



**CIRCULAR**

CIR/EFD/1/2012

May 25, 2012

**Subject :Amendment to the Consent Circular dated 20<sup>th</sup> April 2007**

SEBI had issued Circular No.EFD/ED/Cir.-01/2007 dated 20<sup>th</sup> April 2007 providing the framework for passing of consent orders and for considering requests for composition of offences. On the basis of the experience gained and with the purpose of providing more clarity on its scope and applicability, it has been decided to partially modify the same as follows:

1. SEBI *shall not* settle the defaults listed below:
  - i. Insider trading i.e. violation of Regulation 3 and 4 of the SEBI(Prohibition of Insider Trading)Regulations, 1992;
  - ii. Serious fraudulent and unfair trade practices which, in the opinion of the Board, cause substantial losses to investors and/or affects their rights, especially retail investors and small shareholders or have or may have market wide impact, except those defaults where the entity makes good the losses due to the investors;
  - iii. Failure to make the open offer (except where the entity agrees to make the open offer or if in the opinion of the Board, the open offer is not beneficial to the shareholders and / or the case is referred for adjudication);
  - iv. Front-running; for the purpose of this circular, 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;



- v. Defaults relating to manipulation of net asset value or other mutual funds defaults where the actions of the asset management company (AMC)/ mutual fund (MF)/sponsor, result in substantial losses to the unit holders, except cases where the entity has made good the losses of the unit holders to the satisfaction of the Board;
- vi. Failure to redress investor grievances(except cases where the issue involved is only of delayed redressal);
- vii. Failure to make such disclosures under the ICDR and Debt Securities Regulations, which in the opinion of the Board, materially affect the right of the investors;
- viii. Non-compliance of summons issued by SEBI;
- ix. Non compliance of an order passed by the Adjudicating Officer (AO), Designated Member (DM) or Whole Time Member (WTM);
- x. Any *other* default by an applicant who continues to be non-compliant with any order passed by the (AO) or (DM) or (WTM).

Notwithstanding anything contained in this circular, based on the facts and circumstances of the case, the HPAC/Panel of WTMs may settle any of the defaults listed above.

2. No consent application shall be considered-
  - i. Before the completion of any investigation / inspection or contemplated in respect of the alleged default;
  - ii. If an alleged default is committed within a period of two years from the date of any consent order except where the default is minor in nature;
  - iii. If the applicant has already obtained more than two consent orders, for a period of three years, from the date of the last consent order;
  - iv. Where more than one proceeding arising out of the same cause of action is pending, unless it is for all the proceedings.



3. One application may be considered for a single proceeding or multiple proceedings arising from the same cause of action but in no case, shall one application be considered for multiple proceedings arising from different causes of action.
4. No consent application shall be considered, if filed, after 60 days from the date of-
  - (i) service of the notice to show cause, including supplementary notices, if any, issued by the Designated Authority (DA)/AO, DM and WTM, whichever is later.
  - (ii) this circular, if the proceedings before the DA/AO, DM and WTM are pending as on that date.

Provided that the Competent Authority may condone the delay, if the delay is beyond the control of the applicant.

Provided further that the said condition shall not apply in respect of cases pending before the Tribunal/Courts.

Explanation – Where multiple proceedings have been initiated for the same cause of action, a consent application filed within the limitation period specified above, for any one proceeding, shall be deemed to have been made within the prescribed time for the remaining proceedings also, for which the settlement is sought.

5. The consent terms shall be determined in terms of the Guidelines annexed herewith as **Annexure A**.
6. All consent applications after coming into effect of this Circular, shall be filed in the revised format, herewith attached as **Annexure B**.
7. All consent applications shall be accompanied with a non refundable processing fee of ₹ 5,000/- (Rupees five thousand only) per applicant, by way of a “Demand Draft” in favour of “Securities and Exchange Board of India” payable at Mumbai.
8. The consent application in the prescribed format, containing all the necessary details / documents, shall be assigned a registration number, which shall be communicated to the applicant and quoted for future correspondence. In case the specified details/documents as



submitted by the applicant are incomplete or vague, the deficient application shall be returned forthwith to the applicant without assigning a registration number, detailing the deficiencies contained therein.

9. The applicant shall be granted not more than one opportunity to resubmit the rectified application, if it so desires, within a period of 15 days from the date of service of the letter from SEBI. The application resubmitted within the stipulated period only shall be registered for processing. The Competent Authority may extend the time in deserving cases.

10. The Authority within SEBI before whom the enforcement proceeding(s) is pending, in respect of which the consent application is filed, shall be informed about the filing of the said application. The Authority may continue the proceedings except passing the final order till the conclusion of the consent proceedings. In cases where the criminal complaint has not yet been filed but is envisaged, the filing of a complaint may be kept in abeyance till the conclusion of the consent proceedings. In case of rejection of the terms of consent by the Panel of WTMs, the said proceedings shall be continued from the stage at which it was pending.

11. The High Powered Advisory Committee (HPAC) shall consist of a retired Judge of a High Court and three other external experts, as may be decided by the Board from time to time.

12. There shall be Internal Committee(s) comprising of a Chief General Manager, not administratively associated with the case and Division Chiefs of the concerned Operational Department and Legal/ Enforcement Department of SEBI respectively, for assisting the HPAC. The Internal Committee will require the applicant to appear before it for formulating terms of consent as per the Guidelines annexed to this Circular, where after the applicant shall submit the consent terms, including the non-monetary directives, if any, within one week. The consent terms shall be placed before the HPAC for its consideration and recommendations.



13. The recommendations made by the HPAC, shall be placed before the Panel of two Whole Time Members for their approval. The HPAC/ Panel of WTMs may, considering the facts and circumstances of the case and the gravity of the charges:-

- (i) enhance the settlement amount in serious cases as per the scheme of the Act, or
- (ii) reduce the settlement amount if the settlement amount is disproportionately higher considering the nature of violation, or
- (iii) refuse to consider the case under the consent process.

14. The consent terms finally approved by the Panel of WTMs, i.e. the Settlement Amount (SA) along with the directives, if any, shall be communicated to the applicant.

15. The applicant shall within 15 days from the date of receipt of the intimation send its acceptance of the said terms and remit the SA in lump sum. In case of non-acceptance of the SA and directives, if any or non-communication of acceptance within the stipulated time, the application shall be treated as rejected.

16. A consent application may be withdrawn only once, at any stage prior to the consideration of the application by the HPAC.

17. In case of rejection of the consent application, no request for reconsideration shall be considered and no subsequent application with respect to the same default shall be considered by SEBI at any stage thereafter. This clause shall come into effect on the expiry of 30 days from the date of this circular.

18. The consent application shall be disposed of expeditiously, preferably within a period of six months from the date of registration of the consent application.

19. The Consent order, containing the alleged misconduct, legal provisions alleged to have been violated, facts and circumstances of the case and the consent terms, shall be hosted on the website of SEBI.



20. This Circular shall come into force with immediate effect. All new applications and pending applications as on the date of this circular, except cases where the consent terms have been received from the applicant for placing before the HPAC or cases pending at any stage thereafter, shall be dealt in accordance with this circular.

**J. Ranganayakulu**  
**Executive Director**

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