

GAZETTE OF INDIA
EXTRAORDINARY
PART – III – SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, JANUARY 9, 2014
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, the 9th January, 2014

**SECURITIES AND EXCHANGE BOARD OF INDIA (SETTLEMENT OF
ADMINISTRATIVE AND CIVIL PROCEEDINGS) REGULATIONS, 2014**

No. LAD-NRO/GN/2013-14/37/50.-*In exercise of the powers conferred by 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 read with section 30 of the Securities and Exchange Board of India Act, 1992, section 31 of the Securities Contracts (Regulation) Act, 1956 and section 25 of the Depositories Act, 1996, the Securities and Exchange Board of India hereby makes the following regulations to provide for the terms of settlement and the procedure of settlement and matters connected therewith or incidental thereto, namely:—*

CHAPTER I
PRELIMINARY

Short title and commencement.

- 1.** (1) These regulations may be called the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014.
(2) They shall be deemed to have come into force with effect from 20th day of April 2007.

Definitions.

- 2.** (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly,—
- (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (b) "alleged default" means an alleged or probable non-compliance of any provision of the securities laws;
 - (c) "Board" means the Securities and Exchange Board of India established under the provisions of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (d) "panel of whole time members" means the panel consisting of two or more Whole Time Members of the Board;
 - (e) "securities laws" means the Act, the Securities Contract (Regulations) Act, 1956 (42 of 1956), the Depositories Act, 1996 (22 of 1996), and the rules and regulations made thereunder;

- (f) "specified proceedings" means the proceedings which have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I of the Act or section 12A or section 23-I of the Securities Contracts (Regulation) Act, 1956 or section 19 or section 19H of the Depositories Act, 1996, as the case may be;
- (g) "specified" means specified by the Board through circulars or guidelines;
- (h) "Tribunal" means the Securities Appellate Tribunal established under section 15K of the Securities and Exchange Board of India Act, 1992.

(2) Words and expressions used and not defined in these regulations but defined in the Act, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996 or any rules or regulations made thereunder shall have the same meanings respectively assigned to them in those Acts, rules or regulations made thereunder or any statutory modification or re-enactment thereto.

CHAPTER II

APPLICATION FOR SETTLEMENT

Application.

3. (1) A person, against whom any specified proceedings have been initiated or may be initiated, may make an application to the Board in the Form specified in Part-A of the Schedule-I:

Provided that any person who proposes to dispose of any proceedings with regard to defaults under securities laws, pending before the Tribunal or a court, wherein the Board is a party may also file the settlement proposal in the Form as specified in Part-A of the Schedule-I.

(2) The application made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Part-B and the undertakings and waivers as specified in Part-C of the Schedule-I:

Provided that the rejection of the application shall not affect the continued validity of the undertakings and waivers and the Board or the applicant, subject to the undertakings and waivers, shall be free to resort to legal recourse as may be available under law.

(3) The applicant shall make full and true disclosures in the application in respect of the alleged default(s):

Provided that the facts established against the applicant or admitted by him in any ongoing or concluded proceedings with respect to the same cause of action, under any law, shall be deemed to be admitted by the applicant in respect of the proceedings proposed to be settled.

(4) The applicant shall make one application for settlement of all the proceedings that have been initiated or may be initiated in respect of the same cause of action:

Provided that an applicant, who has applied for compounding of an offence before a court for the same cause of action related to the specified proceedings, shall, within thirty days from the date of making the application, make an application under sub-regulation (1) in respect of the specified proceedings.

(5) An application that is not complete in all respects or does not conform to the requirements of these regulations shall be returned.

(6) The applicant whose application has been returned under sub-regulation (5) may, within fifteen days from the date of communication of the rejection, submit the revised application that conforms to the requirements of these regulations:

Provided that no further opportunity shall be given to the applicant to make an application in respect of the alleged default.

(7) Where the applicant is an association or a firm or a body corporate, the application and undertakings and waivers shall be executed by the person in charge of, and responsible for the conduct of the business of such firm or association, or body corporate and the same shall bind the firm or association, the body corporate and any officer who is in default.

Explanation.- For the purpose of this sub-regulation, the expression 'officer who is in default' has the same meaning as provided in sub-section (60) of section 2 of the Companies Act, 2013.

(8) An application for settlement of defaults related to disclosures, shall be made after making the required disclosure.

Limitation.

4. (1) No application in respect of any specified proceedings pending with the Board shall be considered if it is made after sixty days from the date of service of the notice to show cause or supplementary notice(s) to show cause, whichever is served later.

(2) Notwithstanding anything contained in sub-regulation (1), the panel of whole time members may condone the delay, if it is satisfied that there was sufficient cause for not filing the application within the period specified in sub-regulation (1).

(3) The provisions of this regulation shall not apply in the case of proceedings pending before the Tribunal or any court.

CHAPTER III SCOPE OF SETTLEMENT

Scope of settlement proceedings.

5. (1) No application for settlement of any specified proceedings shall be considered, if:

- (a) the alleged default was committed within a period of twenty four calendar months from the date of the last settlement order where the applicant was a party;
- (b) an earlier application with regard to the same alleged default had been rejected;
- (c) the applicant has been party to two settlement orders during the period of thirty six calendar months, prior to the date of the application;
- (d) the audit or investigation or inspection, if any, in respect of any alleged default, is not complete.

(2) A specified proceeding, shall not be settled, if it involves any of the following defaults, namely,-

- (a) defaults involving insider trading and communication of unpublished price sensitive information in contravention of the provisions of the Act and the regulations made thereunder;
- (b) fraudulent and unfair trade practices including front running, which in the opinion of the Board are serious and have a market wide impact or have caused substantial losses to or affect the rights of investors in securities, especially retail investors and small shareholders:

Provided that where the applicant has made or intends to make good the losses due to the investors, his application may be considered.

Explanation.- For the purpose of this clause, the expression ' front running' means usage of non-public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an

impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change;

- (c) failure to make an open offer in accordance with the provisions of the Act and the regulations made thereunder, except where the applicant agrees to make the open offer or where the Board is of the opinion that the making of the open offer would not be beneficial to the shareholders or is infructuous;
- (d) defaults or manipulative practices by mutual funds, alternative investment funds, collective investment schemes and their sponsors or asset management companies, collective investment management company, managers, trustees that result in substantial losses to investors, except in cases where the applicant has compensated the investors for the losses, to the satisfaction of the Board;
- (e) failure to redress investor grievances to the satisfaction of the Board, except where the alleged default is with regard to delayed redressal;
- (f) failure, by issuers of securities or entities who invite investment, to make material disclosures in offer documents as required under the relevant regulations framed by the Board;
- (g) raising of monies by issuance of securities or pooling of funds, in violation of securities laws where the remedy is refund of such monies;
- (h) non-compliance of notices and summons issued by the Board or summons issued by the adjudicating officer;
- (i) non-compliance of any order or direction passed under the securities laws.

(3) Notwithstanding anything contained in this regulation, where the applicant makes out adequate grounds in his application, the settlement of proceedings in respect of the defaults referred to in sub-regulation (2) may be considered in the interest of the investors and the development and regulation of securities market:

Provided that the reasons for settlement of such proceeding shall be recorded in writing.

(4) Nothing contained in these regulations shall be construed to preclude the panel of whole time members to reject any application in respect of specified proceedings involving the defaults referred to in clauses (a), (g), (h) and (i) of sub-regulation (2) without examination by the internal committee or the high powered advisory committee.

Withdrawal of application.

6. (1) An application may be withdrawn at any time prior to the communication of the decision of the panel of whole time members under regulation 14.

(2) An applicant who withdraws an application under sub-regulation (1) shall not be permitted to make another application in respect of the same default.

Effect of pending application on the specified proceedings.

7. (1) Filing of an application for settlement of any specified proceedings shall not affect continuance of the proceedings except that the passing of the final order shall be in abeyance till the application is disposed of.

(2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn.

CHAPTER IV TERMS OF SETTLEMENT

Settlement terms.

- 8.** (1) The settlement terms may include a settlement amount and/or non-monetary terms, in accordance with the guidelines specified in Schedule-II.
- (2) The non-monetary terms may include appropriate directions, such as:
- (a) Voluntary suspension of certificate of registration or closure of business for a specified period;
 - (b) Removal from Management;
 - (c) Direction in the nature of disgorgement, where it is possible to identify the investors who have incurred losses on account of the action or inaction of the applicant;
 - (d) Debarment of certain individuals from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by the Board, for specified periods;
 - (e) Cancellation of securities and reduction in share holding where the securities are issued fraudulently including cancellation of bonus shares received on such securities, if any, and re-imbursement of any dividends received, etc;
 - (f) Voluntary lock-in of securities;
 - (g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as direction to appoint or retain an independent consultant to review policies and procedures;
 - (h) Direction to provide enhanced training and education to employees of intermediaries;
 - (i) Directions relating to internal audit and reporting requirements;
 - (j) Any other directions that may be issued by the Board under the securities laws in the interest of the investors.
- (3) The settlement amount, excluding the legal costs and disgorgement amount, shall be credited to the Consolidated Fund of India.
- (4) The legal costs, if any, forming part of the settlement amount shall be credited to the Securities and Exchange Board of India General Fund.
- (5) The amount of ill-gotten profits made or losses avoided by the applicant that may be disgorged as part of the settlement terms, shall be credited to the Investor Protection and Education Fund of the Board.

Factors to be considered to arrive at the settlement terms.

- 9.** While arriving at the settlement terms, the Board shall also consider such factors including but not limited to the following:
- (a) conduct of the applicant in the investigation;
 - (b) the role played by the applicant in case the alleged default is committed by a group of persons;
 - (c) nature, gravity and impact of alleged defaults;
 - (d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;
 - (e) whether the alleged default is minor or major in nature;
 - (f) the extent of amount of harm and/or loss to investors' and/or gain by the applicant;
 - (g) processes which have been introduced since the alleged default to minimize future defaults or lapses;
 - (h) compliance schedule proposed by the applicant;
 - (i) economic benefits accruing to any person from the non-compliance or delayed compliance;

- (j) conditions which are necessary to deter future non-compliance by the same or another person;
- (k) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;
- (l) whether the applicant has undergone any other enforcement action for the same violation;
- (m) any other factors necessary in the facts and circumstances of the case.

CHAPTER V COMMITTEES

High powered advisory committee.

- 10.** (1) The Board shall constitute a high powered advisory committee for consideration and recommendation of the terms of settlement.
- (2) The high powered advisory committee shall consist of a retired Judge of a High Court and three external experts having expertise in securities market or in matters connected therewith or incidental thereto.
- (3) The quorum of the high powered advisory committee shall be of three members.
- (4) The term of the members of the high powered advisory committee shall be three years which may be extended for a further period of two years.
- (5) The high powered advisory committee shall conduct its meetings in the manner specified by the Board in this regard.

Internal committee(s).

- 11.** The internal committee(s) shall comprise of an officer of the Board not below the rank of Chief General Manager and such other officers as may be decided by the Board.

CHAPTER VI PROCEDURE OF SETTLEMENT

Proceedings before internal committee.

- 12.** (1) Save as otherwise provided in these regulations, an application shall be referred to the internal committee which shall examine whether the proceedings may be settled and if so determine the settlement terms in accordance with these regulations.
- (2) The internal committee may:
- (a) call for relevant information, documents, etc., pertaining to the alleged default(s) in the custody of the applicant;
 - (b) call for the personal appearance of the applicant before it:
Provided that a duly authorized representative of the applicant may make representation on behalf of the applicant;
 - (c) permit the applicant to revise settlement terms within a period not exceeding ten working days from the date of the internal committee meeting.
- (3) The proposed settlement terms, if any, shall be placed before the high powered advisory committee.

Proceedings before high powered advisory committee.

- 13.** (1) The high powered advisory committee shall consider the proposed settlement terms, placed before it alongwith the following:
- (a) the application, undertaking and waivers of the applicant;
 - (b) factors specified in regulation 9;
 - (c) settlement terms or revised settlement terms proposed by the applicant;
 - (d) any other relevant material available on record.

- (2) The high powered advisory committee may require the applicant to revise the settlement terms and refer the application back to the internal committee.
- (3) The recommendations of the high powered advisory committee shall be placed before the panel of whole time members for consideration.

Action on recommendation of high powered advisory committee.

14. (1) A panel of two whole time members shall consider the recommendations of the high powered advisory committee and may accept or reject the same.
- (2) Where the panel of whole time members accepts the recommendation of the high powered advisory committee, the applicant shall be communicated about the same within 7 days of the decision of the panel.
- (3) Where the panel has accepted the recommendation to pass settlement order, the applicant shall remit the settlement amount, as per the settlement terms and/or undertake in writing to abide by other settlement terms, if any, within the time provided to the applicant.
- (4) Where the panel of whole time members does not accept the recommendation of the high powered advisory committee to settle the specified proceedings on the settlement terms recommended by it, the panel may return the application to the internal committee for re-examination of the settlement terms and thereafter the procedure as applicable in the case of an original application shall be followed by the internal committee and the high powered advisory committee.
- (5) Where the panel of whole time members disagrees with the recommendation to settle the specified proceedings, such decision shall be communicated to the applicant.

CHAPTER VII SETTLEMENT ORDERS

Settlement of proceedings before the Adjudicating officer and the Board.

15. (1) The adjudicating officer shall pass the settlement order in the proceeding pending before him with respect to the alleged default(s).
- (2) The panel of the whole time members shall pass settlement order with respect to proceedings initiated or proposed to be initiated for alleged default(s) other than the proceedings referred to in sub-regulation (1).
- (3) The settlement order passed under these regulations shall, *inter alia*, contain the details of the alleged default(s), relevant provisions of the securities laws, facts and circumstances relevant to the alleged default, the admissions made by the applicant, if any and the settlement terms.

Settlement of the proceedings pending before the Tribunal or any court.

16. (1) Save as otherwise provided in these regulations, the provisions with regard to settlement of specified proceedings shall *mutatis mutandis* apply to an application for settlement of any proceeding pending before the Tribunal or any court.
- (2) The proposal of settlement along with the settlement terms or rejection thereof shall be placed before such Tribunal or court for appropriate orders.

Service of settlement order and publication.

17. Settlement orders shall be served on the applicant and shall also be published on the website of the Board.

Effect of settlement order on third party rights.

18. A settlement order under these regulations shall not affect the right of third parties arising out of the alleged default.

Non-compliance of settlement order.

19. If the applicant fails to comply with the settlement order or at any time after the settlement order is passed, it comes to the notice of the Board that the applicant has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed.

Rejection in certain eventualities.

20. (1) The Board may at any time during the course of considering an application, reject an application on the following grounds:

- (a) Where the applicant refuses to receive or respond to the communications sent by the Board;
- (b) Where the applicant does not submit or delays the submission of information, document, etc., required by the Board;
- (c) Where the applicant who is required to appear, but does not appear before the internal committee on more than one occasion;
- (d) Where the applicant violates in any manner the undertaking and waivers as specified in Part-C of the Schedule-I;
- (e) Where the applicant does not remit or delays the payment of settlement amount and/or does not abide by the undertaking and waivers.

(2) The rejection under sub-regulation (1) shall be communicated to the applicant.

**CHAPTER VIII
MISCELLANEOUS**

Confidentiality of information, etc.

21. (1) All information submitted and discussions held in pursuance of the settlement proceedings under these regulations shall be deemed to have been received or made in a fiduciary capacity and the same may not be released to the public, if the same prejudices the Board and/or the applicant.

(2) Where an application is rejected, the applicant and the Board shall not rely upon or introduce as evidence before any court or Tribunal, any proposals made or information submitted or representation made by the applicant under these regulations:

Provided that this sub-regulation shall not apply where the settlement order is revoked and withdrawn under these regulations.

Power to remove difficulties.

22. In order to remove any difficulty in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue clarifications through circulars or guidelines.

Power to specify procedures.

23. For the purposes of implementation of these regulations the Board may specify norms or procedures, by way of circulars or guidelines.

Rescission and savings.

24. (1) On and from the commencement of these regulations, the following circulars issued by the Board shall stand rescinded:

- (a) Board's circular ref No. EFD/ED/Cir-1/2007 dated April 20, 2007; and
- (b) Board's circular ref No. CIR/EFD/1/2012 dated May 25, 2012.

(2) Notwithstanding any such rescission:

- (a) Applications filed under the circulars referred to in sub-regulation (1) and pending with the Board shall be deemed to have been filed in accordance with these regulations and shall be dealt with in accordance with the provisions of these regulations.
- (b) Settlement orders passed under the circulars referred to in sub-regulation (1) shall be deemed to have been passed under these regulations.
- (c) The proposals of the internal committees and the recommendations of the high powered advisory committee in accordance with the circulars referred to in sub-regulation (1) and any action taken by the Board on the basis of these recommendations shall be deemed to have been made under these regulations.
- (d) The internal committee(s) and the high powered advisory committee constituted by the Board in accordance with the circulars referred to in sub-regulation (1), shall continue to function till such time the Board re-constitutes them.

SCHEDULE-I

(See regulation 3)

Part-A
FORM

Application for settlement

(For Office use only)

Date of receipt of the application:

Application Registration Number:

*(**Instructions:** All the particulars must be filled. Put 'NA' wherever necessary.)*

Before the Securities and Exchange Board of India

In the matter of

1. Name/Trade name of the applicant:

- (a) Registration no., if applicable :
- (b) Date of Registration, if applicable :
- (c) PAN number:
- (d) Paid-up capital of applicant:

2. If stock broker, name of the stock exchange:

3. If sub-broker, name of stock broker with whom affiliated and name of the stock exchange:
4. Name of the segment (Cash/derivative etc.):
5. Form of organization: corporate body/ sole proprietorship / partnership / LLP/ financial institution (if listed co., details of listing) :
6. Names of promoters/directors/proprietors/partners:
7. Key management personnel(s) :
8. Address/correspondence address, contact no./fax no. and email(any changes in aforesaid details shall be communicated to the Board promptly):
9. Name and contact details (including e-mail) of the contact person (s):
10. Other registration(s) with the Board, if applicable :
 - (a) Trade name :
 - (b) Registration type :
 - (c) Registration no. :
11. Case(s) pending with the Board/SAT/Court (Pl. specify) :
12. Case(s) pending under 11B/Adjudication/Enquiry/others (pl. specify):
13. Stage at which pending:
14. Interim order(s) in the pending proceedings (gist of the orders passed), if any :
15. Other actions pending with/concluded by the Board, if any (with their details) :
 - (a) Against the applicant :
 - (b) Against its associates :
 - (c) Against its key management personnel(s) :
 - (d) Against its other promoters/directors:
 - (e) Other details, if any:
16. Date of show cause notice/summons/communication indicating probable cause of action, if any, against which the settlement is sought (PLEASE ENCLOSE COPIES)*:
17. Full and true disclosure of facts (including the profit made, loss avoided, gross fees, brokerage, commissions, etc., in respect of the cause of action):
18. Specific charges alleged:
19. Terms of settlement proposed by the Applicant:-
 - (a) Monetary terms:-

(b) Non-monetary terms:-

20. Original documents to be enclosed:

- (a) Undertakings and waivers (as per Format specified in Part C).
- (b) Authority letter/Board resolution.

21. List of other enclosures:

- (a) A copy of the notice to show cause/summons/communication/other notices indicating the probable cause of action, if any, against which the settlement is sought;
- (b) Complete Annual Reports / other relevant financial details for the last three financial years and the quarterly audited financial results of the current year;
- (c) A statement showing net worth of the applicant(only for those applicants who are required to comply with the networth requirements as specified by the Board or by the stock exchanges), gross annual income before tax, the amount of gross profit made/loss avoided, including the gross brokerage, fees, management/performance/transaction fee, carried interest, compensation, etc., in respect of the said default;
- (d) Copy of PAN card;
- (e) Complete Income-tax Returns of the applicant for the last three financial years;
- (f) Any other relevant document (s)/submissions.

(Signature of the applicant)

(Stamp and Seal)

Verification

I,son/daughter/wife of (Name in block letters)

Shribeing the applicant/authorised representative (in case of corporate entity) of do hereby verify and affirm on oath that this application and the contents thereof are true to my knowledge and belief and as per the records and that I have not suppressed any material facts.

(Signature of the applicant)

Date:

Place :

Part-B

Every applicant shall pay fees of five thousand rupees by a demand draft in favour of 'Securities and Exchange Board of India' payable at Mumbai.

Part-C

Undertakings and Waivers

Format

Undertaking to be submitted alongwith the application with stamp duty duly paid and duly notarized at the time of execution.
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I/We,, the applicant(s) herein, as a condition for making the enclosed application to the Board for examining of the application and passing of appropriate settlement order, hereby declare that I/we agree and undertake that:

- (1) I/We admit the jurisdiction and right of the Securities and Exchange Board of India to initiate appropriate proceedings in respect of the alleged default.
- (2) I/We further agree and undertake that the time spent during the settlement proceedings shall be excluded for computing the limitation period, if any, for initiating or continuing or restoring any legal proceedings, if any, against me/us, and waive any objections in this regard.
- (3) The Securities and Exchange Board of India may enforce any claims against me/us arising from or/in relation to any violation of the settlement order passed pursuant to this application.
- (4) Nothing in the settlement order shall preclude any other person from pursuing any other legal remedy to which such person may be entitled against me/us as per law.
- (5) The settlement proposed by me/us does not limit or create any private rights or remedies for any person who is not a party to these proceedings, against me/us.
- (6) The settlement amount including legal costs, if any, shall be paid by me/us to the Board within the period stipulated by the Board.
- (7) The settlement order shall be construed and enforced in accordance with the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014.
- (8) I/We agree that subsequent to the passing of the settlement order, I/We shall not take any action or make or permit to be made any public statement denying, directly or indirectly, any finding in the settlement order or creating impression that the settlement order is without factual basis.
- (9) I/We hereby declare that nothing in the waiver and undertaking given by me/us shall affect my/our (i) testimonial obligations or (ii) right to take legal or factual positions in defence of litigation or in defence of a claim or in any other legal proceeding in which the Board is not a party.
- (10) I/We 'admit the findings of fact and conclusions of law' or 'neither admit nor deny the findings of fact and conclusions of law' (strike off whichever is not applicable) which may be part of the settlement order, and agree to abide by the settlement order as may be passed for the purpose of settlement of the specified proceedings in accordance with the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and guidelines and circulars issued by the Board in that regard.

(11) I/We waive my/our right of taking any legal proceedings against the Securities and Exchange Board of India concerning any of the issue covered in the settlement order that may be passed.

(12) I/We further waive the following:

- (a) the findings of fact and conclusions of law;
- (b) the proceedings before the Board or any officer of the Board;
- (c) the right to all post-hearing procedures;
- (d) appeal/review before the Tribunal/courts;
- (e) any plea relating to such provisions of the regulations or other requirements of law as may be construed to prevent any officer of the Securities and Exchange Board of India from participating in the any proceedings, including settlement proceedings or assisting or advising the internal committee, high powered advisory committee or panel of whole time members, as to, any order, opinion, finding of fact, or conclusion of law, etc;
- (f) any plea of bias or pre-judgment by the Securities and Exchange Board of India or the high powered advisory committee, based on the consideration of or discussions concerning settlement of all or any part of the internal proceedings;
- (g) any plea of limitation for initiating or reopening of the proceedings, if the applicant violates the settlement order.

(Signature of the applicant with stamp and seal of the body corporate)

Before me.

Notary.

SCHEDULE-II

(See regulation 8)

GUIDELINES FOR ARRIVING AT SETTLEMENT TERMS

CHAPTER I

1. The settlement amount (SA) *shall* comprise of the Indicative Amount (IA) arrived at in terms of these guidelines and the factors provided in regulation 9, wherever applicable.
2. Except for persons treated as name lenders, the IA shall not be less than ₹ 2 lakh for first time applicants or ₹ 5 lakh for others, as the case may be.

Explanation.- A 'first time applicant' is a person who has never obtained a settlement order from the Board as on the date of the present application.

3. Based on the stage at which the proceeding(s), for which the application is made, is/are pending, the proceeding conversion factor (PCF) shall be applied when calculating the IA.
4. In cases, where an existing business or activity of a person is either corporatized or converted into an LLP or partnership or merged or taken over by a new management, the existing record of the erstwhile entity shall be deemed to be the record of the new entity. Considerations such as change of name or management or ownership shall be irrelevant when determining the liability of the said entity.
5. Where an entity desires to obtain the benefit of a lower PCF, in relation to any alleged default it may, *suo motto*, before the receipt of any notice to show cause, intimate the Board of such default hereinafter referred to as 'intimation defaults' and co-operate with SEBI in the investigation, inquiry, inspection or audit. It may thereafter file a settlement application, upon completion of the investigation, inspection, etc. The application shall be deemed to have been made 'Pre- issue of notice to show cause' for the purpose of calculating the PCF.
6. The IA is to be calculated for each applicant. In a case where multiple applicants make a combined application for a default arising from the same cause of action, the IA will be calculated for each applicant, as per the applicable formula except in cases related to defaults under the Takeover Regulations where the acquirer and persons acting in concert (PAC) may be considered to have joint liability.
7. While considering the application, the alleged default(s) detailed in the Inspection Report or the Investigation Report or the Report of the Designated Authority (DA) or the notice to show cause, including any supplementary notice to show cause issued by any authority in a pending proceeding, or the facts/findings detailed in the order of the Designated Member (DM) or the Whole Time Member (WTM) or the Adjudicating Officer (AO) or the Securities Appellate Tribunal (SAT), as applicable, may be the basis for calculating the IA.

In case, the Internal Committee (IC) or the High Powered Advisory Committee (HPAC) or the Panel of Whole Time Members (WTMs) are of the view that the facts disclose a different default, the same may be taken into account.

8. The alleged defaults shall, wherever applicable, be categorised based on the facts and circumstances as major, minor, serious or miscellaneous, etc., by the IC or HPAC or the Panel of WTMs.
9. Notwithstanding anything contained in these guidelines, the IC or HPAC or Panel of WTMs shall have the discretion to recommend acceptance or rejection or accept or reject an application, to recommend a amount, lower or higher than the amounts arrived at in terms of these guidelines, in accordance with the provisions of securities laws, considering the facts and circumstances of the case and the gravity of the charges.

10. In cases where the formulae for calculating the IA are inapplicable or cannot be adapted due to the nature of the default or the facts and circumstances of the case or where the defaults detailed in the Tables in these guidelines are not covered, the IC or HPAC or Panel of WTM may arrive at the SA, as they deem fit.
11. In case of an amendment(s) or repeal of the securities laws, these guidelines shall continue to apply to similar provisions under the amended or new laws, *mutatis mutandis*.

CHAPTER II
INDICATIVE AMOUNT AND THE SETTLEMENT AMOUNT

Indicative amount (IA) shall be calculated as follows:

IA = A × B + Legal Costs[#]

#Legal costs as incurred by the Board shall be applicable to a application made at the stages mentioned in points “d” and “e” as provided in Table I.

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

- A** : Multiplying Factor
- PCF** : Proceeding Conversion Factor
- RAF** : Regulatory Action Factor

Where

- 'PCF'**- The value assigned on the basis of the stage of the proceedings, as on the date of the application; and
- 'RAF'**- Values for prior orders and regulatory directions issued to the applicant.

'B' - Benchmark Amount, is the amount which is attributable to the alleged default for which a proceeding under securities laws may be or has been initiated by the Board; it is determined separately for each category of default and in case of multiple defaults, the total sum thereof, determined in terms of these guidelines;

1. In case, more than one proceeding arising from the same cause of action has been initiated against the applicant, the IA shall be increased by 15%.

Provided that where the AO has already awarded penalty to the applicant, then 'B' shall be equal to the amount calculated by these guidelines *or* the penalty awarded by the AO; whichever is higher. In cases where the WTM or DM has issued directions debarring or suspending the applicant, the **RAF** shall take into account the value of **Y** as per Table III.

2. The amount which is finally recommended by the HPAC after taking into account the IA, any mitigating or aggravating factors etc; and approved by the Panel of Whole Time Members is the **SA**.
3. After payment of the SA, the settlement order along with other directives, if any, shall be passed accordingly.

CHAPTER III
PROCEEDING CONVERSION FACTOR

The values assigned on the basis of the stage of the proceedings, as on the date of the application, shall be the PCF as per Table I

TABLE I-PCF

STAGE OF THE PROCEEDING(S) WHEN THE APPLICATION IS MADE		VALUE OF PCF
a.	Pre- issue of the notice to show cause (including intimation matters)	0.75
b.	Post-issue of the first notice to show cause pertaining to any pending proceeding in the same cause of action	0.85
c.	Proceeding pending after the submission of the report by the DA	0.9
d.	Proceedings pending after passing of the order by the AO or DM or WTM, as the case may be	1.10
e.	Proceedings pending after the passing of the order by the SAT or High Court	1.20

Provided that where multiple proceedings arising out of the same cause of action are sought to be settled, the value of the proceeding which is at the most advanced stage, irrespective of the stage of progress of the other proceedings, shall be taken as the PCF.

CHAPTER IV
VALUE FOR ALL ORDERS AND REGULATORY DIRECTIONS

The sum of all the values assigned to the orders and regulatory direction(s) issued in the past, if any, shall be 'RAF'.

'RAF' = X + Y

TABLE II -VALUE FOR ORDERS AND REGULATORY DIRECTIONS ISSUED X*

* To also include those orders and directions which have been stayed by the SAT or Court, as on the date of the application. In case multiple proceedings have been initiated for the same cause of action, the value shall be added for each order passed.

ORDERS AND REGULATORY DIRECTIONS ISSUED TO THE APPLICANT	X PER ORDER
Exonerated cases i.e. cases where applicant was exonerated in an order or appeal or review	0
Settlement Order	0.01

ALL OTHER ORDERS (EXCEPT FOR WHICH THE APPLICATION IS FILED)	
Cease and desist order	0.02
Order of AO or WTM issued against other market participants	0.05
Order of AO, DM or WTM issued against intermediaries or listed companies	0.075

TABLE III- VALUE FOR ORDER OR DIRECTION PASSED OR ISSUED FOR WHICH THE APPLICATION IS FILED - Y

PROCEEDING BEFORE DM	PROCEEDING BEFORE WTM	‘Y’ PER ORDER
Warning issued		0.05
Suspension upto 1 week	Debarment upto 6 calendar months	0.1
Suspension for 1 week or more, but less than 1 month	Debarment for 6 calendar months or more, but less than 1 year	0.15
Suspension for 1 month or more but less than 3 months	Debarment for 1 year or more but less than 2 years	0.2
Suspension for 3 months or more but less than 1 year	Debarment for 2 years or more but less than 3 years	0.25
Suspension for or more than 1 year	Debarment for 3 years or more but less than 5 years	0.3

CHAPTER V
BENCHMARK AMOUNT FOR FUTP DEFAULTS

The Benchmark Amount for defaults related to FUTP i.e. B (FUTP), may be computed as detailed in this Chapter.

However, the IC or HPAC or Panel of WTM’s may, in cases of serious FUTP default, take the Benchmark Amount of the applicant as per the provisions of the securities laws if the amounts arrived at on the basis of the calculations are found to be low and not commensurate to the seriousness of the alleged default.

Notwithstanding the above, SEBI shall not settle serious fraudulent and unfair trade practices which, in its opinion, cause substantial losses to investors especially retail investors and small shareholders or have or may have market wide impact, except those defaults where the applicant has made or intends to make good the losses due to the investors to the satisfaction of SEBI.

$B(\text{FUTP}) = \text{SUM OF BASE VALUES AS PER TABLE IV} \times \text{APPLICABLE AMOUNT}$
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TABLE IV - BASE VALUES

NATURE OF DEFAULT		BASE VALUE
a.	FUTP or violation of code of conduct noted in an investigation related to FUTP	1.35
	Or	
	FUTP in combination with the violation of code of conduct or any other regulation under SEBI (PIT) Regulations or SEBI (SAST) Regulations	1.37
	Or	
	FUTP in combination with a violation of <i>SEBI Master Circular on AML, etc.</i>	1.4
b.	Factors for volume traded and/or price change for the default	Sum of 'V', 'P' and 'Q', wherever applicable, to be applied only if the the volume traded or price change, quantity traded in respect of the group, of which the applicant is a part of or of the applicant when he acts alone, as the case may be, can be calculated from findings brought out in the investigation report or notice to show cause or order, as the case may be. In case multiple trading periods are involved the highest change has to be considered.
c.	Time value of ill-gotten gains*	$0.09 \times$ no. of calendar years from the date of commission of the default
d.	Reputation risk applicable in all cases	All applicants - 0.25

*Factor 'c' is applicable only in cases where the actual profit and/or loss avoided (approx) is determinable. While calculating the period, the fractions may be ignored.

'V' = VALUE FOR THE HIGHEST % OF VOLUME TRADED IN ANY TRADING PERIOD DURING THE ENTIRE PERIOD OF DEFAULT

In case of more than one scrip, the scrip with the highest volume traded is to be considered

% VOLUME TRADED (ILLIQUID SCRIP)	‘V’	% VOLUME TRADED (LIQUID SCRIP)
Upto 50%	0.05	Upto 2%
50 -60%[#]	0.07	2-5%[#]
60-75%[#]	0.1	5-10%[#]
75% or more[#]	0.15	10% or more[#]

#Where the volume traded, during any trading period falls within this class, the IC or HPAC or Panel of WTM’s shall consider whether the default may be settled.

‘P’ = VALUE FOR HIGHEST % OF PRICE CHANGE IN ANY TRADING PERIOD DURING THE ENTIRE PERIOD OF DEFAULT

In case of more than one scrip, the scrip with the highest price change is to be considered

% PRICE CHANGE (ILLIQUID SCRIP)	‘P’	% PRICE CHANGE (LIQUID SCRIP)
Upto 50%	0.05	Upto 5%
50-100%[#]	0.07	5-10%[#]
100-200%[#]	0.1	10-20%[#]
200% or more[#]	0.15	20% or more[#]

#Where the price change during any trading period falls within this class, the IC or HPAC or Panel of WTM’s shall consider whether the default may be settled.

‘Q’ = VALUE FOR HIGHEST % OF PRICE CHANGE IN ANY TRADING PERIOD, DURING THE PERIOD OF DEFAULT FOR F&O & LEVERAGED PRODUCTS

In case of more than one product, the contract with the highest price change is to be considered

% PRICE CHANGE	‘Q’
Upto 0.5%	0.05
0.5-1%	0.07
1-5%[#]	0.1
5% or more[#]	0.15

#Where the price change during any trading period falls within this class, the IC or HPAC or Panel of WTM’s shall consider whether the default may be settled.

II - APPLICABLE AMOUNT

**THE APPLICABLE AMOUNT FOR AN APPLICANT =The profit made and/or loss avoided*
of each applicant
Or
The Base Amount as per Table V,
whichever is higher.**

***IN CHAPTER V TO VII, PROFIT MADE AND/OR LOSS AVOIDED, MAY BE CALCULATED AFTER TAKING INTO ACCOUNT THE FOLLOWING:**

1. In cases, where the profit made and losses avoided both co-exist, the sum thereof shall be taken into consideration for arriving at the total ill-gotten profit made by the applicant.
2. In cases of issue of fraudulent securities, fraudulent purchase of securities, including where funding is through circuitous route, etc., the profit made and/or loss avoided, shall be calculated after taking into account the market value of the securities on the date of purchase, allotment, issue, etc; whichever is relevant, in addition to the profit earned from subsequent sale thereof, if any.
3. In cases involving the siphoning of funds or cornering of securities in an issue, the applicant's profit made and/or loss avoided shall take into account the net proceeds or the value of the securities or the share thereof received by the applicant.
4. In cases involving an intermediary, the profit made and/or loss avoided shall take into account the *gross* fees earned by the applicant in respect of the default, by whatever name called and any proprietary trades, if any.
5. In cases where the purpose of the FUTP is to maintain the price, the profit made and/or loss avoided shall take into account any means by which the applicant has benefited including the value of any pledge, margin requirements, loans against securities, hedge, options, hybrids, futures, issue of securities, etc., in the scrip in which the applicant was interested.
6. In cases where trades have been executed after the dissemination of false information, the profit and/or loss avoided shall take into consideration the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security after a reasonable period from public dissemination of the true information.

TABLE V- BASE AMOUNT

AND

PARAMETERS (WHEREVER APPLICABLE) RELATING TO FUTP INCLUDING AIDING AND ABETTING FUTP OR CODE OF CONDUCT NOTED IN AN INVESTIGATION RELATED TO FUTP

In case more than one parameter is applicable, the highest Base Amount, as may be appropriate in the facts and circumstances of the case, may be considered.

CATEGORY OF APPLICANT	BASE AMOUNT AND PARAMETER *
	<p>(i) Where the entity is charged for FUTP or aiding and abetting FUTP</p> <p>₹ 15 lakh</p>

a.	Intermediaries	<p style="text-align: center;">Or</p> <p style="text-align: center;">1.5% of the value of the gross fraudulent trades executed through the intermediary including proprietary trades,</p> <p style="text-align: center;">whichever is higher</p> <p style="text-align: center;">(ii) Where the intermediary is charged for violation of code of conduct</p> <p style="text-align: center;">₹ 8 lakh</p> <p style="text-align: center;">Or</p> <p style="text-align: center;">0.75% of the value of the gross fraudulent trades executed through the intermediary,</p> <p style="text-align: center;">whichever is higher</p> <p style="text-align: center;">(iii) In cases of proceedings before the DM or the WTM, the Base Amount may also be computed by taking into account a suitable fraction or multiple of the gross annual income during the period of default, as may be recommended or decided by the IC or HPAC or Panel of WTM's, after taking into account the facts and circumstances of the case.</p>
b.	<p style="text-align: center;">Applicant charged for financing the FUTP activities</p> <p style="text-align: center;">(Listed companies not engaged in lending business, but charged with financing its Issue fall under point 'd')</p>	<p style="text-align: center;">₹ 15 lakh</p> <p style="text-align: center;">Or</p> <p style="text-align: center;">15% per annum × into funds provided × period for which the funds was provided,</p> <p style="text-align: center;">whichever is higher</p>
c.	Promoters	<p style="text-align: center;">₹ 1 crore</p> <p style="text-align: center;">Or</p> <p style="text-align: center;">0.5% of the (highest) market value of its/his holdings in the company (including any convertible warrant or options)</p>

	promoters or directors, as the case may be)	
e.	Name-lender clients or front-entities or dummy entities	To be determined for each applicant as recommended or decided by the IC or HPAC or Panel of WTMs on the basis of the facts and circumstances of each case
f.	Key-operators	<p>To be determined for each applicant as recommended or decided by the IC or HPAC or Panel of WTMs on the basis of the facts and circumstances of each case.</p> <p>Notwithstanding the above, in case of the key operator transferring the bulk or the whole of his share of proceeds or securities cornered, to another, the base amount may also be added by a suitable fraction taking into account a suitable fraction or multiple of the gross amount or transfers made, as may be recommended or decided by the IC or HPAC or Panel of WTM's after taking into account the facts and circumstances of the case.</p>
g.	FII Proprietary sub-account	<p>₹ 35 lakh</p> <p>Or</p> <p>0.005% of the total assets under custody (AUC), whichever is higher</p>
	Non- proprietary sub-accounts	<p>₹ 20 lakh</p> <p>Or</p> <p>0.005% of the total AUC, whichever is higher</p>
h.	Book running lead manager or lead manager and other intermediaries associated with an issue or takeover	<p>1% of the issue or takeover size (or the estimated issue size) handled by the Book running lead manager or lead manager and</p> <p>0.25% for other intermediaries</p>
i.	AMC, trustee, sponsor, etc. (In case of mutual fund, etc., to be borne by the	<p>₹ 25 lakh</p> <p>Or</p> <p>0.001% of the total assets under management</p>

	AMC, CIMC, manager, etc., and not to be passed on to the schemes)	(AUM) Or 0.1% of the net worth; whichever is higher
j.	Where none of the above are applicable to the applicant	To be determined for each applicant as recommended or decided by the IC or HPAC or Panel of WTMs on the basis of the facts and circumstances of each case

*** To be calculated per scrip or product manipulated. In case the scrip is part of any index maintained by BSE Ltd or National Stock Exchange of India Ltd, the Base Amount shall be increased by 15%.**

In these guidelines the following persons shall be treated as 'name-lender':

An applicant who allows his name to be used or whose name is used for opening a demat account or client account by another, who operates the same as his own account. It includes an account-lender whose demat account or client account is allowed to be used or used for market transactions by anyone other than himself, for the purpose of any activity by such other, including manipulation or other fraudulent activities.

A key operator referred to in these guidelines, includes the main manipulator and any other applicant who in the opinion of the IC or HPAC or Panel of WTM's may be so categorised.

Chapter VI

BENCHMARK AMOUNT IN DISCLOSURE RELATED DEFAULTS UNDER SEBI (SAST) REGULATIONS, SEBI (PIT) REGULATIONS AND OTHER DISCLOSURES AND REPORTING REQUIREMENTS, etc.

The Benchmark Amount for disclosure defaults i.e. B (D) may be computed on the basis of this Chapter. This chapter does not deal with those disclosure defaults which amount to FUTP.

However the IC or HPAC or Panel of WTM's, may, in cases of serious disclosure defaults take the Benchmark Amount of the applicant as per the provisions of securities laws if the amounts arrived at on the basis of the calculations are found to be low and not commensurate to the seriousness of the alleged default or the ill-gotten profit and/or loss avoided by the applicant.

$B(D) = \text{BASE VALUE AS PER TABLE IX} \times \text{SUM OF BASE AMOUNTS AS PER TABLE VI OR VII}$

TABLE VI- BASE AMOUNT - DISCLOSURES UNDER SEBI (SAST) REGULATIONS

PERCENTAGE OF SHAREHOLDING	BASE AMOUNT FOR VIOLATION OF
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OR VOTING RIGHTS ACQUIRED OR DISPOSED BUT NOT DISCLOSED OR PERCENTAGE OF ENCUMBERED SHARES BUT NOT DISCLOSED, etc.	REGULATION 7 OF SEBI (SAST) REGULATIONS, 1997 OR REGULATION 29 OF SEBI (SAST) REGULATIONS, 2011	REGULATION 8 OF SEBI (SAST) REGULATIONS, 1997* OR REGULATION 30 OF SEBI (SAST) REGULATIONS, 2011*	REGULATION 8A OF SEBI (SAST) REGULATIONS, 1997 OR REGULATION 31 OF SEBI (SAST) REGULATIONS, 2011
Upto 2 %	₹ 1 lakh + ₹ 5,000/- For every three months delay [#] or part thereof		
2% to less than 5 %	₹ 2 lakh + ₹ 10,000/- For every three months delay or part thereof		
5 % to less than 10%	₹ 5 lakh + ₹ 15,000/- For every three months delay or part thereof		
10 % to less than 15 %	₹ 10 lakh + 0.1 % of the value of the holding not disclosed, etc. + ₹ 20,000/- For every three months delay or part thereof		
15% and above	₹ 15 lakh + 0.1 % of the value of the holding not disclosed, etc. + ₹ 25,000/- For every three months delay or part thereof		

* The Base Amount shall only be as per the lowest slab, irrespective of change in shareholding over the reporting period. In case of defaults related to disclosures that are required to be made annually, and application is filed for settlement of such defaults, the amount for delay for every three months or part thereof shall be computed only for the first non-disclosure. In case the applicant complies with the annual reporting requirements for a few years, such compliance

will not result in a higher base amount than would have otherwise be calculated for continuous defaults.

#The period of delay is to be calculated from the last day, when the disclosure ought to have been made, as required by the regulations.

In case a correct disclosure is made on time but filed in the wrong format, the Base Amount shall be reduced by 75%.

TABLE VII- BASE AMOUNT - TRANSACTION SPECIFIC DISCLOSURES UNDER REGULATIONS 13(3), 13(4), 13(4A) AND CORRESPONDING 13 (6) OF SEBI (PIT) REGULATIONS 1992,

PERCENTAGE OF SHAREHOLDING OR VOTING ACQUIRED BUT NOT DISCLOSED, etc.	BASE AMOUNT*
Upto 2%	₹ 1.5 lakh + ₹ 7,500/- For every three months delay or part thereof
2% to less than 5%	₹ 2.5 lakh + ₹ 12,500/- For every three months delay or part thereof
5% to less than 10%	₹ 6 lakh + ₹ 17,500/- For every three months delay or part thereof
10 % to less than 15%	₹ 12 lakh + 0.1 % of the value of the holding not disclosed, etc. + ₹ 22,500/- For every three months delay or part thereof
15% and above	₹ 20 lakh + 0.1 % of the value of the holding not disclosed, etc. + ₹ 25,000/- For every three months delay or part thereof

*In cases of disclosures not made by the connected persons and by the KMPs, the Base Amount may be increased by 25%.

In case the applicant is charged for non-disclosure of both SEBI (SAST) Regulations and SEBI (PIT) Regulations, the Base Amount arrived at for any one of the Regulations shall be reduced by 75%.

OTHER DISCLOSURES AND REPORTING REQUIREMENTS

B(D) = BASE VALUE AS PER TABLE IX X SUM OF BASE AMOUNTS AS PER TABLE VIII
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TABLE VIII- BASE AMOUNT

<u>NATURE OF DEFAULT</u>	<u>BASE AMOUNT</u>
TYPE OF NON-DISCLOSURE	
<u>SEBI (PIT) Regulations</u> Periodical and other disclosures	₹ 3 lakh + ₹ 5,000/- for every three months delay or part thereof
<u>SEBI (SAST) Regulations</u> Reporting requirements or disclosures for which exemptions are available, except cases of non-compliance of a condition precedent for availing exemption would result in the triggering of an open offer obligation (In respect of Regulation 6 of SEBI (SAST) Regulations, 1997 the provisions are dated and no amount may be recommended, except in case of standalone violations of Regulation 6 of SEBI (SAST) Regulations, 1997 the minimum amount of ` 2 lacs may be applicable)	₹ 2 lakh + ₹ 10,000/- for every three months delay or part thereof
<u>SEBI (FII) Regulations</u> Failure to provide information Intimation of material changes	₹ 20 lakh per default ₹ 5 lakh per default

<p><u>Others</u></p> <p>Code of conduct reporting requirements</p> <p>or</p> <p>Disclosures on appointment of director</p> <p>or</p> <p>Any other disclosure related defaults that are not detailed in these guidelines, if deemed appropriate</p>	<p>₹ 2 lakh</p> <p>+</p> <p>₹ 10,000/- for every three months delay or part thereof</p>
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TABLE IX - BASE VALUE

NATURE OF DEFAULT		BASE VALUE
a)	Per se SAST or PIT or ICDR regulation, etc. violation, not falling in any of the below mentioned categories	1
b)	Non-disclosure charge in combination with any other charge	1.1
c)	Charge of non-disclosure, although timely related disclosure made under any other Regulation(s)	0.6
d)	Charge of non-disclosure, although timely related disclosure made under any other regulation of SEBI (SAST) Regulations or listing agreement, etc.	0.55
e)	Companies with paid-up share capital below ₹ 10 crore (not applicable to companies which are exclusively holding companies)	0.5

All factors 'a' to 'e' in Table IX are mutually exclusive. In case of applicability of more than one factor, the lowest factor is to be considered.

OPEN OFFER DEFAULTS INCLUDING INDIRECT ACQUISITION
(CONSENTABLE CASES ONLY)

The Benchmark amount for open offer defaults ie. B (OO) may be computed on the basis provided below.

However the IC or HPAC or Panel of WTM's, may, in cases of serious open offer default, take the Benchmark Amount of the applicant as per the provisions of securities laws if the amounts arrived at on the basis of the calculations are found to be low and not commensurate to the seriousness of the alleged default.

The non-compliance of a condition precedent for availing exemption would result in the triggering of an open offer obligation and would be considered as per under Table X and XI.

$$B(OO) = \text{SUM OF BASE VALUES AS PER TABLE XI} \times \text{BASE AMOUNT AS PER TABLE X}$$

TABLE X-BASE AMOUNT

NATURE OF DEFAULT	BASE AMOUNT FOR ACQUIRER AND PACS
Delayed open offer	₹ 25 lakh or 0.25% of the open offer size, i.e. max number of shares for which open offer must be given x applicable open offer price, which ever is higher
Cases of open offer defaults referred for adjudication	
Delayed open offer (after direction from the Board)	₹ 50 lakh or 0.5% of the open offer size, whichever is higher .
Where the making of the open offer is infructuous i.e. when company has been delisted, etc.	To be recommended or decided by the IC or HPAC or Panel of WTMs on the basis of the facts and circumstances of each case
Where the open offer is not beneficial to the shareholders	

TABLE XI-BASE VALUES

NATURE OF DEFAULT UNDER CONSIDERATION		BASE VALUE
a	Entity in control of the target company, prior to triggering the takeover	1
b	Entity not in control of target company, prior to triggering the takeover	1.2
c	Illiquid Scrip	0.3

Factors 'a' and 'b' are mutually exclusive.

Chapter VII

BENCHMARK AMOUNT FOR OTHER DEFAULTS BY INTERMEDIARIES , REGULATED ENTITIES, 'B (I/RE)':

The Benchmark Amount for other defaults by intermediaries (I) and other regulated entities (RE) i.e. B(I/RE) may be computed on the basis of this Chapter. This Chapter is not

applicable where default is dealt with under Chapter V or is by a CIS, mutual fund, etc., where the proposed remedy may be disgorgement or refund or winding up of the scheme or fund.

However the IC or HPAC or Panel of WTM's may in cases of serious violations take the Benchmark Amount of the applicant as per the provisions securities laws if the amounts arrived at on the basis of the calculations are found to be low and not commensurate to the seriousness of the alleged default.

B(I/RE) = SUM OF ALL BASE AMOUNTS AS PER TABLE XII + 25 % OF THE GROSS FEE EARNED* IN RESPECT OF THE MAJOR DEFAULTS, WHERE DETERMINABLE

*A lower percentage may be taken in respect of Public Sector Undertakings.

TABLE XII- BASE AMOUNT

NATURE OF DEFAULT	BASE AMOUNT	
	MINOR CASES	MAJOR CASES [#]
Code of conduct related defaults	₹ 1 lakh per default	₹ 8 lakh per default
Section 15B of SEBI Act, etc.		
Section 15F of SEBI Act & other stock-broker defaults vis-à-vis clients, etc.		
Delay in redressing investor grievances*		
Section 15D & 15E of SEBI Act- CIS, AMC, and other fund activity related defaults, etc., including	₹ 2 lakh per default or 0.001% of the AUM or 0.1% of the net worth whichever is higher	₹ 20 lakh per default or 0.001% of the AUM or 0.1% of the net worth whichever is higher

conduct related defaults		
Other defaults not provided elsewhere in these guidelines, if deemed appropriate	₹ 1 lakh per default	₹ 8 lakh per default

* The IC or HPAC or Panel of WTMs may based on the facts and circumstance of the case, gravity of the grievances and the past track record of the entity in redressing investor grievances, arrive at a lump sum Base Amount of ₹ 5 lakh or a lesser amount.

The Base amount may also take into account any ill-gotten profit and/or loss avoided in major cases. In case of violations under Securities Contract (Regulations) Act, 1956 and the rules, regulations made thereunder the IC or HPAC or Panel of WTMs may recommend or decide a higher base amount. Further, in case of proceedings before DM or WTM, the Base Amount may also be computed by taking into account a suitable fraction or multiple of the gross annual income during the period of default, as may be recommended or decided by the IC or HPAC or Panel of WTM's, after taking into account the facts and circumstances of the case.

CLARIFICATIONS:

- a. In case of CIS, mutual fund, AIF, etc., related defaults, the settlement amount shall be recovered from the promoter or CIMC; and from trustees or sponsors or AMC or manager in case of defaults by AMCs or Mutual Fund, etc., as may be deemed appropriate.
- b. In case the CIMC or AMC, etc., investment decisions have caused wrongful loss to the investors, the CIMC or AMC, etc., shall be required to make good such loss, to the investors. In case, the same is not possible, the amount shall be deposited in the Investor Protection and Education Fund of SEBI.
- c. Conduct related defaults may be settled only if the applicant has rectified its conduct and the investor grievances have been redressed to the satisfaction of SEBI.

U.K. SINHA
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA