

**Amendments to Regulations to operationalize Online Dispute Resolution (ODR)
Mechanism for investors and clients across all registered intermediaries /
regulated entities**

1. Objective:

1.1 The objective of this memorandum is to seek approval of the Board for amending the following regulations to enable an Online Dispute Resolution (ODR) Mechanism for investors and clients of intermediaries¹ across all registered intermediaries / regulated entities:

- (i) Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 (“Merchant Bankers Regulations”)
- (ii) Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 (“RTA & STA Regulations”)
- (iii) Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (“Debenture Trustees Regulations”)
- (iv) Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 (“Mutual Fund Regulations”)
- (v) Securities and Exchange Board of India (Custodian) Regulations, 1996 (“Custodian Regulations”)
- (vi) Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 (“CRA Regulations”)

¹ Institutional or Corporate Clients of Merchant Bankers, Debenture Trustees, Custodians, Credit Rating Agencies, Alternative Investment Funds, Research Analysts/Proxy Advisors, Designated Depository Participants and Vault Managers will have an option to utilize the MII administered ODR, or to utilize an independent institution in India providing conciliation and/or arbitration, as specified in their agreement with the intermediary, and which option should be clearly exercised at the time of entering into of the agreement. Existing agreements shall also be appropriately amended specifying this choice. Retail investors having dealings with all registered intermediaries/ regulated entities and retail clients will utilize the MII administered ODR.

- (vii) Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999
- (viii) Securities and Exchange Board of India {KYC (Know Your Client) Registration Agency} Regulations, 2011 (“KRA Regulations”)
- (ix) Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”)
- (x) Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (“Investment Advisers Regulations”)
- (xi) Securities and Exchange Board of India (Research Analysts) Regulations, 2014 (“Research Analysts Regulations”)
- (xii) Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”)
- (xiii) Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”)
- (xiv) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015² (“LODR Regulations”)
- (xv) Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019³ (FPI Regulations)
- (xvi) Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020 (“Portfolio Managers Regulations”)
- (xvii) Securities and Exchange Board of India (Vault Managers) Regulations, 2021 (“Vault Managers Regulations”)

In the case of Stock Exchanges, Stock Brokers, Depositories and Depository Participants, dispute resolution under the proposed online dispute resolution (ODR) mechanism may be invoked in accordance with suitable amendments to the bye laws of Stock Exchanges and Depositories⁴ and relevant circulars.

² *LODR amendment for including Listed companies*

³ *FPI Regulations amendment for including Designated Depository Participants (DDPs)*

⁴ *Bye laws framed under the Securities Contracts (Regulation) Act, 1956 and Depositories Act, 1996*

1.2 The memorandum also seeks the approval of the Board for declaring registered intermediaries / regulated entities who fail to comply with the awards of the conciliation/arbitration within the timeline specified (unless they are at the next level of the dispute resolution mechanism within the prescribed timelines if the conciliation is not successful or have filed an appeal in an appropriate court of competent jurisdiction and obtained a stay or order setting aside the award), as not 'Fit and Proper' in terms of the Intermediaries Regulations⁵ and would be inter-alia, liable to have their registration cancelled or their business activities suspended, vide such process as may be specified in the operating circular/s.

1.3 Further, the memorandum also seeks to apprise the Board for consequently notifying the repeal of the following Regulations:

SEBI (Ombudsman) Regulations, 2003

2. **Background:**

2.1 Presently, the process of dealing with investor grievances and disputes in the securities markets is undertaken through the following measures:

- (i) Time-bound mechanism for resolution of investor complaints by the concerned intermediary, Market Infrastructure Institution (MII), and through SCORES
- (ii) In the event of the complainant not being satisfied with the resolution, the MII administered dispute resolution process may be initiated by the aggrieved party against select regulated entities (Stock brokers, Depository participants, Listed Companies and Registrars and Share Transfer Agents).
- (iii) In case either party is not satisfied with the arbitration award, such party may approach the courts.

⁵ *In terms of Schedule II of SEBI (Intermediaries) Regulations, 2008, paragraph (3) (b) (xi)*

2.2 The MII administered dispute resolution process comprises of:

- (i) A time bound conciliation process undertaken at the Investor Grievance Redressal Committee (**IGRC**) of the concerned stock exchange, and
- (ii) In case the IGRC process does not resolve the matter satisfactorily, reference may be made to a time bound arbitration process administered by a sole arbitrator / panel of arbitrators (based on defined thresholds) from amongst a pool of arbitrators appointed by the MII
- (iii) In case the arbitration process does not resolve the matter satisfactorily, reference may be made to appellate arbitration process administered by a panel of arbitrators, from amongst a pool of arbitrators appointed by the MII
- (iv) During the period starting with the onset of Covid-19, the MII administered dispute resolution mechanism was conducted in online mode, using video conferencing tools and e-filing of documents/service requests.

2.3 The need for a revamp in the MII administered dispute resolution process was the culmination of many factors, including those listed below:

- (i) Reference in SEBI Investor Charter (Our Mission): “To provide for alternative dispute resolution mechanism in agreements between investors and MIs/intermediaries”.
- (ii) The Report of the Financial Sector Legislative Reforms Commission also makes reference to the need to have an online grievance redress process followed by mediation and adjudication.
- (iii) A committee constituted by Niti Aayog, chaired by Justice Sikri (Retd.), has in its report⁶ also advocated usage of online dispute resolution mechanisms.

⁶ *Designing the Future of Dispute Resolution: The ODR Policy Plan for India*

3. Issues with the existing MII administered dispute resolution process:

3.1 With a view to further streamline and strengthen the Investor Grievance Redressal Mechanism (IGRM) in the securities market with the aid of technology, an internal cross-departmental committee was constituted to examine the issue. The report was submitted by the committee enumerating various recommendations for changes in the IGRM framework.

3.2 The existing MII administered dispute resolution process has certain complexities and accordingly the following areas had been identified, with scope for further improvement:

- (i) The present MII administered dispute resolution process only covers Stock Brokers, Depository Participants, listed companies and Registrars and Share Transfer Agents. Investors who have disputes with any other registered intermediary do not have recourse to dispute resolution under the existing dispute resolution framework.
- (ii) The present process is largely physical, with some parts adapted to digital mode (due to changes brought on by the COVID-19 scenario). This leads to a relatively costly, time consuming dispute resolution process, coupled with information asymmetry, in terms of evidence / documents available with the investor/complainant on one hand and the regulated entity on the other hand.
- (iii) The current structure of the process is multi layered and non-uniform, and is a three layered process: IGRC, Arbitration (sole or panel depending on the amount) and Appellate Arbitration (Panel).

3.3 A series of stakeholder consultation in the form of meetings with Stock Exchanges and Depositories were conducted. Stakeholders were apprised of the proposed changes in the IGRM framework and their feedback was obtained.

4. Public consultation:

4.1 Thereafter, a consultation paper dated December 19, 2022, was published on the SEBI website, inviting comments on the following proposals:

- (i) To extend MII administered online mediation/conciliation and online arbitration to specified registered intermediaries / regulated entities and to have a contractual framework between MIIs and intermediaries for initiation of dispute resolution
- (ii) To expand the capacity of the MII administered dispute resolution process with the aid of Online Dispute Resolution (ODR) process by tie ups with ODR institutions
- (iii) To conduct the dispute resolution process through a hybrid approach (mix of online and offline) or online only approach.
- (iv) To relabel the IGRC into a panel of mediators/conciliators.
- (v) To appoint a sole arbitrator for all cases and do away with a panel of arbitrators.
- (vi) To retain or discontinue appellate arbitration.
- (vii) To determine the cost structure for funding the infrastructure for MII administered dispute resolution and to determine costs to be borne by complainant for initiation of proceedings
- (viii) To determine the timely enforcement of interim relief amounts and maintaining deposits for funding the same by intermediaries
- (ix) To enhance publication of data relating to dispute resolution w.r.t. to intermediaries

4.2 Comments were received from around 50 entities viz. MIIs, financial institutions, law firms, academics, arbitrators, statutory body, investor associations and investors. The public comments were broadly in agreement with the proposals mentioned in the consultation paper. For a wider reach, SEBI also enlisted the

services of Civis⁷, a Non-Governmental organization involved in public policy consultation.

4.3 A table containing the proposals and a summary of the public comments is enclosed herewith (**Annex - I**).

4.4 The following are the broad recommendations based on the public comments received:

- (i) Extend the MII administered online conciliation and online arbitration to specified registered intermediaries / regulated entities and to create a contractual framework between MIIs and intermediaries for initiation of dispute resolution. The investor may approach any MII to lodge their request for dispute resolution and the request would be auto assigned to a MII ODR platform based on a round robin logic.
- (ii) Expand the capacity of the MII administered dispute resolution process with the aid of the ODR process and their engagement/ tie up with ODR institutions. Training needs of the conciliators/arbitrators may be met through NISM modules.
- (iii) Conduct the dispute resolution process through a hybrid approach (mix of online and offline). A completely online process may be explored in the future. The hybrid process may be facilitated through Investor Service Centers (ISC) of MIIs.
- (iv) Relabel the IGRC as conciliators.
- (v) Appoint a sole arbitrator for cases below a certain monetary threshold and have a panel of arbitrators for cases above the threshold.
- (vi) Discontinue appellate arbitration.
- (vii) A transaction fee may be levied for initiation of dispute resolution proceedings by the complainant and require the intermediary to also deposit the fee. The party which succeeds would receive a refund of the fees paid by that party.

⁷ Civis has undertaken projects in collaboration with NITI Aayog, Ministry of Heavy Industries and Public Enterprises, Food Safety and Standards Authority of India, etc.

- (viii) A deposit in a separate specified account by the concerned intermediary may be maintained and utilized for payment of award or interim relief, in case of non-adherence of the award by the intermediary or refusal to pay. Interest income from these deposits or the IPF of stock exchange may be utilized towards infrastructure expenses of the MII administered dispute resolution mechanism.
- (ix) Publication of detailed data relating to dispute resolution at a prominent place on the website of intermediaries and MIIs.

4.5 A Working Group to operationalize the proposed ODR Mechanism with representatives from MIIs, ODR institutions, and industry associations will be asked to provide its recommendations. The Working Group would recommend the details for operationalizing the proposed ODR mechanism, including costs, fees, interim relief, levels of deposits maintained by intermediaries with MIIs, timelines and code of conduct⁸.

4.6 The recommendations of the Working Group and other operational details will be duly evaluated and implemented (with or without modifications) by issuance of appropriate circulars subsequently.

5. **Proposal:**

5.1 In view of the above, it is proposed that suitable amendments may be carried out to the various Regulations listed at paragraph 1, as under:

- (i) Insertion of relevant clause/s under all the respective SEBI Regulations listed at paragraph 1.1 providing a condition for invoking dispute resolution under the proposed online dispute resolution (ODR) mechanism, which shall read as under:

⁸ For MIIs, ODR institutions, arbitrators, conciliators etc.

'All claims, differences or disputes between an investor/client and the "(name of intermediary)", shall be submitted to a dispute resolution mechanism administered by a MII, in accordance with the procedure as specified by the Board from time to time'

In the case of Stock Exchanges, Stock Brokers, Depositories and Depository Participants, dispute resolution under the proposed online dispute resolution (ODR) mechanism will be specified by suitable amendments to the bye laws of Stock Exchanges and Depositories

- (ii) Issuance of operating circulars by the concerned operational departments based on the broad recommendations from the public consultation process at paragraph 4.4 above.
- (iii) The Memo seeks views of the Board on declaring registered intermediaries / regulated entities who fail to comply with the awards of the conciliator/arbitrator within the timeline specified (unless they are at the next level of the dispute resolution mechanism within the prescribed timelines if the conciliation is not successful or have filed an appeal in an appropriate court of competent jurisdiction and obtained a stay or order setting aside the award), as not 'Fit and Proper' in terms of the Intermediaries Regulations and would be inter-alia, liable to have their registration canceled or their business activities suspended, vide such process as may be specified in the operating circular/s. Accordingly, this measure will be a sufficient deterrent to ensure that the awards are honored by registered intermediaries / regulated entities.
- (iv) Notifying the repeal of Securities and Exchange Board of India (Ombudsman) Regulations, 2003, as approved by the Board in its meeting held on March 25, 2021.

The repeal of SEBI (Ombudsman) Regulations, 2003 was not notified in the absence of an alternative mechanism. Given that the present proposal provides for an alternative mechanism encompassing the various segments of the securities market, the repeal of SEBI (Ombudsman) Regulations, 2003 may be notified.

- (v) The Board is requested to consider and approve the proposals as contained in the Memorandum and authorize the Chairperson to make consequential and incidental changes and take necessary steps to give effect to the decisions of the Board.

This has been excised for reasons of confidentiality.