

Review of SEBI (Settlement Proceedings) Regulations, 2018

1. Objective:

- 1.1 The objective of this memorandum is to seek approval of the Board to SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2026 ("**Proposed Regulations**") which would replace existing SEBI (Settlement Proceedings) Regulations, 2018 ("**Existing Regulations**")

2. Background:

- 2.1 SEBI had introduced the framework for settlement of enforcement proceedings on April 20, 2007 by way of a circular no. EFD/ED/Cir.-01/2007 Circular 2007. Further changes in the said framework were made through circular dated May 25, 2012. Settlement framework got statutory recognition by way of amendments made in the Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956 and Depositories Act, 1996, through Securities Laws (Amendment) Ordinance, 2013. Ultimately Securities Laws (Amendment) Act, 2014 was passed on August 25, 2014. 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, as inserted by the Securities Laws (Amendment) Act, 2014, specifically empowered SEBI to frame regulation for settlement of administrative and civil proceedings. First regulation on SEBI's settlement process came to be notified on January 09, 2014 as SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. Thereafter, SEBI (Settlement Proceedings) Regulations, 2018 ("**Existing Regulations**") were notified on November 30, 2018 and came into force from January 01, 2019. Settlement Regulations, 2018 replaced SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014.
- 2.2 In order to reduce litigation and provide alternative mode of resolution thereby providing clarity and ease of understanding of regulations, SEBI has undertaken

the review of existing settlement mechanism. As a part of this initiative, SEBI held meetings with the stakeholders to understand their concerns/comments/views/suggestions on the existing framework providing for settlement of enforcement proceedings.

- 2.3 SEBI has also conducted a study of settlement applications filed in the last two years where settlement could not be reached and subsequently resulted in imposition of penalty. While conducting this study, efforts have been made to have cases which were proximate to the outcome of the enforcement proceedings and for the said purpose, outliers were left out. The study showed that settlement amounts proposed and not accepted in such matters were average 8 times higher than the penalty amount ultimately came to be imposed in such cases.
- 2.4 It was also noted from the examination of data of settlement applications that in last 3 years a total of 1576 settlement applications were filed, out of which 640 applications resulted in return/rejection/withdrawal of the settlement applications and 568 resulted in settlement. Thus, 40% applications resulted into return/rejection/withdrawal.
- 2.5 After taking the comments/views/suggestions of the stakeholders, a clause by clause review of Existing Regulations was undertaken by SEBI and certain changes were identified which could be made to the Existing Regulations. These changes, which emerged on review of the Existing Regulations in the light of comments/views/suggestions of the stakeholders, were placed before the High Powered Advisory Committee ("HPAC"). Subsequently, a draft of the SEBI (Settlement of Proceedings) Regulations, 2026 ("**Proposed Regulations**") was prepared.
- 2.6 HPAC gave its comments/suggestions on the changes proposed. Comments/suggestions of HPAC were duly considered and wherever required were duly incorporated in the Proposed Regulations.

3. Public Consultation:

3.1 A consultation paper titled as “Consultation Paper on Review of SEBI (Settlement Proceedings) Regulations, 2018” containing the changes as aforesaid and also the draft of the Proposed Regulation, was placed on the SEBI website on August 14, 2016 for seeking the public comments on the changes proposed in the Existing Regulation. The last date for receiving public comments was September 04, 2016. A copy of the said consultation paper is enclosed as **Annexure A** to this memorandum. The consultation paper sought public comments on the following proposals:

- (i) New proposed formula for calculation of Settlement Amount
- (ii) Base Amount
- (iii) Non-consideration of wrongful gain made in determining Base Amount
- (iv) Bringing clarity in calculating “counts of default”
- (v) Calculation of Count of default when default is repetitive
- (vi) General mitigating factors and residuary clause
- (vii) General Aggravating Factors and residuary clause
- (viii) Removal of additional 20% Settlement Amount levied in case of multiple proceedings
- (ix) Interest on disgorgement amount
- (x) Starting date for calculating period of interest
- (xi) No interest on interest
- (xii) Increasing limitation period for filing settlement applications
- (xiii) Requirement of making pre-disclosures
- (xiv) Market wide impact, loss caused to investors and effect on the integrity of the market
- (xv) Non-monetary terms (NMTs) in adjudication cases
- (xvi) Voluntary debarment and Voluntary Suspension
- (xvii) Revision of filing fees
- (xviii) Reduction in additional settlement amount in case of withdrawal of settlement application

- (xix) Opportunity to file settlement application where previous settlement application was rejected
- (xx) Fast track settlement
- (xxi) Settlement Notice before issue of show cause notice
- (xxii) Opportunity of hearing in case of revocation of settlement order
- (xxiii) Power to relax timelines
- (xxiv) Removing redundant provisions
- (xxv) Bringing clarity in application form for Settlement Application
- (xxvi) Defining certain words
- (xxvii) Settlement terms to apply to applicants
- (xxviii) Settlement of cases involving misrepresentation of Financials and siphoning off/diversion of funds
- (xxix) Use of “days” instead of “working days”
- (xxx) Separate calculation of settlement amount for each applicant
- (xxxi) Option for applicants whose applications are pending
- (xxxii) Extending Proposed Regulations to settlement applications not filed, withdrawn, rejected or returned under the Existing Regulations

3.2 A total of 15 entities (228 comments) responded on the proposals made in the consultation paper with their views/ suggestions. While a majority of the respondents have agreed with the proposal, some have disagreed/strongly disagreed with some proposals and some respondents have made additional suggestions related to the proposal. Detailed analysis of public comments received is given hereunder in this Board memorandum. Additionally, a summary of the comments received, along with SEBI's views on the same, is placed at **Annexure B** to this memorandum.

4. Proposals for consideration and approval of the Board:

4.1 Explanation of existing Formula:

4.1.1 **Existing Formula:** Existing Regulations provide for calculation of settlement amount on the basis of a mathematical formula which is as under:

$$\text{Indicative Amount} = [(A*B) + \text{Legal Costs}]$$

Where,

$$'A' = \text{PCF} + \text{RAF}$$

A: Multiplying Factor

PCF: Proceeding Conversion Factor

RAF: Regulatory Action Factor

$$\text{RAF} = X + Y$$

X= Value assigned to previous orders and regulatory direction issued

Y= Value assigned to order or direction passed or issued for which the application is filed

$$'B' = \text{BV} \times \text{BA}$$

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 factors including the aggravating and mitigating factors in respect of a particular charge.

BV= 1+ sum of applicable base values

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

4.1.1.1 The aforesaid formula is mathematical but also takes into account subjective factors. The factors which assess fact specific situation are: - Proceeding Conversion Factor, Regulatory Action Factor, General Base Values, Special Base Values, Mitigating Factors, Aggravating Factors and Base Amounts.

4.1.1.2 PCF is the factor which is applied depending on the stage of the enforcement proceedings for which settlement application is filed. Under PCF, each stage has been assigned a distinct value varying from 0.40 to 1.50. PCF values are assigned such that an application which is filed at earlier stage of the enforcement proceedings will attract a lower PCF and thus, a lower indicative amount than if the same application was filed at a later stage of the enforcement proceedings.

- 4.1.1.3 RAF (X+Y) is the factor which is applied to take into account the past orders or directions issued against the applicant (X) and also any directions which are issued in the proceedings for which the settlement application is filed (Y). Under RAF, each type of order has been assigned a distinct value varying from 0.1 to 0.075. RAF increases the Indicative Amount taking into account the factor of previous regulatory orders and directions.
- 4.1.1.4 Base Value is the factor which takes into account the facts and circumstances alleged in the enforcement proceedings and accordingly acts as a multiplier for the base amount. Base Values contain both kind of factors i.e. the ones which carry positive value, thus being against the applicant and the ones which carry negative values, thus being in favour of the applicant. The total of both the positive and negative values when added to 1, becomes base value (BV). The higher the sum of the base values, the higher will be the value of Indicative Amount.
- 4.1.1.5 Base Amount (BA) is the amount assigned for different types of violations. It is used to arrive at the value of Benchmark Amount for each default. Base amount is taken as per the value mentioned in the tables provided under schedule II of the Settlement Regulations. However, wherever wrongful gain is made or loss is caused to investors, then the base amount is taken as higher of amount as per the tables or the wrongful gain made or loss causes to investors, by the applicant in the proceedings for which settlement is applied. Presently, there are five tables specifying base amounts for different kinds of defaults. Four tables provide base amounts for defaults relating to open offer, relating to disclosures under takeover regulations, relating to disclosures under Insider Trading Regulations and other disclosures not covered in Takeover and Insider Trading Regulations. Further, the last table provides for residuary base amount and covers all other violations not covered in the four tables.
- 4.1.1.6 Base values (BV) multiplied with the Base Amount (BA) becomes applicable benchmark amount (B). It has been noted that settlement amount calculated as per the aforesaid formula and base amounts leads to settlement amounts which are significantly higher than the penalties imposed in such cases. There is a need to review this vast gap between penalties and the settlement amount to

ensure that settlement amount is not too high so as to defeat the purpose of settlement. However, there is also a need to check that settlement amounts acts as sufficient deterrent and are on a premium compared to the outcome of the enforcement proceedings. On the basis of experience gained so far and on the basis of feedback received from the stakeholders, it is felt that there is a need for rationalisation of the calculation of settlement amount.

4.2 New proposed formula for calculation of settlement amount:

4.2.1 In the consultation paper, it was proposed to introduce a new simpler formula, for calculation of settlement amount and also to rationalise the settlement amounts, which is as under:

$$\text{Settlement Amount (SA)} = \text{BA} \times (\text{S} + \text{R} + \text{G} + \text{A} - \text{M})$$

4.2.1.1 In the above formula, 'BA' is the base amount. As the name suggests, it is the amount which is minimum amount for a violation which is considered for calculating settlement amount for that violation. Under the Existing Regulation, there are five tables which specify base amounts for different kinds of defaults. However, wherever wrongful gain is made or loss is caused to investors, then the base amount is taken as higher of amount as per the tables or the wrongful gain made or loss causes to investors, by the applicant in the proceedings for which settlement is applied. In the consultation paper it was proposed to link the base amount to the penalty amounts provided under the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956 and Depositories Act, 1996 ("the 3 Acts) with suitable multiplying factor based on the type of the applicant. Base amount has been further discussed in detail in paragraphs 4.2.2.1 and 4.2.2.2 below.

4.2.1.2 'S' is the stage of proceedings which is similar to the Proceeding Conversion Factor under the Existing Regulations. Under 'S' the values proposed to be assigned to different stages of proceedings range from 0.2 to 1.5 where, -

- 0.2 is for voluntary application,
- 0.4 is for prior to SCN,
- 0.6 is for post issue of SCN,

- 0.8 is for pending before designated member or pending proceedings under Section 15(3) and corresponding provisions under SCRA and Depositories Act, 1996,
- 1 is for pending before the Tribunal, and
- 1.5 is for pending before the Supreme Court.

4.2.1.3 'R' is the regulatory action factor which is similar to 'X' component of RAF, under the Existing Regulations. Further, the values under 'R' have also been proposed to be changed which now ranges from 0 to 0.3 where,-

- 0 is for no prior orders passed,
- 0.10 is for "each administrative warning" issued,
- 0.20 is for "each settlement order passed", and
- 0.30 is for "each order passed in adjudication proceedings, proceedings for directions and disciplinary proceedings".

4.2.1.4 'G' is similar to the special base values which are applied under the Existing Regulations. Values proposed to be assigned under G range from 0.25 to 1.5 where, -

- 0.25 is for open offer related violations,
- 0.5 is for offer document related violations,
- 0.5 is for violation of regulations 3 and 4 of SEBI (PIT) Regulations, 2015, and
- 1.5 is for violation of PFUTP Regulations, 2003

4.2.1.5 'A' is same as the aggravating factors under the Existing Regulations. However, in order to bring reasonableness, in the consultation paper changes were proposed to be incorporated and consequently maximum 5 aggravating factors each having value of 0.20 were proposed.

4.2.1.6 'M' is same as the mitigating factors under Existing Regulations. However, instead of 3, in appropriate cases, maximum 5 mitigating factors each having value of 0.20 were proposed in the consultation paper.

4.2.1.7 Further, in the consultation paper it was proposed that if net total of $S+R+G+A-M$ is less than 1 then same shall be treated as 1. So, in any event, value of $S+R+G+A-M$ is not less than 1.

4.2.1.8 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	08
Strongly agree/Agree/Partially Agree	08
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.2.1.9 All the comments received on the said proposal are in favour of the proposal.

Three comments which have partially agreed with the proposal have suggested to modify the values assigned to S, R and G on the lines of existing Regulations, otherwise, it may result into higher settlement amounts in case of insider trading and fraudulent and unfair trade practices. In this regard, it is observed that the new formula and various values assigned under it to the various components, have been arrived to ensure a reasonable outcome of the settlement amount. It should be noted that the settlement amount should ideally be reasonably higher to act as a deterrent against violation and should not be too high to act against settlement. The proposal seeks to achieve the same. Further, though smaller values are assigned under the Existing Regulations, however, the base amounts under the existing regulations are high. Under the Proposed Regulations base amounts have been linked to minimum penalty amounts provided under the 3 Acts with suitable multipliers depending on the type of the violator, which rationalises the outcome of settlement amount. In view of this, there is no need for modifying the values as suggested in the public comments. Further, one comment which has partially agreed with the proposal has suggested that the floor value which is assigned to $(S+R+G+A-M)$ should not be capped at 1 so that in a given case settlement amount can even go below the base amount. In this regard, it is observed that the intention behind the new formula is that Settlement amount should not be less than the base amount. If the value of $(S+R+G+A-M)$ is taken as less than 1 then this will lead to settlement amount lesser than the base amount. Therefore, the suggestion made in the public comment may not be accepted. In view of this, the proposal contained in the consultation paper in this regard may be approved.

4.2.2 Explanation to New Formula:

4.2.2.1 **Base amounts:** Presently, for calculating indicative amount, base amount for different kinds of violation is given in the tables under Chapter VI of Schedule II of the Existing Regulations. However, for certain violations involving wrongful gain made and/or loss caused to investors, base amount is taken as the higher of the wrongful gain made and/or loss caused to investors or the amount given in the tables under Chapter VI of Schedule II of the Existing Regulations. In this regard, it was observed that table of base amounts is not comprehensive and provides for only limited number of violations. As a result, substantial number of the violations fall under the Residuary (P) of Table X of the Existing Regulations, which leads to either higher base amounts or inadequate base amounts. Accordingly, in the consultation paper, it was proposed to link the base amounts to the minimum penalty amounts provided under the 3 Acts, with suitable multipliers having regard to the type of the applicant seeking disposal of the enforcement proceedings for the alleged violation, such as Executive director/Promoter in control / KMP, Non-executive directors, Independent directors, Company, Pooled Investment Vehicles, Intermediary, MIs and others. Base amount is to be calculated for each count of violation and then aggregated.

Thus, Base Amount = Minimum penalty specified for such violation × Multiplier
(to be aggregated for each count of violations)

Different multipliers proposed to be used in this regard are as under:

Type of Applicant	Multiplier
Independent Director	2
Natural Person	2.5
Non-executive Director	3
Executive Director/ Promoter in control/ Key Managerial Person	3.5

Company, intermediaries, Pooled Investment Vehicles and others	4
Market Infrastructure Institution	5.5

4.2.2.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	09
Strongly agree/Agree/Partially Agree	07
Disagree/Strongly Disagree	02

Analysis of Public Comments:

4.2.2.3 Majority of the comments received on the said proposal are in favour of the proposal. One comment which has partially agreed to the proposal has suggested that multipliers should be calibrated having regards to the gravity and actual impact of the alleged default including investor loss and market impact by the applicant. In this regard, it is observed that the multipliers in the Proposed Regulations are entity specific and the gravity is captured in the G factor. Further, the comment has also suggested to clarify the parameters for determining market wide impact. In this regard, it is observed that the same are already part of the Proposed Regulation under the provision relating to factors for consideration of Regulatory and Remedial Terms. Therefore, the suggestions made in the comment are not accepted. Two comments which have disagreed with the said proposal has stated that there should not be any multipliers which have been made applicable in all cases irrespective of the gravity of violation. It has also been stated that instead of applying the multipliers, SEBI should consider retaining discretion to impose higher base amounts in case of serious intentional violation. As discussed above, the new formula and various values assigned under it to the various components, have been arrived to ensure a reasonable outcome of the settlement amount, in the settlement cases. Introduction of different base amounts in different cases, based on the discretion of SEBI, will lead to uncertainty in the settlement

process. Multipliers have been introduced to ensure rationale outcome of the settlement amounts without discretion. Therefore, the suggestions made in the said public comments may not be accepted. In view of this, the proposal contained in the consultation paper in this regard may be approved.

4.2.2.4 Consideration of wrongful gains made in determining Base Amount:

Presently, in case where enforcement proceedings sought to be settled envisages disgorgement of wrongful gains, the applicant is required to remit both the indicative amount and also disgorge the wrongful gains. To calculate the indicative amount, the base amount is taken as the higher of the amount of wrongful gains or the amount given in the tables for base amount. Therefore, such wrongful gain is considered twice, first as a base amount for computation of indicative amount and second such wrongful gain is also required to be disgorged with interest as non-monetary terms. It leads to a double impact for the applicant seeking settlement of such proceedings and tends to discourage applicants to come forward for disposal of the enforcement proceedings under settlement. In the consultation paper, it was proposed that wrongful gains made or loss caused to investor shall not be considered while ascertaining the base amount for computing the settlement amount. However, it shall continue to be considered for disgorgement separately.

4.2.2.5 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	09
Strongly agree/Agree/Partially Agree	09
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.2.2.6 All of the Public comments received on the said proposal are in favour. One comment which has partially agreed with the proposal has suggested that in case of adjudication matters where wrongful gains have been alleged, the wrongful gain might be more than the base amount therefore such gap must be rectified. The proposal is required to be seen in the light of the practice followed in enforcement where wrongful gains is small amount, 11B proceedings are not

initiated and instead in adjudication proceeding penalty is decided after considering wrongful gains amount as well. In this regard, it is noted that said suggestion has substance as allowing settlement of an adjudication matter, only with settlement amount without having regard to the wrongful gains made or loss avoided or loss caused to investors, by the violator, would have no disincentive for the violator. In view of this, it is proposed that in adjudication matters also, the wrongful gains made or loss avoided or loss caused to investors wherever quantified and not directed to be disgorged, shall also be disgorged. In view of this, the proposal contained in the consultation paper with aforesaid modification, may be approved.

4.2.2.7 Bringing clarity in calculating “counts of default”: In the consultation paper, base amount was proposed to be calculated for each count of defaults and then aggregated. Counts of default are ascertained on the basis of number of allegations made in the show cause notice or enquiry report, in case of pending proceedings. Sometimes, count of default is confused with number of provisions of the law which stand violated due to a particular act or omission. In the consultation paper, it was proposed to be clarified that base amount shall be considered for counts of defaults and not for the provisions of law alleged to be violated. Also, in the consultation paper, since it was proposed to enable the filing of settlement applications at the stage of appeal before the SAT and the Supreme Court, it was also proposed that while processing of such applications, only those counts of default shall be considered for base amount which has been upheld/ established in the SEBI Order or the SAT order, as the case may be. Further, it was proposed that in case SEBI has preferred appeal before the Supreme Court against the relief provided by Hon’ble SAT, then only 50% of the Base Amount for each count of such defaults shall be considered. For the rest of the defaults, for which appeal has been preferred by applicant, 100% of the base amount shall be considered for the calculation of settlement amount.

4.2.2.8 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	09
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Strongly agree/Agree/Partially Agree	09
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.2.2.9 All of the public comments received are in favour of said proposal. One of the comment which has partially agreed with the proposal has suggested that non-disclosure for one financial year has been made equal to same non-disclosure continuing for 3 financial years. The equivalence created here appears to be artificial and is contrary to the understanding that financial statements of each year are self-contained and the standards of disclosure needs to be adhered for each financial year individually. Hence, the above suggestion of counts of default requires reconsideration to maintain the deterrent effect of the Settlement. In this regard, it is observed that in the proposal, failure to make annual disclosure for three years was taken as one default and failure to make quarterly disclosure in one year was taken as one default. The suggestion received in public comment seems reasonable and the provisions in the Proposed Regulations have been modified to provide that number of false, wrong, misleading disclosures made or failed to make required disclosures, in a statement in a calendar year or financial year, as applicable under the securities laws, shall be taken as one count of default. In view of this, proposal made in the consultation paper with aforesaid modification may be approved.

4.2.2.10 **Calculation of Count of default when default is repetitive:** Presently, repetitive nature of default has not been clearly defined in the Existing Regulations. In order to bring in more clarity as to when a particular default shall not be considered as a default of repetitive nature, in the consultation paper, it was proposed to provide illustrations when an act or omission despite occurring number of times will not be treated as repetitive and shall be counted as only one default.

4.2.2.11 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	10
Strongly agree/Agree/Partially	09
Disagree/Strongly Disagree	01

Analysis of Public Comments:

4.2.2.12 Majority of comments are in favour of the said proposal. Two public comments have partially agreed with the proposal. One of such comment has suggested that in the consultation paper it has been mentioned that communication of single UPSI to multiple number of persons shall be taken as one count of default, however, this does not find mention in the Proposed Regulations. In this regard, it is observed that it is a drafting miss. In view of this, suggestion contained in the proposal is accepted and necessary changes in the Proposed Regulations, have been made in this regard. Another public comment which has partially agreed with the proposal has suggested that a single systems technology or process failure affecting multiple accounts securities instruments or clients on the same occasion should be treated as one count of default irrespective of the number of accounts or records affected. It has further been suggested that there should be a look back period for determining the repetitive nature of default. In this regard, it is observed that as regards addition of specific instance to illustrative list, there is already a residuary clause in the provision which takes care of the concern raised in the public comment. In respect of suggestion regarding providing a look back period, it is observed that suggestion seems to be reasonable. Accordingly, suitable changes have been made in the Proposed Regulations to provide that repetitive nature of default shall be reckoned with respect to a particular specified proceedings sought to be settled. Accordingly, the suggestion made in the public comment has been accepted. One of the public comment which has disagreed with the proposal has suggested that disclosure obligations are different in nature. Each disclosure period is an independent statutory trigger, and the entity has a fresh and separate opportunity to comply on each occasion. Clubbing repeated non-compliance across a year, or across three years, into a single count removes

the incremental consequence for an entity that continues to withhold information from the market over multiple periods. This weakens the deterrent effect of the settlement mechanism and dilutes the object of investor protection that periodic disclosure norms are meant to serve. Retaining a separate count for each period of default will keep the settlement amount proportionate to the extent and duration of non-disclosure. There is merit in this comment. Accordingly, proposal contained in the consultation paper may be modified to provide that number of false, wrong, misleading disclosures made or failed to make required disclosures, in a statement in a calendar year or financial year, as applicable under the securities laws, shall only be counted as one default. In view of this, proposal contained in the consultation paper may be approved with aforesaid modifications.

4.2.2.13 General mitigating factors and residuary clause: Presently, while assessing the relevant factors, the IC or HPAC or Panel of WTMs may take into account the general mitigating factors with a base value of '0.20' for each of them wherever applicable, subject to a maximum limit of 3. There may be situations where a particular case may attract more mitigating factors than 3, however, due to capping of maximum mitigating factors at 3, more mitigating factors cannot be considered. Whereas, in a given case up to 7 aggravating factors can be applied which carry a total value of 1.65. In order to strike a balance between the general aggravating and mitigating factors, in the consultation paper, it was proposed to increase maximum limit of mitigating factors to 5 with a base value of "0.20" each.

Further, presently, there is a list of mitigating factors containing 9 items. In the consultation paper, it was proposed to introduce certain new mitigating factors viz.: there was change in control or management of the corporate entity, applicant was an independent director. Further, it was also proposed to include a residuary clause in the said list so that any other relevant mitigating factor in favour of the applicant can also be considered in appropriate cases.

4.2.2.14 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	08
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Strongly agree/Agree/Partially	08
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.2.2.15 All of the public comments received on the proposal are in favour. Two public comments have partially agreed with the proposal. One of such comment has suggested that mitigating factor provided for public sector undertakings (PSUs) should be removed. In this regard, it is observed that such relaxations for PSUs are available under various regulations of SEBI and thus, is being retained here as well. Another public comment which has partially agreed has suggested that 'proactive cooperation' is presently only one among several competing mitigating factors subject to an overall cap of five and a value of 0.20 each. An applicant who provides substantial and material cooperation may not receive a return that reflects the actual value of that cooperation to SEBI particularly where other unrelated mitigating factors are also being claimed in the same case. It has been further suggested that a dedicated cooperation credit framework that is quantifiable and applied independently of the capped mitigating factors would better incentivise voluntary self-reporting and provision of evidence against other parties and align practice of SEBI with cooperation credit regimes recognised under international securities enforcement standards and will materially improve ability of SEBI to gather evidence and detect violations that may otherwise go undiscovered. Regarding these suggestions, it is observed that cooperation credit framework is already part of the settlement regulation under the Chapter VII- Settlement with Confidentiality wherein the settlement amounts are at discount to normal applications, in case a person agrees to provide substantial assistance in investigation, inspection, examination or audit. Further, suggested additional confidentiality may not be desirable. Therefore, suggestions made in the public comment are not accepted. In view of this, proposal contained in the consultation paper in this regard, may be approved.

4.2.2.16 **General Aggravating Factors and residuary clause:** Presently, while assessing the relevant factors, the IC or HPAC or Panel of WTMs may take into account the general aggravating factors such as providing inaccurate or misleading testimony, misconduct extended to not less than 30 days, evidence of planning, pre-meditation or sophisticated means, applicant abused a position of trust etc., with a total base value of '1.65' wherever applicable, subject to a maximum limit of 7 factors. In order to balance general aggravating and mitigating factors, so that a balanced, fair and equitable treatment is accorded to the applicant in the settlement proceedings, in the consultation it was proposed to reduce general aggravating factors applicable in a case from 7 to 5 with a base value of "0.20" for each of the general aggravating factors. Further, a residuary clause in the said list of aggravating factor was also proposed to be added so that any other relevant aggravating factor can also be considered in appropriate cases.

4.2.2.17 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	09
Strongly agree/Agree/Partially	09
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.2.2.18 All of the public comments received on the said proposal are in favour. 3 public comments have partially agreed with the proposal. One of such public comment has suggested that breach of internal procedures is unlikely to work as an aggravating factor because such breaches will ordinarily come to SEBI's notice only if the applicant reports them itself. There is no reason for an applicant to do so. On the proposed formula, the settlement amount will in most cases exceed the penalty an Adjudicating Officer would impose on the same facts, and reporting the breach adds a further aggravating factor on top. The framework therefore gives companies a clear reason not to report. In this regard, it is observed that said aggravating factor is part of the Existing Regulations, is well thought of and has worked well. Therefore, the suggestion

made in the public comment is not accepted. Other public comment which has partially agreed with the proposal has suggested that the gravity of the proceedings is a necessary factor, hence, effectively differentiating the same in the Settlement Proceedings must be considered. In this regard, it is observed that the specified proceedings such as 11B, adjudication, etc. are initiated based on the seriousness of the violations and other terms which can be imposed in settlement also take care of the seriousness of the violations. Further, the regulation is not specific to the nature of proceedings. Hence, the suggestions made in the public comment are not accepted. Other public comment which has partially agreed with the proposal has suggested that there should not be any residuary clause in the aggravating factors. In this regard, it is observed that in specified proceedings, the violations are fact based and may not be uniform in all cases, thus, residuary clause is required to deal with unforeseen situations. It has also been suggested that aggravating factor “a listed intermediary or securities Market Infrastructure Institution (MII) being substantially jeopardized” and “act or omission of MII was such that the functioning of such MII or other MII was substantially jeopardized.”, overlap with each other, therefore, where the same applicant qualifies under both categories, one of the two may be applied to avoid double counting. In this regard, it is observed that both these factors serve different purpose and may be applied based on the facts and circumstances of a given case. It has also been suggested that aggravating factor, “act or omission of MII was such that the functioning of such MII or other MII was substantially jeopardized.”, should be confined to consequences proximately caused by the applicant act or omission. In this regard, it is observed that the aggravating factor already provides that the omission or act should be of the MII, therefore, this suggestion is already taken care of in the Proposed Regulations. Therefore, the suggestion made in the public comment is not accepted. It has also been suggested that there should not be any aggravating factor of search and seizure. In this regard, it is observed that search and seizure is conducted in a serious case pursuant to order of the court. Therefore, the suggestion made in the public comment is

not accepted. In view of this proposal contained in the consultation paper in this regard, may be approved.

- 4.2.2.19 **Removal of additional 20% Settlement Amount levied in case of multiple proceedings:** Presently, Existing Regulations provide for charging of additional 20% of settlement amount in case enforcement proceedings sought to be settled are multiple. This was the situation earlier where 11B and adjudication proceedings against same noticees were done separately. Presently, under 11B proceedings, both directions and penalties, are imposed by the same authority. Hence, the rationale for such additional amount does not exist now. Accordingly, in the consultation paper, it was proposed to remove additional settlement amount of 20%, in case of settlement of such proceedings. However, it was also proposed that such additional 20% settlement amount shall continue to apply in respect of enquiry proceedings under Section 12(3) of the SEBI Act, 1992 which are conducted by a separate authority.
(Refer to Regulation 10(5) of proposed Regulations)

- 4.2.2.20 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	06
Disagree/Strongly Disagree	01

Analysis of Public Comments:

- 4.2.2.21 Majority of the comments received on the said proposal are in favour of the proposal. One of the comment which has partially agreed with the proposal has suggested that proposal for additional settlement amount for multiple proceedings be reviewed, as it arises from single underlying default. In this regard, it is observed that stage, gravity, regulatory action and aggravating/mitigating factors are applied in every case which comes for settlement. Initiation of multiple enforcement proceedings on same cause of action involves deploying of regulatory resources for conduct of such proceedings which justifies calling for extra amount in case of settlement of

such proceedings. Hence, the suggestion made in the public comment is not accepted. One of the comment which has disagreed with the said proposal has raised similar concern stating that the formula already takes into account the stage, gravity, regulatory action and aggravating/mitigating factors, for arriving at settlement terms, therefore, there should not be any additional 20% amount in case of multiple proceedings. For the reasons as stated above, the suggestion made in the public comment is not accepted. In view this, proposal contained in the consultation paper may be approved.

4.2.2.22 Interest on disgorgement amount: Presently, wrongful gain or loss caused to investors are disgorged as non-monetary term, as a part of the settlement terms, at the rate of 12% per annum. This interest is charged, on the lines of recovery proceedings of SEBI wherein interest is charged at the rate 1% per month or part thereof. However, 12% interest under recovery is for period after passing of order. For period prior to passing of the order, different quasi-judicial authorities have adopted different rates of interest, as there is no guidance available in the existing laws/regulations. In order to rationalise charging of interest in the settlement proceedings, in the consultation paper it was proposed to charge interest, if no final order is passed by SEBI, at the rate of 9% per annum from the date of transaction till the date of filing of settlement application. If final order is passed by SEBI, interest was proposed to be charged at the rate of 9% per annum from the date of transaction till the date of passing of final order and thereafter, at the rate of 12% per annum, till the date of filing of settlement application.

(Refer to Regulation 20(1) of proposed Regulations)

4.2.2.23 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	05
Disagree/Strongly Disagree	02

Analysis of Public Comments:

4.2.2.24 Majority of comments are in favour of the said proposal. Two comments which have disagreed with the proposal have suggested that where an application for settlement is made without admission of findings of fact and conclusions of law, imposition of an interest component on the disgorgement amount would not be appropriate. In this regard, it is observed that interest is natural and legal consequence of any wrongful gain payable for the time value of the wrongful gains which was retained by the applicant. Further, demand of such interest is in equity and as the person who has been asked to pay interest, has enjoyed the money which he was not entitled to enjoy. In such a case, equity demands that such person should pay interest on such money while settling the enforcement proceedings. Fact that settlement is made without admission of findings of fact and conclusions of law, does not make any difference to said legal position. In view of this, proposal contained in the consultation paper along with the modification which is more specifically discussed in para 6.1.8 pursuant to internal review, may be approved.

4.2.2.25 **Starting date for calculating period of interest:** Presently, interest is charged on disgorgement amount from the date of the violation till the date of filing of the settlement application. In case of large number of transactions, calculating interest from each date of the violations becomes complex. In the consultation paper, it was proposed that if there are a number of transactions involved in the violation and the calculation is complex, then the weighted average for each year may be calculated and interest may be charged from the middle of the year.

4.2.2.26 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	05
Disagree/Strongly Disagree	02

Analysis of Public Comments:

4.2.2.27 Majority of comments are in favour of the said proposal. Two comments have been received opposing the proposal. These two comments are from those two

entities which have opposed last proposal of interest on disgorgement amount. Therefore, the opposition to present proposal is the consequence of opposition made on last proposal. Accordingly, the same is not accepted in view of the comments made in para 4.2.2.24. In view of this, proposal contained in the consultation paper may be approved.

4.2.2.28 **No interest on interest:** Interest charged under the settlement proceedings is simple interest. There is no interest charged on the interest unless it is so provided in the SEBI order. However, in order to keep the issue beyond doubt, in the consultation paper, it was proposed to provide that no interest shall be charged on the interest amount.

4.2.2.29 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	07
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.2.2.30 All of the comments received are in favour of the said proposal except for one comment which has partially agreed with the proposal suggesting that no interest should be levied on disgorgement. In this regard, it is observed that, for the reasons stated in the para 4.2.2.24, the suggestion in the public comment is not accepted. In view of this, proposal contained in the consultation paper may be approved.

4.3 Increasing limitation period for filing settlement applications:

4.3.1 Presently, under the Existing Regulations, limitation period for filing application for settlement in case of pending proceedings is 60 days from the date of service of Show Cause Notice (SCN). The period of 60 days is less for the entities who are body corporate or for the entities who are based outside India, as they need more time to take decision due to their structure or presence outside India. In view of this, in the consultation paper it was proposed to increase present period of 60 days to 90 days.

4.3.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	07
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.3.3 All comments received are in favour of the said proposal. In view of this, proposal contained in the consultation paper may be approved.

4.4 Requirement of making pre-disclosures:

4.4.1 At present, in case of disclosure related violations, applicant is required to comply with the requirement of making disclosures, as a precondition, before his settlement application could be considered. Such requirement of making pre-disclosures may lead to a situation where an applicant has made pre-disclosures, however, his application for settlement is ultimately rejected. To avoid such a situation, in the consultation paper, it was proposed to defer the requirement of making pre-disclosure. In order to make the settlement process equitable, it was proposed that the applicant would be required to make such disclosures after approval of his application for settlement by the Panel of Whole Time Members and before passing of settlement order.

4.4.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	07
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.4.3 All of the comments received are in favour of the said proposal. Two comments have partially agreed with the proposal. One of the comment has suggested that directing disclosures to be made as part of settlement terms is antithetical to settlement without admission of guilt. Making necessary disclosure must be made a condition subsequent to issuance of the settlement order. In this regard,

it is observed that object of disclosures is to make information available to the public at large. Therefore, entering into settlement by the person who was required to make disclosures cannot do away with this objective. Further, allowing disclosures after passing of settlement order will lead to uncertainty in making disclosures and consequential complexities arising thereof. If such a disclosure is not made, it would lead to additional complexity of revoking the settlement order. Hence, suggestion made in this public comment is not accepted. Another comment which has partially agreed with the proposal has suggested that such deferment should not extend to any disclosure that is material to investors or where the delay in disclosure could adversely affect investor interest or market integrity. In this regard, for certainty of the process of settlement, disclosures should only be asked to be made at a stage where there is certainty of going through of settlement otherwise the applicant will be uncertain about availing settlement. Hence, this suggestion is not accepted. The public comment has further suggested to clarify that what would constitute a change in situation and the way it is to be established that the reasons for the earlier rejection are no longer applicable. In this regard, it is observed that this suggestion pertains to proposal to allowing earlier rejected applications to be filed again at subsequent stage of proceeding. Accordingly, this suggestion has been dealt under the proposal at para 4.10.3. In view of this, proposal contained in the consultation paper may be approved.

4.5 Market wide impact, loss caused to investors and effect on the integrity of the market:

- 4.5.1 In terms of the Existing Regulations, SEBI may not settle a case if in the opinion of SEBI, it has market wide impact, caused loss to large number of investors or affected the integrity of the securities market. At present settlement cases attracting these factors, do not pass through the scrutiny of the Internal Committee (IC) and High Powered Advisory Committee (HPAC). Also, the applicant does not get a chance to present his case before IC as being given in other cases. In the consultation paper, it was proposed that these factors shall now be considered by the IC and HPAC who will provide its recommendations to panel of WTMs. It was also proposed that if such a situation where factors

like Market wide impact, loss caused to investors and effect on the integrity of the market, are applicable and the same are curable by way of monetary and non-monetary terms (viz: by bringing back the diverted money, making necessary disclosures about misrepresentations in the financials to the stock exchanges and in explanatory notes to the upcoming financials, etc.), then the same will be considered by IC/ HPAC before giving their recommendations for settlement of such proceedings.

4.5.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	04
Strongly agree/Agree/Partially	04
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.5.3 Majority of the comments received are in favour of the said proposal. One comment which has partially agreed with the proposal has suggested that pre-set mechanism should be prescribed for assessing market-wide impact and loss caused to investors, including clear parameters for determining the loss and the steps required for remediation. In this regard, it is observed that violations in securities market can happen in varied circumstances which cannot be comprehended beforehand. It is better to leave these matters to be determined in the facts and circumstances of each case instead of confining them to certain parameters. Hence, the suggestion in the public comment is not accepted. In view of this, proposal contained in the consultation paper may be approved.

4.6 Non-monetary terms (NMTs) in adjudication cases:

4.6.1 Adjudication proceedings are initiated for the purpose of imposing monetary penalty. At present, if a person wishes to settle adjudication proceedings he may be asked to pay a settlement amount (which is, historically, at premium to penalty amounts) and may also be asked to comply with certain NMTs whereas in the adjudication proceedings such person is liable to be visited with penalty

only. In the consultation paper, it was proposed that there shall be no NMT in case of settlement of adjudication proceedings. However, this may not apply in all cases. In adjudication proceedings initiated for disclosure related violations, adjudication order contains the details of the non-disclosures through which general public comes to know about the non-disclosure. However, if such an adjudication case is settled then this non-disclosure will never come to the notice of the public. Therefore, in the consultation paper, it was also proposed that there shall be no NMT, in case of settlement of adjudication proceedings except where it is on account of non-disclosure related violations.

4.6.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	10
Strongly agree/Agree/Partially	10
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.6.3 All of the comments received on this proposal are in favour. Four comments have partially agreed with the proposal. One of such comment has suggested that in case of a person filing suo motu application for settlement, there is no mechanism to know about the nature of proceeding which would be initiated against him, therefore, there should be mechanism to make applicant aware about the same. In this regard, it is observed that settlement is permissible after the completion of fact finding exercise and approval of the nature of proceeding except in the summary cases. Entity is informed about the proceeding to be initiated during course of settlement proceeding. Hence, the suggestion made in the public comment is not accepted. The public comment has further suggested that disgorgement should be separately defined as a corrective direction and not as monetary or non-monetary term. In this regard, it is observed that suggestion seems to be reasonable as disgorgement should necessarily be part of settlement terms separately where the wrongful gains, loss averted or loss caused to investors are quantified. Accordingly, the

suggestion made in the public comment is accepted and disgorgement is provided separately instead of being part of non-monetary term (now known as Remedial and Regulatory term or RRT). Another public comment which has partially agreed with the proposal has suggested that the draft Settlement Regulations must clarify that no NMT in respect of suo motu settlement application should be imposed unless the case is serious. In this regard, it is observed that the Proposed Regulations provides that there shall be no NMT in adjudication cases except for disclosures. Hence, the suggestion made in the public comment is not accepted. Another public comment which has partially agreed with the proposal has suggested that in respect of adjudication proceedings for insider trading, the settlement amount should be aligned with the amount of disgorgement i.e., alleged wrongful gain made from insider trading or loss avoided, in appropriate cases. In this regard, it is observed that as discussed earlier, said suggestion has substance as allowing settlement of a matter, only with settlement amount without having regard to the wrongful gains made or loss avoided or loss caused to investors, by the violator, would have no disincentive for the violator. In view of this, it is proposed that in adjudication matters also, the wrongful gains made or loss avoided or loss caused to investors wherever quantified and not directed to be disgorged, shall also be disgorged. Another comment which has partially agreed with the proposal has made suggestion which pertain to next proposal. Accordingly, the same has been dealt under the next proposal. In view of this, proposal contained in the consultation paper along with modification may be approved.

4.7 Voluntary debarment and Voluntary Suspension:

- 4.7.1 Presently, final settlement terms may also include NMT in addition to settlement amount. In deserving cases, settlement terms may ask the applicant to undergo voluntary debarment from securities market or voluntary suspension from trading in securities, as a NMT. In order to bring consistency and clarity regarding applicability of said NMT, in the consultation paper, it was proposed to provide that voluntary debarment or voluntary suspension from trading may be considered as one of the settlement term in proceedings under Section 11B (1) and Section 12(3) of SEBI Act, 1992, where:

- (i) The seriousness and gravity of the violation is high; or
- (ii) The applicant is a key-operator or leader of an illegal activity or the main beneficiary of the default; or
- (iii) The applicant is a repetitive defaulter.

(Refer to Regulation 5(v) of proposed Regulations)

4.7.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	06
Strongly agree/Agree/Partially	06
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.7.3 All of the comments received in this proposal are in favour. One public comment which has partially agreed with the proposal and the one public comment though given on the previous proposal but pertains to the previous one has suggested that seriousness and gravity of the violations must be clearly defined. In this regard, it is observed that these terms cannot be defined in a straitjacket manner. It has to be applied considering the facts and circumstances of a case. Hence, the suggestion in the public comment is not accepted. In view of this, proposal contained in the consultation paper may be approved.

4.8 Revision of filing fees:

4.8.1 Presently, under the Existing Regulations, minimum fee for filing settlement application by a natural person is Rs. 15,000/- and by entities other than natural person is Rs. 25,000. These filing fees were fixed in the year 2018 and since then the filing fees have remained unchanged. Accordingly, in the consultation paper, it was proposed to increase minimum filing fees from Rs. 15,000/- to Rs. 25,000/- for natural person and from Rs. 25,000/- to Rs. 35,000/- for entities other than natural persons.

4.8.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	05
Strongly agree/Agree/Partially	05
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.8.3 All of the comments received in this proposal are in favour. One comment which has partially agreed with the proposal has suggested to refund the filing fees in cases where the settlement application is not considered or returned. In this regard, it is observed that administrative efforts are put in even those cases which are not considered or returned which justifies retaining of fees in such cases. Hence, the suggestion made in the public comment is not accepted. In view of this, proposal contained in the consultation paper may be approved.

4.9 Reduction in additional settlement amount in case of withdrawal of settlement application:

4.9.1 Presently, refiling of settlement application after withdrawal of settlement application, is allowed with 50% additional settlement amount. In order to ease refiling of settlement application after withdrawal of settlement application, in the consultation paper it was proposed to reduce additional settlement amount from 50% to 20%.

4.9.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	06
Strongly agree/Agree/Partially	06
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.9.3 All of the comments received in this proposal are in favour. One of the public comment which has partially agreed with the proposal has suggested to provide discretion to IC/HPAC/WTM for imposition of 20% additional settlement amount. In this regard, it is observed that even under the Existing Regulation

there is no such provision and in withdrawal 50% additional settlement amount is charged in every settlement application which is filed after withdrawal. There seems to be no need to provide discretion to increase or decrease the proposed 20% additional settlement amount which would lead to uncertainty in the settlement process. However, general power has been made available to the Panel of Whole Time Member to increase or decrease the settlement amount under the Proposed Regulation. Hence, the suggestion made in the public comment is not accepted. In view of this, proposal contained in the consultation paper may be approved.

4.10 Opportunity to file settlement application where previous settlement application was rejected:

4.10.1 Presently, Existing Regulations do not allow filing of settlement application, at any stage including the appellate stage of the enforcement proceedings, in cases where previous settlement application filed was rejected.

An applicant whose application has earlier been rejected at the stage of pendency of proceedings before SEBI may like to file settlement application at further stage of the proceedings, if there is change in situation which warranted rejection earlier. This could be due to any order passed by SEBI/SAT or for other reasons.

Objective of the settlement proceedings is avoidance of protracted litigation and quicker and amicable disposal of enforcement proceedings, and therefore, any entity who wishes to avail settlement process at later stages due to change in circumstances should be allowed to avail the settlement mechanism after paying some additional settlement amount for settling the pending proceedings. Balancing these two needs, in the consultation paper, it was proposed that in case of rejection at pre-SCN stage, the settlement application can be filed at next stage of proceeding i.e. post SCN stage provided the reasons for which settlement application was rejected earlier are no longer applicable, subject to payment of additional settlement amount of 20%. Similarly, it was also proposed that if the application is rejected at pre SCN stage or post SCN stage during the pendency of proceedings before the Board then the settlement

application can be filed during subsequent stage of proceeding i.e. before the SAT or before the Supreme Court, subject to payment of additional settlement amount of 20%, if the reasons for which settlement application was rejected earlier are no longer applicable.

4.10.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	06
Strongly agree/Agree/Partially	06
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.10.3 All comments received are in favour of the said proposal. One of the public comment which has partially agreed with proposal at para 4.4.3 has made suggestions pertaining to this proposal. Accordingly, the same has been dealt here. The public comment has suggested to clarify that what would constitute a change in situation and the way it is to be established that the reasons for the earlier rejection are no longer applicable. In this regard, it is observed that the Proposed Regulation provides that the settlement application can be filed at subsequent stage if the reason for which it was rejected earlier, no longer exists. Further, the public comment has suggested to reduce the additional settlement amount from twenty percent to ten percent. In this regard, it is observed that comment is in agreement with the proposal as regards the principle, only the quantum is suggested for change. under the Existing Regulations there is no provision for filing settlement application if previous settlement application is rejected. In the Proposed Regulations this is being allowed on payment of twenty percent extra settlement amount. Though comment suggests ten percent amount, however, it has not provided rationale for arriving at such amount. Quantum of extra settlement amount to be charged is a policy decision to be taken by the regulator. Hence, this suggestion made in the public comment is not accepted. Another public comment which has partially agreed with the proposal has suggested that the additional settlement

amount of 20% should not be made mandatory but left to discretion of IC/HPAC/WTM as the case may be. In this regard, it is observed that there seems to be no need to provide discretion to increase or decrease the proposed 20% additional settlement amount as that would lead to uncertainty in the settlement process. However, general power has been made available to the Panel of Whole Time Member to increase or decrease the settlement amount under the Proposed Regulation. Hence, the suggestion made in the public comment is not accepted. In view of this, proposal contained in the consultation paper may be approved.

4.11 Fast track settlement:

4.11.1 The Existing Regulations provide for summary settlement in case of certain violations specified therein. Summary proceeding does not go through Internal Committee meeting and High Powered Advisory Committee meeting. However, this applies to only violations specified and not as a general rule. In the consultation paper, it was proposed to introduce a mechanism of settlement upto a particular threshold of settlement amount, which would not require to go through High Powered Advisory Committee meeting. Accordingly, in the consultation paper, it was proposed to introduce fast track settlement based on violations (present summary settlement) and based on threshold of settlement amount upto Rs. 10 lakh. Violation based fast track settlement procedure shall be the same as the existing summary settlement procedure. Fast track settlement based on threshold will not involve High Powered Advisory Committee meeting. Thus, from IC it would go directly to panel of Whole Time Members, if the settlement amount is only upto Rs. 10 Lakh. Once payment is made by the applicant, settlement order shall be passed by the competent authority before whom the specified proceedings are pending or by the Panel of Whole Time Members, if no such proceeding is pending.

4.11.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	09
Strongly agree/Agree/Partially	09
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.11.3 All of the public comments received in this proposal are in favour. Two of the public comments which have partially agreed with the proposal have suggested that the threshold be raised to rupees twenty five lakh or rupees fifty lakh. In this regard, it is observed that the threshold of rupees ten lakhs was arrived at after taking into account the settlement amounts of last three years which showed that settlement amount of around 25% settlement applications were under this category. Another public comment which has partially agreed with the proposal has suggested that SEBI must consider providing the calculation of the Settlement Amount along with the notice of Fast Track Settlement. In this regard, it is observed that settlement calculator is available on SEBI website wherein the settlement amount can be calculated using the violations mentioned in the notice of fast track settlement. Hence, the suggestion made in the public comment is not accepted. Further, one more public comment which has partially agreed with the proposal has suggested that SEBI should consider processing of fast-track settlements through a straight-through fast-track settlement mechanism, without requiring the matter to be placed before the Internal Committee and/or High-Powered Advisory Committee, subject to appropriate safeguards and that the payment of settlement fees may also be facilitated through net banking. In this regard, it is observed that Internal Committee meeting cannot be eliminated as it is required for determining the settlement terms which are ultimately approved by the Panel of Whole Time Member. Further regarding payment through netbanking, SEBI already provides facility for electronic fund transfer through payment gateway. This also ensures uniformity for accounting purpose. Therefore, suggestions made in the public comment are not accepted. In view of this, proposal contained in the consultation paper may be approved.

4.12 Settlement Notice before issue of show cause notice:

4.12.1 As per the provisions of the 3 Acts pertaining to settlement and the Existing Regulations, there can be settlement of “may be initiated proceedings”. Accordingly, the Existing Regulations provide a proceeding conversion factor

of 0.5, for those who apply for settlement prior to issue of show cause notice. Similarly, lesser value of “S” is proposed under new calculation. However, there is no mechanism available, by which a person could become aware of proceedings which may be initiated against him, in advance of show cause notice. Accordingly, in the consultation paper, it was proposed to provide that before issuing any show cause notice, SEBI shall issue a settlement notice in all cases except where prosecution is proposed, intimating the entity that they may avail settlement, if desired, by filing a settlement application within 60 days from receipt of the notice to settle. This will be without prejudice to the right of SEBI to reject such applications in accordance with the regulations.

4.12.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	08
Strongly agree/Agree/Partially	06
Disagree/Strongly Disagree	02

Analysis of Public Comments:

4.12.3 Majority of public comments received are in favour of the proposal. One public comment which has partially agreed with the proposal has suggested that the limitation for filing of settlement application within 60 days should be changed to 90 days and that a suitable remedy for suo-moto settlement by any applicant to approach the Board directly, without any Settlement Notice may also be built in. In this regard, it is observed that increasing the time limit for notice of settlement will delay the initiation of enforcement proceeding. Further, as regards providing mechanism to approach Board for suo motu settlement application, it is observed that a suo motu application has to be on its own by its very nature. Hence, the suggestion made in the public comment is not accepted. Further, another public comment which has partially agreed with the proposal has suggested that SEBI should ensure that this is not used as delay tactic by entities concerned. There should be some mechanism by which delay tactics can be overcome. In this regard, it is observed that the notice to settle provides that the settlement application should be filed within sixty days from

the receipt of the same failing which enforcement proceeding will be initiated. Hence, the suggestion made in the public comment is not accepted. One public comment which has partially agreed with the proposal has suggested that it should be clearly provided in the provision in case noticee does not file settlement application in pursuance of the notice of the settlement, there shall be opportunity of filing settlement application. The comments seem to be reasonable, as a person should not be deprived of filing of settlement application at the next stage of the proceedings just because he did not file for settlement pursuant to notice of settlement. Moreover, Proposed Regulations allows even rejected and withdrawn applications to come for settlement at the next stage of the proceedings. Accordingly, suggestion made in these comments may be accepted. The comments which do not agree with the proposal have suggested that in such cases, the applicant should be given to present/defend his case on merits. In this regard, it is observed that settlement is arrived at without going into the merits of the matter and on the basis of the allegations made in the show cause notice. Notice for settlement under the Proposed Regulations would be providing the gist of the allegations against the entity and not complete report. Allowing defences to be put in settlement proceedings would make the settlement proceedings as quasi-judicial proceedings which in fact they are not. Therefore, suggestion made in the said public comment may be rejected. Another public comment which has disagreed with the proposal has simply stated that the settlement notice should only be issued only after the issue of show cause notice. For the reasons stated in para 4.12.1, the said suggestion may be rejected. In view of the above, proposal contained in the consultation paper along with the modification which is more specifically discussed in para 6.1.6 pursuant to internal review, may be approved.

4.13 Opportunity of hearing in case of revocation of settlement order:

4.13.1 Presently, the Existing Regulations do not provide for opportunity of hearing to the person concerned, in case of revocation of settlement order passed in respect of such person. Revocation of a settlement order is made where there is violation of any terms of the settlement or any information, undertaking or

waiver is found to be false or incorrect. Since, revocation of settlement order exposes a person to enforcement proceedings, therefore, in order to comply with requirements of principles of natural justice, in the consultation paper, it was proposed to provide an opportunity of hearing in case of revocation of any settlement order.

4.13.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	06
Disagree/Strongly Disagree	01

Analysis of Public Comments:

4.13.3 Majority of public comments are in favour of said proposal. One public comment which has partially agreed with the proposal has made certain suggestions which are not pertaining to any of the proposal in the consultation paper. One public comment which has disagreed with the proposal has stated that since settlement proceedings are neither judicial nor quasi-judicial proceedings therefore, there should not be any hearing provided before revocation of the settlement order. Instead entity should be given a notice to cure the defect inviting revocation, with in a given time and thereafter, in case of failure to cure, revocation should be automatic. The suggestion made in the comments may not be accepted as the opportunity of hearing before revocation is provided to a person, order passed in whose favour is going to be revoked which would adversely affect his rights. Thus, in order to comply with principles of natural justice, hearing is proposed to be provided in case of revocation of settlement order. In view of the above, proposal contained in the consultation paper may be approved.

4.14 Power to relax timelines:

4.14.1 Presently, under the Existing Regulations, various activities are required to be performed by the applicants in a time bound manner. Failure to adhere to timelines provided for a particular activity, leads to rejection of the settlement application. Sometimes such timelines are breached due to reasons beyond

the control of the applicant. However, in the Existing Regulations, there is no specific provision to make relaxation of such timelines in deserving cases. In order to take care of situations where timelines were breached due to a reasons beyond the control of the applicant, in the consultation paper it was proposed to provide for a provision specifically empowering SEBI to relax timelines where timelines were breached due to a reason beyond the control of the applicant subject to condition that maximum delay which can be condoned is 30 days. Further, it was proposed to charge additional 1% settlement amount, if timeline for which extension is sought pertains to making of payment after issue of notice of demand.

4.14.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	04
Strongly agree/Agree/Partially	04
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.14.3 All of the public comments are in favour of the proposal. Two public comments who are partially agreeing with the proposal suggest that this power to relax should apply to all activities which are required to be completed in a time bound manner. In this regard, it is observed that the power to relax has been extended to all time bound activities under the settlement regulations where timelines were breached due to a reasons beyond the control of the applicant, except timeline of 90 days for filing of settlement application whose extension would delay enforcement. Thus, suggestion made in the said public comment is already taken care. In view of this, proposal contained in the consultation paper along with the modification which is more specifically discussed in para 6.1.7 pursuant to internal review, may be approved.

4.15 Removing redundant provisions:

4.15.1 Presently, the Existing Regulations contain provisions which are though present in the Regulations, however have never been applied. These provisions include:

- (i) the provision providing for use of settlement formula for imposition of monetary penalties in adjudication proceedings; and
- (ii) provision providing for mutatis mutandis following of settlement regulations for determining the terms while processing a compounding application.

Adjudicating Officers are independent authorities who levy penalties in accordance with the provisions of the Acts and the Penalty Rules. Any requirement providing for Settlement formula to be followed by the Adjudicating Officers, is extraneous to the legal framework for penalties. As a matter of fact, penalties have never been imposed by the Adjudicating Officers by referring to settlement formula.

Also, compounding is done by the Court where prosecution proceedings are pending. SEBI has a separate guideline for arriving at compounding charges for compounding of offences.

In view of this, in the consultation paper, it was proposed to remove both these provisions.

4.15.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	07
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.15.3 All of the public comments received are in favour of said proposal. One public comment, which has partially agreed with the proposal has suggested that before removing these provisions, SEBI should first come out a guideline for compounding of criminal cases. In this regard, it is observed that as stated in the consultation paper, the provision regarding mutatis mutandis application of Existing Regulations to compounding of prosecution cases has never been used. It is informed that SEBI has separate guidelines for compounding of prosecution matters. In view of this suggestion made in the public comment

may not be accepted. In view of this, proposal contained in the consultation paper in this regard may be approved.

4.16 Bringing clarity in application form for Settlement Application:

4.16.1 Presently, Form which is required to be filled for filing settlement applications, requires applicant to fill certain information which is cumbersome and do not serve any purpose to the settlement proceedings. Further, certain information require clarity, like information about organisational structure and fee payable by entities other than natural persons who are not body corporate. Having regard to this, in the consultation paper, it was proposed to modify such requirements, in the Form.

4.16.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	06
Strongly agree/Agree/Partially	06
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.16.3 All of the public comments received are in favour of the proposal. One public comment, which has partially agreed with the proposal has suggested some drafting changes pertaining to reference to the provision of the Proposed Regulation in the Form. As the suggestion points out drafting error, the same is accepted and necessary modifications have been carried out in the Form appended to the Proposed Regulations. In view of this, proposal contained in the consultation paper may be approved with the drafting changes as above.

4.17 Defining certain words:

4.17.1 Presently, in the Existing Regulations and during settlement proceedings, certain words are used extensively, However, these words either required to be defined or require clarity. Accordingly, in the consultation paper, it was proposed to either define and/or re-define certain words for bringing clarity. Such words include the words, "alleged default", "specified proceedings", "securities laws", etc. (Refer to Regulation 2 of proposed Regulations)

4.17.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	06
Disagree/Strongly Disagree	01

Analysis of Public Comments:

4.17.3 Majority of public comments received are in favour of the proposal. In this regard, out of the three public comments, which have partially agreed with the proposal, it is noted that one is not relevant to the proposal. One of the comment is suggesting that “days” as defined in the Proposed Regulation instead of referring to Gregorian calendar days should refer to working days. In this regard, it is observed that working day is not uniform throughout the country and it varies from state to state, resulting into confusion in calculation of the number of days within which a particular activity is required to be performed. In order to avoid this confusion, instead of working days, the term calendar days has been used and while doing so, number of days have been suitably increased to ensure that effective time available remains same. In view of this, suggestion made in the public comment is not accepted. Another public comment which has partially agreed to the proposal has suggested to include definitions of Market Wide Impact, Losses, Affected the integrity of the market, Serial Defaulter, Main Beneficiary, Weighted Average and Year. In this regard, it is observed that terms like Market Wide Impact, Losses, Affected the integrity of the market, Serial Defaulter and Main Beneficiary, carry wider connotations. These terms are applied considering the facts and circumstances of a case and limiting them to particular definitions would limit their scope. In view of the suggestions received, the term weighted average is being removed. Further, suggestion regarding the term "year" has been accepted and accordingly in the Proposed Regulations the term “year” will be considered as calendar or financial year depending on the context. One public comment which has disagreed with the proposal has suggested that in the definition of specified proceeding, instead of presently used “Tribunal” and “Supreme Court”, the word “forum” should be used to include any proceeding pending before High Courts

also. In this regard, it is observed that settlement can be in respect of specified proceeding which may result into statutory appeals before the Tribunal or the Supreme Court only and not before other forums including High Court. Hence, the suggestion made in the public comment is not accepted. In view of the above, the proposal in the consultation paper with aforesaid modifications may be approved.

4.18 Settlement terms to apply to applicants:

4.18.1 Presently, the Existing Regulations provide that in cases where applicant is a body corporate, settlement amount may be asked 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. Taking cue from this provision, it is viewed that sometimes directors/KMPs of such body corporates are asked to step down as part of NMT, even though such directors/KMPs are not even part of the show cause notice. It is unfair to ask non-noticees to be a part of settlement terms when no violation has been made out against them in the show cause notice. In the consultation paper it was proposed to remove such provision requiring payment of settlement amount by non-noticees and also to specifically provide that settlement terms shall not require any person other than the applicant, to do or refrain from doing something.

4.18.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	05
Strongly agree/Agree/Partially	05
Disagree/Strongly Disagree	00

Analysis of Public Comments:

4.18.3 All of public comments received are in favour of the proposal. In view of the above, the proposal in the consultation paper may be approved.

4.19 Settlement of cases involving misrepresentation of Financials and siphoning off/diversion of funds:

4.19.1 Presently, cases involving misrepresentation of financials and siphoning off/diversion of funds are dealt under regulation 5(2). As the violations involved

therein may be considered having market wide impact, causing loss to large number of investors or impacting the integrity of the market, such cases sometimes are rejected under regulation 5(2) by the Board. In such cases, bringing back the funds diverted to the company and proper disclosure about misrepresentation to investors, are the key issues which if addressed would alter the decision matrix. Accordingly, with respect to settlement of cases involving misrepresentation of financials and siphoning off/diversion of funds, in the consultation paper, it was proposed that, -

(i) where the alleged violations have impacted the audited financial statements and continues to impact every subsequent financial statements, the applicant shall be required to make a disclosure of the allegations levelled in the show cause notice to the stock exchange and also to incorporate them in the explanatory notes to the upcoming financial statements forming part of the annual report, as part of the settlement terms. It was also proposed that in such cases, the applicant will be having the option of stating in its disclosure and the explanatory notes that it is making the disclosure without admission or denial of the findings of fact and conclusions of law, as part of the settlement terms.

(ii) where the alleged violation has impacted the past audited financial statements, but does not impact subsequent audited financial statements, the applicant shall be required to make appropriate disclosures for each relevant previous years/period on the designate stock exchange, as part of the settlement terms. It was also proposed that in such cases, the applicant shall have the option of stating in its disclosure that it is making the disclosure without admission or denial of the findings of fact and conclusions of law, as part of the settlement terms.

(iii) where the alleged violations do not impact the audited financial statements, but the alleged violation needs to be brought to the notice of the public, the applicant shall be required to make appropriate disclosures to the stock exchanges, as part of the settlement terms. It was also proposed that in

such cases, the applicant shall have the option of stating in its disclosure that it is making the disclosure without admission or denial of the findings of fact and conclusions of law, as part of the settlement terms.

(iv) for other cases, such applications may be settled on such pre-conditions of disclosures to the stock exchange or other settlement terms as may be determined in terms of the Settlement Regulations.

(v) where there are allegations of diversion/siphoning off of funds in the show cause notice, the applicant shall be required to bring back to the company, the diverted/siphoned off funds, along with interests from the date of the contravention till the date of filing the settlement application, as part of the settlement terms.

(vi) where there are allegations of diversion/siphoning off of funds in the show cause notice, any unfair trading/illegal gains or losses averted by the applicant, by trading in the securities market during the time of mis-statement of financials/siphoning off of money, as brought out in the order or the investigation report or the examination report, may also be considered for disgorgement while deciding the settlement terms.

(vii) where there are allegations of diversion/siphoning off of funds in the SCN, and the applicant is willing to bring back the alleged diversion/siphoned off money along with interest as part of settlement terms, the said diversion or siphoning off of the money shall not be an impediment to settling the matter for the reasons that the said diversion or siphoning off, caused loss to the investors.

4.19.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	06

Analysis of Public Comments:

4.19.3 Majority of public comments received are in favour of the proposal. Two public comments have partially agreed with the proposal. Out of which, one comment has agreed with proposal however it is suggesting that requirement of disclosures should not be there. In this regard, it is observed that in cases involving financial misrepresentation, it is necessary that the misrepresentation is brought to the knowledge of the investors through disclosures made to the stock exchanges and/or through explanatory statement appended to the next year's financial statement. This is to strike a balance between protection of investor's interest and resolution of enforcement proceeding through settlement. Hence, this suggestion is not accepted. Another public comment which has also in principle agreed with the proposal has further suggested drafting changes. In this regard, it is observed that Proposed Regulations have adopted new age drafting method which avoids use of legal jargons. Hence, this suggestion is not accepted. Further, one public comment has disagreed with the proposal stating that requirement of making disclosures would amount to admission of guilt and thus hamper settlement. For the reasons stated above regarding the importance of disclosures in cases of financial misrepresentation, the suggestion made in the said public comment is not accepted. Further, it should be noted that in disclosure the applicant may state that this is without admission of guilt. In view of the above, the proposal in the consultation paper may be approved.

4.20 Use of “days” instead of “working days”:

4.20.1 Presently, the Existing Regulations use different terminologies for prescribing time limits in the form of “calendar days” or “working days”. In the consultation paper, it was proposed to use uniform terminology in the form of “days” which means calendar days. A definition of word “days” is also proposed to be provided to mean “calendar days”. Also wherever the time is given in working days in the Existing Regulations, same was proposed to be increased from 14

working days to 21 days (for filing revised settlement terms) and 7 working days to 10 days (for issuing of notice of demand after approval by the Panel of Whole Time Members).

4.20.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	06
Strongly agree/Agree/Partially	05
Disagree/Strongly Disagree	01

Analysis of Public Comments:

4.20.3 Majority of public comments received are in favour of the proposal. One public comment has partially agreed with the proposal suggesting that “days” should mean working days rather than calendar days. In this regard, as stated above, it is observed that working day is not uniform throughout the country and it varies from state to state, resulting into confusion in calculation of the number of days within which a particular activity is required to be performed. In order to avoid this confusion, instead of working days, the term calendar days has been used and while doing so, number of days have been suitably increased to ensure that effective time available remains same. One comment which has disagreed has stated that use of calendar days instead of working days would reduce the time available to the applicant. In this regard, it is observed that in the Proposed Regulation wherever working days has been changed to calendar days, the number of days have been suitably increased to ensure that effective time available remains same. Therefore, the suggestion made in the comments is not accepted. In view of the above, the proposal in the consultation paper may be approved.

4.21 Separate calculation of settlement amount for each applicant:

4.21.1 Presently, the Existing Regulations provide that in case of multiple applicants having joint and several liabilities, indicative amount may be calculated either jointly or separately depending on the facts and circumstances of the case. This has resulted into different practices being adopted for calculation of indicative

amount in different cases. In order to avoid different approaches in similar type of cases, in the consultation paper, it was proposed to provide that in case of multiple applicants having joint and several liabilities for wrongful gains, while disgorgement amount would continue to be joint and several for wrongful gains, the settlement amount shall be calculated for each applicant, separately.

4.21.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	06
Strongly agree/Agree/Partially	04
Disagree/Strongly Disagree	02

Analysis of Public Comments:

4.21.3 Majority of public comments received are in favour of the proposal. One public comment has partially agreed with the proposal suggesting that it would lead to higher settlement amounts in cases pertaining to joint liability. In this regard, it is observed that separate calculation is provided to rationalise the settlement amount based on the role and category of each applicant in a specified proceeding. Further, Show Cause Notice is issued separately to each noticee and penalty is imposed individually on each noticee. Therefore, to align settlement proceeding with enforcement proceeding, separate calculation for each applicant has been provided. Hence, the suggestion in this regard is not accepted. One comment has disagreed with the proposal raising the same concern as has been raised by partially agreeing commentor, accordingly, the said suggestion is not accepted for the reasons stated hereinbefore. Further, one comment which has disagreed with the proposal contains suggestions with respect to admissibility of settlement order as an evidence of admission of guilt by the applicant and confidentiality of the settlement applications and other materials submitted by the applicant during settlement. In this regard, it is observed that the suggestion with respect to admissibility of settlement order as an evidence of admission of guilt by the applicant is not pertaining to the proposal and is beyond the scope of the proposal. Further, with respect to suggestion regarding confidentiality of the settlement applications, it is

observed that same is already part of the proposed regulations. In view of the above, the proposal in the consultation paper may be approved.

4.22 Option for applicants whose applications are pending:

4.22.1 In the consultation paper it was proposed that after coming into force of the new regulations, -

- (i) all those pending applications wherein HPAC meeting has not yet been held would be dealt under the new regulations by holding the fresh Internal Committee meeting.
- (ii) all pending applications wherein Panel of Whole Time Members has approved the settlement terms recommended by the HPAC, such applications would be processed as per the settlement terms approved by the Panel of Whole Time Member under the then Existing Regulations.
- (iii) all pending applications wherein HPAC meeting has been held but the settlement terms are yet to be approved by the Panel of Whole Time Members, shall be provided with an option to either choose the processing under the new regulations or to continue to be processed with the amount recommended by the HPAC under the then Existing Regulations.

4.22.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	07
Strongly agree/Agree/Partially	06
Disagree/Strongly Disagree	01

4.22.3 Majority of public comments received are in favour of the proposal. One public comment has partially agreed with the proposal. However, it is noted that suggestions made in such comments pertain to next proposal dealt hereafter in this memorandum. Accordingly, suggestions made will be dealt under next proposal. One comment which has disagreed with the proposal has commented that there is no distinction between the settlement application where terms have been approved by the Panel of WTM and where they have not been so approved, therefore, benefit of Proposed Regulation should be extended to all

pending applications. In this regard, it is observed that settlement applications where the terms have been approved by the Panel of WTM have attained finality with regard to settlement terms. The benefit of the Proposed Regulation is extended as an option to applications where such finality of terms has not been reached but terms have been recommended by the HPAC. Hence, the suggestions made in the aforesaid comment are not accepted. In view of the above, the proposal in the consultation paper may be approved.

4.23 Extending Proposed Regulations to settlement applications not filed, withdrawn, rejected or returned under the Existing Regulations:

4.23.1 Applicants whose applications were earlier rejected, withdrawn or returned under the Existing Regulations or who did not file settlement application for any reason under the Existing Regulations, may like to apply for settlement under the Proposed Regulations, if the specified proceedings sought to be settled thereunder are still pending before the Board or the adjudicating officer. Accordingly, in the consultation paper, it was proposed that such application may be filed within a period of 90 days of the commencement of the Proposed Regulations. It was also proposed that such applicants may be asked to pay additional 10% of settlement amount, as computed in terms of the Proposed Regulations.

4.23.2 Regarding the said proposal, details of public comments received are as under:

Total Comments Received	08
Strongly agree/Agree/Partially	08
Disagree/Strongly Disagree	00

4.23.3 All of the public comments received are in favour of the proposal. One public comment has partially agreed with the proposal, making suggestions with respect to clawback which does not pertain to said proposal. As mentioned above, one of the public comments pertaining to this proposal was made on the preceding proposal, accordingly, it is being dealt here. In the said comment, it has been suggested that this one-time opportunity of filing applications within 90 days of commencement of Proposed Regulation should also be made available in cases where appeal is pending before the Tribunal and the

Supreme Court. In this regard, it is observed that the entities whose appeals are pending before the Tribunal and the Supreme Court are otherwise eligible to file settlement application before the Board at any time. The comment has also suggested that the additional 10% settlement amount should not be fixed and it should be at the discretion of IC/HPAC/Panel of WTM. In this regard, it is observed that these applications have been allowed to be made by applicants who otherwise do not have the opportunity to come again before Board, therefore, 10% additional settlement amount is applied. Hence, the suggestions made in this comment are not accepted. In view of the above, the proposal in the consultation paper along with the modification which is more specifically discussed in para 6.1.4 pursuant to internal review, may be approved.

5. (This paragraph has been excised for reasons of confidentiality.)

6. **Modifications pursuant to internal review:**

6.1. In the Consultation Paper, it was informed that the Proposed Regulations may undergo drafting changes. In this regard, it is stated that pursuant to internal review conducted by SEBI, the following modifications have been made in the draft of the Proposed Regulations:

- 6.1.1. **Name of the Proposed Regulations:** In the Consultation Paper, on the lines of the name of the existing Regulations, the name of the Proposed Regulations was proposed as the SEBI (Settlement of Proceedings) Regulations, 2026. On internal review, it was noted that the provisions providing for the settlement, as contained in the 3 Acts, refer to “Settlement of Administrative and Civil Proceedings”. Accordingly, in order to align the name of the Proposed Regulations with the provisions of the 3 Acts, the name of the Proposed Regulations is changed to SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2026;
- 6.1.2. **Definition of “Report”:** In the Proposed Regulations, various words which refer to documents containing fact-**finding** conducted by the Board like inquiry report, investigation report, examination, inspection, were used

repeatedly. Therefore, for ease of reference, "Report" has been defined, as including all documents containing the details of fact-finding conducted by SEBI;

- 6.1.3. **Changing name of Non-Monetary Term (NMT):** In the Consultation Paper, it was provided that the settlement terms shall include settlement amount and wherever applicable, non-monetary terms also. It was observed that NMT includes various terms which are monetary in nature like clawback, refund, disgorgement. Therefore, NMT is misnomer. To rectify this situation a new terminology- Remedial and Regulatory Terms (RRT) has been used in the Proposed Regulations;
- 6.1.4. **Extending Proposed Regulations to settlement applications not filed, withdrawn, rejected or returned under the Existing Regulations with additional settlement amount:** This proposal was internally reviewed and on review it was considered that the 10% additional amount may be increased to 20% in such cases to bring it at par with the similar provisions wherein a 20% additional levy has been proposed in cases where applicant approaches for settlement second time after rejection.
- 6.1.5. **Returned application to be treated as withdrawn:** In the consultation paper it was proposed that an applicant whose settlement application is returned, fails to file settlement application within the given time, such person was allowed to come for settlement only at the next stage of proceeding. In order to enable such applicant to file settlement at the same stage, it has been provided that such returned application which are not refiled within time shall be treated as withdrawn and thereby enabling him to file application at the same stage with additional 20% settlement amount.
- 6.1.6. **Settlement Notice before issue of show cause notice:** In the consultation paper it was proposed that notice of settlement will not be issued where prosecution is one of the approved action. On an internal review it was considered that issue of notice of settlement should also not be mandatory in case where interim order is contemplated as it will defeat the purpose of issuing interim order. Accordingly, Proposed Regulations have been

modified to provide that the notice of settlement shall not be issued where interim order is contemplated.

6.1.7. **Power to relax:** In the consultation paper it was proposed that in order to take care of situations where timelines were breached due to a reasons beyond the control of the applicant, in the consultation paper it was proposed to provide for a provision specifically empowering SEBI to relax timelines where timelines were breached due to a reason beyond the control of the applicant subject to condition that maximum delay which can be condoned is 30 days. However, it was also proposed that said power to relax would not extend to relaxing timelines of 90 days provided for filing of settlement application. The said provision was made to avoid delays in the enforcement proceedings. Upon internal review of the matter, it was found the rationale applicable to not extending of power to relax to period of 90 days for filing settlement application, equally applies to 60 days' period given in the notice to settle for filing settlement application. Accordingly, Proposed Regulations have been modified to provide that power to relax will not extend to 60 days' time given in the notice to settle.

6.1.8. **Calculation of interest:** The concept of weighted average is proposed to be dropped as upon internal review and on considering the recommendation of HPAC, it was found that this concept has not much relevance at present times.

6.2. In view of the above, modifications discussed at para 6.1.1 to 6.1.8 above, may be approved.

7. Proposal to the Board:

7.1. The Board is requested to:

7.1.1. consider and approve the proposals as detailed in paras 4.2.1.9, 4.2.2.3, 4.2.2.6, 4.2.2.9, 4.2.2.12, 4.2.2.15, 4.2.2.18, 4.2.2.21, 4.2.2.24, 4.2.2.27, 4.2.2.30, 4.3.3, 4.4.3, 4.5.3, 4.6.3, 4.7.3, 4.8.3, 4.9.3, 4.10.3, 4.11.3, 4.12.3,

4.13.3, 4.14.3, 4.15.3, 4.16.3, 4.17.3, 4.18.3, 4.19.3, 4.20.3, 4.21.3, 4.22.3, 4.23.3 and 6.2 above and the consequent draft of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2026 enclosed as **Annexure C**;

7.1.2. authorize the Chairman to make consequential and incidental changes and take necessary steps to give effect to the decisions of the Board;

7.1.3. The SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2026 is proposed to take effect from 30th day from the date of notification in the official gazette.

Encl.:

Annexure A: Copy of consultation paper

Annexure B: Summary of the comments received, along with SEBI's views on the same

Annexure C: Draft of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2026

Annexure A

(Available on SEBI Website www.sebi.gov.in under the head "Reports & Statistics">>" Reports">>" Reports for Public Comments)

Annexure B

(This has been excised for reasons of confidentiality.)

Annexure C

(Amendments shall be notified after following the due process.)