

INDIAN MERCHANTS' CHAMBER



RESEARCH PAPER ON  
**CONSENT  
SETTLEMENT  
FRAMEWORK**  
REVIEW AND RECOMMENDATIONS

Release Date:  
Wednesday, April 3, 2013



## FOREWORD

IMC has taken upon itself the task of being a bridge between Regulators and market participants. At IMC through Seminars and Workshop we discuss various changes in regulatory framework. One such Seminar was organized on the changes in the Consent Term Regulations framework. Since introduction in 2007 Consent Terms framework had gained considerable momentum until 2012. In 2012 pursuant to various suggestions and criticisms some amendments were made in the regulations. Unfortunately these amendments have reduced considerably the use of this mechanism for disposal of alleged defaults.

The wisdom of SEBI panel has been substituted with mandatory eliminations of certain types of defaults. The list of defaults shows that cases that fall under the Code of Conduct of particular regulations are also rejected. For example a person may not have indulged in Insider Trading but failed to report under Code of Conduct would also be denied the use of Consent Mechanism. This will lead to substantial increase in legal disputes to an otherwise delayed legal system.

Through this paper we attempt to present a study of the consent mechanism as it operated pre May, 2012 and its effectiveness. We have also taken the liberty of preparing a draft of the proposed Consent Regulation which we think would be a great contribution to settlement of non habitual defaults in securities markets. This will also free the Securities Markets from an otherwise delayed legal system of the country.

We wish to put on record our gratitude to Mr. Somasekhar Sr. Partner, J Sagar Associates, Mr. Sandeep Parekh, Founder, Finsec Law Advisors and Mr. M. S. Sahoo, Advocate, who were panellist in our seminar at IMC. The issues discussed in the seminar have been presented in the paper.

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# RESEARCH PAPER ON CONSENT SETTLEMENT FRAMEWORK REVIEW AND RECOMMENDATION

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## I. Settlement of Enforcement Actions

In the past, Indian laws and authorities used to be quite cagey about disposal of enforcement actions by amicable settlement. However, keeping in view the hard realities, the laws as well as the authorities now use three forms of amicable settlement, namely, plea bargaining, consent settlement and compounding, for a large variety of enforcement actions with view to deliver justice better. The Code of Criminal Procedure, 1973, for example, provides for settlement of most kinds of criminal offences which attract imprisonment up to seven years. In advanced jurisdictions, the bulk of civil enforcement actions are settled amicably.

The advantages of this kind of settlement are many in Indian context. It frees up the scarce resources of the authorities and the judicial system which are already saddled with a very large number of enforcement actions awaiting disposal for years. It allows the authorities to have innovative deterrents on the delinquents while achieving equitable remedies for the victims. It is more effective because the settlement orders are passed only after compliance with the terms of settlement. Most importantly, it achieves something in days or months, which decades of trial and appeals may fail to, and avoids the risk of the delinquent being scot free after prolonged, expensive and valiant legal battle just because of lack of the required level of evidence. In short, it achieves the public good that there be an end of litigation, *Expedit reipublicae ut sit finis litium*.

The consent settlement is an alternative to disposal on merits, where the track record is not much to speak about: the conviction rate is hardly 10%; most convictions don't invite a imprisonment, many invite a penalty of ₹5,000, the disposal takes years and even decades, and the victims are not indemnified. The consent settlement avoids all these and often achieves outcomes superior to that is possible through disposal on merits. The stark contrast in disposal of Satyam misdemeanour in India vis-a-vis in the US is testimony to the efficacy of amicable settlement. Another testimony is disposal of the enforcement action relating to Reliance Communications Limited for the misdemeanour that occurred in 2007-09 through consent settlement in early 2011 resulting in debarment from secondary market for one year, rotation of statutory auditors, and upfront payment of ₹50 crore. Contrast this to the fact that a few enforcement actions relating to misdemeanour that happened in



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the last century, as evident from the agenda for the Board meeting on July 28, 2011, were waiting for disposal on merits as on March 31, 2011.

The securities laws generally provide that no appeal shall lie to the Securities Appellate Tribunal from an order made by SEBI or one of its Adjudication Officers, with the consent of the parties. These also provide for compounding of offences. In exercise of these powers and in recognition of the efficacy of amicable settlement, SEBI issued, *vide* circular dated April 20, 2007, guidelines for settlement of enforcement actions. Based on the experience gained in implementation of the guidelines over the last five years, it has modified the same *vide* circular dated May 25, 2012.

### II. Working of the Consent Settlement Framework

By the end of March 2012, SEBI has approved 1186 applications settling various kinds of enforcement actions. These included 75 consent applications where consent orders were passed by the Securities Appellate Tribunal (SAT) and the Supreme Court. These also included 70 compounding applications where the compounding orders were passed by the respective criminal courts. These further included 142 applications where the terms of settlement included debarment from dealing in securities market / suspension of certificate of registration for different periods. During this period, SEBI declined to settle the enforcement actions in respect of 817 consent applications and 26 compounding applications on the ground that the terms of settlement proposed by the applicants were not commensurate. The details of disposal of consent and compounding applications till March 31, 2012 are as under:

Particulars	Consent	Compounding	Total
No. of applications received by SEBI	2558	165	2723
No. of applications disposed by settlement	1116	70	1186
No. of applications rejected	817	26	843
No. of applications withdrawn / infructuous	327	1	328
No. of applications pending	298	68	366
Amount of Disgorgement (₹ lakh)	2897.38	0	2897.38
Settlement/Compounding Charges (₹ lakh)	17499.55	107.59	17607.14
Legal and Administrative charges (₹ lakh)	108.98	40.00	148.98
No. of applications settled where terms included non-monetary terms	142	-	142
No. of applications settled with the approval of SAT, Supreme Court and Courts	75	70	145

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At the end of March, 2012, a total sum of ₹207 crore was realized from such settlement. This amount comprised of ₹29 crore towards disgorgement and ₹176 crore towards settlement/compounding charges. The disgorgement amount is distributed, wherever possible, among the investors who have suffered loss on account of the related misdemeanour. The settlement charges and undistributed disgorgement money, if any, is remitted to Consolidated Fund of India. During April 1 - December 20, 2012, SEBI has approved 38 consent applications realising ₹7 crore towards settlement charges and ₹2 crore towards disgorgement.

The working of consent mechanism under the April 2007 circular was being criticised, among others, on the following grounds, which have been addressed by the circular in May 2012:

- a. The mechanism was being misused by a few to prolong the enforcement proceeding indefinitely by making repeated applications offering marginally better terms of settlement.
- b. Quite a few used to continue to commit the same kind of defaults which they had settled a few times earlier under consent.
- c. The order settling an enforcement action through consent was too brief to impart transparency.
- d. The processing of applications was not transparent.
- e. There were no time limits either for the delinquent to seek consent settlement or for SEBI to dispose of the consent applications.

The consent mechanism was also being criticised on the ground that there was no uniformity in the terms of settlement for similar enforcement actions. The circular of May, 2012 has attempted to address this concern, though it is not possible to do so. No two cases are the same, similar or identical. Two apparently identical proceedings may have different mitigating factors which could lead to different terms of settlement. If these two identical cases were adjudicated on merits, these would in all probability lead to two different outcomes, as trials of two cases of murder do not result in exactly the same punishment. That is the reason why the law usually provides an upper ceiling on punishment for any offence and allows the judge to determine the exact quantum of punishment based on application of mind to the unique facts of the case. Different terms of settlement for two apparently identical proceedings should not, therefore,



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be viewed unusual, though care has to be taken to ensure that similar cases end up in similar outcomes.

There were also a few other concerns. These are based on inadequate understanding of the facts and issues and did not require to be addressed. Some of these are:

- a. It is believed in some circles that SEBI enriches itself by appropriating the settlement charges received under the consent procedure. As stated earlier, the settlement charges received through consent settlement is remitted to the Consolidated Fund of India and does not come to the kitty of SEBI, as is the case with any penalty imposed by any Court in India.
- b. It is believed in some circles that a person can violate any provision of the securities laws and settle the violation, if at all caught, through the consent procedure. The statistics, however, do not support this. Consent settlement is not a matter of right. The three layers in SEBI have to be satisfied that the settlement terms are appropriate to the alleged violation. In fact, they were not satisfied in case of 843 applications, as stated earlier. Settlement proposed in about 42% of the applications has not been accepted by SEBI.
- c. It is alleged in some quarters that that any violation can be settled on payment of money. It may be noted that the enforcement actions are not settled on monetary terms only. In appropriate cases, the terms of settlement are in kind in the sense that these include debarment from trading or accessing securities market, disgorgement, suspension of certificate of registration, etc. For example, the consent settlement in 142 orders debarred 188 persons from dealing in securities market for different periods. About 12% of the applications have been settled on terms which included non-monetary terms. A potential violator of law, therefore, cannot take a chance that his violation would be settled by SEBI through the consent procedure and that too, at best, on payment of money.
- d. Some have expressed a concern that while SEBI refused to settle a few matters on consent, but disposed of the same subsequently on merits without any finding of the guilt on the part of the delinquent or any penalty. It is worth noting that the standards applied for disposal under the consent procedure and disposal on merits are different. It is possible that a delinquent may wish to settle a matter, which does not

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- have adequate evidence, to buy peace, but the same matter, if tried on merits, would naturally find no guilt on his part.
- e. A concern is expressed that SEBI settles most of enforcement actions under the consent procedure and hardly any on merits. Fortunately, the data are contrary to this. For example, SEBI settled enforcement actions against 326 persons in while it disposed of enforcement actions against 2010 persons on merits during the same year.
  - f. A concern is expressed that consent settlement does not have any finding of guilt on the part of the delinquent. It may be noted that the consent settlement does not either have a finding that the delinquent is not guilty. The terms of settlement are different depending on if a delinquent admit or denies guilt.
  - g. It is alleged at times that the consent terms are not commensurate to the violations committed by the party. It needs to be noted that the consent process passes through application of mind at three levels, namely, Internal Committee, HPAC and the Panel of WTMs. Any application for consent is discussed at length at all the three levels, including the HPAC which is an external body headed by a retired Justice of a High Court. This would produce more commensurate outcomes than that is possible under disposal on merits.
  - h. It is believed that disposal of enforcement through the consent procedure does not achieve justice. This is far from the truth. The same outcomes, as would have been obtained if the proceedings were adjudicated on merits, are being achieved through the consent settlement. At times, the consent settlement achieves more than the adjudication on merits simply because the terms of settlement could be more innovative. They are more effective because these orders are passed only after compliance with the terms of settlement. The disposal of proceedings on merits directs the party to pay the penalty which may not be realised always. SEBI has recovered about ₹220 crore during last five years through the consent settlement. In contrast, it has realised a cumulative amount of ₹25 crore towards monetary penalty through adjudication on merits during the last decade.
  - i. There is an apprehension that the consent settlement framework is not supported by law. As stated earlier, the law clearly allows SEBI to settle matters through the consent procedure. This procedure has





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been blessed by SAT, the Supreme Court and other Courts who pass appropriate orders on submission of consent terms agreed to between SEBI and the delinquent concerned.

### III. Difficulties in the Extant Framework

The modified framework brought in by the circular of May, 2012 has made the consent framework impractical. These are:

- a. The earlier framework allowed settlement of all kinds of defaults as long as the terms of settlement were appropriate. The new framework debars settlement of serious FUTP defaults, the ICDR defaults which materially affect the rights of investors, the MF defaults which have resulted in substantial loss to the unit holders, etc. The words 'serious', 'materially', 'substantial', etc., being subjective, legitimatises discretion of SEBI. The HPAC / Panel of WTMs have, however, been granted discretion to settle any default irrespective of its kind and gravity. Thus, the new framework practically allows settlement of all kinds of defaults as the earlier framework, but requires invocation of discretion. Interestingly, SEBI will use discretion initially to deny consent settlement in serious cases, while the HPAC/Panel of WTMs will use discretion subsequently to allow consent in those very cases and *vice versa*. The delinquent would have no clue as to whether a particular default is consentable, and whether a particular default is consentable would be contestable.
- b. There is no reason to prohibit certain kinds of defaults from consent settlement. Ideally, any default, irrespective of its nature and gravity, should be settled through consent, subject, however, to the condition that the settlement terms are appropriate to the alleged default, that is, at least the same or equivalent outcomes, as would have been obtained if the proceedings were adjudicated on merits, are achieved. For example, if a default warrants a penalty of ₹1 lakh on adjudication, it should be settled under consent only if the delinquent either admits the guilt and pays ₹1 lakh, or does not admit or deny the guilt and pays ₹2 lakh. If terms are not appropriate, the consent application should be rejected as has been happening in about 42% of the cases. While the authorities should have no discretion as to which defaults can be settled under consent, they should have full discretion to determine the terms of settlement keeping in view all the relevant factors.

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- c. The new framework prescribes a formula to arrive at the terms of settlement. This robs the consent mechanism of its soul. A formula, howsoever robust and comprehensive, can't capture all possible factors having a bearing on the terms of settlement. For example, it can't capture the strength of evidence and consequently the probability of conviction. Take the case of a default which warrants a consent settlement of ₹1 crore as per the formula. If, however, the evidence available is such that the probability of conviction is 0.1, the delinquent would never settle the default for ₹1 crore. It may not mind to settle it for ₹10 lakh if the strength of evidence is factored in. This explains why a few defaults were not settled earlier under consent even though the delinquent offered handsome amount, but it was completely exonerated subsequently on adjudication on merits. Its unintended consequence is that only the defaults with substantial evidence would be settled under consent while the defaults with inadequate evidence would be adjudicated on merits.
- d. Formula driven approach delivers if the settlement is in monetary terms only. However, the framework rightly allows, wherever necessary, suitable directives under the consent order. These directives such as cancellation of registration, debarment from market, compensation to investors, disgorgement of unlawful gains, etc. could often be more effective and equitable. But since it would be difficult to establish equivalence between monetary terms and such non-monetary directives, the new framework would encourage settlement of defaults mostly in monetary terms which may not always fully achieve the objectives of enforcement actions.
- e. A formula has laudable objectives to ensure that the consent terms are commensurate to the default and uniform for similar defaults. However, since it can't factor in all possible factors, it would occasionally over-estimate the terms of settlement and deny settlement in an otherwise deserving case and *vice versa*. If no formula is used in adjudication where there is application of mind by one person only, it is not necessary to use a formula in consent settlement which passes through three committees and application of mind by nine senior, experienced and responsible persons, including a justice and two whole time members.

Keeping in view the experience gained in implementation of the consent guidelines of 2007 and subsequent modification in May 2012 and various



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concerned expressed and with a view to increase the effectiveness of the consent settlement, the consent framework:

- a. may be provided under the regulations to be made under the securities laws to lend statutory sanctity and have the explicit blessings of the SEBI Board and the Parliament;
- b. should provide a detailed, transparent procedure from receipt of the consent application till the issue of order disposing of the consent application;
- c. must ensure confidentiality of the submissions made by the delinquent during the consent process, but disclose the outcomes in detail;
- d. must institutionalise the Internal Committee, the High Powered Advisory Committee and the Panel of Whole Time Members and their roles in the consent process;
- e. must allow settlement of all kinds of enforcement actions, without any exception, under the securities laws provided the terms are commensurate;
- f. encourage innovative, effective and non-monetary terms of settlement, preferably the terms which are equitable to victims of the related misdemeanour;
- g. must specify the factors to be taken into account to determine the terms of settlement; and
- h. must dispose of the consent application within a time bound manner and hasten the disposal of the enforcement actions on merits if the consent procedure has failed.

**A draft of the Consent Regulations which will fulfil the above requirements is enclosed in following pages**

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### IV. SEBI (Settlement of Enforcement Actions) Regulations, 2013

In exercise of the powers conferred by section 30 read with sections 11, 15T(2) and 24A of the Securities and Exchange Board of India Act (15 of 1992), section 31 read with section 23N of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and section 25 read with sections 22A and 23A of the Depositories Act, 1996 (17 of 1996), the Securities and Exchange Board of India hereby makes the following regulations, namely : —

#### Chapter I Preliminary

##### Short title and commencement

1. (1) These regulations may be called the Securities and Exchange Board of India (Settlement of Enforcement Actions) Regulations, 2013.
- (2) They shall come into force on the date of their publication in the Official Gazette.

##### Definitions

2. (1) In these regulations, unless the context otherwise requires, —
  - (a) 'Act' means the Securities and Exchange Board of India Act (15 of 1992), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Depositories Act, 1996 (17 of 1996), as the case may be;
  - (b) 'delinquent' means any person who is facing any enforcement action;
  - (c) 'Enforcement Action' means any proceeding, preventive, remedial or penal,
    - (i) initiated by SEBI under the securities laws and pending for disposal before the SEBI, Securities Appellate Tribunal, Supreme Court or any Court of law, or
    - (ii) being contemplated by SEBI under the securities laws;
  - (d) 'HPAC' means the High Powered Advisory Committee constituted under regulation 4(1);
  - (e) 'Internal Committee' means the Internal Committee constituted under regulation 3(1);



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- (f) 'Panel' means the Panel constituted under regulation 5(1);
  - (g) 'SAT' means the Securities Appellate Tribunal established under section 15K(1) of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
  - (h) 'SEBI' means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
  - (i) 'securities laws' mean the Securities and Exchange Board of India Act (15 of 1992), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Depositories Act, 1996 (17 of 1996), provisions of the Companies Act administered by SEBI and the rules and regulations made thereunder and the circulars, guidelines, and directions issued thereunder;
- (2) Words and expressions used and not defined in these regulations, but defined in the Act, shall have the meaning respectively assigned to them in the Act.

### Chapter II Authorities

#### Internal committee

3. (1) SEBI shall constitute and reconstitute as many Internal Committees as necessary for the purposes of these regulations.
- (2) An Internal Committee shall consist of three members as under:
- (a) an officer from the Enforcement Department;
  - (b) an officer from the Operations Department dealing with the enforcement action; and
  - (c) an officer from any other Department.
- (3) The Members of the Internal Committee shall be at least of the level of Division Chief.
- (4) The Internal Committee shall transact the business only at meetings when all the members are present.
- (5) All questions which come up before any meeting of the Internal Committee shall be decided by a majority of votes of the Members.



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### HPAC

4. (1) SEBI shall constitute a HPAC for the purposes of these regulations.
- (2) The HPAC shall consist of four members as under:
  - (a) former Justice of a High Court as Presiding Officer,
  - (b) three eminent persons in the field of law, finance, economics, or markets as Members.
- (3) All questions which come up before any meeting of the HPAC shall be decided by a majority of votes of the Members present and voting, and, in the event of an equality of votes, the Presiding Officer, or in his absence, the Member presiding, shall have a casting vote.
- (4) The tenure of the Presiding Officer and Members of HPAC shall not exceed three years.

### Panel

5. (1) SEBI shall constitute a Panel for the purposes of these regulations.
- (2) The Panel shall consist of at least two Whole Time Members of SEBI.

## Chapter III Application for Consent Settlement

### Application

6. (1) A delinquent wishing to settle any enforcement action may submit an application in Form A to Enforcement Department.
- (2) The application under regulation 6(1) shall be made
  - (a) any time before the issue of show cause notice;
  - (b) within 30 days of receipt of the show cause notice;
  - (c) within 30 days of the filing of prosecution before the appropriate Court of law;
  - (d) within 30 days of the admission of appeal by the SAT;
  - (e) within 30 days of admission of appeal by the Supreme Court, as the case may be.



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- (3) An application under regulation 6(1) may seek settlement of one or more enforcement actions arising from the same cause of action or related to the same alleged violation of securities laws.
- (4) An application under regulation 6(1) shall concisely state if:
  - (a) the delinquent admits the guilt, denies the guilt, or neither admits nor denies the guilt; and
  - (b) the terms the delinquent offers to settle the enforcement action.
- (5) An application under regulation 6(1) shall be accompanied by a processing fee of ₹25,000 by way of demand draft drawn in favour of 'Securities and Exchange Board of India'.
- (6) The delinquent shall have only one opportunity to make consent application in respect of the same cause of action or the same alleged violation of the securities laws.

### Chapter IV Consideration of Application

#### Timelines

7. (1) The Enforcement Department shall scrutinise the applications received under regulation 6(1) to verify that it is in order.
  - (2) SEBI shall return the application to the delinquent within one week of receipt of the application if it is not in order.
  - (3) An application received under regulation 6(2)(a) shall be processed only after the fact finding process is over.
  - (4) An application shall be disposed of by SEBI, after following the procedure under regulation 8, by issue of an order either rejecting or accepting the application, within 90 days from the date of
    - (a) completion of the fact finding process in case applications under regulation 6(2)(a), and
    - (b) receipt of the application under regulation 6(2)(b).
  - (5) An application shall be disposed of by SEBI, after following the procedure under regulation 8, within 90 days from the date of receipt of application under regulation 6(2)(c) to 6(2)(e) either

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- (a) by an agreement between SEBI and the delinquent, if the application is accepted; or
  - (b) by an order if the application is rejected.
- (6) SEBI and the delinquent shall jointly submit the agreement arrived at under regulation 7(5)(a), at the earliest opportunity, for the consideration of the SAT, the Supreme Court or the appropriate Court of Law, as the case may be, for orders.
- (7) SEBI shall continue the normal process of disposal of the enforcement action on merits even if an application under regulation 6(1) has been received in respect of the same action,

Provided that no order shall be passed till the disposal of the consent application.

### Process

8. (1) Every application found in order under regulation 7(1) shall be submitted to Internal Committee.
- (2) The Internal committee shall meet the delinquent or his authorised representative to consider the terms of settlement offered in the application and, if it considers that the terms offered are not commensurate with the alleged violation under the enforcement action, suggest the terms it considers commensurate.
- (3) Based on the deliberations in the meeting of the delinquent with the Internal Committee under regulation 8(2), the delinquent may submit revised terms within seven days of the meeting.
- (4) The Internal Committee shall consider the terms offered in the application or the revised terms offered under regulation 8(3), as the case may be, and recommend in writing whether the terms are commensurate with the alleged violation under the enforcement action.
- (5) The Enforcement Department shall place the recommendations of the Internal Committee arrived under regulation 8(4) before the HPAC.
- (6) The HPAC shall consider the recommendation of the Internal Committee and while doing so, may
- (a) meet the delinquent for better appreciation of facts and circumstances;





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- (b) suggest different terms of settlement to the delinquent.
- (7) The HPAC shall recommend in writing whether:
  - (a) the terms offered in the application or the revised terms offered under regulation 8(3) are commensurate with the alleged violation under the enforcement action; or
  - (b) the delinquent needs to be advised to offer a different terms for settlement of the enforcement action, as suggested by it in its meeting with the delinquent.
- (8) The Enforcement Department shall place the recommendations of the HPAC under regulation 8(7) before the Panel.
- (9) The Panel shall consider the recommendation of the HPAC and take a decision as to whether to accept or reject the application and the terms of settlement if the application is to be accepted.
- (10) The Enforcement Department shall convey the decision of the Panel to the delinquent with an advice to comply with the monetary terms of settlement within seven days and to undertake to comply with the non-monetary terms, if any, in the manner decided by Panel.
- (11) On compliance with the monetary terms in respect of applications under 6(2)(a) and 6(2)(b), SEBI shall issue an order closing the enforcement actions under the application and specifying the mechanism to monitor the compliance with non-monetary terms, if any.
- (12) On compliance with the monetary terms in respect of applications under 6(2)(c) to 6(2)(e), SEBI shall draw up agreement with the delinquent indicating its willingness to close the enforcement action(s) under the application subject to compliance with the non-monetary terms, if any, by the delinquent and the approval of the SAT, Supreme Court or the appropriate Court of Law, as the case may be.
- (13) SEBI shall issue an order rejecting the consent application where the Panel rejected the application or where the delinquent failed to comply with the monetary terms.
- (14) If the non-monetary terms, if any, are not complied with in the manner decided by the Panel, the enforcement proceeding will be resumed and disposed of on merits in normal course.

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- (15) If the agreement arrived at under regulations 8(12) is not accepted by the SAT, the Supreme Court or the appropriate Court of Law, as the case may be, SEBI shall
  - (a) refund the money promptly to the delinquent it had received on compliance with the monetary terms, and
  - (b) pursue the proceeding before the SAT, the Supreme Court or the appropriate Court of Law, as the case may be, in normal course.
- (16) If the non-monetary terms are not complied with in the manner decided by the Panel and approved by the SAT, the Supreme Court or the appropriate Court of Law, as the case may be, it will be deemed to be contempt of Court.
- (17) The application and submissions made by the delinquent before the Internal Committee and the HPAC shall
  - (a) be held by SEBI in fiduciary capacity;
  - (b) not be released to public except under the directions of Court, and
  - (c) not be used against the delinquent under any circumstance.
- (18) The order under regulation 7(4) and agreement under 7(5) shall contain the alleged misconduct, provisions alleged to have been violated, facts and circumstances of the case, the recommendations of the Internal Committee, the recommendations of the HPAC, and the consent terms.
- (19) The order under regulation 7(4) shall be hosted on SEBI website as soon as it is issued.
- (20) The agreement under regulation 7(5) shall be hosted on SEBI website as soon as the SAT, the Supreme Court or the appropriate Court of Law, issues the order after consideration of the agreement.

### Factors to be taken into account

9. (1) While determining the terms of settlement, the Internal Committee, the HPAC and the Panel shall have due regard to the following factors:
  - (a) the amount of disproportionate gain or unfair advantage made as a result of the default,



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- (b) the amount of loss caused to an investor or group of investors as a result of default,
  - (c) the repetitive nature of the default,
  - (d) the stage of the enforcement action,
  - (e) the track record of the delinquent, and
  - (f) the worst outcome for the delinquent if the enforcement actions were disposed of on merits.
- (2) The Enforcement Department must make available the show cause notice, the consent application and other relevant records and documents to the Internal Committee, the HPAC and the Panel to enable them to formulate appropriate terms of settlement or decide if the terms offered by the delinquent are commensurate with the alleged default.
- (3) SEBI shall decline to settle an enforcement action only if the terms offered by the delinquent are not commensurate to the facts of the case.

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### Form A Application for Consent Settlement

1	Details of the Delinquent	
	(a) Name (b) Address (c) PAN (d) Registration Number, if applicable	
2	Details of enforcement actions initiated in the last five years against the delinquent and current status of the same  (a) Section 11B Proceeding (b) Adjudication Proceeding (c) Enquiry Proceeding (d) Prosecution (e) Any other Proceeding	
3	Details of alleged violation sought to be settled  (a) Describe the alleged activity (b) Describe the provisions allegedly violated (c) Current stage of the Proceeding (d) Details for identification of the Proceeding	
4	Whether the delinquent admits the guilt?	
5	What terms does the delinquent propose to settle the enforcement action(s)	
	(a) Non-Monetary Terms i. Debarment from market ii. Debarment from iii.	



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	(b) Monetary Terms i. Disgorgement ii. Settlement Charges iii. Compensation to investors iv. Contribution to Investor Welfare Fund v.	
6	List of Enclosures (a) (b) (c) (d)	

### Verification

I, ....., son/ daughter /wife of Shri ..... do hereby verify and affirm on oath that the contents of this application are true to my personal knowledge and belief and that I have not suppressed any material facts.

(Signature of the Delinquent)

### Undertaking

I, ....., son/ daughter /wife of Shri ..... do hereby undertake the following:

- a. The settlement of the enforcement actions with SEBI shall not preclude any person other than SEBI from seeking any legal remedy against the delinquent.
- b. The enforcement action shall revive if at any time it is found that the delinquent has not revealed the correct facts or suppressed any material facts in this consent application.

(Signature of the Delinquent)



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