five per-cent along with legal charges and any other terms as may be approved by the Panel of Whole Time Members.</u>

18. Chapters III & IV of Schedule II:

<u>Current Regulatory provision:</u>

Chapters III & IV of Schedule II of the existing Settlement Regulations are related and provide weightages to specified proceedings for which an application is filed as well as the existing regulatory record of the applicant.

Recommendation and rationale:

The Committee propose only minor changes as follows, -

1. The guidelines now provision for PCF in case of an applicant seeking settlement with confidentiality or an application pursuant to a settlement notice as well as a compounding application filed during the various stages of a trial; and

2. The Table- III is sought to be revised as the Committee is independently considering changes in the procedure for taking action against the Certificate of Registration issued to an intermediary under the SEBI Act.

Proposed Revision to the Settlement Regulations:

<table>
<tr><th>Existing Chapters</th><th>Suggested Revision</th></tr>
<tr><td>

CHAPTER III

PROCEEDING CONVERSION FACTOR

The values assigned on the basis of the stage of the proceedings, as on the date of the application, shall be the PCF as per Table I

<table>
<tr><th colspan="2">TABLE I-PCF
STAGE OF THE PROCEEDING(S) WHEN THE APPLICATION IS MADE</th><th>VALUE OF PCF</th></tr>
<tr><td>a.</td><td>Voluntary or suo-moto intimation matters *</td><td>0.65</td></tr>
<tr><td>b.</td><td>Pre- issue of the notice to show cause (including applications filed on or before 15th calendar day from the receipt of the settlement notice)</td><td>0.75</td></tr>
<tr><td>c.</td><td>Post-issue of the first notice to show cause pertaining to any pending proceeding in the same cause of action (including applications filed after 15th calendar day from the receipt of the settlement notice)</td><td>0.85</td></tr>
<tr><td>d.</td><td>Proceeding pending after the submission of the report by the Designated Authority</td><td>0.9</td></tr>
</table>

</td><td>

CHAPTER III

PROCEEDING CONVERSION FACTOR

The values assigned on the basis of the stage of the proceedings, as on the date of the application, shall be the PCF as per Table I:
Provided that where multiple proceedings arising out of the same cause of action are sought to be settled, the value of the proceeding which is at the most advanced stage, irrespective of the stage of progress of the other proceedings, shall be taken as the PCF.

TABLE I-PCF

<table>
<tr><th colspan="2">STAGE OF THE PROCEEDING(S) WHEN THE SETTLEMENT APPLICATION IS MADE</th><th>VALUE OF PCF</th></tr>
<tr><td>a.</td><td>Voluntary or for seeking settlement with confidentiality</td><td>0.65</td></tr>
<tr><td>b.</td><td>Pre- issue of the notice to show cause (including applications filed on receipt of the settlement notice)
[Or</td><td>0.75</td></tr>
</table>

</td></tr>
</table>

e.	Proceedings pending after passing of a final order imposing penalty or issuing civil and administrative directions, as the case may be	1.10
f.	Proceedings pending after the passing of the order by the Securities Appellate Tribunal or High Court	1.20

***Cases relating to fraudulent and unfair trade practices may be considered taking into account the evidence, information and assistance provided during the course of investigation, otherwise b. will apply.**

Provided that where multiple proceedings arising out of the same cause of action are sought to be settled, the value of the proceeding which is at the most advanced stage, irrespective of the stage of progress of the other proceedings, shall be taken as the PCF.

	Compounding application filed pre-summoning]	
c.	Post-issue of the first notice to show cause pertaining to any pending proceeding in the same cause of action (including applications filed after period provided in settlement notice) [Or Compounding application filed before the framing of charge]	0.85
d.	Proceeding pending after the submission of the report by the Designated Authority [Or Compounding application filed after framing of charge]	0.9
e.	Proceedings pending after passing of a final order imposing penalty or issuing civil and administrative directions, as the case may be	1.10
f.	Proceedings pending after the passing of the order by the Securities Appellate Tribunal or Court	1.20

CHAPTER IV

VALUE FOR ALL ORDERS AND REGULATORY DIRECTIONS

The sum of all the values assigned to the orders and regulatory direction(s) issued in the past, if any, shall be 'RAF'.

'RAF'= X + Y

TABLE II -VALUE FOR ORDERS AND REGULATORY DIRECTIONS ISSUED X*

* To also include those orders and directions which have been stayed by the SAT or Court, as on the date of the application. In case multiple proceedings have been initiated for the same cause of action, the value shall be added for each order passed.

ORDERS AND REGULATORY DIRECTIONS ISSUED TO THE APPLICANT	X PER ORDER
Exonerated cases i.e. cases where applicant was exonerated in an order or appeal or review	0
Settlement Order	0.01
ALL OTHER ORDERS (EXCEPT FOR WHICH THE APPLICATION IS FILED)	
Cease and desist order	0.02

CHAPTER IV

REGULATORY ACTION FACTOR -VALUE FOR ALL ORDERS AND REGULATORY DIRECTIONS

The sum of all the values assigned to the order and regulatory direction(s) issued in the past, if any, shall be 'RAF'.

'RAF'= X + Y

"TABLE II -VALUE for ORDERS AND REGULATORY DIRECTIONS ISSUED X*

* To also include those orders and directions which have been stayed by the Securities Appellate Tribunal or Court, as on the date of the application. In case multiple proceedings have been initiated for the same cause of action, the value shall be added for each final order passed.

ORDERS AND REGULATORY DIRECTIONS ISSUED TO THE APPLICANT	X PER ORDER
Exonerated cases (i.e. cases where applicant was exonerated in an order or appeal or review) and any settlement order involving confidentiality	0
Any other Settlement Order	0.01
ALL OTHER ORDERS (EXCEPT FOR WHICH THE APPLICATION IS FILED)	
Cease and desist order	0.02

Order of AO or WTM issued against other market participants	0.05
Order of AO, DM or WTM issued against intermediaries or listed companies	0.075

TABLE III- VALUE FOR ORDER OR DIRECTION PASSED OR ISSUED FOR WHICH THE APPLICATION IS FILED - Y

PROCEEDING BEFORE DM	PROCEEDING BEFORE WTM	'Y' PER ORDER
Warning issued		0.05
Suspension upto 1 week	Debarment upto 6 calendar months	0.1
Suspension for 1 week or more, but less than 1 month	Debarment for 6 calendar months or more, but less than 1 year	0.15
Suspension for 1 month or more but less than 3 months	Debarment for 1 year or more but less than 2 years	0.2
Suspension for 3 months or more but less than 1 year	Debarment for 2 years or more but less than 3 years	0.25
Suspension for or more than 1 year	Debarment for 3 years or more but less than 5 years	0.3

Final order issued against other persons associated with the securities markets	0.05
Final order issued against an intermediary or securities market infrastructure institutions* or listed companies, and their principal officers	0.075

*In this schedule an '*intermediary or securities market infrastructure institutions*' includes any person required by securities laws to be registered or recognized by the Board.

TABLE III- VALUE FOR ORDER OR DIRECTION PASSED OR ISSUED FOR WHICH THE APPLICATION IS FILED – Y

FINAL ORDER AGAINST INTERMEDIARY OR SECURITIES MARKET INFRASTRUCTURE INSTITUTION, FOR WHICH APPLIED	FINAL ORDER AGAINST ANY PERSON OTHER THAN INTERMEDIARY OR SECURITIES MARKET INFRASTRUCTURE INSTITUTION, FOR WHICH APPLIED	'Y' PER ORDER
Warning issued		0.05
Suspension/Debarment upto 1month	Debarment upto 6 calendar months	0.1
Suspension/Debarment for 1month or more, but less than 6 months	Debarment for 6 calendar months or more, but less than 1 year	0.15

	Suspension/Debarment for 6 month or more but less than 1 year	Debarment for 1 year or more but less than 2 years	0.2
	Suspension/Debarment for 1 year or more but less than 2 years	Debarment for 2 years or more but less than 3 years	0.25
	Suspension/Debarment for 2 years or more	Debarment for 3 years or more but less than 5 years	0.3

19. Chapters V and VI of Schedule II:

Current Regulatory provision:

Recommendation and rationale:

In the existing Chapters V to VIII of Schedule II of the existing Settlement Regulations, not all defaults are assigned base amounts and the possibility of some factors being applicable across all defaults is not considered.

The existing Chapters also do not provide for a detailed manner of calculation of profit caused and loss caused. Chapter V does have some guidelines on calculation of the profit but they have not yet been resorted to due to the existing lacunae in the investigation reports and inquiry reports. Further, the existing Chapters did not provision for a host of mitigating factors.

In order to deal with the aforesaid issues, the Committee has reworked the existing Chapters V to VIII into just two Chapters V to VI. Not only does Chapter V consolidate the existing factors and their weightages but also considers various other aggravating and mitigating factors. In this respect, the factors detailed in FCA's Enforcement Guide and the Decision Procedure and Penalties Manual and the FINRA Sanction Guidelines have been considered. A suitable weightage has been assigned to these factors.

In Chapter VI, the Committee has reworked the base amounts under the existing Chapters V and VIII. These Chapters were not able to deal with the kind of defaults that the Board has had to deal with in the past few years and the newer defaults introduced by the Finance Act, 2018. The Committee has with suitable modifications adopted the existing scheme of base amounts for disclosure and open offer violations, whereas for other violations it has adopted a structure similar to SEC's three-tier penalty structure and the classification of minor and major defaults has been done away. Also, the base amounts for disclosure related defaults have been raised incrementally.

Proposed Revision to the Settlement Regulations:

1. Existing Chapters V to VIII
CHAPTER V **BENCHMARK AMOUNT FOR FUTP DEFAULTS** The Benchmark Amount for defaults related to FUTP i.e. B (FUTP), may be computed as detailed in this Chapter. However, the IC or HPAC or Panel of WTM's may, in cases of serious FUTP default, take the Benchmark Amount of the applicant as per the provisions of the securities laws if the amounts arrived at on the basis of the calculations are found to be low and not commensurate to the seriousness of the alleged default.

Notwithstanding the above, SEBI shall not settle serious fraudulent and unfair trade practices which, in its opinion, cause substantial losses to investors especially retail investors and small shareholders or have or may have market wide impact, except those defaults where the applicant has made or intends to make good the losses due to the investors to the satisfaction of SEBI.

B(FUTP) = SUM OF BASE VALUES AS PER TABLE IV × APPLICABLE AMOUNT

TABLE IV - BASE VALUES

	NATURE OF DEFAULT	BASE VALUE
a.	FUTP or violation of code of conduct noted in an investigation related to FUTP Or FUTP in combination with the violation of code of conduct or any other regulation under SEBI (PIT) Regulations or SEBI (SAST) Regulations Or FUTP in combination with a violation of *SEBI Master Circular on AML, etc.*	1.35 1.37 1.4
b.	Factors for volume traded and/or price change for the default	Sum of **'V', 'P'** and **'Q',** wherever applicable, to be applied only if the the volume traded or price change, quantity traded in respect of the group, of which the applicant is a part of or of the applicant when he acts alone, as the case may be, can be calculated from findings brought out in the investigation report or notice to show cause or order, as the case may be. In case multiple trading periods are involved the highest change has to be considered.
c.	Time value of ill-gotten gains*	0.09 × no. of calendar years from the date of commission of the default
d.	Reputation risk applicable in all cases	All applicants - 0.25

***Factor 'c' is applicable only in cases where the actual profit and/or loss avoided (approx) is determinable. While calculating the period, the fractions may be ignored.**

'V' = VALUE FOR THE HIGHEST % OF VOLUME TRADED IN ANY TRADING PERIOD DURING THE ENTIRE PERIOD OF DEFAULT

In case of more than one scrip, the scrip with the highest volume traded is to be considered

% VOLUME TRADED (ILLIQUID SCRIP)	'V'	% VOLUME TRADED (LIQUID SCRIP)
Upto 50%	0.05	Upto 2%
50 -60%	0.07	2-5%
60-75%#	0.1	5-10%#
75% or more#	0.15	10% or more#

#Where the volume traded, during any trading period falls within this class, the IC or HPAC or Panel of WTM's shall consider whether the default may be settled.

'P' = VALUE FOR HIGHEST % OF PRICE CHANGE IN ANY TRADING PERIOD DURING THE ENTIRE PERIOD OF DEFAULT

In case of more than one scrip, the scrip with the highest price change is to be considered

% PRICE CHANGE (ILLIQUID SCRIP)	'P'	% PRICE CHANGE (LIQUID SCRIP)
Upto 50%	0.05	Upto 5%
50-100%#	0.07	5-10%#
100-200%#	0.1	10-20%#
200% or more#	0.15	20% or more#

#Where the price change during any trading period falls within this class, the IC or HPAC or Panel of WTM's shall consider whether the default may be settled.

'Q' = VALUE FOR HIGHEST % OF PRICE CHANGE IN ANY TRADING PERIOD, DURING THE PERIOD OF DEFAULT FOR F&O & LEVERAGED PRODUCTS

In case of more than one product, the contract with the highest price change is to be considered

% PRICE CHANGE	'Q'
Upto 0.5%	0.05
0.5-1%	0.07
1-5%#	0.1
5% or more#	0.15

#Where the price change during any trading period falls within this class, the IC or HPAC or Panel of WTM's shall consider whether the default may be settled.

II - APPLICABLE AMOUNT

THE APPLICABLE AMOUNT FOR AN APPLICANT =The profit made and/or loss avoided* of each applicant
Or
The Base Amount as per Table V,
whichever is higher.

***IN CHAPTER V TO VII, PROFIT MADE AND/OR LOSS AVOIDED, MAY BE CALCULATED AFTER TAKING INTO ACCOUNT THE FOLLOWING:**

1. In cases, where the profit made and losses avoided both co-exist, the sum thereof shall be taken into consideration for arriving at the total ill-gotten profit made by the applicant.

2. In cases of issue of fraudulent securities, fraudulent purchase of securities, including where funding is though circuitous route, etc., the profit made and/or loss avoided, shall be calculated after taking into account the market value of the securities on the date of purchase, allotment, issue, etc; whichever is relevant, in addition to the profit earned from subsequent sale thereof, if any.

3. In cases involving the siphoning of funds or cornering of securities in an issue, the applicant's profit made and/or loss avoided shall take into account the net proceeds or the value of the securities or the share thereof received by the applicant.

4. In cases involving an intermediary, the profit made and/or loss avoided shall take into account the *gross* fees earned by the applicant in respect of the default, by whatever name called and any proprietary trades, if any.

5. In cases where the purpose of the FUTP is to maintain the price, the profit made and/or loss avoided shall take into account any means by which the applicant has benefited including the value of any pledge, margin requirements, loans against securities, hedge, options, hybrids, futures, issue of securities, etc., in the scrip in which the applicant was interested.

6. In cases where trades have been executed after the dissemination of false information, the profit and/or loss avoided shall take into consideration the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security after a reasonable period from public dissemination of the true information.

TABLE V- BASE AMOUNT

AND

PARAMETERS (WHEREVER APPLICABLE) RELATING TO FUTP INCLUDING AIDING AND ABETTING FUTP OR CODE OF CONDUCT NOTED IN AN INVESTIGATION RELATED TO FUTP

In case more than one parameter is applicable, the highest Base Amount, as may be appropriate in the facts and circumstances of the case, may be considered.

CATEGORY OF APPLICANT		BASE AMOUNT AND PARAMETER *
		(i) Where the entity is charged for FUTP or aiding and abetting FUTP

a.	**Intermediaries**	**Rs 15 lakh** **Or** **1.5% of the value of the gross fraudulent trades executed through the intermediary including proprietary trades,** **whichever is higher** **(ii) Where the intermediary is charged for violation of code of conduct** **Rs 8 lakh** **Or** **0.75% of the value of the gross fraudulent trades executed through the intermediary,** **whichever is higher** **(iii) In cases of proceedings before the DM or the WTM, the Base Amount may also be computed by taking into account a suitable fraction or multiple of the gross annual income during the period of default, as may be recommended or decided by the IC or HPAC or Panel of WTM's, after taking into account the facts and circumstances of the case.**
	Applicant charged for financing the FUTP activities **(Listed companies not engaged in lending business, but charged with financing its Issue fall under point 'd')**	**Rs 15 lakh** **Or** **15% per annum × into funds provided × period for which the funds was provided, whichever is higher**
b.	**Promoters**	**Rs 1 crore** **Or**

	Whole Time Directors or Chairman **Other directors or Key Managerial Personnel (KMP)**	**0.5% of the (highest) market value of its/his holdings in the company (including any convertible warrant or options)** **whichever is higher** **Rs 25 lakh** **Or** **0.5 % of the (highest) market value of its/his holdings in the company (including any convertible warrants or options)** **whichever is higher;** **Rs 10 lakh** **Note:** **I. In case of pre-IPO related matters, the market value will be computed on the basis of the listing price.** **II. In the case of already listed companies, the value of holdings during the period of default shall be taken.**
c.	**Listed companies** **(to be borne by the promoter group or directors or KMPs or the company or both, as the case may be)** **(In case where the charge against a company is of funding its own issue or any other FUTP charge and the promoters or directors are also charged for the same default as the company, then only point 'd'**	**Rs 10 lakh** **Or** **0.1% of its (highest) entire market cap during the period of the default.** **whichever is higher** **Note:** **I. In case of pre-IPO related matters, the market value will be computed on the basis of the listing price.** **II. In the case of already listed companies, the value of holdings during the period of default shall be taken.**

	applies. In other cases, the higher of point 'c' or 'd' shall be borne by the promoters or directors, as the case may be)	
d.	**Name-lender clients or front-entities or dummy entities**	**To be determined for each applicant as recommended or decided by the IC or HPAC or Panel of WTMs on the basis of the facts and circumstances of each case**
e.	**Key-operators**	**To be determined for each applicant as recommended or decided by the IC or HPAC or Panel of WTMs on the basis of the facts and circumstances of each case.** **Notwithstanding the above, in case of the key operator transferring the bulk or the whole of his share of proceeds or securities cornered, to another, the base amount may also be added by a suitable fraction taking into account a suitable fraction or multiple of the gross amount or transfers made, as may be recommended or decided by the IC or HPAC or Panel of WTM's after taking into account the facts and circumstances of the case.**
f.	**FII Proprietary sub-account**	**Rs 35 lakh** **Or** **0.005% of the total assets under custody (AUC), whichever is higher**
	Non- proprietary sub-accounts	**Rs 20 lakh** **Or** **0.005% of the total AUC, whichever is higher**

*** To be calculated per scrip or product manipulated. In case the scrip is part of any index maintained by BSE Ltd or National Stock Exchange of India Ltd, the Base Amount shall be increased by 15%.**

In these guidelines the following persons shall be treated as 'name-lender':
An applicant who allows his name to be used or whose name is used for opening a demat account or client account by another, who operates the same as his own account. It includes an account-lender whose demat account or client account is allowed to be used or used for market

g.	**Book running lead manager or lead manager** **and** **other intermediaries associated with an issue or takeover**	**1% of the issue or takeover size (or the estimated issue size) handled by the Book running lead manager or lead manager** **and** **0.25% for other intermediaries**
h.	**AMC, trustee, sponsor, etc.** **(In case of mutual fund, etc., to be borne by the AMC, CIMC, manager, etc., and not to be passed on to the schemes)**	**Rs 25 lakh** **Or** **0.001% of the total assets under management (AUM)** **Or** **0.1% of the net worth; whichever is higher**
i.	**Where none of the above are applicable to the applicant**	**To be determined for each applicant as recommended or decided by the IC or HPAC or Panel of WTMs on the basis of the facts and circumstances of each case**

transactions by anyone other than himself, for the purpose of any activity by such other, including manipulation or other fraudulent activities.

A key operator referred to in these guidelines, includes the main manipulator and any other applicant who in the opinion of the IC or HPAC or Panel of WTM's may be so categorised.

Chapter VI

BENCHMARK AMOUNT IN DISCLOSURE RELATED DEFAULTS UNDER SEBI (SAST) REGULATIONS , SEBI (PIT) REGULATIONS AND OTHER DISCLOSURES AND REPORTING REQUIREMENTS, etc.

The Benchmark Amount for disclosure defaults i.e. B (D) may be computed on the basis of this Chapter. This chapter does not deal with those disclosure defaults which amount to FUTP.

However the IC or HPAC or Panel of WTM's, may, in cases of serious disclosure defaults take the Benchmark Amount of the applicant as per the provisions of securities laws if the amounts arrived at on the basis of the calculations are found to be low and not commensurate to the seriousness of the alleged default or the ill-gotten profit and/or loss avoided by the applicant.

B(D) = BASE VALUE AS PER TABLE IX X SUM OF BASE AMOUNTS AS PER TABLE VI OR VII

TABLE VI- BASE AMOUNT - DISCLOSURES UNDER SEBI (SAST) REGULATIONS

PERCENTAGE OF SHAREHOLDING OR VOTING RIGHTS ACQUIRED OR DISPOSED BUT NOT DISCLOSED OR PERCENTAGE OF ENCUMBERED SHARES BUT NOT DISCLOSED, etc.	BASE AMOUNT FOR VIOLATION OF		
	REGULATION 7 OF SEBI (SAST) REGULATIONS, 1997 OR REGULATION 29 OF SEBI (SAST) REGULATIONS, 2011	REGULATION 8 OF SEBI (SAST) REGULATIONS, 1997* OR REGULATION 30 OF SEBI (SAST) REGULATIONS, 2011*	REGULATION 8A OF SEBI (SAST) REGULATIONS, 1997 OR REGULATION 31 OF SEBI (SAST) REGULATIONS, 2011
Upto 2 %	**Rs 1 lakh + Rs 5,000/- For every three months delay# or part thereof**		
2% to less than 5 %	**Rs 2 lakh + Rs 10,000/- For every three months delay or part thereof**		
5 % to less than 10%	**Rs 5 lakh + Rs 15,000/- For every three months delay or part thereof**		
10 % to less than 15 %	**Rs 10 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rs 20,000/- For every three months delay or part thereof**		
15% and above	**Rs 15 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rs 25,000/- For every three months delay or part thereof**		

*** The Base Amount shall only be as per the lowest slab, irrespective of change in shareholding over the reporting period. In case of defaults related to disclosures that are required to be made annually, and application is filed for settlement of such defaults, the amount for delay for every three months or part thereof shall be computed only for the first non-disclosure. In case the applicant complies with the annual reporting requirements for a few years, such compliance will not result in a higher base amount than would have otherwise be calculated for continuous defaults.**

#The period of delay is to be calculated from the last day, when the disclosure ought to have been made, as required by the regulations.

In case a correct disclosure is made on time but filed in the wrong format, the Base Amount shall be reduced by 75%.

TABLE VII- BASE AMOUNT - TRANSACTION SPECIFIC DISCLOSURES UNDER REGULATIONS 13(3), 13(4), 13(4A) AND CORRESPONDING 13 (6) OF SEBI (PIT) REGULATIONS 1992,

PERCENTAGE OF SHAREHOLDING OR VOTING ACQUIRED BUT NOT DISCLOSED, etc.	BASE AMOUNT*
Upto 2%	Rs 1.5 lakh + Rs 7,500/- For every three months delay or part thereof
2% to less than 5%	Rs 2.5 lakh + Rs 12,500/- For every three months delay or part thereof
5% to less than 10%	Rs 6 lakh + Rs17,500/- For every three months delay or part thereof
10 % to less than 15%	Rs 12 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rs22,500/- For every three months delay or part thereof
15% and above	Rs 20 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rs25,000/- For every three months delay or part thereof

***In cases of disclosures not made by the connected persons and by the KMPs, the Base Amount may be increased by 25%.**

In case the applicant is charged for non-disclosure of both SEBI (SAST) Regulations and SEBI (PIT) Regulations, the Base Amount arrived at for any one of the Regulations shall be reduced by 75%.

OTHER DISCLOSURES AND REPORTING REQUIREMENTS

B(D) = BASE VALUE AS PER TABLE IX X SUM OF BASE AMOUNTS AS PER TABLE VIII

TABLE VIII- BASE AMOUNT

NATURE OF DEFAULT	BASE AMOUNT
TYPE OF NON-DISCLOSURE	

SEBI (PIT) Regulations **Periodical and other disclosures**	**Rs 3 lakh** **+** **Rs 5,000/- for every three months delay or part thereof**
SEBI (SAST) Regulations **Reporting requirements or disclosures for which exemptions are available, except cases of non-compliance of a condition precedent for availing exemption would result in the triggering of an open offer obligation** (In respect of Regulation 6 of SEBI (SAST) Regulations, 1997 the provisions are dated and no amount may be recommended, except in case of standalone violations of Regulation 6 of SEBI (SAST) Regulations, 1997 the minimum amount of **Rs** 2 lacs may be applicable)	**Rs 2 lakh** **+** **Rs 10,000/- for every three months delay or part thereof**
SEBI (FII) Regulations **Failure to provide information** **Intimation of material changes**	**Rs 20 lakh per default** **Rs 5 lakh per default**
Others **Code of conduct reporting requirements or** **Disclosures on appointment of director or** **Any other disclosure related defaults that are not detailed in these guidelines, if deemed appropriate**	**Rs 2 lakh** **+** **Rs 10,000/- for every three months delay or part thereof**

TABLE IX - BASE VALUE

	NATURE OF DEFAULT	BASE VALUE
a)	**Per se SAST or PIT or ICDR regulation, etc. violation, not falling in any of the below mentioned categories**	**1**

b)	**Non-disclosure charge in combination with any other charge**	**1.1**
c)	**Charge of non-disclosure, although timely related disclosure made under any other Regulation(s)**	**0.6**
d)	**Charge of non-disclosure, although timely related disclosure made under any other regulation of SEBI (SAST) Regulations or listing agreement, etc.**	**0.55**
e)	**Companies with paid-up share capital below Rs 10 crore (not applicable to companies which are exclusively holding companies)**	**0.5**

All factors 'a' to 'e' in Table IX are mutually exclusive. In case of applicability of more than one factor, the lowest factor is to be considered.

OPEN OFFER DEFAULTS INCLUDING INDIRECT ACQUISITION (CONSENTABLE CASES ONLY)

The Benchmark amount for open offer defaults i.e. B (OO) may be computed on the basis provided below.

However the IC or HPAC or Panel of WTM's, may, in cases of serious open offer default, take the Benchmark Amount of the applicant as per the provisions of securities laws if the amounts arrived at on the basis of the calculations are found to be low and not commensurate to the seriousness of the alleged default.

The non-compliance of a condition precedent for availing exemption would result in the triggering of an open offer obligation and would be considered as per under Table X and XI.

B(OO) = SUM OF BASE VALUES AS PER TABLE XI ×BASE AMOUNT AS PER TABLE X

TABLE X-BASE AMOUNT

NATURE OF DEFAULT	BASE AMOUNT FOR ACQUIRER AND PACS
Delayed open offer	**Rs 25 lakh or 0.25% of the open offer size, i.e. max number of shares for which open offer must be given x applicable open offer price, which ever is higher**
Cases of open offer defaults referred for adjudication	
Delayed open offer (after direction from the Board)	**Rs 50 lakh or 0.5% of the open offer size, whichever is higher .**

Where the making of the open offer is infructuous i.e. when company has been delisted, etc.	**To be recommended or decided by the IC or HPAC or Panel of WTMs on the basis of the facts and circumstances of each case**
Where the open offer is not beneficial to the shareholders	

TABLE XI-BASE VALUES

NATURE OF DEFAULT UNDER CONSIDERATION		BASE VALUE
a	**Entity in control of the target company, prior to triggering the takeover**	**1**
b	**Entity not in control of target company, prior to triggering the takeover**	**1.2**
c	**Illiquid Scrip**	**0.3**

Factors 'a' and 'b' are mutually exclusive.

Chapter VII

BENCHMARK AMOUNT FOR OTHER DEFAULTS BY INTERMEDIARIES , REGULATED ENTITIES, 'B (I/RE)':

The Benchmark Amount for other defaults by intermediaries (I) and other regulated entities (RE) i.e. B(I/RE) may be computed on the basis of this Chapter. This Chapter is not applicable where default is dealt with under Chapter V or is by a CIS, mutual fund, etc., where the proposed remedy may be disgorgement or refund or winding up of the scheme or fund.

However the IC or HPAC or Panel of WTM's may in cases of serious violations take the Benchmark Amount of the applicant as per the provisions securities laws if the amounts arrived at on the basis of the calculations are found to be low and not commensurate to the seriousness of the alleged default.

B(I/RE) = SUM OF ALL BASE AMOUNTS AS PER TABLE XII + 25 % OF THE GROSS FEE EARNED* IN RESPECT OF THE MAJOR DEFAULTS, WHERE DETERMINABLE

***A lower percentage may be taken in respect of Public Sector Undertakings.**

TABLE XII- BASE AMOUNT

NATURE OF DEFAULT	BASE AMOUNT	
	MINOR CASES	MAJOR CASES#

Code of conduct related defaults	**Rs1 lakh per default**	**Rs8 lakh per default**
Section 15B of SEBI Act , etc.		
Section 15F of SEBI Act & other stock-broker defaults vis-à-vis clients, etc.		
Delay in redressing investor grievances*		
Section 15D &15E of SEBI Act- CIS, AMC, and other fund activity related defaults, etc., including conduct related defaults	**Rs2 lakh per default or 0.001% of the AUM or 0.1% of the net worth whichever is higher**	**Rs20 lakh per default or 0.001% of the AUM or 0.1% of the net worth whichever is higher**
Other defaults not provided elsewhere in these guidelines, if deemed appropriate	**Rs1 lakh per default**	**Rs8 lakh per default**

*** The IC or HPAC or Panel of WTMs may based on the facts and circumstance of the case, gravity of the grievances and the past track record of the entity in redressing investor grievances, arrive at a lump sum Base Amount of `5 lakh or a lesser amount.**

 # The Base amount may also take into account any ill-gotten profit and/or loss avoided in major cases. In case of violations under Securities Contract (Regulations) Act, 1956 and the rules, regulations made thereunder the IC or HPAC or Panel of WTMs may recommend or decide a higher base amount. Further, in case of proceedings before DM or WTM, the Base Amount may also be computed by taking into account a suitable fraction or multiple of the gross annual income during the period of default, as may be recommended or decided by the IC or HPAC or Panel of WTM's, after taking into account the facts and circumstances of the case.

CLARIFICATIONS:

a. In case of CIS, mutual fund, AIF, etc., related defaults, the settlement amount shall be recovered from the promoter or CIMC; and from trustees or sponsors or AMC or manager in case of defaults by AMCs or Mutual Fund, etc., as may be deemed appropriate.

b. In case the CIMC or AMC, etc., investment decisions have caused wrongful loss to the investors, the CIMC or AMC, etc., shall be required to make good such loss, to the investors. In case, the same is not possible, the amount shall be deposited in the Investor Protection and Education Fund of SEBI.

c. Conduct related defaults may be settled only if the applicant has rectified its conduct and the investor grievances have been redressed to the satisfaction of SEBI.

2. Proposed Revision: Chapters V and VI

CHAPTER V

APPLICABLE BASE VALUES AND FACTORS

BV= 1+ SUM OF APPLICABLE BASE VALUES

I. While assessing the relevant factors, the IC or HPAC or Panel of WTMs may take into account the following general mitigating factors with a base value of '-0.2' applied once for all or any of them:

1. The quantum of IA would affect the ability of the applicant to make restitution to investors:
   Explanation. - In such cases higher IA may be sought from the officer who is in default.
2. The applicant had minimal participation in the alleged default;
3. Proactive and exceptional cooperation, including:
   a. Prompt and detailed self-identification of suspected or uncovered misconduct;
   b. Early self-identification of contraventions followed by thorough internal reviews and sharing of discovered facts;
   c. Substantial assistance to an investigation or inquiry by obtaining and providing evidence.
4. Acceptance of responsibility and acknowledgement of misconduct to the Board prior to detection and intervention by truthfully admitting the conduct;
5. Voluntarily employing subsequent substantial corrective measures to avoid recurrence of misconduct;
6. Where the delay in complying with the reporting requirement was less than 7 days and non-reporting did not result in undue gain or loss to any person;
7. Voluntary acts of compensation, disgorgement of commission, profits and payment of restitution to investors;
8. Disclosure made in the incorrect format; and
9. Applicant is a unit of governmental authority including a public-sector unit.

II. While assessing the relevant factors, the IC or HPAC or Panel of WTMs may take into account the following general aggravating factors with a base value of '0.2' applied once for all or any of them:

1. Efforts to frustrate or prolong an investigation, inquiry or a civil and administrative proceeding, including settlement proceedings:
   Explanation. - This factor may be taken into account only when the applicant is or may be charged for non-compliance with summons during investigation or when the applicant fails to comply with the summons in a civil and administrative proceeding;
2. Providing inaccurate or misleading testimony or information or willfully failing to provide information that he was bound to provide;
3. Misconduct over an extended period of time which is not less than 30 days;
4. Significant monetary loss to the clients which exceeds in aggregate of Rs 5 crores;
5. Applicant had failed to heed prior regulatory guidance and prior warnings;
6. Evidence of planning, pre-meditation or sophisticated means:
   Explanation: Conducting default across different jurisdictions, hiding assets or transactions, or both, through the use of fictitious entities, corporate shells or offshore financial accounts ordinarily indicates sophisticated means.

7. A listed intermediary or securities market infrastructure institution was substantially jeopardized:
   Explanation. - A listed intermediary or securities market infrastructure institution shall be deemed to have been substantially jeopardized if as a result of the alleged default:
   a. it has become insolvent or an application under the Insolvency and Bankruptcy Code, 2016 was admitted;
   b. it was unable on demand to refund fully any public deposit, payment or investment; or
   c. it is so depleted of assets that it is forced to merge with another institution in order to continue active operations.

8. The liquidity of the securities of a publicly traded company was substantially endangered i.e. it was delisted or trading of the company's securities was halted for more than one full trading day;
9. The applicant abused a position of trust or used a special skill, in a manner such that significantly facilitated the commission or concealment of the alleged default:
   Explanation 1. - This factor applies if the applicant occupied and abused a position of trust. It does not apply to an ordinary tippee.

   Explanation 2. - This factor applies if the applicant's position involved regular participation or professional assistance in creating, issuing, buying, selling, or trading securities or products was used to facilitate significantly the commission or concealment of the default. It does not apply to clerical staff in an organisation; as such position ordinarily does not involve special skill.

   Explanation 3. - 'Special skill' refers to a skill not possessed by members of the general public and requires professional education, training or licensing, e.g. charted accountant, advocate, auditor, compliance officer, etc.

   Explanation 4. - This factor also applies where the applicant has represented himself to hold a position of trust when, in fact, he does not.

10. The applicant was the key-operator, whether or not he himself traded:
Explanation 1. - A person is a key-operator if he was an organizer or leader of an illegal activity or the main beneficiary of the default:
Provided that, if a person is merely a manager or supervisor (but not an organizer or leader or the main beneficiary) then he is not a key-operator.

Explanation 2. - The IC or HPAC or Panel of WTMs may take into account factors such as share of profits, the recruitment of accomplices, the degree of control and authority exercised over others.

11. Exercising management control by use of fraudulent or forged securities or securities issued without appropriate approvals; and
12. Reporting of false information.

III. While assessing the relevant factors, the IC or HPAC or Panel of WTMs may take into account the following factors tending to show the alleged default was deliberate with a base value of '0.25' applied once for all or any of them:

1. The actions were not in accordance with the applicable internal procedures;
2. The individual knowingly took decisions relating to the violation beyond his field of competence;
3. The individual intended to benefit financially from the violation, either directly or indirectly;
4. The alleged default was repetitive.

IV. While assessing the relevant factors, the IC or HPAC or Panel of WTMs may take into account the following factor tending to show the alleged default was reckless with a base value of '0.3':

1. The body corporate or the responsible person, appreciated there was a risk that their actions or inaction could result in a violation of securities laws and failed adequately to mitigate that risk:
Explanation. – The following shall be deemed to be reckless, -
   a. failure to appoint competent officials for discharge of their duties, including a compliance officer;
   b. failure to put in place adequate systemic safeguards; and
   c. failure to put in place a code of conduct.

V. While considering the various factors and the aggregate base values, the following specific base values given shall also be taken into account, -

TABLE IV- GENERAL BASE VALUES, APPLICABLE IN ALL CASES

	NATURE OF VIOLATION	**BASE VALUE**
a.	Fraudulent and unfair trade practice (FUTP); or Insider trading, including tipping (IT); or violation of code of conduct noted in an investigation or inquiry related to FUTP or IT Or	0.25

	FUTP or IT in combination with the violation of code of conduct or any other regulation Or FUTP in combination IT or in combination with a violation of *requirement relating to anti-money laundering and know your client.* Or Failure by a market infrastructure institution or its principal officers to conduct its business in a fair manner. Or Failure by a market infrastructure institution or its principal officers to conduct its business in a fair manner in combination with FUTP or IT or the violation of code of conduct or any other regulation	0.3 0.35 0.50 0.75 [In case multiple are applicable, only the highest value shall be applied.]
b.	Factors for volume traded and/or price change for the default	Sum of **'V', 'P'** and **'Q',** wherever applicable, to be applied to each member of group or of the applicant when he acts alone, only if the volume traded or price change, quantity traded in respect of the group, of which the applicant is a part of or of the applicant when he acts alone, as the case may be, can be calculated from the findings brought out in the investigation report or inquiry or notice to show cause or order, as the case may be. In case multiple trading periods are involved, the highest change has to be considered.
c.	Time value of ill-gotten gains*	0.09 × multiple of calendar years from the date of commission of the default
d.	Reputation risk applicable in all settlements without admitting violation of securities laws	All applicants: 0.25

e.	Violation in illiquid scrip	0.3
f.	Persons who are indigent or undergoing liquidation or bankruptcy process or whose resolution/repayment plan has been submitted to the adjudicating authority for approval	- 0.3

***Factor 'c' is applicable only in cases where the actual profit and/or loss avoided (approx) is determinable and disgorgement with interest is not ordered. While calculating the period, the fractions may be ignored.**

'V' = VALUE FOR THE HIGHEST % OF VOLUME TRADED IN ANY TRADING PERIOD DURING THE ENTIRE PERIOD OF VIOLATION

In case of more than one scrip, the scrip with the highest volume traded is to be considered

TABLE IVA- SPECIAL BASE VALUES, IN ADDITION TO GENERAL BASE VALUES		
% VOLUME TRADED (ILLIQUID SCRIP)	**'V'**	**% VOLUME TRADED (LIQUID SCRIP)**
Upto 50%	0.1	Upto 2%
50 -60%	0.15	2-5%
60-75%	0.2	5-10%
75% or more	0.25	10% or more

'P' = VALUE FOR HIGHEST % OF PRICE CHANGE DURING THE ENTIRE PERIOD OF VIOLATION

In case of more than one scrip, the scrip with the highest price change is to be considered

TABLE IVB- SPECIAL BASE VALUES, IN ADDITION TO GENERAL BASE VALUES		
% PRICE CHANGE (ILLIQUID SCRIP)	**'P'**	**% PRICE CHANGE (LIQUID SCRIP)**
Upto 50%	0.1	Upto 5%
50-100%	0.15	5-10%
100-200%	0.2	10-20%
200% or more	0.25	20% or more

'Q' = VALUE FOR HIGHEST % OF PRICE CHANGE, DURING THE PERIOD OF DEFAULT FOR F&O & LEVERAGED PRODUCTS

In case of more than one product, the contract with the highest price change is to be considered

TABLE IVC- SPECIAL BASE VALUES, IN ADDITION TO GENERAL BASE VALUES	
% PRICE CHANGE	**'Q'**
Upto 0.5%	0.1
0.5-1%	0.15
1-5%	0.2
5% or more	0.25

TABLE V- SPECIAL BASE VALUES, IN ADDITION TO GENERAL BASE VALUES FOR DISCLOSURE AND OPEN OFFER DEFAULTS		
	NATURE OF VIOLATION	**BASE VALUE**
a.	Non-disclosure charge (including incorrect or incomplete disclosure) under any regulation relating to takeover, insider trading or issue or listing of securities in combination with any other charge	0.20
b.	Non-Disclosure charge (including incorrect or incomplete disclosure) where Applicant is a body corporate with paid-up equity share capital (including reserves) below Rupees Ten crores (not applicable to companies which are exclusively holding companies)	- 0.5
c.	In open offer violations: acquirer not in control of target company, prior to triggering the takeover	0.25

VI. In cases where joint and several liability exists, a single IA may be based on the factors and the weightages applicable to the default in general, as the IC or HPAC or Panel of WTMs may deem fit and any other factor may also be considered while imposing any limit in respect of amounts that may be recovered from a particular applicant, in respect of the IA calculated for multiple applicants.

CHAPTER VI

APPLICABLE BENCHMARK AMOUNT

APPLICABLE B = 'The illegal profits' + 'loss caused to investors', [quantified as per the guidelines, if any, issued by the Board]
Or
The BA as per the Tables in this Chapter,
whichever is higher.

GENERAL GUIDELINE: In case the applicant is charged for non-disclosure of Regulations relating to Open Offer [*SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, and any subsequent similar regulations*] and PIT [*Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, SEBI (Prohibition of Insider Trading) Regulations, 2015, and any subsequent similar regulations*], the Benchmark Amount arrived at for the highest such charge shall be reduced by 75%.

TABLE-VI

BA FOR ALLEGED DEFAULT RELATING TO OPEN OFFER

NATURE OF VIOLATION	BA FOR ACQUIRER AND PERSONS ACTING IN CONCERT
DELAYED OPEN OFFER	RUPEES 25 LAKH OR 0.25% OF THE OPEN OFFER SIZE, I.E. MAX NUMBER OF SHARES FOR WHICH OPEN OFFER MUST BE GIVEN X APPLICABLE OPEN OFFER PRICE, WHICHEVER IS HIGHER
DELAYED OPEN OFFER (AFTER DIRECTION FROM THE BOARD)	RUPEES 50 LAKH OR 0.5% OF THE OPEN OFFER SIZE, WHICHEVER IS HIGHER

WHERE THE MAKING OF THE OPEN OFFER IS INFRUCTUOUS I.E. WHEN COMPANY HAS BEEN DELISTED, WHEN OPEN OFFER IS NOT BENEFICIAL TO SHAREHOLDERS, ETC	INFRUCTUOUS BY AN ACT OF THE COMPANY REQUIRED TO MAKE AN OPEN OFFER	INFRUCTUOUS DUE TO OTHER REASON, INCLUDING WHEN OPEN OFFER IS NOT BENEFICIAL TO SHAREHOLDERS
	RUPEES 1 CRORE OR OPEN OFFER SIZE, WHICHEVER IS HIGHER	ANY AMOUNT BETWEEN THE MINIMUM PENALTY TO PROBABLE COST OF OPEN OFFER AS RECOMMENDED BY THE CORPORATE FINANCE DEPARTMENT OF THE BOARD

TABLE-VII

BA FOR ALLEGED DEFAULT RELATING TO DISCLOSURES UNDER SECURITIES EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS -1997/2011

PERCENTAGE OF SHAREHOLDING OR VOTING RIGHTS ACQUIRED OR DISPOSED BUT NOT DISCLOSED OR PERCENTAGE OF ENCUMBERED SHARES BUT NOT DISCLOSED, etc.	BA FOR VIOLATION OF		
	REGULATION 7 OF 1997 REGULATIONS OR REGULATION 29 OF 2011 REGULATIONS (I)	REGULATION 8 OF 1997 REGULATIONS OR REGULATION 30 OF 2011 REGULATIONS (II)	REGULATION 8A OF 1997 REGULATIONS OR REGULATION 31 OF 2011 REGULATIONS (III)
Upto 2 %	Rupees 2 lakh + Rupees 5,000/- For every three months delay# or part thereof		

2% to less than 5 %	Rupees 5 lakh + Rupees 10,000/- For every three months delay or part thereof
5 % to less than 10%	Rupees 10 lakh + Rupees 15,000/- For every three months delay or part thereof
10 % to less than 15 %	Rupees 15 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rupees 20,000/- For every three months delay or part thereof
15% and above	Rupees 20 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rupees 25,000/- For every three months delay or part thereof

Notes to Table VII:

1. **Table VII is not applicable in cases where the disclosure related violation is in combination with FUTP or PIT.**
   Explanation: Dealing while in possession of material financial or shareholding information may be treated as insider trading.
2. **The BA for violation at (II) shall only be as per the lowest slab, irrespective of change in shareholding over the reporting period. In case of violations related to disclosures that are required to be made annually\ the amount for delay for every three months or part thereof shall be computed only for the first disclosure violation. In case the noticee complies with the annual reporting requirements for a few years, such compliance will not result in a higher amount than would have otherwise be calculated for continuous violations.**
3. **The period of delay is to be calculated from the last day, when the disclosure ought to have been made, as required by the regulations.**

TABLE VIII

BA – ALLEGED DEFAULT RELATING TO TRANSACTION SPECIFIC DISCLOSURES UNDER REGULATIONS 13(3), 13(4), 13(4A) AND CORRESPONDING 13 (6) OF 1992 PIT REGULATIONS [INCLUDES, CORRESPONDING TRANSACTION SPECIFIC DISCLOSURES UNDER REGULATIONS OF 2015 PIT REGULATIONS]

PERCENTAGE OF SHAREHOLDING OR VOTING RIGHTS ACQUIRED OR DISPOSED BUT NOT DISCLOSED OR PERCENTAGE OF ENCUMBERED SHARES BUT NOT DISCLOSED, ETC.	BA
Upto 2%	Rupees 2.5 lakh + Rupees 7,500/- For every three months delay or part thereof
2% to less than 5%	Rupees 6 lakh + Rupees 12,500/- For every three months delay or part thereof
5% to less than 10%	Rupees 12 lakh + Rupees 17,500/- For every three months delay or part thereof
10 % to less than 15%	Rupees 18 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rupees 22,500/- For every three months delay or part thereof
15% and above	Rupees 25 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rupees 25,000/- For every three months delay or part thereof

Notes to Table VIII:

1. **In cases of disclosure related violations by connected persons or by key managerial persons, the BA may be increased by 25%.**
2. **Table VIII is not applicable in cases where the disclosure related violation is in combination with FUTP or IT.**
   Explanation: Dealing while in possession of material financial or shareholding information may be treated as IT.

TABLE IX

BA - DISCLOSURES RELATED VIOLATIONS NOT COVERED IN TABLES VII AND VIII

NATURE OF ALLEGED DEFAULT **TYPE OF DISCLOSURE RELATED VIOLATION**	**BASE AMOUNT**
PIT REGULATIONS	
Periodical and other disclosures	Rupees 5 lakh + Rupees 5,000/- for every three months delay or part thereof, if applicable
OPEN OFFER REGULATIONS	
Reporting requirements or disclosures for which exemptions are available, except cases of non-compliance of a condition precedent for availing exemption would result in triggering of an open offer obligation (The Regulation 6 of 1997 Regulations are dated and no amount may be imposed for its violation, except in case of standalone violations of Regulation 6 the minimum SA may be applicable)	Rupees 5 lakh + Rupees 10,000/- for every three months delay or part thereof, if applicable
VIOLATIONS UNDER REGULATIONS RELATED TO FOREIGN INSTITUTIONAL INVESTORS	
Failure to provide information	Rupees 20 lakh per default

Intimation of material changes	Rupees 5 lakh per default
RESIDUARY	
Code of conduct reporting requirements or Disclosures on appointment of director or Any other disclosure related violations that are not detailed in this Chapter, if deemed appropriate	Rupees 5 lakh + Rupees 10,000/- for every three months delay or part thereof, if applicable

Notes to Table IX:

1. **In cases of disclosure related violations by key managerial persons, the Benchmark Amount may be increased by 25%.**
2. **Table IX is not applicable in cases where the disclosure related violation is in combination with FUTP or IT.**
   Explanation: Dealing while in possession of material financial or shareholding information may be treated as IT.

TABLE-X

RESIDUARY BA, FOR EACH UNIT OF ALLEGED DEFAULT FOR EACH APPLICANT OR ON JOINT LIABILITY BASIS (AS PER THE SUM OF APPLICABLE AMOUNTS IN CASE OF JOINT APPLICANTS)

	INDIVIDUAL (PRINCIPAL OFFICERS NOT INCLUDED) (I)	BODY CORPORATE & FIRM (AND PRINCIPAL OFFICERS IN CASES RELATING	PRINCIPAL OFFICERS& COMPLIANCE OFFICERS [WHEN NOT IN II, IV-VII]	SECTION 15B AND 15F OF SEBI ACT & SIMILAR DEFAULTS (AND PRINCIPAL OFFICERS IN	FAILURE IN REDRESSING INVESTOR GRIEVANCES (AND PRINCIPAL OFFICERS IN CASES RELATING TO JOINT LIABILITY WITH	MARKET INFRASTRUCTURE INSTITUTIONS (AND PRINCIPAL OFFICERS IN CASES	FUND RELATED DEFAULTS (AND PRINCIPAL OFFICERS IN CASES RELATING TO JOINT LIABILITY WITH THE FUND) (VII)

		TO JOINT LIABILITY WITH THE BODY CORPORATE /FIRM) (II)	**(III)**	**CASES RELATING TO JOINT LIABILITY WITH THE INTERMEDIARY) (IV)**	**THE INTERMEDIARY/ISSUER) (V)** **(FOR DELAY REDUCE TO 1/4)**	**RELATING TO JOINT LIABILITY WITH THE INSTITUTION) (VI)**	
BA WHERE: DEFAULT RELATE TO FUTP OR IT, **CODE OF CONDUCT VIOLATION RELATING TO FUTP OR IT,** **INADEQUATE SYSTEMIC SAFEGUARDS RELATING TO FUTP OR IT,** **FALSE/ MISLEADING/ INCORRECT/INCOMPLETE DISCLOSURES IN OFFER DOCUMENTS,** **FAILURE BY MARKET INFRASTRUCTURE**	RUPEES 15 LAKHS	RUPEES 1.5 CRORES	RUPEES 45 LAKHS	RUPEES 15 LAKHS	RUPEES 30 LAKHS	RUPEES 5 CRORE	RUPEES 33 LAKHS OR 0.01% OF THE AVERAGE ASSET UNDER MANAGEMENT, AT TIME OF VIOLATION OR 0.05% OF THE AVERAGE NET WORTH, AT TIME OF VIOLATION, WHICHEVER IS HIGHER

INSTITUTIONS TO CONDUCT BUSINESS IN THE REQUIRED MANNER, **A RECKLESS VIOLATION,** **OR** **A DISGORGEMENT/REFUND IN EXCESS OF RUPEES 1CRORE. (M)**							
BENCHMARK WHERE VIOLATION INVOLVED AT (M) AND, - **SUCH VIOLATION DIRECTLY OR INDIRECTLY –** **(I) RESULTED IN SUBSTANTIAL LOSSES TO OTHER PERSONS, OR** **(II) CREATED A SIGNIFICANT RISK OF SUBSTANTIAL**	RUPEES 60 LAKHS	RUPEES 3 CRORE	RUPEES 2 CRORE	RUPEES 60 LAKHS	RUPEES 80 LAKHS	RUPEES 10 CRORE	RUPEES 60 LAKHS OR 0.05% OF THE AVERAGE ASSET UNDER MANAGEMENT, AT TIME OF VIOLATION OR 0.075% OF THE AVERAGE NET WORTH, AT TIME OF VIOLATION, WHICHEVER IS

LOSSES TO OTHER PERSONS, OR **(III) AFFECTED THE INTEGRITY OF THE SECURITIES MARKET** **(N)**							HIGHER
RESIDUARY (O)	RUPEES 3 LAKHS	RUPEES 15 LAKHS	RUPEES 10 LAKHS	RUPEES 3 LAKHS	RUPEES 6 LAKHS	RUPEES 3 CRORE	RUPEES 15 LAKHS OR 0.001% OF THE AVERAGE ASSET UNDER MANAGEMENT, AT TIME OF VIOLATION OR 0.01% OF THE AVERAGE NET WORTH, AT TIME OF VIOLATION, WHICHEVER IS HIGHER

Note to Table X:

1. **In case of applicability of more than one BA, the highest is to be considered.**
2. **In this Schedule, 'Principal Officer' means a person that may be covered under Section 27 of the SEBI Act, as amended by the Finance Act, 2018.**
3. **'Fund' means an AIF, MF, CIS, and any other pooling arrangement required to be registered with the Board.**

20. Chapter VIII of Schedule II:

Current Regulatory provision:

The existing Schedule II of the Settlement Regulations needs to be revised for taking into account the repetitive nature of a default.

Recommendation and rationale:

The Committee is of the view that the Indicative Amount should take into account the repetitive nature of the default.

The Committee's proposal in the context of repetitive default can be applied even in existing cases and also in non-settlement proceedings as the Schedule II is relevant in all enforcement proceedings. In this regard the committee has examined the practices of the USA SEC[44] and the FINRA's *Sanction guidelines*[45] and accordingly framed Chapter VIII, containing suitable guidelines for taking into account the repetitive nature of the default.

Proposed Revision to the Settlement Regulations:

Existing Chapter	Suggested Revision
None	**Chapter VIII** **Repetitive nature of default** I. The counts of defaults may be selected using one or more or a combination of the methods indicated in this Chapter. Explanation. - Different methods may be used in respect of different persons in the same cause of action as may be required for arriving at a reasonable IA. II. In general, the unit of alleged default may be selected from either of, or a combination of, the following, - i. the (approx.) number of purchase or sale transaction, ii. the (approx.) number of individual deceptions attempted, iii. the (approx.) number of investors involved, or iv. 'Course of conduct' standard -whereby each counts amounts to a complete violation. Discretion may be used to apply a different standard that is

[44] See, e.g., *SEC* v *Milan Capital Group, Inc*., 2001 U.S. Dist. LEXIS 11804 (S.D.N.Y. Aug 14, 2001) (penalties assessed based on each of the 200 fraudulent sales to customers); *SEC* v *M&A West, Inc*., 2005 U.S. Dist. LEXIS 22358 (N.D. Cal. June 20, 2005) (assessing maximum penalty for each of the five charges under the statutes and rules); and *SEC* v *Lipkin*, 2006 U.S. Dist. LEXIS 10496 (E.D.N.Y 2006) (treating each of the two fraudulent kickback schemes, rather than each of the fraudulent sales to customers during the pendency of the schemes, as a separate violation for penalty purposes).

[45] Latest FINRA Sanction Guidelines available at <http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf>.

	less prejudicial to a person after taking into account the interest of the investors in securities: Provided that, where a large number of counts of a default are noted, for arriving at a reasonable IA a less prejudicial standard of selecting the unit of default may be applied. Explanation. - In respect of a default relating to a report or statement,- i. each person to whom a misleading report was sent or statement made may involve a separate "act"; ii. each distinct misleading report or statement made may be a separate "act"; iii. each distinct misleading statement within a report may be a separate "act"; iv. the course of conduct standard in respect of all or any such reports or statements; or v. a combination of i, ii, iii and iv above III. **Course of Conduct standard**: Depending on the facts and circumstances of a case, for the purpose of arriving at a reasonable IA, "course of conduct" standard in which multiple counts of a violation are aggregated and counted as a single violation for purposes of calculating IA may be applied. Explanation 1. - It may be reasonable to aggregate multiple counts of a default if, - (a) the conduct did not involve manipulative, fraudulent or deceptive intent or insider trading, except where the recommended IA would otherwise be extremely disproportionate to the conduct; *Explanation*. – "disproportionate" and "reasonable" refer to the appropriateness vis-à-vis the deterrence sought to be achieved and not appropriateness vis-à-vis the illegal profit made by the applicant or loss caused to investors. (b) the conduct did not result in substantial injury to the rights of public investors, or if restitution was made in such cases; and (c) the violations resulted from a systemic problem or cause that has been corrected. Explanation 2. – Depending on the facts and circumstances, the units of violation may be based on how long the violations continued, however no uniformity of the period of time (daily, weekly, fortnightly, monthly, yearly) is required. The multiple counts of violation acts may be combined into one or more than one course of conduct.

IV. COMPARATIVE TABLE

Sr. No.	Regulation No.	Existing Regulations	Proposed New Regulations
1	1	**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, 2014. (2) They shall be deemed to have come into force with effect from 20th day of April 2007.	**Short title and commencement.** **1.** (1) These regulations may be called the Securities and Exchange Board of India (**Settlement Proceedings**) Regulations, 2018. (2) They shall be deemed to have come into force with effect from 20th day of April 2007.
	2	**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 the 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) "panel of whole time members" means the panel consisting of two or more Whole Time Members of the Board; (e) "securities laws" means the Act, the Securities Contract (Regulations) Act, 1956 (42 of 1956), the Depositories Act,1996 (22 of 1996), and the rules and regulations made thereunder; (f) "specified proceedings" means the proceedings which have been initiated or may be initiated under Section 11, Section 11B, Section 11D, sub-Section (3)	**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~~ **contravention** of any provision of the 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)~~**Act**; (d) "Panel of Whole Time Members" means the panel consisting of two or more Whole Time Members of the Board; (e) "securities laws" means the Act, the Securities Contract (Regulations) Act, 1956 (42 of 1956), the Depositories Act,1996 (22 of 1996), **the relevant provisions of the any other law to the extent it is administered by the Board** and the relevant rules and regulations made thereunder; (f) "specified proceedings" means the proceedings which may be initiated or have been initiated **and are pending before any forum, for the violation of**

		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; (g) "specified" means specified by the Board through circulars or guidelines; (h) "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.	**securities laws,** 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; (g) "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 Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and **the Companies Act, 2013** 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.
	3	**Application.** 3. (1) A person, against whom any specified proceedings have been initiated or may be initiated, may make an application to the Board in the Form specified in Part-A of the Schedule-I: Provided that any person who proposes to dispose of any proceedings with regard to defaults under securities laws, pending before the Tribunal or a court, wherein the Board is a party may also file the settlement proposal in the Form as specified in Part-A of the Schedule-I. (2) The application made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Part-B and the undertakings and waivers as specified in Part-C of the Schedule-I: Provided that the rejection of the application shall not affect the	**Application.** **3.** (1) A person, against whom any specified proceedings have been initiated **and are pending** or may be initiated, may make an application to the Board in the Form specified in Part-A of the Schedule-I. ~~Provided that any person who proposes to seek settlement of any proceedings with regard to defaults under securities laws, pending before the Tribunal or a court, where the Board is a party may also file the settlement application in the Form as specified in Part-A of Schedule-I.~~ (2) The application made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Part-B of Schedule I and the undertakings and waivers as specified in Part-C of Schedule-I: Provided that the rejection of the application shall not affect the continued validity of the undertakings and waivers and subject to **such**

		continued validity of the undertakings and waivers and the Board or the applicant, subject to the undertakings and waivers, shall be free to resort to legal recourse as may be available under law.	**undertakings and waivers, the Board or the applicant, shall be free to initiate or pursue such proceedings as may be appropriate in accordance with law.**
		(3) The applicant shall make full and true disclosures in the application in respect of the alleged default(s): Provided that the facts established against the applicant or admitted by him in any ongoing or concluded proceedings with respect to the same cause of action, under any law, shall be deemed to be admitted by the applicant in respect of the proceedings proposed to be settled.	(3) The applicant shall make full and true disclosures in the application in respect of the alleged default(s): Provided that the facts established against the applicant or admitted in any ongoing or concluded proceedings with respect to the same cause of action, under any law, shall be deemed to be admitted by the applicant in respect of the proceedings proposed to be settled.
		(4) The applicant shall make one application for settlement of all the proceedings that have been initiated or may be initiated in respect of the same cause of action: Provided that an applicant, who has applied for compounding of an offence before a court for the same cause of action related to the specified proceedings, shall, within thirty days from the date of making the application, make an application under sub-regulation (1) in respect of the specified proceedings.	(4) The applicant shall make one application for settlement of all the proceedings that have been initiated or may be initiated in respect of the same cause of action. ~~Provided that an applicant, who has applied for compounding of an offence before a court for the same cause of action related to the specified proceedings, shall, within thirty days from the date of making the application, make an application under sub-regulation (1) in respect of the specified proceedings.~~ **(5) The provisions of Chapters IV to VI and Schedule-II may be applied *mutatis mutandis* for arriving at a proposal pursuant to a compounding application filed or to be filed before the court.**
		(5) An application that is not complete in all respects or does not conform to the requirements of these regulations shall be returned. (6) The applicant whose application has been returned under sub- regulation (5)	(6) An application that is not complete in all respects or does not conform to the requirements of these regulations shall be returned **to the applicant.** Explanation. - An application for settlement of defaults related to disclosures, shall to the extent

		may, within fifteen days from the date of communication of the rejection, submit the revised application that conforms to the requirements of these regulations: Provided that no further opportunity shall be given to the applicant to make an application in respect of the alleged default. (7) Where the applicant is an association or a firm or a body corporate, the application and undertakings and waivers shall be executed by the person in charge of, and responsible for the conduct of the business of such firm or association, or body corporate and the same shall bind the firm or association, the body corporate and any officer who is in default. Explanation.- For the purpose of this sub-regulation, the expression 'officer who is in default' has the same meaning as provided in sub-Section (60) of Section 2 of the Companies Act, 2013. (8) An application for settlement of defaults related to disclosures, shall be made after making the required disclosure.	possible, be made after making the required disclosure. (7) The applicant whose application has been returned under sub- regulation (5**6**) may, within fifteen days from the date of communication **from the Board**, submit the **complete and** revised application that conforms to the requirements of these regulations: Provided that no further opportunity shall be given to the applicant to make an application in respect of the alleged default **at the same stage of the proceedings, as indicated in Table I in Schedule-II.** (8) Where the applicant is an association or a firm or a body corporate, the application and undertakings and waivers shall be executed by the person in charge of, and responsible for the conduct of the business of such firm or association or body corporate **or a limited liability partnership** and the same shall bind the firm or association, the body corporate and any officer who is in default. Explanation. - For the purpose of this sub-regulation, the expression 'officer who is in default' shall have the same meaning as provided in sub-Section (60) of Section 2 of the Companies Act, 2013. ~~(8) An application for settlement of defaults related to disclosures shall be made after making the required disclosures.~~
	4	**Limitation.** 4. (1)No application in respect of any specified proceedings pending with the Board shall be considered if it is made after sixty days from the date of service of the notice to show cause or supplementary notice(s) to show cause, whichever is served later. (2) Notwithstanding anything contained in sub-regulation (1), the panel of whole	**Limitation.** **4.** (1)~~No~~ **An** application in respect of any specified proceedings pending ~~with~~ **before** the Board shall **not** be considered if it is made after sixty days from the date of service of the notice to show cause or supplementary notice(s) to show cause**,** whichever is served later. (2) Notwithstanding anything contained in sub-regulation (1), the ~~Panel of Whole Time Members~~

		time members may consider the application, if it is satisfied that there was sufficient cause for not filing it within the period specified in sub-regulation (1) and it is accompanied with an application for condonation of delay and non-refundable fees as specified in Part-B of the Schedule-I. Provided that where the application is filed after sixty calendar days from the expiry of the period specified in sub-regulation (1), the settlement amount payable by the applicant shall be increased by a levy of simple interest at the rate of six per cent, per annum, from the expiry of the period specified in sub-regulation (1) till the date of filing. (3)The provisions of this regulation shall not apply in the case of proceedings pending before the Tribunal or any court.	**Board** may consider the application, if ~~it is~~ satisfied that there was sufficient cause for not filing it within the **specified** period ~~specifiedin sub-regulation (1)~~ and it is accompanied with ~~an application for condonation of delay and~~ non-refundable fees as specified in Part-B of the Schedule-I: Provided that, where the application is filed after sixty calendar days from the expiry of the period specified in sub-regulation (1) **is considered by the panel of whole time members**, the settlement amount **determined in accordance with Schedule-II of these regulations shall be increased by twenty five percent**: **Provided further that, no such application shall be considered if the delay exceeds hundred and twenty calendar days from the expiry of the period specified in sub-regulation (1) or after the first date fixed for oral hearing, if any, whichever is earlier.** (3) The provisions of this regulation shall not apply in the case of proceedings pending before the Tribunal or any court.
		Scope of settlement proceedings. **5.** (1) No application for settlement of any specified proceedings shall be considered, if: (a)the alleged default was committed within a period of twenty four calendar months from the date of the last settlement order where the applicant was a party; (b) an earlier application with regard to the same alleged default had been rejected: Provided that such an application may be considered in exceptional circumstances, such as the lapse of time since the commission of the alleged default, the weight of evidence against the applicant, etc and subject to the payment of such additional fees and/or interest on the settlement amount from	**Scope of settlement proceedings.** **5.** (1) No application for settlement of any specified proceedings shall be considered, if: **(a)an earlier application with regard to the same alleged default had been rejected;** **(b) the audit or investigation or inspection or inquiry, if any, in respect of any alleged default, is not complete, except in case of applications involving confidentiality.** **(c) monies due under an order issued under securities laws are liable for recovery under securities laws.**

		the date of rejection of the earlier application till the date of payment of the settlement amount, as may be recommended by the high powered advisory committee. (c) the applicant has been party to two settlement orders during the period of thirty six calendar months, prior to the date of the application; (d) the audit or investigation or inspection, if any, in respect of any alleged default, is not complete. (2) A specified proceeding, shall not be settled, if it involves any of the following defaults, namely,- (a) defaults involving insider trading and 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 in the opinion of the Board are serious and have a market wide impact or have caused substantial losses to or affect 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. Provided further that the defaults under this clause shall be considered in accordance with these regulations and also the guidelines specified in Schedule-II. Explanation.- For the purpose of this clause, the expression ' 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	**(2) The Board may not settle any specified proceeding, if it is of the opinion that the alleged default, -** **i. has market wide impact,** **ii. caused losses to a large number of investors, or** **iii. affected the integrity of the market.** **(3) Without prejudice to the generality of the foregoing provisions, for settling any specified proceeding the Board may *inter alia* take into account the following factors, -** **(a) whether the applicant has refunded or disgorged the monies due, to the satisfaction of the Board;** **(b) whether the applicant has provided an exit or purchase option to investors in compliance with securities laws, to the satisfaction of the Board;** **(c) whether the applicant is in compliance with securities laws or any order or direction passed under securities laws, to the satisfaction of the Board;** **(d) any other factor as may be deemed appropriate by the Board.**

		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, except where the applicant agrees to make the open offer or where the Board is of the opinion that the making of the open offer would not be beneficial to the shareholders or is infructuous; (d) defaults or manipulative practices by mutual funds, alternative investment funds, collective investment schemes and their sponsors or asset management companies, collective investment management company, managers, trustees that result in substantial losses to investors, except in cases where the applicant has compensated the investors for the losses, to the satisfaction of the Board; (e) failure to redress investor grievances to the satisfaction of the Board, except where the alleged default is with regard to delayed redressal; (f) failure, by issuers of securities or entities who invite investment, to make material disclosures in offer documents as required under the relevant regulations framed by the Board; (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 any order or direction passed under the securities laws. (3) Notwithstanding anything contained in this regulation, where the applicant makes out adequate grounds in his	**(3) Without prejudice to sub-regulations (1) and (3), the Board may not settle the specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or penalty imposed under securities laws.**

		application, the settlement of proceedings in respect of the defaults referred to in sub-regulation (2) may be considered in the interest of the investors and the development and regulation of securities market: Provided that the reasons for settlement of such proceeding shall be recorded in writing. (4) Nothing contained in these regulations shall be construed to preclude the panel of whole time members to reject any application in respect of specified proceedings involving the defaults referred to in clauses (a), (g), (h) and (i) of sub-regulation (2) without examination by the internal committee or the high powered advisory committee.	**(4) Nothing contained in these regulations shall be construed to restrict the right of the Panel of Whole Time Members to consider or reject any application in respect of any specified proceeding without examination by the Internal Committee or the High Powered Advisory Committee.**
			(Previously at Regulation 20 of existing Settlement Regulations) **Rejection of application.** **6 (1) An application may at any time be rejected on the following grounds:** (a) **Where the applicant refuses to receive or respond to the communications sent by the Board;** (b) **Where the applicant does not submit or delays the submission of information, document, etc., as called for by the Board;** (c) **Where the applicant who is required to appear, does not appear before the Internal Committee on more than one occasion;** (d) **Where the applicant violates in any manner the undertaking and waivers as provided in Part-C of the Schedule-I;** (e) **Where the applicant does not remit the settlement amount within the period specified in clause (a) of sub-regulation (3) of regulation 15 and/or**

			does not abide by the undertaking and waivers. **(2) The rejection under sub-regulation (1) shall be communicated to the applicant:** **Provided that the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of the initiation or continuation or restoration of any legal proceeding and the waivers given under sub-paras (d), (e) (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.**
	6	**Withdrawal of application.** **6**. (1) An application may be withdrawn at any time prior to the communication of the decision of the panel of whole time members under regulation 14. (2) An applicant who withdraws an application under sub-regulation (1) shall not be permitted to make another application in respect of the same default: Provided that such an application may be considered at the next stage of proceedings, as indicated in Table I in Schedule-II, if the applicant makes out adequate grounds and subject to payment of such additional fees and/or interest on the settlement amount from the date of withdrawal of the earlier application till the date of payment of the settlement amount, as may be recommended by the high powered advisory committee.	**Withdrawal of application.** **7.** (1) An application may be withdrawn at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15. (2) An applicant who withdraws an application under sub-regulation (1) shall not be permitted to make another application in respect of the same default: **Provided that, as may be recommended by the High Powered Advisory Committee, such an application may be considered subject to an increase of atleast fifty percent over the settlement amount earlier determined in accordance with Schedule-II of these regulations.**
	7	**Effect of pending application on the specified proceedings.** **7.** (1) Filing of an application for settlement of any specified proceedings shall not affect continuance of the proceedings except that the passing of the final order shall be in abeyance till the application is disposed of.	**Effect of pending application on specified proceedings.** **8.** (1) The filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of.

		(2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn.	(2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn. **Provided that, the filing of an application shall not prohibit the initiation of any proceedings, in so far as may be deemed necessary for the purpose of issuance of interim civil and administrative directions to protect the interests of investors and the integrity of the securities markets.** **Explanation. - Where any proceeding is pending or to be initiated against several persons but the settlement application is filed only by one or more persons, but not all, the filing of such an application shall not affect the initiation, continuation and disposal of the proceedings against the person who has not filed the application for settlement and any observations made in such proceedings against the applicant shall qua the applicant be subject to the outcome of the settlement application filed such applicant.**
	8	**Settlement terms.** **8.** (1) The settlement terms may include a settlement amount and/or non-monetary terms, in accordance with the guidelines specified in Schedule-II. (2) The non-monetary terms may include appropriate directions, such as: (a) Voluntary suspension of certificate of registration or closure of business for a specified period; (b) Removal from Management; (c) Direction in the nature of disgorgement, where it is possible to identify the investors who have incurred losses on account of the action or inaction of the applicant; (d) Debarment of certain individuals from acting as a partner or officer or director of an intermediary or as an	**Settlement terms.** **9**. (1) The settlement terms may include a settlement amount and/or non-monetary terms, in accordance with the guidelines specified in Schedule-II. (2) The non-monetary terms may include the ~~appropriate directions, such as~~ following:- (a) ~~Voluntary~~ Suspension of certificate of registration or **cessation of business activities** for a specified period; (b) **Exit from Management by voluntary agreement**; (c) ~~Direction in the nature of~~ Disgorgement, where it is possible to identify the investors who have incurred losses on account of the action or inaction of the applicant; (d) ~~Voluntary debarment~~ Restraint of certain individuals from acting as a partner or officer or director of an intermediary or as

		officer or director of a company that has a class of securities regulated by the Board, for specified periods; (e) Cancellation of securities and reduction in shareholding where the securities are issued fraudulently including cancellation of bonus shares received on such securities, if any, and re-imbursement of any dividends received, etc; (f) Voluntary lock-in of securities; (g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as direction to appoint or retain an independent consultant to review policies and procedures; (h) Direction to provide enhanced training and education to employees of intermediaries; (i) Directions relating to internal audit and reporting requirements; (j) Any other directions that may be issued by the Board under the securities laws in the interest of the investors. (3) The settlement amount, excluding the legal costs and disgorgement amount, shall be credited to the Consolidated Fund of India. (4) The application fee referred to in sub-regulation (2) of regulation 3, the additional processing fee accompanying the application for condonation of delay as referred to in sub-regulation (2) of regulation 4 and the legal costs, if any, forming part of the settlement amount shall be credited to the Securities and Exchange Board of India General Fund.	an officer or director of a company that has a class of securities regulated by the Board, for specified periods **by voluntary agreement**; (e) Cancellation of securities and reduction in holding where the securities are issued fraudulently including cancellation of bonus shares received on such securities, if any, and re-imbursement of any dividends received, etc; (f) ~~Voluntary~~ Lock-in of securities **by voluntary agreement**; (g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as ~~direction~~ **agreeing** to appoint or engage an independent consultant to review internal policies, processes and procedures; (h) ~~Direction~~**Agreement** to provide enhanced training and education to employees of intermediaries **and securities market infrastructure institutions**; (i) ~~Directions relating~~ **Voluntary submission to enhanced** ~~to~~ internal audit and reporting requirements; ~~(j) Any other terms, in the interest of the investors.~~ (3) The settlement amount, excluding the legal costs and disgorged amount, shall be credited to the Consolidated Fund of India. (4) The application fee referred to in sub-regulation (2) of regulation 3 **and the legal costs, if any, forming part of the settlement amount shall be credited to the Securities and Exchange Board of India General Fund.** **Explanation. – Legal costs shall include liquidated costs, as may be determined by the Board, in respect of costs incurred for obtaining appropriate orders from the Tribunal or Court under sub-regulation (2) of regulation 24.**

		(5) The amount of ill-gotten profits made or losses avoided by the applicant that may be disgorged as part of the settlement terms, shall be credited to the Investor Protection and Education Fund of the Board.	(5) The amount of ill-gotten profits made or losses avoided by the applicant that may be disgorged as part of the settlement terms, shall be credited to the Investor Protection and Education Fund of the Board.
	9	**Factors to be considered to arrive at the settlement terms.** **9.** While arriving at the settlement terms, the Board shall also consider such factors including but not limited to the following: (a) conduct of the applicant in the investigation; (b) the role played by the applicant in case the alleged default is committed by a group of persons; (c) nature, gravity and impact of alleged defaults; (d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded; (e) whether the alleged default is minor or major in nature; (f) the extent of amount of harm and/or loss to investors' and/or gain by the applicant; (g) processes which have been introduced since the alleged default to minimize future defaults or lapses; (h) compliance schedule proposed by the applicant; (i) economic benefits accruing to any person from the non-compliance or delayed compliance; (j) conditions which are necessary to deter future non-compliance by the same or another person; (k) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them; (l) whether the applicant has undergone any other enforcement action for the same violation; (m)any other factors necessary in the facts and circumstances of the case.	**Factors to be considered to arrive at the settlement terms.** **10.** While arriving at the settlement terms, the ~~Board shall also consider~~ **factors indicated in Schedule-II may be considered,** ~~such factors~~, including but not limited, to the following: (a) conduct of the applicant **during the specified proceeding, investigation, inspection, inquiry or audit**; (b) the role played by the applicant in case the alleged default is committed by a group of persons; (c) nature, gravity and impact of alleged defaults; (d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded; (e) the extent ~~of amount~~ of harm and/or loss to **the** investors' and/or gains **made** by the applicant; (f) processes that have been introduced since the alleged default to minimize future defaults or lapses; (g) compliance schedule proposed by the applicant; (h) economic benefits accruing to any person from the non-compliance or delayed compliance; (i) conditions which are necessary to deter future non-compliance by the same or another person; (j) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them; (k) ~~whether the applicant has undergone~~ any other enforcement action **that has been taken against the applicant** for the same violation; (l) any other factors necessary in the facts and circumstances of the case.

	10	**High powered advisory committee.** **10.** (1)The Board shall constitute a high powered advisory committee for 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 securities market or in matters connected therewith or incidental thereto. (3) The quorum of the high powered advisory committee shall be of three members. (4) The term of the members of the high powered advisory committee shall be three years which may be extended for a further period of two years. (5) The high powered advisory committee shall conduct its meetings in the manner specified by the Board in this regard.	**High powered advisory committee.** **11.** (1) The Board shall constitute a High Powered Advisory Committee for consideration and recommendation of the terms of settlement. (2) The High Powered Advisory Committee shall consist of **a Judicial member who has been the Judge of the Supreme Court or a High Court** and three external experts having expertise in securities market or in matters connected therewith or incidental thereto. (3) The term of the members of the High Powered Advisory Committee shall be three years which may be extended for a further period of two years. (4) The quorum **for a meeting** of the High Powered Advisory Committee shall be of three members. **Explanation. - Meeting includes meeting through audio-video electronic means or through the medium of electronic video linkage.** (5) The High Powered Advisory Committee shall conduct its meetings in the manner specified by the Board in this regard: **Provided that, where any member of the High Powered Advisory Committee seeks recusal, the remaining members or (atleast two) may submit their recommendation on the terms of settlement:** **Provided further that, in case no consensus or majority can be reached, the recommendation made by the Judicial member shall be considered to be the recommendation of the High Powered Advisory Committee and in case of recusal of the Judicial member, the recommendations of the remaining members (atleast two) shall be submitted for consideration to the Panel of Whole Time Members.**

			Provided also that, where all or all but one of the members of the High Powered Advisory Committee recuse themselves in respect of an application, the Board may constitute another High Powered Advisory Committee.
	11	**Internal committee(s).** **11.** The internal committee(s) shall comprise of an officer of the Board not below the rank of Chief General Manager and such other officers as may be decided by the Board.	**Internal committee(s).** **12. (1) Internal Committee shall be constituted by the Board.** (2) The Internal Committee(s) shall ~~comprise of~~ **be headed by** an officer of the Board not below the rank of Chief General Manager and **shall comprise of** such other officers as may be decided by the Board.
	12	**Proceedings before internal committee.** **12**. (1) Save as otherwise provided in these regulations, an application shall be referred to the internal committee which shall examine whether the proceedings may be settled and if so determine the settlement terms in accordance with these regulations. (2) The internal committee may: (a) call for relevant information, documents, etc., pertaining to the alleged default(s) in the custody of the applicant;	**Proceedings before the Internal Committee.** **13.** (1) Save as otherwise provided in these regulations, an application shall be referred to an Internal Committee ~~which shall~~ **to** examine whether the proceedings may be settled and if so to determine the settlement terms in accordance with these regulations. (2) The Internal Committee may: (a) call for relevant information, documents, etc., pertaining to the alleged default(s) in ~~custody of~~ **possession of** the applicant **or obtainable by the applicant**; **Explanation. – Nothing in these regulations shall confer a right upon the applicant to seek information from the Board or require the Board to seek information from any other person for the purpose of relying upon in the settlement proceedings or request the Board to permit it to present information not already disclosed in the application, which the applicant was aware of at the time of making the application or which information upon diligent enquiry being made could have become known to the applicant.**

		(b) call for the personal appearance of the applicant before it: Provided that a duly authorized representative of the applicant may make representation on behalf of the applicant; (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 proposed settlement terms, if any, shall be placed before the high powered advisory committee.	(b) call for the personal appearance of the applicant before it: Provided that a duly authorized representative of the applicant may ~~make representation~~ **represent** on behalf of the applicant: **Explanation. - Personal appearance under this clause includes appearance through audio-video electronic means or through the medium of electronic video linkage as may be permitted by the Internal Committee.** (c) permit the applicant to **submit revised** settlement terms within a period not exceeding ten working days from the date of the Internal Committee meeting: **Provided that the revised settlement terms received after ten working days, but within twenty working days may be considered subject to an increase of ten percent over the recommended settlement amount.** (3) The proposed settlement terms, if any, shall be placed before the High Powered Advisory Committee.
	13	**Proceedings before high powered advisory committee.** **13.** (1) The high powered advisory committee shall consider the proposed settlement terms, placed before it alongwith the following: (a) the application, undertaking and waivers of the applicant; (b) factors specified in regulation (c) settlement terms or revised settlement terms proposed by the applicant; (d) any other relevant material available on record. (2) The high powered advisory committee may require the applicant to revise the settlement terms and refer the application back to the internal committee.	**Proceedings before the High Powered Advisory Committee.** **14.** (1) The High Powered Advisory Committee shall consider the proposed settlement terms, placed before it along with the following: (a) the application, undertaking and waivers of the applicant; (b) factors specified in regulation **10**; (c) settlement terms or revised settlement terms proposed by the applicant; (d) any other relevant material available on record. (2) The High Powered Advisory Committee may ~~require the applicant to~~ **seek revision of** the settlement terms and refer the application back to the Internal Committee.

		(3) The recommendations of the high powered advisory committee shall be placed before the panel of whole time members for consideration.	(3) The recommendations of the High Powered Advisory Committee shall be placed before the Panel of Whole Time Members ~~for consideration~~.
	14	**Action on recommendation of high powered advisory committee.** **14.** (1) A panel of two whole time members shall consider the recommendations of the high powered advisory committee and may accept or reject the same. (2) Where the panel of whole time members accepts the recommendation of the high powered advisory committee, the applicant shall be communicated about the same within 7 days of the decision of the panel. (3) Where the panel has accepted the recommendation to pass a settlement order, the applicant shall,- (a) remit the settlement amount forming part of the settlement terms, not later than fifteen calendar days from the date of receipt of the notice of demand, which may be extended by the panel of whole time members for reasons to be recorded, by a period(s) of fifteen calendar days. Provided that in no case shall such remittance be accepted after the ninetieth calendar day from the date of the receipt of the notice of demand. Provided further that where the settlement amount is remitted after thirty calendar days from the date of receipt of the notice of demand and on or before the ninetieth day from such receipt, the settlement amount payable by the applicant shall be increased by the levy of simple interest at the rate of six per cent per annum from the date of receipt of the notice of demand till the date of payment of the settlement amount; and/or	**Action on the recommendation of High Powered Advisory Committee.** **15.** (1) The Panel of Whole Time Members shall consider the recommendations of the High Powered Advisory Committee and may accept or reject the same. (2) Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee, the applicant shall be **issued a notice of demand** ~~communicated about the same~~ within seven working days of the decision of the panel and the applicant shall,- (a) remit the settlement amount forming part of the settlement terms, not later than fifteen calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by ~~a period of~~ fifteen calendar days: **Explanation. – Remittance of settlement amount shall be done by way of a demand draft in favour of 'Securities and Exchange Board of India' payable at Mumbai or by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised mode of payment.** Provided ~~further~~ that where the settlement amount is remitted after thirty calendar days from the date of receipt of the notice of demand and on or before the ninetieth day from such receipt, the settlement amount payable by the applicant shall be increased by the levy of simple interest at the rate of six per cent per annum from the date of receipt of the notice of demand till the date of payment of the settlement amount:

		(b) fulfil/undertake in writing to abide by, the other settlement terms, if any, within the time provided to the applicant. (4) Where the panel of whole time members does not accept the recommendation of the high powered advisory committee to settle the specified proceedings on the settlement terms recommended by it, the panel may return the application to the internal committee for re-examination of the settlement terms and thereafter the procedure as applicable in the case of an original application shall be followed by the internal committee and the high powered advisory committee. (5) Where the panel of whole time members disagrees with the recommendation to settle the specified proceedings, such decision shall be communicated to the applicant.	Provided **further** that, in no case shall such remittance be accepted after the ninetieth calendar day from the date of the receipt of the notice of demand. (b) fulfil/undertake in writing to abide by, the other settlement terms, if any, within the time provided to the applicant. (4) Where the panel of Whole Time Members do not accept the recommendation of the High Powered Advisory Committee to settle the specified proceedings on the settlement terms recommended by it, the panel may return the application to the Internal Committee for re-examination of the settlement terms and thereafter the procedure as applicable in the case of an original application shall be followed by the Internal Committee and the High Powered Advisory Committee. (5) Where the panel of Whole Time Members **rejects the** recommendation **of the High Powered Advisory Committee** to settle the specified proceedings, such decision **of the panel of Whole Time Members** shall be communicated to the applicant.
	14A	**Summary Settlement Procedure** **14A**. (1) Notwithstanding anything contained in Chapter VI, before initiating any specified proceeding the Board may issue a notice of settlement in the format as specified in Schedule-III, calling upon the noticee to file a settlement application in respect of the specified proceeding(s) to be initiated, upon payment of the settlement amount and/or furnishing an undertaking in respect of other non-monetary terms or compliance with other non-monetary terms, as may be specified in the settlement notice in respect of the following alleged defaults,-	**Summary Settlement Procedure** **16.**(1) Notwithstanding anything contained in Chapter VI, before initiating any specified proceeding the Board may issue a notice of summary settlement in the format as specified in **Part-A** of Schedule-III, calling upon the noticee to file a settlement application **under Chapter-II**, ~~in respect of the specified proceeding(s) to be initiated~~ and **submit** the settlement amount and/or furnish an undertaking in respect of other non-monetary terms or ~~compliance~~ **comply** with other non-monetary terms, as may be specified in the **summary** settlement notice in respect of **the specified proceeding(s) to be initiated for** the following defaults,- i. **Delayed disclosures, including** ~~Late~~ filing of returns, report, document, etc.;

		i. Late filing of returns, report, document, etc.; ii. Delay in making disclosures; iii. Non-disclosure in relation to companies exclusively listed on regional stock exchanges which have exited; iv. Failure to make disclosures in the prescribed formats; v. Delay in compliance of any of the requirements of law or with directions issued by the Board; vi. Such other violations as may be determined by the Board. Provided that, the specified proceeding(s) shall not be settled under this Chapter, if in the opinion of the Board, the applicant has failed to make a full and true disclosure of facts or failed to co-operate to the satisfaction of the Board: Provided further that, notwithstanding anything contained in the notice of settlement , the Board shall have the power to modify the enforcement action to be brought against the noticee and the notice of settlement shall not confer any right upon the noticee to seek settlement or avoid any enforcement action. (2) The noticee may within thirty calendar days from the date of receipt of the notice of settlement,- (a) file a settlement application in the Form specified in Part-A of the Schedule-I alongwith non-refundable application fee as specified in Part-B and the undertakings and waivers as specified in Part-C of the Schedule-I; (b) remit the settlement amount as specified in the notice of settlement; and (c) comply or undertake to comply with other non-monetary terms as specified	~~ii Delay in making disclosures~~; ii. Non-disclosure in relation to companies exclusively listed on regional stock exchanges which have exited; iii. ~~Failure to make~~ Disclosures **not made** in the specified formats; iv. Delay**ed**~~in~~ compliance of any of the requirements of law or with directions issued by the Board; v. Such other ~~violations~~**defaults** as may be determined by the Board. Provided that, the specified proceeding(s) shall not be settled under this Chapter, if in the opinion of the Board, the applicant has failed to make a full and true disclosure of facts or failed to co-operate in the required manner. (2)~~Provided further that,~~ Notwithstanding anything contained in the notice of settlement, the Board shall have the power to modify the enforcement action to be brought against the noticee and the notice of settlement shall not confer any right upon the noticee to seek settlement or avoid any enforcement action. (3)The noticee may within thirty calendar days from the date of receipt of the notice of settlement,- (a) file a settlement application in the Form specified in Part-A of Schedule-I along with non-refundable application fee as specified in Part-B and the undertakings and waivers as specified in Part-C of Schedule-I; (b) remit the settlement amount as specified in the notice of settlement;

		in the notice of settlement, as the case may be. Provided that, in case of any discrepancy in calculation of settlement amount specified in the notice of settlement, the noticee may seek rectification of the same at the time of filing the settlement application and in such cases the decision of the Board shall be final and remittance shall be done within thirty calendar days from the date of receipt of the decision of the Board. Provided further that, the Board may for reasons to be recorded, grant extension of time not exceeding a further period of fifteen calendar days for filing of the settlement application, remittance of the settlement amount and/or furnishing an undertaking in respect of any of the non-monetary terms or compliance with any of the non-monetary terms specified in the notice of settlement. (3) The Board upon being satisfied with the remittance of settlement amount and undertaking furnished in respect of non-monetary terms or compliance with non-monetary terms, if any specified in the settlement notice, shall pass an order of settlement under regulation 15.	(c) comply or undertake to comply with other non-monetary terms as specified in the notice of settlement, as the case may be**;** and **(d) seek rectification of the calculation of settlement amount, as communicated in the notice of settlement, at the time of filing the settlement application and in such cases the decision of the Board shall be final and remittance shall be done within thirty calendar days from the date of receipt of the decision of the Board.** Provided ~~further~~ that, the Board may for reasons to be recorded, grant extension of time not exceeding a further period of fifteen calendar days for filing ~~of~~ the settlement application, remittance of the settlement amount and/or furnishing an undertaking in respect of any of the non-monetary terms or compliance with any of the non-monetary terms specified in the notice of settlement. (4) ~~The Board~~ **Upon** being satisfied with the remittance of settlement amount and undertaking furnished in respect of **the** non-monetary terms or compliance with non-monetary terms, if any as **detailed** in the settlement notice, **the Board** shall pass an order of settlement under **regulation 23.**
	14B	14B. Notwithstanding anything contained in Chapter VI and in regulation 14A, with respect to specified proceedings pending as on the date of commencement of this Chapter, the Board may issue a notice of settlement under sub-regulation (1) of regulation 14A in respect of such proceedings and in such cases the procedure specified in regulation 14A shall apply mutatis mutandis.	**Omitted** ~~14B. Notwithstanding anything contained in Chapter VI and in regulation 14A, with respect to specified proceedings pending as on the date of commencement of this Chapter, the Board may issue a notice of settlement under sub-regulation (1) of regulation 14A in respect of such proceedings and in such cases the procedure specified in regulation 14A shall apply mutatis mutandis.~~

		Explanation. - For the purposes of this Chapter, it is clarified that a specified proceeding is not deemed to be initiated and pending, unless the Board has communicated the matter to the authority who shall conduct such proceedings.	~~Explanation. - For the purposes of this Chapter, it is clarified that a specified proceeding is not deemed to be initiated and pending, unless the Board has communicated the matter to the authority who shall conduct such proceedings.~~
	14C	14C. Notwithstanding anything contained in these regulations, where a noticee does not file a settlement application under this Chapter or remit the settlement amount and/or comply with other non-monetary terms to the satisfaction of the Board or withdraws the settlement application, the specified proceedings may be initiated or continued, as the case may be and such a noticee shall only be permitted to file a settlement application in respect of proceedings pending before a Court or tribunal after conclusion of proceedings before the Adjudicating Officer or the Board, as the case may be.	**17.** Notwithstanding anything contained in these regulations, where a noticee does not file a settlement application under this Chapter or remit the settlement amount and/or comply with other non-monetary terms to the satisfaction of the Board or withdraws the settlement application, the specified proceedings may be initiated or continued, as the case may be and such a noticee shall only be permitted to file a settlement application in respect of the proceedings pending before the Court or tribunal, after conclusion of proceedings before the Adjudicating Officer or the Board, as the case may be.
			(New Chapter) **CHAPTER VIII** **SETTLEMENT NOTICE** **Settlement Notice.** **18.** (1) A notice of settlement in the format as specified in Part-B of Schedule-III, indicating the substance of the probable charges and enforcement actions, may except in cases covered under Chapter VII, be issued by the Board prior to the issuance of the notice to show cause so as to afford the noticee an opportunity to file a settlement application under Chapter-II, within fifteen calendar days from the date of receipt of the settlement notice. (2) Notwithstanding anything contained in the settlement notice, the Board shall have the right to modify the nature of the enforcement action to be initiated against the noticee and the charges stated in the notice shall not confer any right to seek

			settlement on the said basis or avoid any enforcement action due to modified charges. (3) Where a noticee does not file the settlement application under this Chapter or withdraws the settlement application at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15, the specified proceedings may be initiated and such a noticee shall only be permitted to file a settlement application in respect of the proceedings pending before a Court or tribunal, after conclusion of the proceedings before the Adjudicating Officer or the Board, as the case may be.
			(New Chapter) **CHAPTER IX** **SETTLEMENT WITH CONFIDENTIALITY** **Seeking Settlement with confidentiality.** **19**. (1) An applicant seeking the benefit of confidentiality in return for admitting for the limited purpose of settlement of specified proceedings to be initiated and agreeing to provide substantial assistance in the investigation, inspection, inquiry or audit, initiated or ongoing, against any other person in respect of a violation of securities laws, shall fulfil the conditions of this Chapter, including – (a) cease to participate in the violation of securities laws from the time of the disclosure of information, unless otherwise directed by the Board; (b) provide and continue to provide complete and true disclosure of information, documents and evidence, which is in his possession or he is able to obtain, to the satisfaction of the Board in respect of the alleged contravention of the provisions of securities laws;

			(c) co-operate fully, continuously and expeditiously throughout the investigation, inspection, inquiry or audit and related proceedings before the Board; and (d) not conceal, destroy, manipulate or remove the relevant documents in any manner that may contribute to the establishment of the alleged violation. *Explanation*. – Violation of securities laws in this Chapter refers to defaults other than those of disclosure and reporting requirements detailed in Schedule II. Provided that an application made under this chapter shall be made only in cases prior to or pending investigation, inspection, inquiry or audit. (2) Notwithstanding anything contained in this Chapter, where an applicant fails to comply with the conditions mentioned in this regulation, the Board may rely upon the information and evidence submitted by the applicant in any proceedings (3) Without prejudice to sub-regulations (1) and (2), the Board may subject the applicant to further restrictions or conditions, as deemed fit, after considering the facts and circumstances of the case. (4) For the purpose of seeking confidentiality, the applicant or its authorized representative may make an application containing all the relevant disclosures pertaining to the information as specified in Schedule-IV for furnishing the information and evidence relating to the commission of any violation of securities laws. (5) Upon being satisfied the Board may assure the benefit of confidentiality and shall thereupon mark the status of the application depending upon its priority and convey the same to the applicant in writing. (6) The Board may, for reasons to be recorded in writing, at any stage, reject the application if the

			information, documents or evidence is found to be incomplete or false to the knowledge of the applicant. (7) The rejection of the application for confidentiality shall be communicated to the applicant. **Procedure. —** **20**. (1) The provisions of Chapters IV to VI of these regulations may be applied *mutatis mutandis* to a settlement application filed under this Chapter and a settlement order passed accordingly. (2) The information, documents and evidence provided by the applicant under this chapter shall be submitted in the manner specified by the Board. **Confidentiality and assurance. —** **21**. For the purposes of providing the applicant with interim confidentiality and assurance from being proceeded with, the Board may not initiate regulatory measures when the Board has a reasonable belief that the information provided to it relates to a possible securities law violation that has occurred, is ongoing or about to occur. **Confidentiality. —** **22**. Notwithstanding anything contained in Chapter X, the following shall be treated as confidential, - (a) the identity of the applicant seeking confidentiality; and (b) the information, documents and evidence furnished by the applicant under this Chapter: Provided that, the identity of the applicant or such information or documents or evidence may not be treated as confidential if, — (i) the disclosure is required by law; or (ii) the applicant has agreed to such disclosure in writing; or (iii) there has been a public disclosure by the applicant.

	15	**Settlement of proceedings before the Adjudicating officer and the Board.** **15.** (1)The adjudicating officer shall pass the settlement order in the proceeding pending before him with respect to the alleged default(s). (2)The panel of the whole time members shall pass settlement order with respect to proceedings initiated or proposed to be initiated for alleged default(s) other than the proceedings referred to in sub-regulation (1). (3) The settlement order passed under these regulations shall, inter alia, contain the details of the alleged default(s), relevant provisions of the securities laws, facts and circumstances relevant to the alleged default, the admissions made by the applicant, if any and the settlement terms.	**Settlement of proceedings before the Adjudicating officer and the Board.** **23.** (1) The Adjudicating Officer shall **by an appropriate order dispose of the** ~~pass the settlement order in the~~ proceeding pending before him with respect to the alleged default(s). (2) The Panel of the Whole Time Members shall **by an appropriate order dispose of the** ~~pass settlement order with respect to~~ proceedings initiated or proposed to be initiated for alleged default(s) other than the proceedings referred to in sub-regulation (1). (3) The settlement order passed under these regulations shall, contain the details of the alleged default(s), relevant provisions of the securities laws, **brief** facts and circumstances relevant to the alleged default, the admissions made by the applicant, if any and the settlement terms.
	16	**Settlement of the proceedings pending before the Tribunal or any court.** **16.** (1) Save as otherwise provided in these regulations, the provisions with regard to settlement of specified proceedings shall mutatis mutandis apply to an application for settlement of any proceeding pending before the Tribunal or any court. (2) The proposal of settlement along with the settlement terms or rejection thereof shall be placed before such Tribunal or court for appropriate orders.	**Settlement of the proceedings pending before the Tribunal or any court.** **24.** (1) Save as otherwise provided in these regulations, the provisions with regard to settlement of specified proceedings shall *mutatis mutandis* apply to an application for settlement of any proceeding pending before the Tribunal or any court. (2) The proposal of settlement along with the settlement terms or rejection thereof shall be placed before such Tribunal or court for appropriate orders.
	17	**Service of settlement order and publication.** **17.** Settlement orders shall be served on the applicant and shall also be published on the website of the Board.	**Service and Publication of settlement order ~~and publication~~.** **25.** Settlement orders shall be served on the applicant and shall also be published on the website of the Board. **Provided that settlement orders in matters relating to the confidentiality shall not, directly or indirectly, disclose the identity of**

			the applicant, but shall indicate the provisions of securities laws which the applicant is alleged to have violated.
			(New Provision) **Settlement Schemes.** **26.** Notwithstanding anything contained in these regulations, the Board may specify the procedure and terms of settlement of specified proceedings under a settlement scheme for any class of persons involved in respect of any similar specified defaults. *Explanation*. - A settlement order issued under a Settlement scheme shall be deemed to be a settlement order under these regulations.
	18	**Effect of settlement order on third party rights.** **18.** A settlement order under these regulations shall not affect the right of third parties arising out of the alleged default.	**Effect of settlement order on third party rights or other proceedings.** **27.** (1)A settlement order under these regulations shall not **be admissible as evidence in any other proceeding relating to an alleged default not covered under the settlement order nor** affect the right of third parties arising out of the alleged default. **(2) Where any applicant who obtains a settlement order is also noticee along with any other person in any civil and administrative proceeding, the Adjudicating Officer or the Board while disposing proceedings against such other person may make necessary observations in respect of the applicant in so far as is necessary to prove the act of another:** **Provided that, unless the settlement order is revoked, such observations shall qua the applicant be subject to the settlement order obtained by the applicant.** **(3) Where any person has obtained a settlement order, which contains observations in respect of any other person for the commission of an alleged default, such an order shall not in itself be admissible as evidence against such other person.**

	19	**Non-compliance of settlement order.** **19.** If the applicant fails to comply with the settlement order or at any time after the settlement order is passed, it comes to the notice of the Board that the applicant has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed.	**~~Non-compliance~~ Revocation of the settlement order.** **28. (1) At any time after the settlement order is passed, if it comes to the notice of the Board that the applicant has failed to comply with the settlement order or, the applicant has not made full and true disclosures or has violated the undertakings or waivers, the settlement order shall stand revoked and withdrawn and the Board shall give notice of restoration of the proceedings with respect to which the settlement order was passed.** **(2) Whenever any settlement order is revoked, no amount paid under these regulations shall be refunded.**
	20	**Rejection in certain eventualities.** **20.** (1) The Board may at any time during the course of considering an application, reject an application on the following grounds: (a) Where the applicant refuses to receive or respond to the communications sent by the Board; (b) Where the applicant does not submit or delays the submission of information, document, etc., required by the Board; (c) Where the applicant who is required to appear, but does not appear before the internal committee on more than one occasion; (d) Where the applicant violates in any manner the undertaking and waivers as specified in Part-C of the Schedule-I; (e) Where the applicant does not remit the settlement amount within the period specified in clause (a) of sub-regulation (3) of regulation 14 and/or does not abide by the undertaking and waivers. (2) The rejection under sub-regulation (1) shall be communicated to the applicant.	**(Now shifted/inserted as Regulation 6)**

	21	**Confidentiality of information, etc.** **21.** (1) All information submitted and discussions held in pursuance of the settlement proceedings under these regulations shall be deemed to have been received or made in a fiduciary capacity and the same may not be released to the public, if the same prejudices the Board and/or the applicant. (2) Where an application is rejected, the applicant and the Board shall not rely upon or introduce as evidence before any court or Tribunal, any proposals made or information submitted or representation made by the applicant under these regulations: Provided that this sub-regulation shall not apply where the settlement order is revoked and withdrawn under these regulations.	**Confidentiality of information.** **29.** (1) All information submitted and discussions held in pursuance of the settlement proceedings under these regulations shall be deemed to have been received or made in a fiduciary capacity and the same may not be released to the public, if the same prejudices the Board and/or the applicant. (2) Where an application is rejected, the applicant and the Board shall not rely upon or introduce as evidence before any court or Tribunal, any proposals made or information submitted or representation made by the applicant under these regulations: Provided that this sub-regulation shall not apply where the settlement order is revoked and withdrawn under these regulations. **Explanation. – When any fact is discovered in consequence of information received from a person in pursuance of an application, so much of such information, whether it amounts to an admission or not, as relates distinctly to the fact thereby discovered, may be proved.**
	22	**Power to remove difficulties.** **22.** In order to remove any difficulty in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue clarifications through circulars or guidelines.	**Power to remove difficulties.** **30.** In order to remove any difficulty in the interpretation or application **or implementation** of the provisions of these regulations, the Board shall have the power to issue clarifications **and specify procedures** through circulars or guidelines
	23	**Power to specify procedures.** **23.** For the purposes of implementation of these regulations the Board may specify norms or procedures, by way of circulars or guidelines.	**Omitted** ~~**Power to specify procedures.**~~ ~~**31.** For the purposes of implementation of these regulations the Board may specify norms or procedures, by way of circulars or guidelines.~~
			(New Provision) **Irregularity in procedure**

			31. No settlement order or rejection of a settlement application shall be void on ground of any defect in procedure or calculation of the settlement amount or on account of any vacancy in or any defect in the constitution of, any committee under Chapter V: Provided that, nothing in these regulations shall prohibit the Board from revoking the settlement order where the applicant fails to pay any difference due to any discrepancy in calculation of the settlement amount: Provided further that, the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of initiating or continuing or restoring of any legal proceeding and the waivers given in sub-paras (d), (e) (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.
			Relevance of these regulations in specified proceedings **32.** Schedule-II of these regulations shall be relevant but not bind the Board or an Adjudicating Officer in any specified proceeding and the Board or the Adjudicating Officer may apply them to the extent possible.
	24	**Rescission and savings.** **24.**(1) On and from the commencement of these regulations, the following circulars issued by the Board shall stand rescinded: (a) Board's circular ref No. EFD/ED/Cir-1/2007 dated April 20, 2007; and (b) Board's circular ref No. CIR/EFD/1/2012 dated May 25, 2012. (2) Notwithstanding any such rescission:	**~~Rescission~~ Repeal and savings.** **33.**(1) On and from the commencement of these regulations, **Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 shall stand repealed.** (2) Notwithstanding any such ~~rescission~~**repeal**: **(a) Notice of settlement issued under the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 shall be deemed to have been filed in accordance with these regulations and shall be dealt**

			with in accordance with the provisions of these regulations;
		(a) Applications filed under the circulars referred to in sub-regulation (1) and pending with the Board shall be deemed to have been filed in accordance with these regulations and shall be dealt with in accordance with the provisions of these regulations.	(b) **All** applications filed under the **Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014** and pending with the Board shall be deemed to have been filed in accordance with these regulations and shall be dealt with in accordance with the provisions of these regulations;
		(b) Settlement orders passed under the circulars referred to in sub-regulation (1) shall be deemed to have been passed under these regulations.	(c) **All settlement orders passed under the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014**shall be deemed to have been passed under these regulations;
		(c) The proposals of the internal committees and the recommendations of the high powered advisory committee in accordance with the circulars referred to in sub-regulation (1) and any action taken by the Board on the basis of these recommendations shall be deemed to have been made under these regulations.	**(existing clause (c) inserted as clause (e) below)**
		(d) The internal committee(s) and the high powered advisory committee constituted by the Board in accordance with the circulars referred to in sub-regulation (1), shall continue to function till such time the Board re-constitutes them.	(d) The Internal Committee(s) and the High Powered Advisory Committee constituted by the Board in accordance with the **Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014, shall be deemed to have been constituted under these regulations;**
			(e) The proposals of the Internal Committees and the recommendations of the High Powered Advisory Committee in accordance **with the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014** and any action taken by the Board on the basis of these recommendations shall be deemed to have been made under these regulations.

V. PROPOSED REGULATIONS

GAZETTE OF INDIA

EXTRAORDINARY

PART – III – SECTION 4

PUBLISHED BY AUTHORITY

NEW DELHI, , 2018

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the , 2018

SECURITIES AND EXCHANGE BOARD OF INDIA (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018

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 Section 30 of the Securities and Exchange Board of India Act, 1992, Section 31 of the Securities Contracts (Regulation) Act, 1956 and Section 25 of the Depositories Act, 1996, the Securities and Exchange Board of India hereby makes the following regulations to provide for the terms of settlement and the procedure of settlement 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 Proceedings) Regulations, 2018.

(2) They shall be deemed to have come into force with effect from the 20th day of April 2007.

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 contravention of any provision of the securities laws;

(c) "Board" means the Securities and Exchange Board of India established under the provisions of Section 3 of the Act;

(d) "Panel of Whole Time Members" means the panel consisting of two or more Whole Time Members of the Board;

(e) "securities laws" means the Act, the Securities Contract (Regulations) Act, 1956 (42 of 1956), the Depositories Act,1996 (22 of 1996), the relevant provisions of any other law to the extent it is administered by the Board and the relevant rules and regulations made thereunder;

(f) "specified proceedings" means the proceedings that may be initiated or have been initiated and are pending before any forum, for the violation of securities laws, 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;

(g) "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 but not defined in these regulations but defined in the Act,, the Securities Contracts (Regulation) Act, 1956 the Depositories Act, 1996 the Companies Act, 2013 or any of the rules or regulations made thereunder, shall have the same meanings respectively assigned to them in those Acts, rules or regulations or any statutory modification or re-enactment thereto.

CHAPTER II

APPLICATION FOR SETTLEMENT

Application.

3. (1) A person against whom any specified proceedings have been initiated and are pending or may be initiated, may make an application to the Board in the Form specified in Part-A of the Schedule-I.

(2) The application made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Part-B of Schedule I and the undertakings and waivers as specified in Part-C of Schedule-I:

Provided that the rejection of the application shall not affect the continued validity of the undertakings and waivers and subject to such undertakings and waivers, the Board or the applicant, shall be free to initiate or pursue such proceedings as may be appropriate in accordance with law.

(3) The applicant shall make full and true disclosures in the application in respect of the alleged default(s):

Provided that the facts established against the applicant or admitted in any ongoing or concluded proceedings in India or outside India, with respect to the same cause of action, under any law, shall be deemed to be admitted by the applicant in respect of the proceedings proposed to be settled.

(4) The applicant shall make one application for settlement of all the proceedings that have been initiated or may be initiated in respect of the same cause of action.

(5) The provisions of Chapters IV to VI and Schedule-II may be applied *mutatis mutandis* for arriving at a proposal pursuant to a compounding application filed or to be filed before the court.

(6) An application that is not complete in all respects or does not conform to the requirements of these regulations shall be returned to the applicant.

Explanation. - An application for settlement of defaults related to disclosures, shall to the extent possible, be made after making the required disclosure.

(7) The applicant whose application has been returned under sub- regulation (5) may, within fifteen days from the date of communication from the Board, submit the complete and revised application that conforms to the requirements of these regulations:

Provided that no further opportunity shall be given to the applicant to make an application in respect of the alleged default at the same stage of the proceedings, as indicated in Table I in Schedule-II.

(8) Where the applicant is an association or a firm or a body corporate or a limited liability partnership, the application and undertakings and waivers shall be executed by the person in charge of, and responsible for the conduct of the business of such firm or association or body corporate and the same shall bind the firm or association, the body corporate and any officer who is in default.

Explanation. - For the purpose of this sub-regulation, the expression 'officer who is in default' shall have the same meaning as provided in sub-Section (60) of Section 2 of the Companies Act, 2013.

Limitation.

4. (1) An application in respect of any specified proceeding pending before the Board shall not be considered if it is made after sixty days from the date of service of the notice to show cause or supplementary notice(s) to show cause**,** whichever is served later.

(2) Notwithstanding anything contained in sub-regulation (1), the Board may consider the application, if satisfied that there was sufficient cause for not filing it within the specified period and it is accompanied with non-refundable fees as specified in Part-B of the Schedule-I:

Provided that, where the application is filed after sixty calendar days from the expiry of the period specified in sub-regulation (1), the settlement amount determined in accordance with Schedule-II of these regulations shall be increased by twenty five percent:

Provided further that, no such application shall be considered if the delay exceeds one hundred and twenty calendar days from the expiry of the period specified in sub-regulation (1) or after the first date fixed for oral hearing, if any, whichever is earlier.

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

CHAPTER III

SCOPE OF SETTLEMENT

Scope of settlement proceedings.

5. (1) No application for settlement of any specified proceedings shall be considered, if:

(a) an earlier application with regard to the same alleged default had been rejected;

(b) the audit or investigation or inspection or inquiry, if any, in respect of any cause of action, is not complete, except in case of applications involving confidentiality; or

(c) monies due under an order issued under securities laws are liable for recovery under securities laws.

(2) The Board may not settle any specified proceeding, if it is of the opinion that the alleged default, -

i. has market wide impact,
ii. caused losses to a large number of investors, or
iii. affected the integrity of the market.

(3) Without prejudice to the generality of the foregoing provisions, for settling any specified proceeding the Board may *inter alia* take into account the following factors, -

(a) whether the applicant has refunded or disgorged the monies due, to the satisfaction of the Board;

(b) whether the applicant has provided an exit or purchase option to investors in compliance with securities laws, to the satisfaction of the Board;

(c) whether the applicant is in compliance with securities laws or any order or direction passed under securities laws, to the satisfaction of the Board;

(d) any other factor as may be deemed appropriate by the Board.

(3) Without prejudice to sub-regulations (1) and (3), the Board may not settle the specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or penalty imposed under securities laws.

(4) Nothing contained in these regulations shall be construed to restrict the right of the Panel of Whole Time Members to consider or reject any application in respect of any specified proceeding without examination by the Internal Committee or the High Powered Advisory Committee.

Rejection of application.

6.(1) An application may at any time be rejected on the following grounds:

(a) Where the applicant refuses to receive or respond to the communications sent by the Board;

(b) Where the applicant does not submit or delays the submission of information, document, etc., as called for by the Board;

(c) Where the applicant who is required to appear, does not appear before the Internal Committee on more than one occasion;

(d) Where the applicant violates in any manner the undertaking and waivers as provided in Part-C of the Schedule-I;

(e) Where the applicant does not remit the settlement amount within the period specified in clause (a) of sub-regulation (3) of regulation 15 and/or does not abide by the undertaking and waivers.

(2) The rejection under sub-regulation (1) shall be communicated to the applicant:

Provided that the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of the initiation or continuation or restoration of any legal

proceeding and the waivers given under sub-paras (d), (e) (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.

Withdrawal of application.

7. (1) An application may be withdrawn at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15.

(2) An applicant who withdraws an application under sub-regulation (1) shall not be permitted to make another application in respect of the same default:

Provided that, as may be recommended by the High Powered Advisory Committee, such an application may be considered subject to an increase of atleast fifty percent over the settlement amount determined in accordance with Schedule-II of these Regulations.

Effect of pending application on specified proceedings.

8. (1) The filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of.

(2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn:

Provided that, the filing of an application shall not prohibit the initiation of any proceedings, in so far as may be deemed necessary for the purpose of issuance of interim civil and administrative directions to protect the interests of investors and to maintain the integrity of the securities markets.

Explanation. - Where any proceeding is pending or to be initiated against several persons but the settlement application is filed only by one or more persons, but not all, the filing of such an application shall not affect the initiation, continuation and disposal of the proceedings against the person who has not filed the application for settlement and any observations made in such proceedings against the applicant shall qua the applicant be subject to the outcome of the settlement application filed such applicant.

CHAPTER IV

TERMS OF SETTLEMENT

Settlement terms.

9. (1) The settlement terms may include a settlement amount and/or non-monetary terms, in accordance with the guidelines specified in Schedule-II.

(2) The non-monetary terms may include the following:

(a) Suspension of certificate of registration or cessation of business activities for a specified period by voluntary agreement;

(b) Exit from Management by voluntary agreement;

(c) Disgorgement, where it is possible to identify the investors who have incurred losses on account of the action or inaction of the applicant;

(d) Restraint of certain individuals from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by the Board, for specified periods by voluntary agreement;

(e) Cancellation of securities and reduction in holding where the securities are issued fraudulently, including cancellation of bonus shares received on such securities, if any, and re-imbursement of any dividends received, etc;

(f) Lock-in of securities by voluntary agreement;

(g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as agreeing to appoint or engage an independent consultant to review internal policies, processes and procedures;

(h) Agreement to provide enhanced training and education to employees of intermediaries and securities market infrastructure institutions;

(i) Voluntary submission to enhanced internal audit and reporting requirements.

(3) The settlement amount, excluding the legal costs and disgorged amount, shall be credited to the Consolidated Fund of India.

(4) The application fee referred to in sub-regulation (2) of regulation 3 and the legal costs, if any, forming part of the settlement amount shall be credited to the Securities and Exchange

Board of India General Fund.

Explanation. – Legal costs shall include liquidated costs, as may be determined by the Board, in respect of costs for obtaining appropriate orders from the Tribunal or Court under sub-regulation (2) of regulation 24.

(5) The amount of ill-gotten profits made or losses avoided by the applicant that may be disgorged as part of the settlement terms, shall be credited to the Investor Protection and Education Fund of the Board.

Factors to be considered to arrive at the settlement terms.

10. While arriving at the settlement terms, the factors indicated in Schedule-II may be considered, including but not limited, to the following:

(a) conduct of the applicant during the specified proceeding, investigation, inspection or audit;
(b) the role played by the applicant in case the alleged default is committed by a group of persons;
(c) nature, gravity and impact of alleged defaults;
(d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;
(e) the extent of harm and/or loss to the investors' and/or gains made by the applicant;
(f) processes that have been introduced since the alleged default to minimize future defaults or lapses;
(g) compliance schedule proposed by the applicant;
(h) economic benefits accruing to any person from the non-compliance or delayed compliance;
(i) conditions which are necessary to deter future non-compliance by the same or another person;
(j) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;
(k) any other enforcement action that has been taken against the applicant for the same violation;
(l) any other factors necessary in the facts and circumstances of the case.

CHAPTER V

COMMITTEES

High Powered Advisory Committee.

11. (1) The Board shall constitute a High Powered Advisory Committee for consideration and recommendation of the terms of settlement.

(2) The High Powered Advisory Committee shall consist of a Judicial member who has been the Judge of the Supreme Court or a High Court and three external experts having expertise in securities market or in matters connected therewith or incidental thereto.

(3) The term of the members of the High Powered Advisory Committee shall be three years which may be extended for a further period of two years.

(4) The quorum for a meeting of the High Powered Advisory Committee shall be of three members.

Explanation. - Meeting includes meeting through audio-video electronic means or through the medium of electronic video linkage.

(5) The High Powered Advisory Committee shall conduct its meetings in the manner specified by the Board in this regard:

Provided that, where any member of the High Powered Advisory Committee seeks recusal, the remaining members (atleast two) may submit their recommendation on the terms of settlement:

Provided further that, in case no consensus or majority can be reached, the recommendation made by the Judicial member shall be considered to be the recommendation of the High Powered Advisory Committee and in case of recusal of the Judicial member, the recommendations of the remaining members (atleast two) shall be submitted for consideration to the Panel of Whole Time Members:

Provided also that, where all or all but one of the members of the High Powered Advisory Committee recuse themselves in respect of an application, the Board may constitute another High Powered Advisory Committee.

Internal committee(s).

12.(1) Internal Committee shall be constituted by the Board.

(2) The Internal Committee(s) shall be headed by an officer of the Board not below the rank of Chief General Manager and shall comprise of such other officers as may be specified by the Board.

CHAPTER VI

PROCEDURE OF SETTLEMENT

Proceedings before the Internal Committee.

13. (1) Save as otherwise provided in these regulations, an application shall be referred to an Internal Committee to examine whether the proceedings may be settled and if so to determine the settlement terms in accordance with these regulations.

(2) The Internal Committee may:

(a) call for relevant information, documents, etc., pertaining to the alleged default(s) in possession of the applicant or obtainable by the applicant;

Explanation. – Nothing in these regulations shall confer a right upon the applicant to seek information from the Board or require the Board to seek information from any other person for the purpose of relying upon it in the settlement proceedings or request the Board to permit it to present information not already disclosed in the application, which the applicant was aware of at the time of making the application or which information upon diligent enquiry being made could have become known to the applicant.

(b) call for the personal appearance of the applicant before it:

Provided that a duly authorized representative of the applicant may represent on behalf of the applicant:

Explanation. - Personal appearance under this clause includes appearance through audio-video electronic means or through the medium of electronic video linkage as may be permitted by the Internal Committee.

(c) permit the applicant to submit revised settlement terms within a period not exceeding ten working days from the date of the Internal Committee meeting:

Provided that the revised settlement terms received after ten working days, but within twenty working days may be considered subject to an increase of ten percent over the recommended settlement amount.

(3) The proposed settlement terms, if any, shall be placed before the High Powered Advisory Committee.

Proceedings before the High Powered Advisory Committee.

14. (1) The High Powered Advisory Committee shall consider the proposed settlement terms placed before it along with the following:

(a) the application, undertaking and waivers of the applicant;

(b) factors specified in regulation 10;

(c) settlement terms or revised settlement terms proposed by the applicant;

(d) any other relevant material available on record.

(2) The High Powered Advisory Committee may seek revision of the settlement terms and refer the application back to the Internal Committee.

(3) The recommendations of the High Powered Advisory Committee shall be placed before the Panel of Whole Time Members.

Action on the recommendation of High Powered Advisory Committee.

15. (1) The Panel of Whole Time Members shall consider the recommendations of the High Powered Advisory Committee and may accept or reject the same.

(2) Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -

(a) remit the settlement amount forming part of the settlement terms, not later than fifteen calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by fifteen calendar days:

Explanation. – Remittance of settlement amount shall be done by way of a demand draft drawn in favour of 'Securities and Exchange Board of India' payable at Mumbai or by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised mode of payment.

Provided that, where the settlement amount is remitted after thirty calendar days from the date of receipt of the notice of demand and on or before the ninetieth day from such receipt, the settlement amount payable by the applicant shall be increased by the levy of simple interest at the rate of six per cent per annum from the date of receipt of the notice of demand till the date of payment of the settlement amount:

Provided further that, in no case shall such remittance be accepted after the ninetieth calendar day from the date of the receipt of the notice of demand.

(b) fulfil/undertake in writing to abide by, the other settlement terms, if any, within the time provided to the applicant.

(4) Where the Panel of Whole Time Members does not accept the recommendation of the High Powered Advisory Committee to settle the specified proceedings on the settlement terms recommended by it, the panel may return the application for re-examination of the settlement terms and thereafter the procedure as applicable in the case of an original application shall be followed by the Internal Committee and the High Powered Advisory Committee.

(5) Where the Panel of Whole Time Members rejects the recommendation of the High Powered Advisory Committee to settle the specified proceedings, such decision of the panel of Whole Time Members shall be communicated to the applicant.

CHAPTER VII

SUMMARY SETTLEMENT PROCEDURE

Summary Settlement Procedure

16. (1) Notwithstanding anything contained in Chapter VI, before initiating any specified proceeding, the Board may issue a notice of summary settlement in the format as specified in Part-A of Schedule-III, calling upon the noticee to file a settlement application under Chapter-II and submit the settlement amount and/or furnish an undertaking in respect of other non-monetary terms or comply with other non-monetary terms, as may be specified in the summary settlement notice in respect of the specified proceeding(s) to be initiated for the following defaults,-

i. Delayed disclosures, including filing of returns, report, document, etc.;
ii. Non-disclosure in relation to companies exclusively listed on regional stock exchanges which have exited;
iii. Disclosures not made in the specified formats;
iv. Delayed compliance of any of the requirements of law or directions issued by the Board;
v. Such other defaults as may be determined by the Board.

Provided that, the specified proceeding(s) shall not be settled under this Chapter, if in the opinion of the Board, the applicant has failed to make a full and true disclosure of facts or failed to co-operate in the required manner.

(2) Notwithstanding anything contained in the notice of settlement, the Board shall have the power to modify the enforcement action to be brought against the noticee and the notice of settlement shall not confer any right upon the noticee to seek settlement or avoid any enforcement action.

(3) The noticee may, within thirty calendar days from the date of receipt of the notice of settlement, -

(a) file a settlement application in the Form specified in Part-A of Schedule-I along with non-refundable application fee as specified in Part-B and the undertakings and waivers as specified in Part-C of Schedule-I;

(b) remit the settlement amount as specified in the notice of settlement;

(c) comply or undertake to comply with other non-monetary terms as specified in the notice of settlement, as the case may be**;** and

(d) seek rectification of the calculation of the settlement amount, as communicated in the notice of settlement, at the time of filing the settlement application and in all such cases, the decision of the Board shall be final and remittance shall be done within thirty calendar days from the date of receipt of the decision of the Board:

Provided that, the Board may for reasons to be recorded, grant extension of time not exceeding a further period of fifteen calendar days for filing the settlement application, remittance of the settlement amount and/or furnishing an undertaking in respect of any of the non-monetary terms or compliance with any of the non-monetary terms specified in the notice of settlement.

(4) Upon being satisfied with the remittance of settlement amount and undertaking furnished in respect of the non-monetary terms or compliance with non-monetary terms, if any as detailed in the settlement notice, the Board shall pass an order of settlement under regulation 23.

17. Notwithstanding anything contained in these regulations, where a noticee does not file a settlement application under this Chapter or remit the settlement amount and/or comply with other non-monetary terms to the satisfaction of the Board or withdraws the settlement application at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15, the specified proceedings may be initiated or continued, as the case may be and such a noticee shall only be permitted to file a settlement application in respect of the proceedings pending before the Court or Tribunal, after conclusion of proceedings before the Adjudicating Officer or the Board, as the case may be.

CHAPTER VIII

SETTLEMENT NOTICE

Settlement Notice.

18. (1) A notice of settlement in the format as specified in Part-B of Schedule-III, indicating the substance of the probable charges and enforcement actions, may, except in cases covered under Chapter VII, be issued by the Board prior to the issuance of the notice to show cause so as to afford the noticee an opportunity to file a settlement application under Chapter-II, within fifteen calendar days from the date of receipt of the settlement notice.

(2) Notwithstanding anything contained in the settlement notice, the Board shall have the right to modify the nature of the enforcement action to be initiated against the noticee and the charges stated in the notice shall not confer any right to seek settlement on the said basis or avoid any enforcement action due to modified charges.

(3) Where a noticee does not file the settlement application under this Chapter or withdraws the settlement application at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15, the specified proceedings may be initiated and such a noticee shall only be permitted to file a settlement application in respect of the proceedings pending before a Court or tribunal, after conclusion of the proceedings before the Adjudicating Officer or the Board, as the case may be.

CHAPTER IX

SETTLEMENT WITH CONFIDENTIALITY

Seeking Settlement with confidentiality.

19. (1) An applicant seeking the benefit of confidentiality in return for admitting for the limited purpose of settlement of specified proceedings to be initiated and agreeing to provide substantial assistance in the investigation, inspection, inquiry or audit, initiated or ongoing, against any other person in respect of a violation of securities laws, shall fulfil the conditions of this Chapter, including –

(a) cease to participate in the violation of securities laws from the time of the disclosure of information, unless otherwise directed by the Board;
(b) provide and continue to provide complete and true disclosure of information, documents and evidence, which is in his possession or he is able to obtain, to the satisfaction of the Board in respect of the alleged contravention of the provisions of securities laws;
(c) co-operate fully, continuously and expeditiously throughout the investigation, inspection, inquiry or audit and related proceedings before the Board; and
(d) not conceal, destroy, manipulate or remove the relevant documents in any manner that may contribute to the establishment of the alleged violation.

Explanation. – Violation of securities laws in this Chapter refers to defaults other than those of disclosure and reporting requirements detailed in Schedule II.

Provided that an application made under this chapter shall be made only in cases prior to or pending investigation, inspection, inquiry or audit.

(2) Notwithstanding anything contained in this Chapter, where an applicant fails to comply with the conditions mentioned in this regulation, the Board may rely upon the information and evidence submitted by the applicant in any proceedings

(3) Without prejudice to sub-regulations (1) and (2), the Board may subject the applicant to further restrictions or conditions, as deemed fit, after considering the facts and circumstances of the case.

(4) For the purpose of seeking confidentiality, the applicant or its authorized representative may make an application containing all the relevant disclosures pertaining to the information as specified in Schedule-IV for furnishing the information and evidence relating to the commission of any violation of securities laws.

(5) Upon being satisfied the Board may assure the benefit of confidentiality and shall thereupon mark the status of the application depending upon its priority and convey the same to the applicant in writing.

(6) The Board may, for reasons to be recorded in writing, at any stage, reject the application if the information, documents or evidence is found to be incomplete or false to the knowledge of the applicant.

(7) The rejection of the application for confidentiality shall be communicated to the applicant.

Procedure. —

20. (1) The provisions of Chapters IV to VI of these regulations may be applied *mutatis mutandis* to a settlement application filed under this Chapter and a settlement order passed accordingly.

(2) The information, documents and evidence provided by the applicant under this chapter shall be submitted in the manner specified by the Board.

Confidentiality and assurance. —

21. For the purposes of providing the applicant with interim confidentiality and assurance from being proceeded with, the Board may not initiate regulatory measures when the Board has a reasonable belief that the information provided to it relates to a possible securities law violation that has occurred, is ongoing or about to occur.

Confidentiality. —

22. Notwithstanding anything contained in Chapter X, the following shall be treated as confidential, -

(a) the identity of the applicant seeking confidentiality; and

(b) the information, documents and evidence furnished by the applicant under this Chapter:

Provided that, the identity of the applicant or such information or documents or evidence may not be treated as confidential if, —

(i) the disclosure is required by law; or

(ii) the applicant has agreed to such disclosure in writing; or

(iii) there has been a public disclosure by the applicant.

CHAPTER X

SETTLEMENT ORDERS

Settlement of proceedings before the Adjudicating Officer and the Board.

23. (1) The Adjudicating Officer shall by an appropriate order dispose of the proceeding pending before him on the basis of the approved settlement terms.

(2) The Panel of the Whole Time Members shall by an appropriate order dispose of proceedings initiated or proposed to be initiated other than the proceedings referred to in sub-regulation (1).

(3) The settlement order passed under these regulations shall, contain the details of the alleged default(s), relevant provisions of the securities laws, brief facts and circumstances relevant to the alleged default, the admissions made by the applicant, if any and the settlement terms.

Settlement of the proceedings pending before the Tribunal or any court.

24. (1) Save as otherwise provided in these regulations, the provisions with regard to settlement of specified proceedings shall *mutatis mutandis* apply to an application for settlement of any proceeding pending before the Tribunal or any court.

(2) The proposal of settlement along with the settlement terms or rejection thereof shall be placed before such Tribunal or court for appropriate orders.

Service and Publication of settlement order.

25. Settlement orders shall be served on the applicant and shall also be published on the website of the Board:

Provided that settlement orders in matters relating to the confidentiality shall not, directly or indirectly, disclose the identity of the applicant, but shall indicate the provisions of securities laws which the applicant is alleged to have violated.

Settlement Schemes.

26. Notwithstanding anything contained in these regulations, the Board may specify the procedure and terms of settlement of specified proceedings under a settlement scheme for any class of persons involved in respect of any similar specified defaults.

Explanation. - A settlement order issued under a Settlement scheme shall be deemed to be a settlement order under these regulations.

Effect of settlement order on third party rights or other proceedings.

27. (1) A settlement order under these regulations shall not be admissible as evidence in any other proceeding relating to an alleged default not covered under the settlement order nor affect the right of third parties arising out of the alleged default.

(2) Where any applicant who obtains a settlement order is also noticee along with any other person in any civil and administrative proceeding, the Adjudicating Officer or the Board while disposing proceedings against such other person may make necessary observations in respect of the applicant in so far as is necessary to prove the act of another:
Provided that, unless the settlement order is revoked, such observations shall qua the applicant be subject to the settlement order obtained by the applicant.

(3) Where any person has obtained a settlement order, which contains observations in respect of any other person for the commission of an alleged default, such an order shall not in itself be admissible as evidence against such other person.

Revocation of the settlement order.

28. (1) If the applicant fails to comply with the settlement order or at any time after the settlement order is passed, it comes to the notice of the Board that the applicant has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed.

(2) Whenever any settlement order is revoked, no amount paid under these regulations shall be refunded.

CHAPTER XI

MISCELLANEOUS

Confidentiality of information.

29. (1) All information submitted and discussions held in pursuance of the settlement proceedings under these regulations shall be deemed to have been received or made in a fiduciary capacity and the same may not be released to the public, if the same prejudices the Board and/or the applicant.

(2) Where an application is rejected, the applicant and the Board shall not rely upon or introduce as evidence before any court or Tribunal, any proposals made or information submitted or representation made by the applicant under these regulations:

Provided that this sub-regulation shall not apply where the settlement order is revoked and withdrawn under these regulations.

Explanation. – When any fact is discovered in consequence of information received from a person in pursuance of an application, so much of such information, whether it amounts to an admission or not, as relates distinctly to the fact thereby discovered, may be proved.

Power to remove difficulties.

30. In order to remove any difficulty in the interpretation or application or implementation of the provisions of these regulations, the Board shall have the power to issue clarifications and specify procedures through circulars or guidelines.

Irregularity in procedure

31. No settlement order or rejection of a settlement application shall be void on ground of any defect in procedure or calculation of the settlement amount or on account of any vacancy in or any defect in the constitution of any committee under Chapter V:

Provided that, nothing in these regulations shall prohibit the Board from revoking the settlement order where the applicant fails to pay any difference due to any discrepancy in calculation of the settlement amount:

Provided further that, the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of initiating or continuing or restoring of any legal proceeding and the waivers given in sub-paras (d), (e) (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.

Relevance of these regulations in specified proceedings

32. Schedule-II of these regulations shall be relevant but not bind the Board or an Adjudicating Officer in any specified proceeding and the Board or the Adjudicating Officer may apply them to the extent possible.

Repeal and savings.

33. (1) On and from the commencement of these regulations, Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 shall stand repealed.

(2) Notwithstanding any such repeal:

(a) Notice of settlement issued under the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 shall be deemed to have been filed in accordance with these regulations and shall be dealt with in accordance with the provisions of these regulations;

(b) All applications filed under the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and pending with the Board shall be deemed to have been filed in accordance with these regulations and shall be dealt with in accordance with the provisions of these regulations;

(c) All settlement orders passed under the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 shall be deemed to have been passed under these regulations;

(d) The Internal Committee(s) and the High Powered Advisory Committee constituted by the Board in accordance with the Securities and Exchange Board of India

(Settlement of Administrative and Civil Proceedings) Regulations, 2014, shall be deemed to have been constituted under these regulations;

(e) The proposals of the Internal Committees and the recommendations of the High Powered Advisory Committee in accordance with the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and any action taken by the Board on the basis of these recommendations shall be deemed to have been made under these regulations.

SCHEDULE-I

(See regulation 3)

Part-A

FORM

Application for settlement

(To be filed only after conclusion of investigation, inspection, inquiry or audit, as the case may be)

(For Office use only)

Date of receipt of the application:

Application Registration Number:

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*(**Instructions**: All particulars, including submission regarding details of loss caused to investors, profit made and proposed settlement amount **must** be filled, else application shall be returned. Put 'NA' only where NOT APPLICABLE.)*

Before the Securities and Exchange Board of India

In the matter of ……..

1. Name/Trade name of the applicant/co-applicants:
   (a) Registration no., if applicable :
   (b) Date of Registration, if applicable :
   (c) PAN/DIN/CIN number, as available:
   (d) Paid-up capital of applicant:
   (e) Aadhaar number or Aadhar enrolment number, if applicable:
2. If stock broker, name of the stock exchange:
3. If sub-broker/authorised person, 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. Interim order(s) in the pending proceedings (gist of the orders passed), if any:
15. Other actions pending with/concluded by the Board, if any (with their details):
    (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. Full and true disclosure of facts (including the loss caused, profit made, loss avoided, gross fees, brokerage, commissions, etc., in respect of the cause of action, with manner of calculation thereof):

    [APPLICANT TO TAKE INTO ACCOUNT THE GUIDELINES PROVIDED IN SCHEDULE-II]
18. Specific charges alleged:
19. Terms of settlement proposed by the Applicant:-
    (a) Monetary terms, with manner of calculation:-
    (b) Non-monetary terms, including manner of calculation of terms of disgorgement due:-
20. Original documents to be enclosed:

(a) Undertakings and waivers (as per Format specified in Part C).

(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 / other relevant financial details for the last three financial years and the quarterly audited financial results of the current year;

(c) A statement showing net worth of the applicant (only for those applicants who are required to comply with the networth requirements as specified by the Board or by the stock exchanges), 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., in respect of the said default;

(d) Copy of PAN card/Aadhar/ DIN/CIN details;

(e) Complete Income-tax Returns of the applicant for the last three financial years;

(f) In case of a foreign body corporate applicant, include details relating to incorporation, place of business, registration details with any non-Indian financial sector regulatory authority.

(g) In case of a non-resident applicant, include details relating to passport and national identity document, if any.

(h) Any other relevant document (s)/submissions.

(Signature of the applicant)

(Stamp and Seal of body corporate applicant)

Verification

I, ……son/daughter/wife of (Name in block letters) Shri ……..being the applicant/authorised representative (in case of body corporate) of ……. do hereby verify and affirm on oath that this application and the contents thereof are true to my knowledge and belief and as per the records

and that I have not suppressed any material facts and shall keep the Board informed without delay, of any other relevant information that may come to my notice.

(Signature of the applicant)

Date:

Place :

Part-B

Every applicant under Chapter II of these regulations shall pay a non-refundable processing fee of fifteen thousand rupees, by way of a demand draft in favour of 'Securities and Exchange Board of India' payable at Mumbai or by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI.

Provided that, where the applicant is a body corporate, the non-refundable processing fee shall be Twenty-five thousand rupees.

Part-C

Undertakings and Waivers

Format

Undertaking to be submitted by each applicant, along with the application with stamp duty duly paid and duly notarized at the time of execution.

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

(1) I/We admit the jurisdiction and right of the Securities and Exchange Board of India to initiate appropriate proceedings in respect of the alleged default.

(2) I/We further agree and undertake that the time spent during the settlement proceedings shall be excluded for computing the limitation period or laches, if any, for initiating or continuing or restoring any legal proceedings, if any, against me/us, and waive any objections in this regard.

(3) The Securities and Exchange Board of India may enforce any claims against me/us arising from or/in relation to any violation of the settlement order passed pursuant to this application.

(4) Nothing in the settlement order shall preclude any other person from pursuing any other legal remedy to which such person may be entitled against me/us as per law.

(5) The settlement proposed by me/us does not limit or create any private rights or remedies for any person who is not a party to these proceedings, against me/us.

(6) The settlement amount including legal costs, if any, shall be paid by me/us to the Board within the period stipulated by the Board.

(7) The settlement order shall be construed and enforced in accordance with the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, as amended from time to time.

(8) I/We agree that subsequent to the passing of the settlement order, I/We shall not take any action or make or permit to be made any public statement denying, directly or indirectly, any finding of the Board including that recorded in the settlement order or creating impression that the settlement order is without factual basis.

(9) I/We hereby declare that nothing in the waiver and undertaking given by me/us shall affect 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 in any other legal proceeding in which the Board is not a party.

(10) I/We for the limited purpose of settlement under these regulations 'admit the findings of fact and conclusions of law' or 'neither admit nor deny the findings of fact and conclusions of law' (strike off whichever is not applicable), and agree to abide by the settlement order as may be passed in accordance with the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 and guidelines and circulars issued by the Board in that regard:

Provided that, in relation to defaults related to disclosures other than relating to a prospectus or a letter of offer or a similar such document required to be made in relation to an issue of securities, I/we do not deny the alleged default:

(11) I/We waive my/our right of taking any legal proceedings against the Securities and Exchange Board of India concerning any of the issue covered in the settlement order that may be passed.

(12) I/We further waive the following:

(a) the findings of fact and conclusions of law;

(b) the proceedings before the Board or any officer of the Board;

(c) the right to all post-hearing procedures;

(d) appeal/review before the Tribunal/courts;

(e) any plea relating to such provisions of the regulations or other requirements of law, including conflict of interest, as may be construed to prevent any member or officer of the Securities and Exchange Board of India from participating in the proceedings, including settlement proceedings or assisting or advising the Internal Committee, high Powered Advisory Committee or Panel of Whole Time Members, as to, any order, opinion, finding of fact, or conclusion of law, etc;

(f) any plea of bias or pre-judgment by the Securities and Exchange Board of India, the officers or the High Powered Advisory Committee, based on the consideration of or discussions concerning settlement of all or any part of the internal proceedings;

(g) any plea of limitation or laches for initiating or restoring of the proceedings, if the applicant violates the settlement order.

(Signature of the applicant with stamp and seal of the body corporate)

Before me.

Notary.

SCHEDULE-II

(*See regulation 10***)**

CHAPTER I

GUIDELINES FOR ARRIVING AT SETTLEMENT TERMS

1. The settlement amount (SA) *shall* comprise of the Indicative Amount (IA) arrived at in terms of these guidelines and the factors provided in regulation 10, wherever applicable:

   Provided that, wherever applicable, the SA in relation to an adjudication proceeding shall not be less than the minimum penalty that may be levied under securities laws by an adjudicating officer.

2. The IA shall not be less than Rupees 3 lakh for first time applicants or Rupees 7 lakh for others, as the case may be.

   Explanation 1.-A 'first time applicant' is a person against whom no order has been passed by the adjudicating officer or by the Board or who has never obtained a settlement order from the Board as on the date of the present application.

   Explanation 2. - Individual applicants who submit to the satisfaction of the IC or HPAC or Panel of WTMs that, without knowledge of the illegal activity, they had lent the use of their securities account to the key operator or intermediary or securities market infrastructure institution involved in such activity, the SA may not exceed the minimum penalty under securities laws.

3. Based on the stage at which the proceeding(s), for which the application is made, is/are pending, the proceeding conversion factor (PCF) shall be applied when calculating the IA.

4. In cases, where an existing business or activity of a person is either corporatized or converted into an LLP or partnership or merged or taken over by a new management, the existing record of the erstwhile entity shall be deemed to be the record of the new entity. Considerations including insolvency, change of name or management or ownership, etc., shall be considered in accordance with the guidelines issued by the Board, if any, from time to time.

5. PCF for Applications made voluntary or seeking settlement with confidentiality: Where an entity desires to obtain the benefit of a lower PCF, it may, *suo motto*, before the receipt of any notice to show cause, intimate the Board of such default hereinafter referred to as 'intimation defaults' and co-operate with the Board in the investigation, inquiry, inspection or audit. Such an application shall be deemed to have been made 'Pre- issue of notice to show cause*'* for the purpose of calculating the PCF.

6. The IA shall be calculated per count of default, jointly or separately as per the facts and circumstances of the case, in accordance with these guidelines.

7. While considering the application, the alleged default(s) detailed in the Inspection Report or the Investigation Report or the Report of the Designated Authority (DA) or the notice to show cause, including any supplementary notice to show cause issued by any authority in a pending proceeding, or the facts/findings detailed in the order of the Designated Member (DM) or the Whole Time Member (WTM) or the Adjudicating Officer (AO) or the Securities Appellate Tribunal (SAT), as applicable, may be the basis for calculating the IA.

   In case, the Internal Committee (IC) or the High Powered Advisory Committee (HPAC) or the Panel of Whole Time Members (WTMs) are of the opinion that the facts disclose a different default, the modification of the charge(s) may be sought.

8. The alleged defaults shall, wherever applicable, be categorised based on the facts and circumstances by the IC or HPAC or the Panel of WTMs.

9. Notwithstanding anything contained in these guidelines, the IC or HPAC or Panel of WTMs shall have the discretion to recommend acceptance or rejection or accept or reject an application, to recommend an amount, lower or higher than the amounts arrived at in terms of these guidelines, for reasons to be recorded, in accordance with the provisions of securities laws, considering the facts and circumstances of the case and the gravity of the charges.

10. In case the applicant is body corporate, the IC or HPAC or Panel of WTMs may require that the SA payable by a body corporate is to be paid by the officers in default including the persons in charge of the body corporate to avoid burdening investors holding securities issued by the body corporate.

11. In cases where the formulae for calculating the IA are inapplicable or cannot be adapted due to the peculiar nature of the default or the facts and circumstances of the case or where the defaults detailed in the Tables in these guidelines are not covered, the IC or HPAC or Panel of WTMs may arrive at the SA, as they deem fit.

12. In case of an amendment(s) or repeal of the securities laws, these guidelines shall continue to apply to similar provisions under the amended or new laws, *mutatis mutandis*.

Chapter II

INDICATIVE AMOUNT AND THE SETTLEMENT AMOUNT

Indicative amount (IA) shall be calculated as follows:

IA= A xB + Legal Costs#

#Legal costs of the Board may be applicable to an application made at the stages mentioned in points "b", "d" and "e" as provided in Table I.

Where:

'A' = PCF + RAF

A: Multiplying Factor.

PCF: Proceeding Conversion Factor.

RAF: Regulatory Action Factor.

'**B**' = **BV x BA**

B: *Applicable Benchmark Amount*, is the amount attributable to every count of the alleged default in accordance with these guidelines;

'**BV**': Aggregate of the base values given to the relevant aggravating and mitigating factors in respect of a particular charge.

'**BA**': Base amount attributable to every count of the alleged default in accordance with these guidelines.

1. The IA shall not exceed the maximum penalty under securities laws that may be levied for each count of violation multiplied by the counts of alleged default in accordance with these guidelines.

2. (a) Where an order of penalty has been passed prior to making an application, then 'B' shall not be less than the penalty so awarded;

(b) In case more than one proceeding arising from the same cause of action has been initiated against the applicant, the IA shall be increased by 20%;

3. In case of grant of confidentiality, the IA arrived in accordance with this Schedule shall, be further reduced as follows, -

    i. those marked first in priority status may be granted reduction of up to or equal to ninety percent of the IA;
    ii. those marked second in priority status may be granted reduction of upto or equal to fifty percent of the IA; and
    iii. those marked third or subsequent in the priority status may be granted reduction upto or equal to twenty five percent of the IA.

4. The amount which is finally approved by the Panel of Whole Time Members is the **SA.**

5. Notwithstanding anything in this Schedule, -
    i. where a compounding application has been filed in respect of an offence under securities laws for non-payment of penalty, the proposal agreeing to the composition of the offence may be made to the court only on receipt of such penalty and interest as deemed appropriate along with legal charges as determined by the Board; and
    ii. where a compounding application is filed after framing of the charges by the court, the proposal agreeing to the composition may be made after increasing the amount calculated under this Schedule by atleast twenty-five per-cent along with legal charges and any other terms as may be approved by the Panel of Whole Time Members.

CHAPTER III

PROCEEDING CONVERSION FACTOR

The values assigned on the basis of the stage of the proceedings, as on the date of the application, shall be the PCF as per Table I:

Provided that where multiple proceedings arising out of the same cause of action are sought to be settled, the value of the proceeding which is at the most advanced stage, irrespective of the stage of progress of the other proceedings, shall be taken as the PCF.

TABLE- I

PCF

	STAGE OF THE PROCEEDING(S) WHEN THE SETTLEMENT APPLICATION IS MADE	VALUE OF PCF
a.	Voluntary or for seeking settlement with confidentiality	0.65
b.	Pre- issue of the notice to show cause (including applications filed on receipt of the settlement notice) [Or Compounding application filed pre-summoning]	0.75
c.	Post-issue of the first notice to show cause pertaining to any pending proceeding in the same cause of action (including applications filed after period provided in settlement notice) [Or Compounding application filed before the framing of charge]	0.85
d.	Proceeding pending after the submission of the report by the Designated Authority [Or	0.9

	Compounding application filed after framing of charge]	
e.	Proceedings pending after passing of a final order imposing penalty or issuing civil and administrative directions, as the case may be	1.10
f.	Proceedings pending after the passing of the order by the Securities Appellate Tribunal or Court	1.20

CHAPTER IV

REGULATORY ACTION FACTOR -VALUE FOR ALL ORDERS AND REGULATORY DIRECTIONS

The sum of all the values assigned to the order and regulatory direction(s) issued in the past, if any, shall be 'RAF'.

'RAF'= X + Y

"TABLE II -VALUE for ORDERS AND REGULATORY DIRECTIONS ISSUED X*

* To also include those orders and directions which have been stayed by the Securities Appellate Tribunal or Court, as on the date of the application. In case multiple proceedings have been initiated for the same cause of action, the value shall be added for each final order passed.

ORDERS AND REGULATORY DIRECTIONS ISSUED TO THE APPLICANT	X PER ORDER
Exonerated cases (i.e. cases where applicant was exonerated in an order or appeal or review) and any settlement order involving confidentiality	0
Any other Settlement Order	0.01
ALL OTHER ORDERS (EXCEPT FOR WHICH THE APPLICATION IS FILED)	
Cease and desist order	0.02
Final order issued against other persons associated with the securities markets	0.05
Final order issued against an intermediary or securities market infrastructure institutions* or listed companies, and their principal officers	0.075

*In this schedule an '*intermediary or securities market infrastructure institutions'* includes any person required by securities laws to be registered or recognised by the Board.

TABLE III- VALUE FOR ORDER OR DIRECTION PASSED OR ISSUED FOR WHICH THE APPLICATION IS FILED – Y

FINAL ORDER AGAINST INTERMEDIARY OR SECURITIES MARKET INFRASTRUCTURE INSTITUTION, FOR WHICH APPLIED	**FINAL ORDER AGAINST ANY PERSON OTHER THAN INTERMEDIARY OR SECURITIES MARKET INFRASTRUCTURE INSTITUTION, FOR WHICH APPLIED**	**'Y' PER ORDER**
Warning issued		0.05
Suspension/Debarment upto 1 month	Debarment upto 6 calendar months	0.1
Suspension/Debarment for 1 month or more, but less than 6 months	Debarment for 6 calendar months or more, but less than 1 year	0.15
Suspension/Debarment for 6 month or more but less than 1 year	Debarment for 1 year or more but less than 2 years	0.2
Suspension/Debarment for 1 year or more but less than 2 years	Debarment for 2 years or more but less than 3 years	0.25
Suspension/Debarment for 2 years or more	Debarment for 3 years or more but less than 5 years	0.3

CHAPTER V

APPLICABLE BASE VALUES AND FACTORS

BV= 1+ SUM OF APPLICABLE BASE VALUES

I. While assessing the relevant factors, the IC or HPAC or Panel of WTMs may take into account the following general mitigating factors with a base value of '-0.2' applied once for all or any of them:

1. The quantum of IA would affect the ability of the applicant to make restitution to investors:

   Explanation. - In such cases higher IA may be sought from the officer who is in default.
2. The applicant had minimal participation in the alleged default;
3. Proactive and exceptional cooperation, including:
   a. Prompt and detailed self-identification of suspected or uncovered misconduct;
   b. Early self-identification of contraventions followed by thorough internal reviews and sharing of discovered facts;
   c. Substantial assistance to an investigation or inquiry by obtaining and providing evidence.
4. Acceptance of responsibility and acknowledgement of misconduct to the Board prior to detection and intervention by truthfully admitting the conduct;
5. Voluntarily employing subsequent substantial corrective measures to avoid recurrence of misconduct;
6. Where the delay in complying with the reporting requirement was less than 7 days and non-reporting did not result in undue gain or loss to any person;
7. Voluntary acts of compensation, disgorgement of commission, profits and payment of restitution to investors;
8. Disclosure made in the incorrect format; and
9. Applicant is a unit of governmental authority including a public-sector unit.

II. While assessing the relevant factors, the IC or HPAC or Panel of WTMs may take into account the following general aggravating factors with a base value of '0.2' applied once for all or any of them:

1. Efforts to frustrate or prolong an investigation, inquiry or a civil and administrative proceeding, including settlement proceedings:
   Explanation. - This factor may be taken into account only when the applicant is or may be charged for non-compliance with summons during investigation or when the applicant fails to comply with the summons in a civil and administrative proceeding;
2. Providing inaccurate or misleading testimony or information or wilfully failing to provide information that he was bound to provide;
3. Misconduct over an extended period of time which is not less than 30 days;
4. Significant monetary loss to the clients which exceeds in aggregate of Rs 5 crores;
5. Applicant had failed to heed prior regulatory guidance and prior warnings;
6. Evidence of planning, pre-meditation or sophisticated means:
   Explanation: Conducting default across different jurisdictions, hiding assets or transactions, or both, through the use of fictitious entities, corporate shells or offshore financial accounts ordinarily indicates sophisticated means.

7. A listed intermediary or securities market infrastructure institution was substantially jeopardized:
   Explanation. - A listed intermediary or securities market infrastructure institution shall be deemed to have been substantially jeopardized if as a result of the alleged default:
   a. it has become insolvent or an application under the Insolvency and Bankruptcy Code, 2016 was admitted;
   b. it was unable on demand to refund fully any public deposit, payment or investment; or
   c. it is so depleted of assets that it is forced to merge with another institution in order to continue active operations.

8. The liquidity of the securities of a publicly traded company was substantially endangered i.e. it was delisted or trading of the company's securities was halted for more than one full trading day;

9. The applicant abused a position of trust or used a special skill, in a manner such that significantly facilitated the commission or concealment of the alleged default:
   Explanation 1. - This factor applies if the applicant occupied and abused a position of trust. It does not apply to an ordinary tippee.

   Explanation 2. - This factor applies if the applicant's position involved regular participation or professional assistance in creating, issuing, buying, selling, or trading securities or products was used to facilitate significantly the commission or concealment of the default. It does not apply to clerical staff in an organisation; as such position ordinarily does not involve special skill.

   Explanation 3. - 'Special skill' refers to a skill not possessed by members of the general public and requires professional education, training or licensing, e.g. charted accountant, advocate, auditor, compliance officer, etc.

   Explanation 4. - This factor also applies where the applicant has represented himself to hold a position of trust when, in fact, he does not.

10. The applicant was the key-operator, whether or not he himself traded:
    Explanation 1. - A person is a key-operator if he was an organizer or leader of an illegal activity or the main beneficiary of the default:
    Provided that, if a person is merely a manager or supervisor (but not an organizer or leader or the main beneficiary) then he is not a key-operator.

    Explanation 2. - The IC or HPAC or Panel of WTMs may take into account factors such as share of profits, the recruitment of accomplices, the degree of control and authority exercised over others.

11. Exercising management control by use of fraudulent or forged securities or securities issued without appropriate approvals; and
12. Reporting of false information.

III. While assessing the relevant factors, the IC or HPAC or Panel of WTMs may take into account the following factors tending to show the alleged default was deliberate with a base value of '0.25' applied once for all or any of them:

1. The actions were not in accordance with the applicable internal procedures;
2. The individual knowingly took decisions relating to the violation beyond his field of competence;
3. The individual intended to benefit financially from the violation, either directly or indirectly;
4. The alleged default was repetitive.

IV. While assessing the relevant factors, the IC or HPAC or Panel of WTMs may take into account the following factor tending to show the alleged default was reckless with a base value of '0.3':

1. The body corporate or the responsible person, appreciated there was a risk that their actions or inaction could result in a violation of securities laws and failed adequately to mitigate that risk:

   Explanation. – The following shall be deemed to be reckless, -

   a. failure to appoint competent officials for discharge of their duties, including a compliance officer;
   b. failure to put in place adequate systemic safeguards; or
   c. failure to put in place a code of conduct.

V. While considering the various factors and the aggregate base values, the following specific base values given shall also be taken into account, -

TABLE IV- GENERAL BASE VALUES, APPLICABLE IN ALL CASES		
NATURE OF VIOLATION		**BASE VALUE**
a.	Fraudulent and unfair trade practice (FUTP); or Insider trading, including tipping (IT); or violation of code of conduct noted in an	0.25

	investigation or inquiry related to FUTP or IT Or FUTP or IT in combination with the violation of code of conduct or any other regulation Or FUTP in combination IT or in combination with a violation of *requirement relating to anti-money laundering and know your client.* Or Failure by a market infrastructure institution or its principal officers to conduct its business in a fair manner. Or Failure by a market infrastructure institution or its principal officers to conduct its business in a fair manner in combination with FUTP or IT or the violation of code of conduct or any other regulation	0.3 0.35 0.50 0.75 [In case multiple are applicable, only the highest value shall be applied.]

b.	Factors for volume traded and/or price change for the default	Sum of '**V', 'P'** and **'Q',** wherever applicable, to be applied to each member of group or of the applicant when he acts alone, only if the volume traded or price change, quantity traded in respect of the group, of which the applicant is a part of or of the applicant when he acts alone, as the case may be, can be calculated from the findings brought out in the investigation report or inquiry or notice to show cause or order, as the case may be. In case multiple trading periods are involved, the highest change has to be considered.
c.	Time value of ill-gotten gains*****	0.09 × multiple of calendar years from the date of commission of the default
d.	Reputation risk applicable in all settlements without admitting violation of securities laws	All applicants: 0.25
e.	Violation in illiquid scrip	0.3
f.	Persons who are indigent or undergoing liquidation or bankruptcy process or whose resolution/repayment plan has been submitted to the adjudicating authority for approval	- 0.3

***Factor 'c' is applicable only in cases where the actual profit and/or loss avoided (approx.) is determinable and disgorgement with interest is not ordered. While calculating the period, the fractions may be ignored.**

'V' = VALUE FOR THE HIGHEST % OF VOLUME TRADED IN ANY TRADING PERIOD DURING THE ENTIRE PERIOD OF VIOLATION

In case of more than one scrip, the scrip with the highest volume traded is to be considered

TABLE IVA- SPECIAL BASE VALUES, IN ADDITION TO GENERAL BASE VALUES

% VOLUME TRADED (ILLIQUID SCRIP)	'V'	% VOLUME TRADED (LIQUID SCRIP)
Upto 50%	0.1	Upto 2%
50 -60%	0.15	2-5%
60-75%	0.2	5-10%
75% or more	0.25	10% or more

'P' = VALUE FOR HIGHEST % OF PRICE CHANGE DURING THE ENTIRE PERIOD OF VIOLATION

In case of more than one scrip, the scrip with the highest price change is to be considered

TABLE IVB- SPECIAL BASE VALUES, IN ADDITION TO GENERAL BASE VALUES

% PRICE CHANGE (ILLIQUID SCRIP)	'P'	% PRICE CHANGE (LIQUID SCRIP)
Upto 50%	0.1	Upto 5%
50-100%	0.15	5-10%
100-200%	0.2	10-20%
200% or more	0.25	20% or more

'Q' = VALUE FOR HIGHEST % OF PRICE CHANGE, DURING THE PERIOD OF DEFAULT FOR F&O & LEVERAGED PRODUCTS

In case of more than one product, the contract with the highest price change is to be considered

TABLE IVC- SPECIAL BASE VALUES, IN ADDITION TO GENERAL BASE VALUES

% PRICE CHANGE	'Q'

Upto 0.5%	0.1
0.5-1%	0.15
1-5%	0.2
5% or more	0.25

TABLE V- SPECIAL BASE VALUES, IN ADDITION TO GENERAL BASE VALUES FOR DISCLOSURE AND OPEN OFFER DEFAULTS

	NATURE OF VIOLATION	BASE VALUE
a.	In Non-disclosure (including incorrect or incomplete disclosure) charge under any regulation relating to takeover, insider trading or issue or listing of securities in combination with any other charge	0.20
b.	In Non-Disclosure (including incorrect or incomplete disclosure) matters: Applicant is a body corporate with paid-up equity share capital (including reserves) below Rupees Ten crores (not applicable to companies which are exclusively holding companies)	- 0.5
c.	In open offer violations: acquirer not in control of target company, prior to triggering the takeover	0.25

VI. In cases where joint and several penalties exists, a single IA may be based on the factors and the weightages applicable to the default in general, as the IC or HPAC or Panel of WTMs may deem fit and any other factor may also be considered while imposing any limit in respect of amounts that may be recovered from a particular applicant, in respect of the IA calculated for multiple applicants.

CHAPTER VI

APPLICABLE BENCHMARK AMOUNT

APPLICABLE B = 'The illegal profits' + 'loss caused to investors' [quantified as per the guidelines, if any, issued by the Board]

Or

The BA as per the Tables in this Chapter,

whichever is higher.

GENERAL GUIDELINE: In case the applicant is charged for non-disclosure of Regulations relating to Open Offer [*SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, and any subsequent similar regulations*] and PIT [*Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, SEBI (Prohibition of Insider Trading) Regulations, 2015, and any subsequent similar regulations*], the Benchmark Amount arrived at for the highest such charge shall be reduced by 75%.

TABLE-VI BA FOR ALLEGED DEFAULT RELATING TO OPEN OFFER	
NATURE OF VIOLATION	BA FOR ACQUIRER AND PERSONS ACTING IN CONCERT

DELAYED OPEN OFFER	RUPEES 25 LAKH OR 0.25% OF THE OPEN OFFER SIZE, I.E. MAX NUMBER OF SHARES FOR WHICH OPEN OFFER MUST BE GIVEN X APPLICABLE OPEN OFFER PRICE, WHICHEVER IS HIGHER	
DELAYED OPEN OFFER (AFTER DIRECTION FROM THE BOARD)	RUPEES 50 LAKH OR 0.5% OF THE OPEN OFFER SIZE, WHICHEVER IS HIGHER	
WHERE THE MAKING OF THE OPEN OFFER IS INFRUCTUOUS I.E. WHEN COMPANY HAS BEEN DELISTED, WHEN OPEN OFFER IS NOT BENEFICIAL TO SHAREHOLDERS, ETC	**INFRUCTUOUS BY AN ACT OF THE COMPANY REQUIRED TO MAKE AN OPEN OFFER**	**INFRUCTUOUS DUE TO OTHER REASON, INCLUDING WHEN OPEN OFFER IS NOT BENEFICIAL TO SHAREHOLDERS**

	RUPEES 1 CRORE OR OPEN OFFER SIZE, WHICHEVER IS HIGHER	ANY AMOUNT BETWEEN THE MINIMUM PENALTY TO PROBABLE COST OF OPEN OFFER AS RECOMMENDED BY THE CORPORATE FINANCE DEPARTMENT OF THE BOARD

TABLE-VII

BA FOR ALLEGED DEFAULT RELATING TO DISCLOSURES UNDER SECURITIES EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS -1997/2011

PERCENTAGE OF SHAREHOLDING OR VOTING RIGHTS ACQUIRED OR DISPOSED BUT NOT DISCLOSED OR PERCENTAGE OF ENCUMBERED SHARES BUT NOT DISCLOSED, ETC.	**BA FOR VIOLATION OF**		
	REGULATION 7 OF 1997 REGULATIONS OR REGULATION 29 OF 2011 REGULATIONS (I)	**REGULATION 8 OF 1997 REGULATIONS OR REGULATION 30 OF 2011 REGULATIONS (II)**	**REGULATION 8A OF 1997 REGULATIONS OR REGULATION 31 OF 2011 REGULATIONS (III)**
Upto 2%	Rupees 2 lakh + Rupees 5,000/- For every three months delay[#] or part thereof		
2% to less than 5%	Rupees 5 lakh + Rupees 10,000/- For every three months delay or part thereof		

5% to less than 10%	Rupees 10 lakh + Rupees 15,000/- For every three months delay or part thereof
10 % to less than 15%	Rupees 15 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rupees 20,000/- For every three months delay or part thereof
15% and above	Rupees 20 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rupees 25,000/- For every three months delay or part thereof

Notes to Table VII:

1. **Table VII is not applicable in cases where the disclosure related violation is in combination with FUTP or PIT.**
   Explanation: Dealing while in possession of material financial or shareholding information may be treated as IT.
2. **The BA for violation at (II) shall only be as per the lowest slab, irrespective of change in shareholding over the reporting period. In case of violations related to disclosures that are required to be made annually\ the amount for delay for every three months or part thereof shall be computed only for the first disclosure violation. In case the noticee complies with the annual reporting**

requirements for a few years, such compliance will not result in a higher amount than would have otherwise be calculated for continuous violations.

3. **The period of delay is to be calculated from the last day, when the disclosure ought to have been made, as required by the regulations.**

TABLE VIII **BA – ALLEGED DEFAULT RELATING TO TRANSACTION SPECIFIC DISCLOSURES UNDER REGULATIONS 13(3), 13(4), 13(4A) AND CORRESPONDING 13 (6) OF 1992 PIT REGULATIONS [INCLUDES, CORRESPONDING TRANSACTION SPECIFIC DISCLOSURES UNDER REGULATIONS OF 2015 PIT REGULATIONS]**	
PERCENTAGE OF SHAREHOLDING OR VOTING RIGHTS ACQUIRED OR DISPOSED BUT NOT DISCLOSED OR PERCENTAGE OF ENCUMBERED SHARES BUT NOT DISCLOSED, ETC.	**BA**
Upto 2%	Rupees 2.5 lakh +

	Rupees 7,500/- For every three months delay or part thereof
2% to less than 5%	Rupees 6 lakh + Rupees 12,500/- For every three months delay or part thereof
5% to less than 10%	Rupees 12 lakh + Rupees 17,500/- For every three months delay or part thereof
10 % to less than 15%	Rupees 18 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rupees 22,500/- For every three months delay or part thereof
15% and above	Rupees 25 lakh + 0.1 % of the value of the holding not disclosed, etc. + Rupees 25,000/- For every three months delay or part thereof

Notes to Table VIII:

1. **In cases of disclosure related violations by connected persons or by key managerial persons, the BA may be increased by 25%.**
2. **Table VIII is not applicable in cases where the disclosure related violation is in combination with FUTP or IT.**

   Explanation: Dealing while in possession of material financial or shareholding information may be treated as IT.

TABLE IX **BA - DISCLOSURES RELATED VIOLATIONS NOT COVERED IN TABLES VII AND VIII**	
NATURE OF ALLEGED DEFAULT	**BASE AMOUNT**
TYPE OF DISCLOSURE RELATED VIOLATION	
PIT REGULATIONS	
Periodical and other disclosures	Rupees 5 lakh + Rupees 5,000/- for every three months delay or part thereof, if applicable

OPEN OFFER REGULATIONS	
Reporting requirements or disclosures for which exemptions are available, except cases of non-compliance of a condition precedent for availing exemption would result in triggering of an open offer obligation (The Regulation 6 of 1997 Regulations are dated and no amount may be imposed for its violation, except in case of standalone violations of Regulation 6 the minimum SA may be applicable)	Rupees 5 lakh + Rupees 10,000/- for every three months delay or part thereof, if applicable
VIOLATIONS UNDER REGULATIONS RELATED TO FOREIGN INSTITUTIONAL INVESTORS	
Failure to provide information	Rupees 20 lakh per default
Intimation of material changes	Rupees 5 lakh per default
RESIDUARY	
Code of conduct reporting requirements or	Rupees 5 lakh

Disclosures on appointment of director or Any other disclosure related violations that are not detailed in this Chapter, if deemed appropriate	+ Rupees 10,000/- for every three months delay or part thereof, if applicable

Notes to Table IX:

1. **In cases of disclosure related violations by key managerial persons, the Benchmark Amount may be increased by 25%.**
2. **Table IX is not applicable in cases where the disclosure related violation is in combination with FUTP or IT.**
   Explanation: Dealing while in possession of material financial or shareholding information may be treated as IT.

TABLE-X

RESIDUARY BA, FOR EACH UNIT OF ALLEGED DEFAULT FOR EACH APPLICANT OR ON JOINT LIABILITY BASIS (AS PER THE SUM OF APPLICABLE AMOUNTS IN CASE OF JOINT APPLICANTS)

	INDIVIDUAL (PRINCIPAL OFFICERS NOT	BODY CORPORATE & FIRM	PRINCIPAL OFFICERS &	SECTION 15B AND 15F OF SEBI ACT &	FAILURE IN REDRESSING INVESTOR	MARKET INFRASTRUCTURE INSTITUTIONS	FUND RELATED DEFAULTS (AND PRINCIPAL OFFICERS IN

	INCLUDED) **(I)**	**(AND PRINCIPAL OFFICERS IN CASES RELATING TO JOINT LIABILITY WITH THE BODY CORPORATE /FIRM)** **(II)**	**COMPLIANCE OFFICERS [WHEN NOT IN II, IV-VII]** **(III)**	**SIMILAR DEFAULTS (AND PRINCIPAL OFFICERS IN CASES RELATING TO JOINT LIABILITY WITH THE INTERMEDIARY)** **(IV)**	**GRIEVANCES (AND PRINCIPAL OFFICERS IN CASES RELATING TO JOINT LIABILITY WITH THE INTERMEDIARY/ ISSUER)** **(V)** **(FOR DELAY**	**(AND PRINCIPAL OFFICERS IN CASES RELATING TO JOINT LIABILITY WITH THE INSTITUTION)** **(VI)**	**CASES RELATING TO JOINT LIABILITY WITH THE FUND)** **(VII)**

					REDUCE TO 1/4)		
BA WHERE: DEFAULT RELATE TO FUTP OR IT, **CODE OF CONDUCT VIOLATION RELATING TO FUTP OR IT,** **INADEQUATE SYSTEMIC SAFEGUARDS RELATING TO FUTP OR IT,** **FALSE/ MISLEADING/**	RUPEES 15 LAKHS	RUPEES 1.5 CRORES	RUPEES 45 LAKHS	RUPEES 15 LAKHS	RUPEES 30 LAKHS	RUPEES 5 CRORE	RUPEES 33 LAKHS OR 0.01% OF THE AVERAGE ASSET UNDER MANAGEMENT, AT TIME OF VIOLATION OR 0.5% OF THE AVERAGE NET WORTH, AT TIME OF VIOLATION,

INCORRECT/INCOMPLETE DISCLOSURES IN OFFER DOCUMENTS, **FAILURE BY MARKET INFRASTRUCTURE INSTITUTIONS TO CONDUCT BUSINESS IN THE REQUIRED MANNER,** **A RECKLESS VIOLATION,** **OR**							WHICHEVER IS HIGHER

A DISGORGEMENT /REFUND IN EXCESS OF RUPEES 1 CRORE (M)							
BENCHMARK WHERE VIOLATION INVOLVED AT (M) AND, - **SUCH VIOLATION DIRECTLY OR INDIRECTLY –** **(I) RESULTED IN SUBSTANTIAL LOSSES TO OTHER PERSONS,**	RUPEES 60 LAKHS	RUPEES 3 CRORE	RUPEES 2 CRORE	RUPEES 60 LAKHS	RUPEES 80 LAKHS	RUPEES 10 CRORE	RUPEES 60 LAKHS OR 0.05% OF THE AVERAGE ASSET UNDER MANAGEMENT, AT TIME OF VIOLATION OR

(II) CREATED A SIGNIFICANT RISK OF SUBSTANTIAL LOSSES TO OTHER PERSONS, OR **(III) AFFECTED THE INTEGRITY OF THE SECURITIES MARKETS (N)**							0.075% OF THE AVERAGE NET WORTH, AT TIME OF VIOLATION, WHICHEVER IS HIGHER
RESIDUARY (O)	RUPEES 3 LAKHS	RUPEES 15 LAKHS	RUPEES 10 LAKHS	RUPEES 3 LAKHS	RUPEES 6 LAKHS	RUPEES 3 CRORE	RUPEES 15 LAKHS OR 0.001% OF THE AVERAGE ASSET UNDER MANAGEMENT, AT TIME OF VIOLATION

							OR 0.01% OF THE AVERAGE NET WORTH, AT TIME OF VIOLATION, WHICHEVER IS HIGHER

Note to Table X:

1. **In case of applicability of more than one BA, the highest is to be considered.**
2. **In this Schedule, 'Principal Officer' means a person that may be covered under Section 27 of the SEBI Act, as amended by the Finance Act, 2018.**
3. **'Fund' means an AIF, MF, CIS, and any other pooling arrangement required to be registered with the Board.**

CHAPTER VII

REPETITIVE NATURE OF DEFAULT

I. The counts of defaults may be selected using one or more or a combination of the methods indicated in this Chapter.

Explanation. - Different methods may be used in respect of different persons in the same cause of action as may be required for arriving at a reasonable IA.

II. In general, the unit of alleged default may be selected from either of, or a combination of, the following, -

i. the (approx.) number of purchase or sale transaction,
ii. the (approx.) number of individual deceptions attempted,
iii. the (approx.) number of investors involved, or
iv. 'Course of conduct' standard

-whereby each counts amounts to a complete violation. Discretion may be used to apply a different standard that is less prejudicial to a person after taking into account the interest of the investors in securities:

Provided that, where a large number of counts of a default are noted, for arriving at a reasonable IA a less prejudicial standard of selecting the unit of default may be applied.

Explanation. - In respect of a default relating to a report or statement, -

i. each person to whom a misleading report was sent or statement made may involve a separate "act";
ii. each distinct misleading report or statement made may be a separate "act";
iii. each distinct misleading statement within a report may be a separate "act";
iv. the course of conduct standard in respect of all or any such reports or statements; or
v. a combination of i, ii, iii and iv above.

III. **Course of Conduct standard**: Depending on the facts and circumstances of a case, for the purpose of arriving at a reasonable IA, "course of conduct" standard in which multiple counts of a violation are aggregated and counted as a single violation for purposes of calculating IA may be applied.

Explanation 1. - It may be reasonable to aggregate multiple counts of a default if, -

(a) the conduct did not involve manipulative, fraudulent or deceptive intent or insider trading, except where the recommended IA would otherwise be extremely disproportionate to the conduct;

Explanation. – "disproportionate" and "reasonable" refer to the appropriateness vis-à-vis the deterrence sought to be achieved and not appropriateness vis-à-vis the illegal profit made by the applicant or loss caused to investors.

(b) the conduct did not result in substantial injury to the rights of public investors, or if restitution was made in such cases; and

(c) the violations resulted from a systemic problem or cause that has been corrected.

Explanation 2. – Depending on the facts and circumstances, the units of violation may be based on how long the violations continued, however no uniformity of the period of time (daily, weekly, fortnightly, monthly, yearly) is required. The multiple counts of violation acts may be combined into one or more than one course of conduct.

****

Schedule III

Part-A

(*See* regulation 15)

Format

To Date

…….

Address

Sub: Notice of settlement in the matter of .....

During the course of investigation/ inspection/ inquiry/ audit in the matter of ……. the Securities and Exchange Board of India (SEBI) has *prima facie* observed that you have violated the following provisions of the securities laws:

(i) ……..

(ii) ……..

(iii) ……..

(iv) ……..

Extracts of the findings are enclosed.

2. In view of the aforesaid, probable proceedings against you under….***(relevant provisions under which the proceedings may be initiated or continued)*** may be initiated or continued .

3. Notwithstanding anything contained in this notice, the Board reserves the right to modify the proceedings and charges to be brought against you and this notice shall not confer any right to seek settlement or avoid any action initiated by the Board.

4. Subject to Regulation 5 of the SEBI (Settlement Proceedings) Regulations, 2018 the aforesaid proceedings to be initiated may be settled and disposed of upon filing of a settlement application under Chapter-II of the SEBI (Settlement Proceedings) Regulations, 2018 upon remittance of a settlement amount of Rs. ……..to SEBI in terms of ….. …… (provision) of SEBI (Settlement Proceedings) Regulations, 2018 within 30 calendar days from the date of receipt of this notice and upon complying with the following non-monetary terms (if applicable):

   (i) . ……

   (ii) .....…… **(*please specify any other terms*)**

5. **In case** the **settlement application is not filed or the settlement amount is not remitted and/or undertaking in respect of other non-monetary terms is not furnished or other non-monetary terms are not complied with to the satisfaction of the Board or the settlement application is withdrawn, the specified proceedings may be initiated or continued, as the case may be and you shall be permitted to file a settlement application only at the next stage in respect of proceedings pending before a Court or a tribunal, after conclusion of proceedings before the Adjudicating Officer or the Board, as the case may be.**

Name, designation and signature

Encl: As above

Part-B

(*See* regulation 17)

Format

To Date

…….

Address

Sub: Notice of settlement in the matter of .....

During the course of investigation/ inspection/ inquiry/ audit in the matter of ……. the Securities and Exchange Board of India (SEBI) has *prima facie* observed that you have violated the following provisions of the securities laws:

(i) ……..

(ii) ……..

(iii) ……..

(iv) ……..

Extracts of the findings are enclosed.

2. In view of the aforesaid, probable proceedings against you under….***(relevant provisions under which the proceedings may be initiated or continued)*** may be initiated or continued.

3. Notwithstanding anything contained in this notice, the Board reserves the right to modify the proceedings and charges to be brought against you and this notice shall not confer any right to seek settlement or avoid any action initiated by the Board.

4. Subject to regulation 5 of the SEBI (Settlement Proceedings) Regulations, 2018, the aforesaid proceedings to be initiated may, be settled and disposed of upon filing of a

settlement application under Chapter-II of the SEBI (Settlement Proceedings) Regulations, 2018 within 15 calendar days from the date of receipt of this notice.

5. **If the settlement application is not filed, the Board may initiate any proceedings against you in accordance with law and you shall be permitted to file a settlement application only at the next stage in respect of proceedings pending before a Court or a tribunal, after conclusion of proceedings before the Adjudicating Officer or the Board, as the case may be.**

Name, designation and signature

Encl: As above

SCHEDULE IV

(*see* Regulation 19)

Application for confidentiality

1. The application for confidentiality shall be in the format convenient to the applicant and shall inter-alia, include the following, -

   i. name and address of the applicant or its authorized representative as well as of all other known participants involved in the alleged default;
   ii. the address of the applicant for communication including the telephone numbers and the e- mail address, etc.;
   iii. a detailed description of the alleged arrangement, including its aims and objectives and the details of activities and functions carried out for securing such aims and objectives;
   iv. the commencement and duration of the default;
   v. the names, positions, office locations and, wherever necessary, home addresses of all persons who, in the knowledge of the applicant, are or have been associated with the alleged defaulters, including those persons who have been involved on behalf of the applicant;
   vi. the details of other authorities, forums or courts, if any, that have been approached or are intended to be approached in relation to the alleged violation;
   vii. a descriptive list of evidence regarding the nature and content of evidence provided in support of the application for confidentiality; and
   viii. any other material information as may be directed by the Board.

(Signature of the applicant)

(Stamp and Seal of body corporate applicant)

Verification

I, ……son/daughter/wife of (Name in block letters) Shri ……..being the applicant/authorised representative (in case of body corporate) of ……. do hereby verify and affirm on oath that this application and the contents thereof are true to my knowledge and belief and as per the records and that I have not suppressed any material facts and shall keep the Board informed without delay, of any other relevant information that may come to my notice.

(Signature of the applicant)

Date:

Place :

2. The undertaking and waiver as specified in Part C of Schedule-I shall be annexed to the application for confidentiality.

****