

**Subject: Repealing of Securities and Exchange Board of India (Ombudsman) Regulations, 2003**

**1.0 Objective**

1.1 This memorandum seeks approval of the Board to repeal Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

**2.0 Background and existing regulatory provisions**

- 2.1 The arbitration mechanism of stock exchanges to address the investor complaints in early 2000's was plagued with inordinate delays. Passing of an award did not ensure implementation of the same by the brokers. A high arbitration fee and lack of proper appeal mechanism added to the woes of investors.
- 2.2 In this scenario, the Joint Parliamentary Committee (JPC) on the stock market scam and matters relating thereto had emphasized the need to have an independent view on the resolution mechanism of investor complaints against companies and market intermediaries. JPC recommended that the concept of Ombudsman, which was being used in the banking sector, be extended to the capital market. It was, however, of the opinion that ultimately Special Courts dealing exclusively with the investor complaints of financial sector would be the real solution to the expeditious disposal of complaints.
- 2.3 Based on the above recommendation of JPC, the SEBI (Ombudsman) Regulations, 2003 (Ombudsman Regulations) were notified on August 21, 2003. The Ombudsman Regulations were subsequently amended on December 5, 2003 and November 9, 2006 in order to operationalise certain provisions of the regulations. The amendments pertained to the age, tenure and disqualification clause of the Ombudsman and eligibility criteria of members of the Selection Committee.
- 2.4 However, the same could not be operationalised due to various practical difficulties. The Board, in its 117<sup>th</sup> meeting on June 20, 2008, decided that the policy of appointment of Ombudsman be reviewed.
- 2.5 Accordingly, the Ombudsman Regulations were examined internally. During review, one issue which came up prominently was the difficulty in implementation of the awards passed by the Ombudsman. An external legal opinion was sought in the matter from Sri D.J. Khambata, the then Additional Solicitor General of India.
- 2.6 In his opinion dated October 20, 2009, Sri D.J. Khambata opined that the Ombudsman Regulations suffer from legal infirmities such as lack of enforcement mechanism for the Ombudsman Award and the power of SEBI to decide a lis. He also opined that SEBI does

not have the express power to award compensation to investors and therefore, cannot vest the same upon the Ombudsman. It was, therefore felt that the Ombudsman Regulations cannot be operationalised under the extant legal framework.

2.7 Accordingly, a proposal to repeal Ombudsman Regulations was placed before the Board in the 135<sup>th</sup> Board Meeting held on February 07, 2011. In the Board meeting the then representative of Ministry of Finance on SEBI Board had informed the Board that the consultation with Ministry of Law was not over and therefore, Government is yet to take a view in the matter. Accordingly, the matter was deferred.

2.8 Subsequently, Ministry of Finance, vide its letter dated July 13, 2011 requested SEBI to spell out specific legal issues due to which SEBI was not in a position to extend the concept of Ombudsman to the securities market. SEBI vide its letter dated December 21, 2011 informed the Ministry about the legal issues which are impeding SEBI in extending the concept of Ombudsman to securities market. It primarily covered the following issues.

- a. SEBI Act does not expressly empower the Board to award compensation and therefore, SEBI may not empower an Ombudsman to award compensation through delegated legislation.
- b. As per Regulation 5 of Ombudsman Regulations, the Ombudsman need not be a judicial authority. Therefore, it is doubtful as to whether such a non-judicial authority would be entitled to award compensation.
- c. Ombudsman Regulations provides for imposing of penalties/sanctions on the company/intermediary if found guilty upon adjudication of the complaint by the Ombudsman. But, the Ombudsman Regulations do not provide for an enforcement mechanism to execute the orders of the Ombudsman.

### **3.0 Strengthening of Investor Grievance Redressal mechanism by SEBI**

3.1 Over a period of time, SEBI has taken many measures to strengthen the investor grievance eco-system in the securities market:-

- a. **Strengthening of Investor Grievance Mechanism at Stock Exchanges:** The key features of the Arbitration mechanism at Stock Exchanges include the following: -
  - i. Three level arbitration comprising of Investor Grievance Resolution Panel (IGRP), Arbitration Panel and Arbitration Appellate.
  - ii. Currently 24 investor service centres enabling arbitration exist with a facilitation desk to help investors engaged in dispute resolution process. These facilitation desks are meant to assist investors in obtaining documents/details from Stock Exchanges, wherever so required for making application to IGRC and filing arbitration.
  - iii. Arbitration fees stipulated.
  - iv. Profiles of arbitrators on the website.
  - v. Common Pool of Arbitrator across Stock Exchanges.

- vi. Automatic selection of arbitrators.
- vii. Submission of documents in soft copy in addition to physical for assisting Arbitrators in writing the award.
- viii. Interim relief granted to investor from Investor Protection Funds.

- b. **Investor Protection Fund (IPF):** All exchanges have established their respective IPF with the objective of compensating investors in the event of defaulters' assets not being sufficient to meet the admitted claims of investors, promoting investor education, awareness and research. The Investor Protection Fund Trust, based on the appropriate recommendations compensates the investors to the extent of funds found insufficient in Defaulters' account to meet the admitted value of claim, subject to a maximum ceiling, as decided by exchanges, per investor per defaulter/expelled member in respect of claims arising on expulsion/declaration of default of members and subject to an overall limit per defaulter / expelled member.
- c. **SEBI (Investor Protection and Education Fund) Regulations, 2009:** SEBI notified the SEBI (Investor Protection and Education Fund) Regulations, 2009 (IPEF Regulations) in May 2009. The IPEF Regulations provides for the amounts which may be credited, the purposes for which the amount may be utilised and for overall management of the Investor Protection and Education Fund (IPEF) constituted by SEBI under section 11 of the SEBI Act, 1992. A specific provision in the form of sub-regulation (3) to regulation 5 of the IPEF Regulation was inserted vide SEBI (Investor Protection and Education Fund) (Amendment) Regulations, 2014, to provide that the amount disgorged and credited to the IPEF and the interest accrued thereon shall be utilised for the purpose of restitution to eligible and identifiable investors who have suffered losses resulting from the violation of the securities laws.
- d. **Introduction of SCORES:** On 8 June, 2011, SEBI commenced a web based centralized grievance redress system called as SEBI Complaints Redress System (SCORES) which is a platform designed to help investors to lodge their complaints online with SEBI, pertaining to securities market, against listed companies, SEBI registered intermediaries and SEBI recognized Market Infrastructure Institutions. In March 2020, SEBI also launched the SCORES Mobile App with a view to further ease the complaint lodging process by investors. SCORES aids in tracking the status of the complaints anytime by the investor while also providing them notifications from time to time with respect to their complaints. Complaints lodged on SCORES Portal or SCORES Mobile App help in keeping proper audit trail of the complaint which is essential for future references. Data of complaints received and resolved on SCORES in the last 5 years is provided below:-

**Receipt and Redressal of Investor Grievances**

Period	Grievances Received	Grievances Redressed*
2016-17	40,000	49,301
2017-18	43,131	43,308

2018-19	42,202	42,576
2019-20	55,526	39,624
2020-21 \$	49,092	40,402

\$ as on January 31, 2021; \* Includes complaints resolved from previous years

#### 4.0 Grievance mitigating measures by SEBI

4.1 SEBI over a period of time has undertaken many policy measures to address the root cause of investor grievances in order to mitigate them. Some of these policy measures are as follows:-

- a. **Applications supported by Blocked Amounts (ASBA):** ASBA was initially introduced in 2008 and has been made a mandatory process since 2016. With the aid of ASBA, investors do not need demand drafts or cheques which were previously required while applying for an IPO. As a result, complaints arising of non-receipt of refund orders, allotment letters etc. and non-receipt of interest on delayed application money are negligible as the money never leaves the bank account of the subscriber.
- b. **Securities to be issued only in Demat mode:** As per Regulation 15(B)(2)(a) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 in case of any public or rights issue the specified securities shall be issued only in dematerialized form. Therefore, complaints in the nature of non-receipt of share certificates, unit certificates, debenture certificates, bonus shares etc. or any complaints arising out of handling of physical share certificates may not arise.
- c. **Handling of complaints by stock exchanges and SOP on Investor Grievances:** Vide SEBI circular dated August 13, 2020, SEBI specified that complaints (of category refund/ allotment/ dividend/ transfer/ transmission etc.) against listed companies shall be handled by stock exchanges. It also specified the actions that can be taken against listed companies by stock exchanges for non-redressal of grievances including levy of fine, freezing of securities of promoters etc. The circular specified that the fines shall also be imposed on suspended companies. Further, if stock exchanges have taken all necessary action complaints may be sent back to SEBI for further action.
- d. **SEBI Margin norms:** SEBI's new margin rules aim at bringing transparency and preventing stock brokers from misusing clients' securities.
  - i. SEBI, vide circular dated February 25, 2020 specified that Margin obligations to be given in form of securities by client shall be by way of pledge/re-pledge in the Depository System and title transfer of securities to the client collateral demat account of the Trading Member (TM) / Clearing Member (CM) for margin purposes shall not be permitted. By creating pledge/re-pledge mechanism, the securities of client will remain in that client's demat account and entire trail of the securities utilised for margin purposes shall be available. In this mechanism, the TM/CM will not be able to misuse securities of client A towards margin of client B and for also for its own proprietary trades.
  - ii. As per the aforesaid circular, in cases where a client has given a Power of Attorney (POA) in favour of a TM/CM, such holding of POA shall not be considered as

equivalent to the collection of margin by the TM/CM in respect of securities held in the demat account of the client w.e.f August 1, 2020.

- iii. The misuse of POA will be mitigated as pledge shall be created with the consent of client and securities shall not move out from the demat account of the client.

## **5.0 Proposed Investor Charter:**

5.1 Hon'ble FM in her budget speech 2021-22 has announced:

“I propose to introduce an investor charter as a right of all financial investors across all financial products.”

5.2 Accordingly, an investor charter is being prepared by SEBI as part of regulatory compliance. Investor Charter is proposed to be a single document which would contain different services pertaining to investors and of importance to investors along with their respective timelines for providing of these services.

5.3 SEBI's Investor Charter is being developed through a consultative approach. This charter would inter alia contain Vision and Mission statement, responsibilities and Do's and Don'ts of investing in securities market and different services provided to investors along with their timelines.

5.4 The Investor Charter will make the investors aware of their rights and thus would be a step forward in investor grievance redressal mechanism.

## **6.0 Reasons for repealing SEBI (Ombudsman) Regulations, 2003**

6.1 As stated above, SEBI has taken substantial measures to enhance investor grievance redressal by putting in place suitable mechanisms and taking appropriate policy decisions to both strengthen the existing mechanisms of investor grievances as well as addressing the root cause of investor grievances.

6.2 Given that the investor grievances against listed companies, registered intermediaries and market infrastructure institutions are being handled by SEBI through SCORES and there are existing mechanisms at stock exchanges as well, Ombudsman may not have much scope to add value.

6.3 Different courts and tribunal have observed that SEBI does not have to power to adjudge disputes between entities. Recently, in the matter of Franklin Templeton Trustees Services Pvt. Ltd, the Honourable High Court of Karnataka, vide order dated October 24, 2020 inter alia observed that there is no provision under the SEBI Act for adjudication of complaints of the investors, as a matter of right. Rather, National Consumer Dispute Redressal Commission, in its order dated October 28, 2020 passed in the matter of Waman Nagesh Upaskar Vs. India Infoline Ltd. exercised its jurisdiction to adjudging the dispute between investor and financial service providers and to grant compensation while dealing with a case of unauthorized use of DP account and found that the DP account holder whose demat

account was unauthorisedly misused, was entitled for compensation, as a consumer, from India Infoline, DP, under the Consumer Protection Act, 1986.

6.4 With a view to making its regulatory framework simple and more focussed, SEBI has been reviewing its regulations which have either been non-operational or have become redundant and are lying dormant in the statutes. In the current financial year, SEBI has already repealed two regulations viz. SEBI (Central Database of Market Participants) Regulations, 2003 and SEBI (Underwriters) Regulations, 1993. The proposal to repeal the SEBI (Ombudsman) Regulations, 2003 is in continuation of its efforts towards this initiative.

## **7.0 Proposal**

7.1 The Board is requested to consider and approve the following proposals:

7.1.1 to repeal the SEBI (Ombudsman) Regulations, 2003.

7.1.2 to authorize the Chairman to make consequential and incidental changes and to take necessary modification to the draft notification, as may be deemed appropriate and to notify the same in the Gazette of India.