

CONSULTATION PAPER ON
REVIEW OF THE SEBI (SETTLEMENT PROCEEDINGS) REGULATIONS,
2018

1. Background

- 1.1.** The Securities and Exchange Board of India (“SEBI”) introduced the concept of settlement of enforcement proceedings through rule based guidelines issued in 2007. Thereafter in 2012, comprehensive guidelines were issued which expressly provided for a system of formulating and arriving at the settlement terms. It facilitated the market regulator to provide a mechanism that detailed the essential concomitants of enforcement proceeding, without compromising on deterrence and the integrity of the market. The settlement process was codified through the SEBI (Settlement of Administrative and Civil Proceedings) Regulations notified on January 09, 2014 (Settlement Regulations 2014).
- 1.2.** SEBI constituted a High Level Committee in 2018 under the Chairmanship of Justice A. R Dave (Retd. Judge Supreme Court of India) which re-worked certain aspects of the Settlement Regulations 2014 after taking into account the developments in the domestic as well as global markets. Based on the report submitted by the Committee, the SEBI (Settlement Proceedings) Regulations, 2018 (“Settlement Regulations”) were notified and the same came into effect from January 01, 2019.
- 1.3.** On the basis of experience gained from dealing with settlement applications since the Settlement Regulations came into effect, it is felt that the settlement terms should be refined to be further harmonized with the specific nature and gravity of violations committed by the entities. Further, the constraints of the enforcement processes for all stakeholders may be overcome by providing for a more efficacious settlement mechanism that would enable SEBI to utilize its resources even more effectively. Accordingly, certain parameters, especially in respect of certain types of violations/entities could be reviewed and timelines may be further revised so as to provide a meaningful and effective alternate to enforcement processes initiated by SEBI.

1.4. Under this mechanism, the determination of settlement terms also need to take into account the changing techno-regulatory paradigm in the Indian securities market landscape such as the recent introduction of system driven disclosures mechanism. Rationalization of Settlement Regulations in light of these factors may pave the way for incorporating changes brought about due to the dynamic nature of the Indian securities market.

2. Legislative Mandate

2.1. The legislative mandate to consider the settlement of proceedings is contained in section 15JB (2) of the SEBI Act, 1992 which states as follows:

“15JB (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. Determination of terms of Settlement

3.1. Regulation 9 of the Settlement Regulations provides for the terms of settlement, which may consist of both monetary and/or non-monetary terms arrived at in terms of Schedule II to the Settlement Regulations.

3.2. Regulation 10 of the Settlement Regulations provides for factors including but not limited to the following list which may be considered for arriving at suitable settlement terms:

- (i) conduct of the applicant during the specified proceeding, investigation, inspection or audit;
- (ii) the role played by the applicant in case the alleged default is committed by a group of persons;
- (iii) nature, gravity and impact of alleged defaults;
- (iv) pendency of any other proceeding against the applicant for non-compliance of securities laws;

- (v) the extent of harm and/or loss to the investors' and/or gains made by the applicant;
- (vi) processes that have been introduced since the alleged default to minimize future defaults or lapses;
- (vii) compliance schedule proposed by the applicant;
- (viii) economic benefits accruing to any person from the non-compliance or delayed compliance;
- (ix) conditions which are necessary to deter future non-compliance by the same or another person;
- (x) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;
- (xi) any other enforcement action that has been taken against the applicant for the same violation; and
- (xii) any other factors necessary in the facts and circumstances of the case.

3.3. The Settlement Regulations provide for the method of determination of the indicative settlement amount arrived at after considering various factors. To this effect, the regulations provide for a process of arriving at the monetary terms for settlement based on the facts and circumstances of the case, the nature and gravity of the alleged violations and also provide for certain factors as enumerated in Chapter V of the Schedule II to the Settlement Regulations, to be considered by the Internal Committee (IC), the High Powered Advisory Committee (HPAC) and the Panel of Whole Time Members (WTMs) before passing the settlement order.

4. Indicative Amount for Settlement - Principles and Factors

4.1. The basic principles applied and the factors to be taken into account at the time of arriving at the indicative settlement amount as provided for in Schedule II to the Settlement Regulations is as follows:

- (i) **Base Value (BV)**: Values depending upon the violations and the conduct of the applicant as provided in Chapter V of Schedule II to the Settlement Regulations.

- (ii) **Base Amount (BA)**: Amount arrived at depending upon the counts of default and the alleged violations as provided in Chapter V of Schedule II to the Settlement Regulations.
- (iii) **Proceeding Conversion Factor**: A multiplicative factor applied based on the stage of the proceeding when the settlement application is filed. It promotes the filing of a settlement application by the applicant at the earliest possible stage of the enforcement proceeding so as to get the benefit of a lower multiplicative value.
- (iv) **Regulatory Action Factor**: A factor which takes into account the past regulatory track record of the applicant.
- (v) **Legal Costs**: expenses incurred in the proceedings pending before a judicial forum.

5. In this backdrop, certain amendments to the Settlement Regulations are proposed:

5.1. Limitation period for filing settlement application

Regulation 4 provides that an application for settlement may be filed within 60 days of the date of receipt of the show cause notice or the supplementary notice, whichever is later. An additional time period of 120 days may be availed by the noticee subject to the payment of an additional settlement amount i.e. 25% over and above the regular settlement amount.

Proposal: It is proposed to replace Regulation 4 (1) with the following: -

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 later.

Existing Provision	Proposed Amendment
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 later.	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 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 delayed application shall be considered if the application is filed after one hundred and twenty calendar days from the expiry of the period specified in sub-regulation (1) or after the first hearing, whichever is earlier. (3) The provisions of this regulation shall not apply in the case of proceedings pending before the Tribunal or any court.	(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 delayed application shall be considered if the application is filed after one hundred and twenty calendar days from the expiry of the period specified in sub-regulation (1) or after the first hearing, whichever is earlier. (32) The provisions of this regulation shall not apply in the case of proceedings pending before the Tribunal or any court.
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Rationale: Presently, the entities are provided a window of 180 days in total to apply for settlement after receipt of the notice to show cause. On most occasions, the applicants apply for settlement towards the end of this timeframe. Such delays not only do not serve the purpose of the enforcement process but also impede the expeditious disposal of the enforcement proceedings. It is therefore proposed that the additional time period of 120 days with payment of additional settlement amount may be done away with. Instead, the total timeframe for filing the application for settlement may be fixed at 60 days of the date of receipt of the show cause notice or the supplementary notice, whichever is later. This window would provide the applicant adequate time to apply for settlement and also align the regulations with the objective for which they were framed, i.e. as an effective alternative enforcement policy.

5.2. Time period for submission of revised settlement terms after the meeting of the Internal Committee

Regulation 13(2)(c) reads as below:

13. (2) *The Internal Committee may:*

(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.

Proposal: - It is proposed to amend Regulation 13(2)(c) as follows:

13. (2) *The Internal Committee may:*

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

Existing Provision	Proposed Amendment
Proceedings before the Internal Committee. 13. (1) (2) The Internal Committee may: (a) (b)..... (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) ...	Proceedings before the Internal Committee. 13. (1) (2) The Internal Committee may: (a).... (b).... (c) permit the applicant to submit revised settlement terms within a period not exceeding ten fifteen 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)

Rationale: From the experience gained while processing various settlement applications till date, it is noted that the entities keen on settling proceedings that are initiated or proposed to be initiated, tend to submit the Revised Settlement Terms (“RST”) immediately after the meeting of the Internal Committee or within the stipulated period of 10 working days of the

meeting. This is so because the period is provided to seek the commitment of the applicant to avail the settlement process by only providing the RST and not remitting the settlement amount. The extended period of 20 working days as provided under regulation 13 is often misused by certain entities as a procrastinating tactic and delay the conclusion of the enforcement process. It is therefore proposed that in place of the period of 20 days, the cumulative time period for submission of revised settlement terms be amended to 15 days from the date of the meeting of the Internal Committee.

5.3. Remittance of Settlement Amount

Presently Regulation 15(2)(a) provides 30 days for remittance of the settlement amount, after the receipt of the notice of demand. The period is extendable to another 60 days, subject to the levy of simple interest at the rate of six percent per annum from the date of receipt of the notice of demand till the date of payment of the settlement amount.

Proposal: It is proposed to amend the Regulation 15(2)(a) along the following lines:

Existing Provision	Proposed Amendment
Action on the recommendation of High Powered Advisory Committee. 15. (1)..... (2) Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, 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 thirty 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 sixty calendar days, only after receipt of an application seeking extension of time within thirty days from the date of receipt of notice of demand:	Action on the recommendation of High Powered Advisory Committee. 15. (1)..... (2) Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, 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 thirty 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 sixty calendar days, only after receipt of an application seeking extension of time within thirty days from the date of receipt of notice of

Explanation. – Remittance of settlement amount shall be done by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised electronic 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)... (3)...	demand: Explanation. – Remittance of settlement amount shall be done by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised electronic mode of payment in the bank account through online payment using SEBI payment gateway. 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 thirtieth calendar day from the date of the receipt of the notice of demand. (b)... (3)...
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Rationale: As per the existing practice, an applicant is informed about the Settlement Terms during the meeting of the Internal Committee and accordingly agrees to submit the Revised Settlement Terms either immediately after or within 10 working days from the date of the meeting of the Internal Committee. Thereafter, the applications are placed before the HPAC and the Panel of WTMs for the necessary approvals. Taking the approximate period required for the said process into consideration, the notice of demand is issued within 30 to 45 days from the date of the meeting of the Internal Committee. Accordingly, sufficient time is provided to the applicant to arrange for payment of the settlement amount. Further, it is noted from the experience gained, that the provision for additional time for payment of settlement amount with interest is hardly used by the applicant. Thus, a period of 30 days

from the time of issuance of the notice of demand is more than sufficient for remittance of the settlement amount.

5.4. Clarifications with regard to provisions relating to irregularity in procedure

Regulation 31 reads as below:

Irregularity in procedure

31. No settlement order or rejection of a settlement application shall be invalidated 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:

Proposal: - It is proposed to amend Regulation 31 on the following lines:

Existing Provision	Proposed Amendment
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.	Irregularity in procedure 31. No settlement order or rejection of a settlement application shall be void invalidated on ground of any defect in procedure or calculation of the settlement amount determination of the settlement terms 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 the determination of the settlement terms: 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.

Rationale: As per regulation 9 of the settlement regulations, since the settlement terms may include settlement amount and/ or other terms including non-monetary terms and disgorgement of a certain amount, it is proposed that the words “calculation of settlement amount” in the Regulation 31 be replaced with “determination of settlement terms”.

5.5. Proceeding Conversion Factor (PCF)

Presently, the PCF values range from 0.65 to 1.20 depending upon the stage at which an application for settlement is filed. It is necessary to encourage filing of settlement application during the early stages of the proceedings or proceedings to be initiated and to deter forum shopping. This is possible by providing for a higher monetary amount for settlement applications filed in the later stages of the proceeding, after exhausting the entire enforcement mechanism within SEBI and beyond that before other fora. Accordingly, it is proposed to rationalize the PCF values range as follows: from 0.40 to 1.50, in consonance with the intent of the Settlement Regulations.

5.6. Mitigating, aggravating, deliberate and reckless factors

Presently, Clauses I, II, III and IV in Chapter V of Schedule II to the Settlement Regulations provide for mitigating, aggravating, deliberate and reckless factors which constitute the Base Value, to be taken into account by the IC/ HPAC/ Panel of WTMs while arriving at the Indicative Amount.

Under the extant Settlement Regulations, the IC or HPAC or Panel of WTMs while considering the mitigating/ aggravating/ deliberate/ reckless factors with the assigned Base Value apply the clauses only once. Resultantly, irrespective of singular or multiple qualifying factors, the value is applied only once. For instance, presently, an applicant qualifying for the benefit under 5 factors (in Clause I) in the mitigating factors will have the Base Value reduced only once, even though the 5 qualifying factors (in Clause I) under the mitigating factors are applied to the facts of the case. A similar situation (of reduction in the value) may be there in respect of Clauses II, III and IV, as applicable.

Proposal: It is proposed that the increase/decrease in application of Base Value may be considered for each of the qualifying clauses, subject to a maximum limit in the accretion /

reduction in Base Value. Resultantly, that the words “once for all or any of them”, in Clauses I, II, III and IV in Chapter V of Schedule II to the Settlement Regulations, may be replaced by “for each of them wherever applicable, subject to a maximum limit of 3”.

The maximum cumulative limit for all the factors may be as determined by the Board from the past experiences gained in administering the Settlement Regulations.

Rationale: - The existing provisions permit singular addition/subtraction of certain mitigating or aggravating factors to the Base Value, irrespective of the facts and circumstances of the case under consideration and the evidence on record. The application of such values to a singular instance results in amounts higher or lower to the alleged defaults. It is observed from the past experience gained while administering the regulations that on many occasions, multiple mitigating or aggravating factors are applicable to a case. To rationalize the settlement terms, it is proposed that the mitigating, aggravating, deliberate and reckless factors may be applied separately, based on the facts and circumstances of the case, subject to a maximum limit.

5.7. Provisions with regards to disclosure of violations under the SAST and the PIT Regulations

Presently, the indicative settlement amounts for disclosure violations under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (‘SAST Regulations’) and SEBI (Prohibition of Insider Trading) Regulations, 2015 (‘PIT Regulations’) are arrived at primarily on the basis of the Base Amounts as detailed in Table VII and Table VIII of the Schedule of the Settlement Regulations. These Base Amounts are based on the amount of undisclosed shareholding and the delay in disclosing the same resulting in the contravention of the requirement(s) under the securities laws. Further, SEBI is progressively introducing system-driven disclosures in the securities market and moving away from entity-driven disclosures. In August 2021, in respect of disclosures required to be made under 29(2) of the SAST Regulations, SEBI has introduced system-driven disclosures detailing the procedure to be adopted for its implementation.

Proposal: Presently, the Base Amounts under Table VII range from ₹2 Lakh to ₹20 Lakh plus an additional amount depending upon the delay in making the disclosures, depending

upon the percentage of shareholding not disclosed. Similarly, the Base Amounts under Table VIII range from ₹2.5 Lakh to ₹25 Lakh plus an additional amount based on the delay in making the disclosure, depending upon the percentage of undisclosed shareholding. It is therefore proposed to revise the same to ₹2 Lakh to ₹11 Lakh plus an additional amount based on the delay in making the disclosure, depending upon the percentage of undisclosed shareholding.

It is further proposed that if there are multiple transactions attracting disclosure requirements in a quarter, then the value of the highest change and the period of maximum delay may be considered for arriving at the Base Amount, irrespective of the number of violations in that particular quarter.

Rationale: The indicative settlement amount arrived at in cases of disclosure violations is not perceived to be commensurate to the extent of the violations. There could be cases where one large order by the entity is spread over a period for execution. Presently, the Base Amount adds up to each count of disclosure violation leading to a higher indicative settlement amount. The prevalent Base Amounts are applicable only for cases of disclosure per-se but not for cases involving charges in combination with any other charges viz. manipulation, fraud or insider trading, which are being dealt with separately. It may also be noted that the Settlement Regulations require an entity to make the requisite disclosures to the extent possible, as a pre-condition to settlement and thus it is only the delay in making of required disclosures which is settled upon payment of a monetary amount. With the introduction of system driven disclosures relating to Regulation 7(2) of the PIT Regulations and Regulation 29(2) of the SAST Regulations, there appears a case for suitable rationalization of the Base Amounts to reflect the evolving nature of the regulatory landscape.

5.8. Consideration of orders relating to identical violations in the same investigation/inspection/inquiry.

In some cases, involving the same violation by multiple entities and in cases arising out of the same investigation, inspection or inquiry, it is seen that some of the entities seek settlement, while some challenge the proceedings before the quasi-judicial authority. The settlement proceedings may culminate in the passing of a settlement order without admission or denial of guilt while the quasi-judicial proceedings are completed either by holding the entity guilty or by exonerating him. The settlement terms are largely determined on the basis of the charges as alleged in the notice to show cause or the investigation/inspection report, while in the quasi-judicial proceedings, the violations are adjudicated and based on the merits of the case after taking into account submissions by the Noticees (written or during hearing). In order to arrive at an impartial determination of the settlement terms while maintaining the regulatory distinction between the settlement proceedings and the enforcement proceedings and keeping in mind an order, if any, passed by the quasi-judicial authority, it is proposed that a general guideline No. 11B be inserted in Chapter I of Schedule II to the Settlement Regulations dealing with ‘Guidelines for determination of settlement terms’, as under:

“11B. While determining the terms of settlement in cases arising out of the same investigation, inspection or inquiry and involving multiple entities, the IC, or HPAC or Panel of WTMs may, if deemed appropriate, consider the terms in the order passed, if any, by the Board, Securities Appellate Tribunal or the Supreme Court against any other entity in the same investigation, inspection or inquiry.

5.9. Provisions with regards to violations in Table X

Presently, the Base Amounts, as provided under Table X are as below:

<u>TABLE-X</u> <u>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)</u>							
	INDIVIDUAL (PRINCIPAL OFFICERS NOT	BODY CORPORAT & FIRM	PRINCIPAL OFFICERS & COMPLIAN	SECTION 15B AND 15F OF SEBI ACT	FAILURE IN REDRESSIN G	MARKET INFRASTRU CTURE INSTITUTIO	FUND RELATED DEFAULTS (AND PRINCIPAL OFFICERS IN

	INCLUDED) (I)	(AND PRINCIPAL OFFICERS IN CASES RELATING TO JOINT LIABILITY WITH THE BODY CORPORAT E /FIRM) (II)	CE OFFICERS [WHEN NOT IN II, IV-VII] (III)	& SIMILAR DEFAULTS (AND PRINCIPAL OFFICERS IN CASES RELATING TO JOINT LIABILITY WITH THE INTERMEDI ARY) (IV)	INVESTOR GRIEVANC ES (AND PRINCIPAL OFFICERS IN CASES RELATING TO JOINT LIABILITY WITH THE INTERMEDI ARY/ ISSUER) (V) (FOR DELAY REDUCE TO 1/4)	NS (AND PRINCIPAL OFFICERS IN CASES RELATING TO JOINT LIABILITY WITH THE INSTITUTIO N) (VI)	CASES RELATING TO JOINT LIABILITY WITH THE FUND) (VII)
BA WHERE: DEFAULT RELATE TO FUTP OR IT, FALSE/ MISLEADING/ INCORRECT/INCOMP LETE DISCLOSURES IN OFFER DOCUMENTS, FAILURE BY MARKET INFRASTRUCTURE INSTITUTIONS TO CONDUCT BUSINESS IN THE REQUIRED MANNER, (M)	RUPEES 15 LAKHS	RUPEES 1 CRORES	RUPEES 45 LAKHS	RUPEES 15 LAKHS	RUPEES 30 LAKHS	RUPEES 5 CRORES	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, WHICHEVER IS HIGHER
BENCHMARK WHERE VIOLATION INVOLVED AT (M) AND, - SUCH VIOLATION DIRECTLY OR INDIRECTLY - (i) RESULTED IN SUBSTANTIAL LOSSES TO OTHER PERSONS, (ii) CREATED A SIGNIFICANT RISK OF SUBSTANTIAL LOSSES TO OTHER PERSONS, OR (iii) AFFECTED THE INTEGRITY OF THE	RUPEES 60 LAKHS	RUPEES 3 CRORES	RUPEES 2 CRORES	RUPEES 60 LAKHS	RUPEES 80 LAKHS	RUPEES 10 CRORES	RUPEES 60 LAKHS OR 0.05% OF THE AVERAGE ASSET UNDER MANAGEMENT, AT TIME OF VIOLATION OR 0.75 % OF THE AVERAGE NET WORTH, AT TIME OF VIOLATION,

SECURITIES MARKETS <u>(N)</u>							WHICHEVER IS HIGHER
RESIDUARY <u>(Q)</u>	<i>RUPEES 3 LAKHS</i>	<i>RUPEES 15 LAKHS</i>	<i>RUPEES 10 LAKHS</i>	<i>RUPEES 3 LAKHS</i>	<i>RUPEES 6 LAKHS</i>	<i>RUPEES 3 CRORES</i>	<i>RUPEES 15 LAKHS OR</i> <i>0.001% OF THE AVERAGE ASSET UNDER MANAGEMENT, AT TIME OF VIOLATION</i> <i>OR</i> <i>0.05% OF THE AVERAGE NET WORTH, AT TIME OF VIOLATION,</i> <i>WHICHEVER IS HIGHER</i>

Proposal

It is proposed to rationalize the amounts as below:

	PERIPHERAL INDIVIDUALS[#]	BODY CORPORATES & INDIVIDUALS (WHEN NOT IN I, III-V)	INTERMEDIARY INCLUDING PRINCIPAL OFFICERS (III)	MARKET INFRASTRUCTURE INSTITUTIONS INCLUDING PRINCIPAL OFFICERS (IV)	FUND RELATED DEFAULTS INCLUDING PRINCIPAL OFFICERS (v)
	(I)	(II)			
BASE AMOUNT WHERE: DEFAULTS RELATE TO FUTP OR IT, FALSE/ MISLEADING/ INCORRECT/INCOMP LETE DISCLOSURES IN OFFER DOCUMENTS, FAILURE BY MARKET INFRASTRUCTURE INSTITUTIONS TO CONDUCT BUSINESS IN THE REQUIRED MANNER, (M)	RUPEES 10 LAKHS	RUPEES 40 LAKHS	RUPEES 20 LAKHS	RUPEES 2 CRORE	RUPEES 40 LAKHS
BASE AMOUNT WHERE VIOLATION INVOLVED AT (M) ARE APPLICABLE AND, - SUCH VIOLATION DIRECTLY OR INDIRECTLY - (I) RESULTED IN SUBSTANTIAL LOSSES TO OTHER PERSONS, OR (II) CREATED SUBSTANTIAL LOSSES OR A SIGNIFICANT RISK OF LOSSES TO OTHER PERSONS OR (III) AFFECTED THE INTEGRITY OF THE SECURITIES MARKETS (N)^{##}	RUPEES 20 LAKHS	RUPEES 1 CRORE	RUPEES 30 LAKHS	RUPEES 4 CRORES	RUPEES 75 LAKHS

FAILURE IN REDRESSING INVESTOR GRIEVANCES (FOR DELAY REDUCE TO 1/4) (O)	-	RUPEES 10 LAKHS	RUPEES 15 LAKHS	RUPEES 25 LAKHS	RUPEES 30 LAKHS
RESIDUARY (P)	RUPEES 3 LAKHS	RUPEES 10 LAKHS	RUPEES 10 LAKHS	RUPEES 1 CRORE	RUPEES 15 LAKHS

#Peripheral Individual includes individual applicants who submit to the satisfaction of the IC or HPAC or Panel of WTM, that, without awareness of the illegal activity, he/she had permitted/lent the use of his/her securities account or name or facility to the key operator or intermediary or securities market infrastructure institution involved in such activity.

##Serious violations may also involve additional Settlement Terms such as disgorgement of management fee or any other terms as may be decided by the IC, HPAC or the Panel of WTM.

Rationale

Currently, the regulations provide for a differential treatment in the determination of the settlement terms for the violations committed by Individuals vis-à-vis a Body Corporate. In order to provide for a rationalized approach in the treatment for similar defaults, it is proposed that a distinction may be made based on the role attributable to the applicant in the alleged offence as provided in the specified proceedings that have been initiated or may be initiated against the applicant. It has been observed that peripheral entities viz. dummy directors, mule account holder(s), etc. are often persons from economically weaker sections of the society and are name lenders to the main perpetrators in a case. Similarly, layering of funds is also done using bank accounts of such persons/entities without their active knowledge or involvement to spread the transactions across various accounts to hide the origin and destination of the funds or securities. Keeping in mind the principles of proportionality, reasonableness and effectiveness, it is proposed to create a distinction between the peripheral and non-peripheral entities, with higher settlement terms being proposed for the latter category.

5.10. Consequential and Miscellaneous amendments

Certain other incidental and clarificatory amendments may also be undertaken to remove difficulties and give effect to the above provisions and further streamline the settlement process.

6. Public Comments

Comments are invited from the members of the public on the proposed amendments in the Settlement Regulations with the objective of taking into consideration the concerns of various stakeholders. The said comments may be offered in the following format:

Name of the person/entity proposing comments:			
Name of the organization (if applicable):			
Contact details:			
Sr. No.	Relevant Chapter and sub-heading/regulation/clause/point	Comments and suggested changes, if any	Rationale

[**Note:** Kindly mention the subject of the communication as “Comments on consultation paper for review of the “Settlement Regulations” and specify whether you are a market intermediary/ participant (mention type/ category) or public (investor, academician etc.)]

Comments in the aforesaid format may be sent to the following, latest by October 14, 2021 by 05:00PM, post which the comments received may not be accepted.

- a. By e-mail: to settlement2021@sebi.gov.in
- b. By post: to the following address:
Ashok Kumar J
General Manager
Settlement Division, Enforcement Department-2
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C4-A, "G" Block,
Bandra Kurla Complex,
Bandra (East), Mumbai -400 051

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