

Frequently Asked Questions (FAQs)

Updated 20th April 2007

Please refer to Circular No. EFD/ED/Cir-1/2007 dated 20 April 2007 for further details about the process of consent and compounding.

On Consent Orders & Compounding of Offences

Q1. What is a Consent Order?

A. Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may *prima facie* be found to have violated securities laws. It may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved. A Consent Order may or may not include a determination that a violation has occurred.

Q2. What is Compounding of Offence?

A. Compounding is a process whereby an accused pays compounding charges in lieu of undergoing consequences of prosecution.

Q3. What are Administrative/Civil enforcement actions?

A. Administrative/Civil enforcement actions include issuing directions, suspension or cancellation of certificate of registration, imposition of monetary penalty, pursuing suits and appeals in Courts and Securities Appellate Tribunal (SAT).

Q4. What is Prosecution?

A. Filing of criminal complaints before various criminal courts by SEBI for violation of provisions of securities laws which may lead to imprisonment and/ or fine.

Q5. What is the objective of Consent Order?

A. Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays.

Q6. What is the objective of Compounding of Offence?

- A. Compounding of offence allows the accused to avoid a lengthy process of criminal prosecution, which would save cost, time, mental agony, etc in return for payment of compounding charges.

Q7. Does SEBI have power to pass consent orders?

- A. The Parliament of India has recognised SEBI's powers to pass an order with consent of the parties. This will of the Parliament is clear from the words of Section 15T of the SEBI Act 1992. Section 15T(2) of the SEBI Act reads as under:

“15T (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.”

Thus, the Parliament in its wisdom has recognized that SEBI and its authorized delegate have power to pass consent orders. Similarly, courts have well recognized inherent powers to settle a case before them on an application made by the parties.

Q8. Is compounding of an offence permitted?

- A. Section 24A of SEBI Act permits compounding of offences by the court where prosecution proceedings are pending.

Q9. What kind of offences/cases can be compounded or consented?

- A. Consent Orders can be passed in respect of all types of enforcement or remedial actions including administrative proceedings and civil actions e.g. proceedings under Sections 11, 11A(1)(b), 11B and 11D of SEBI Act or under Enquiry Proceedings Regulations or Adjudication Rules or equivalent proceedings under the Securities Contracts (Regulation) Act 1956, Depositories Act 1996 and other civil matters pending before SAT/courts. Compounding of offence can cover appropriate prosecution cases filed by SEBI before the criminal courts.

Q10 Who can seek settlement of proceedings through consent order and compounding?

- A. Any person who is notified that a proceeding may or will be initiated/instituted against him/her, or any party to a proceeding already initiated/instituted, may, at any time, propose in writing for settlement.

Q11. What factors will be taken into consideration for the purpose of passing Consent Order/ Compounding of offence?

A. Following factors, which are only indicative, may be taken into consideration for the purpose of passing Consent Orders and also in the context of compounding of offences under the respective statute:

1. Whether violation is intentional.
2. Party's conduct in the investigation and disclosure of full facts.
3. Gravity of charge i.e. charge like fraud, market manipulation or insider trading
4. History of non-compliance. Good track record of the violator i.e. it had not been found guilty of similar or serious violations in the past.
5. Whether there were circumstances beyond the control of the party
6. Violation is technical and/or minor in nature and whether violation warrants penalty.
7. Consideration of the amount of investors' harm or party's gain.
8. Processes which have been introduced since the violation to minimize future violations/lapses.
9. Compliance schedule proposed by the party
10. Economic benefits accruing to a party from delayed or avoided compliance.
11. Conditions where necessary to deter future non-compliance by the same or another party.
12. Satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them.
13. Compliance of the civil enforcement action by the accused.
14. Party has undergone any other regulatory enforcement action for the same violation.
15. Any other factors necessary in the facts and circumstances of the case.

Q12. At what stage can Consent Orders be passed?

- A. Consent Order can be passed at any stage where probable cause of violation has been found. In the event of a serious and intentional violation, the process cannot be completed till the fact finding process is completed whether by way of investigation or otherwise.

Q13 How will a person propose to consent or compound a violation/offence?

A person can make an application proposing administrative/civil consent by writing to the 'Division of Regulatory Action, Enforcement Department' at SEBI's Mumbai address. Where compounding is proposed by a party, such application may be made to the court and a copy can be addressed to the "Division of Prosecution, Enforcement Department" at SEBI's Mumbai address. (addresses given at the bottom of this document).

Q14. At what stage Compounding of Offence can take place?

- A. At any stage after filing criminal complaint by SEBI. Where a criminal complaint has not yet been filed but is envisaged, the process for consent orders will be followed rather than the one for compounding.

Q15. What are the principal terms and conditions of Consent Order and Compounding of offence?

- A. Consent orders are passed by Competent Authority/SAT/Court where proceedings are pending, subject to the party taking remedial action and on such further consent terms including consent bars or consent penalties as the Competent Authority/SAT/Court where proceedings are pending, may find appropriate in the facts and circumstances of the case. Consent orders can be passed either a) admitting guilt or b) without admitting or denying guilt. Where an order is passed without admitting or denying guilt, such person shall never represent subsequently that he/she is not guilty. In the event such a representation is made, the enforcement process may be reopened. Similar appropriate terms will be sought by SEBI from Court where the prosecution is pending.

Q 16 What is the process for passing consent orders/ compounding of offences?

A. When the proposal of settlement is submitted by the party, it will be examined by a high powered Committee headed by a retired high court judge. Where the Committee finds the terms for passing a consent order inadequate, it may ask the party to revise the consent terms. Thereafter, the Committee will submit its views/recommendations to the Adjudicating Officer/Competent Authority where proceedings are pending for passing consent order. The above procedure and factors and waivers shall be applied for considering the proposals of composition of offences under the SEBI Act, SCRA and the Depositories Act, 1996, wherever applicable. Any party who wishes to compound an offence shall file an appropriate application before the court where complaint is pending with a copy addressed to the Prosecution Division, Enforcement Department of SEBI's Mumbai office which will forward the application/ request to be placed before the high powered Committee. The terms of compounding as recommended by the Committee and approved by the Competent Authority would be placed before the court by the Prosecution Division by way of written submissions or application, as appropriate, for passing orders as the court deems fit. Where a matter is pending before SAT/Court, the same consent process will be undertaken and the draft consent terms recommended by the Committee and approved by the Competent Authority will be filed before the SAT/ Court. The SAT/Court may, if found fit, pass an order in terms of the consent terms and subject to such further terms as the SAT/ Court may find appropriate in the facts and circumstances of the case.

Q17. Will SEBI obtain waivers while passing the Consent Order?

A. Yes, while considering the proposal of the Party, SEBI will obtain a waiver from the Party of taking any legal proceedings against SEBI concerning any of the issues covered by the consent order.

The Party shall waive:

1. all hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;
2. the filing of proposed findings of fact and conclusions of law;
3. proceedings before the Board or any officer;
4. all post-hearing procedures; and
5. Appeal/review before/by SAT/court.

By submitting an offer of settlement the Party shall further waive:

- a. such provisions of the Regulations or other requirements of law as may be construed to prevent any officer of SEBI from participating in the preparation of, or advising the Competent Authority as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and
- b. any right to claim bias or prejudice by SEBI based on the consideration of or discussions concerning settlement of all or any part of the internal proceeding.

In addition, if the Party violates the consent order subsequently, the party shall waive a plea of limitation for reopening the case.

Similar appropriate waivers will be sought by SEBI from the accused before Court where the prosecution is pending.

Q18 When will final acceptance of any offer of settlement/Compounding come in to effect?

- A. The final acceptance of any offer of settlement/Compounding will come in to effect only upon the Competent Authority/SAT/Court passing the consent order/Compounding order.

Q19. What will be the procedure after passing Consent Orders?

- A. The consent order will be published through press release and would be put on SEBI website. In cases where a Party undertakes compliances, it has to comply with the same as per agreed schedule.

Q20. Whether the party has to pay any compounding/settlement charges for mitigating the violation?

- A. Yes. Depending upon the facts and circumstances of the case, gravity of alleged violation, interest of investors and the securities market and deterrent affect, amount payable by a party will be decided. In pending prosecution cases and

cases pending before SAT/courts, the party is also liable to pay legal expenses incurred by SEBI.

Q21. Whether SEBI can consent, if the enforcement order was already passed and appeal is pending before Securities Appellate Tribunal/ Court?

- A. Where a matter is already in SAT/Court, the same consent process will be undertaken and the draft consent terms will be filed before the SAT/Court with an appropriate prayer to consider the terms of the consent and subject to such further terms as the SAT/Court may find appropriate in the facts and circumstances of the case.

Q22. What will be the remedies available with SEBI, if the Consent Order is violated by a party?

- A. Failure to obey consent orders would invite appropriate action, including for violating SEBI orders, besides revival of the pending action. In this context any proceeding which had been kept in abeyance pending the consent process will begin from such stage at which it was suspended.

Q23. What will be the consequences of non-acceptance?

- A. If SEBI rejects the offer of settlement, the person making the offer shall be notified of the same and the offer of settlement shall be deemed to be withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers. SEBI and the Party will be free to resort to legal recourse as may be available to them under law and neither SEBI nor the Party would be entitled to use any information relating to the settlement process in such proceedings. In cases where SEBI is not inclined to accept Settlement/Compounding of offence, SEBI would file its objections before SAT/Court for consideration.

Addresses for corresponding:

For consent orders (civil and administrative)	For prosecution cases (criminal)
Division of Regulatory Action Enforcement Department Securities and Exchange Board of India C4A, G Block Bandra Kurla Complex Bandra (East) Mumbai 400 051	Division of Prosecution Enforcement Department Securities and Exchange Board of India C4A, G Block Bandra Kurla Complex Bandra (East) Mumbai 400 051