

Consultation Paper
on
Proposed Legal Provisions for
Summary Proceedings

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1. Objective

1.1. The objective of this consultation paper is to seek comments from public on proposed legal changes in the SEBI (Intermediaries) Regulations, 2008 ('Intermediaries Regulations') for inclusion of the provisions for the summary proceedings to handle the cases of certain violations of the securities laws by Intermediaries, in a faster and more efficient manner and thereby enhancing the Board's ability to act swiftly in protecting the interest of investors and maintaining integrity, transparency and efficiency of the securities market.

2. Background

2.1. Summary proceedings were earlier part of Chapter III of the erstwhile SEBI (Procedure of Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. However, with the promulgation of the Intermediaries Regulations in 2008, the said regulations were repealed in May 2008.

2.2. There are certain cases of violations wherein it has been observed that the violations are obvious in nature or are either accepted by the Intermediary or need minimal documents or evidence to corroborate the facts.

2.3. One such violation is payment of fees by intermediaries to keep their registration in force. With the advent of the permanent registration being granted, intermediaries are required to only pay the fees at certain interval to keep their registration in force. It has been however noted that there have been increased number of instances wherein intermediaries have not paid fees to keep their registration in force and hence their registration as an intermediary has expired. Since only valid certificates of registration should exist, expired certificates of registration needs to be cancelled. Cancellation of the certificate of registration shall entail the current procedure under Chapter V of the Intermediaries Regulations which is long-drawn, even though it is clear that there is no dispute about violation.

2.4. Similarly, there are few intermediaries which repetitively fail to submit periodic reports within the given timeline specified by SEBI.

2.5. In terms of the SEBI (Investment Advisers) (Amendment) Regulations, 2020, registered Investment Advisors were required to take membership of the Investment Adviser Administration and Supervision Body (IAASB). It was a pre-requisite to keep their registration in force as an Investment Advisor. A couple of hundred entities have not sought registration with the IAASB in the given timeline, thus their registration with the Board is not valid. However, the cancellation of the registration in these cases requires initiation of separate proceedings for each of the two hundred intermediaries and these proceedings may be dealt with by multiple designated authorities and hence entail considerable resources though the violations are obvious and undeniable.

3. Need for summary proceedings

- 3.1. For the nature of violations mentioned above, ordinary procedure, of handling cases under Chapter V of the Intermediaries Regulations, may be time-consuming, inefficient, non-uniform and cumbersome, even to the intermediaries.
- 3.2. For these kind of violations which are obvious in nature, are either accepted by the Intermediary or need minimal documents or evidence to corroborate the facts, a different approach is needed to deal with.
- 3.3. The swift and timely action embedded in the regulatory framework governing intermediaries is crucial to handle such cases for maintaining the integrity, transparency and efficiency of the securities market.
- 3.4. Over a period of time, it has been realised that the approach in the form of summary proceedings is warranted to handle such violations in an expeditious and more efficient manner. The provisions for summary proceedings shall ensure that the similar violations are treated in a uniform manner and shall reduce the existing long-drawn enforcement process in certain violations. This is symptomatic of the cases that are currently being dealt with under the regulation 30A of Intermediaries Regulations, for stock brokers or clearing members who have been expelled from their membership of the stock exchange(s) or clearing corporation(s) and depository participants on termination of their depository participant agreements with depository(ies).

3.5. In line with this, it is proposed to introduce summary proceedings for specific cases involving intermediaries. Summary proceedings offer an opportunity to the entity to provide its submissions on the reasons why fact on which the proceedings are initiated should not be concluded against him with adverse consequence. Given the need, it is proposed to have provisions for “summary proceedings” in Intermediaries Regulations.

3.6. The proposed amendments to the Intermediaries Regulations for inclusion of provisions of summary proceedings are aimed to streamline the regulatory process for handling these kind of violations by intermediaries, thereby enhancing the Board's ability to act swiftly in protecting investors and maintaining market integrity.

4. Proposed legal framework

4.1 The proposed provisions of the summary proceedings shall include the provisions for identifying the cases for summary proceedings and provisions detailing the summary procedure. The proposed provisions of the summary proceedings to be included under Intermediaries Regulations are provided in Annexure A.

4.2 Cases for summary proceedings:

The summary proceedings will apply to cases involving intermediaries under specific conditions, including –

- i. expulsion as a member by stock exchange(s) or clearing corporation(s),
- ii. termination of depository agreements,
- iii. claims of returns or performance which are not permitted by the Board
- iv. claims of returns or performance which are found to be false or misleading by the Board or an agency as may be specified by the SEBI (SEBI had issued a consultation paper on Performance Validation Agency (PVA) wherein it is proposed that, in future, PVA shall validate the claims of returns or performance by the intermediary),
- v. non-payment of specified fees such as payment of fees for keeping the registration in force,
- vi. intermediary not being traceable,

- vii. failure to submit periodic reports for three or such consecutive periods as may be specified by the SEBI,
- viii. cases where intermediary has admitted the violation.

Please refer to the provisions in proposed Regulation 30A (1) of the Intermediaries Regulations mentioned at Annexure A.

4.3 Summary Procedure:

These provisions shall outline the process for issuing notices, submissions and submission timelines, decision-making criteria, obligations that the intermediary needs to satisfy while passing the order and post-cancellation of certificate and the manner of intimation of the order to the intermediary.

In terms of these provisions-

- i. An Intermediary shall be provided twenty-one days from the date of receipt to provide its submission through a written response.
- ii. The competent authority shall endeavour to pass an order within twenty-one days from the date of receipt of response of the intermediary or the date of expiry of the time period allowed to file the written response.
- iii. The competent authority may pass an appropriate order of cancellation or suspension of the certificate of registration of the intermediary or any other order, as deemed fit.
- iv. The competent authority may, while passing the order, require the intermediary to satisfy certain conditions.
- v. The copy of the order shall be sent to the Intermediary and uploaded on the website of SEBI. The copy of the order shall also be sent to the stock exchange(s) or the clearing corporation(s) or the depository(ies) or the body recognised by SEBI for administration and supervision of intermediary, as the case may be, and they shall upload the copy of the order on their websites.

Please refer to the provisions in proposed regulation 30B of the Intermediaries Regulations mentioned at Annexure A for further details.

4.4 The proposed regulations for summary proceedings shall substitute the current Regulation 30A of Intermediaries Regulations.

5. Public Comments

5.1 The comments are invited on the proposals mentioned in the consultation paper. The comments/ suggestions should be submitted latest by August 06, 2024, through the following link:

<https://www.sebi.gov.in/sebiweb/publiccommentv2/PublicCommentAction.do?doPublicComments=yes>

5.2 In case of any technical issue in submitting your comment through web based public comments form, you may write to consultationMIRSD@sebi.gov.in with the subject: "*Public comments on Proposed Legal Provisions for Summary Proceedings.*"

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Annexure A: Draft provisions for inclusion in Intermediaries Regulations

“Summary proceedings: cases and procedure

30A (1). Notwithstanding anything contained in these regulations, a summary procedure as specified in sub-regulation (2) may be applied to-

a) a stock broker or a clearing member, in respect of which intimation has been received by the Board from all the stock exchange(s) or the clearing corporation(s), as the case may be, of which it is a member, that such stock broker or clearing member has been expelled as its member;

b) a depository participant, in respect of which intimation has been received by the Board from all the depository(ies) where the participant is admitted, that the depository participant agreement has been terminated by the depository(ies);

c) an intermediary found to have made claim(s) of return or performance in respect of or related to a security or securities unless otherwise permitted by the Board to make such claim(s);

d) an intermediary found, by the Board or by such an agency as may be specified by the Board, to have made false or misleading claim(s) of return or performance in respect of or related to a security or securities;

e) an intermediary which fails to pay fees to the Board or to such body as may be specified, in terms of provisions of the relevant regulations governing such intermediary;

f) an intermediary which is not traceable;

g) an intermediary which has failed to submit periodic reports for three consecutive periods or such other period(s) as may be specified, to the Board in terms of provisions of the relevant regulations governing such intermediary or the circular(s) issued thereunder;

h) an intermediary which has admitted to have violated any of the provisions of the securities laws or directions, instructions or circulars issued by the Board.

(2) In respect of cases specified in sub-regulation (1), the competent authority shall issue a notice to the concerned intermediary communicating the grounds for initiation of the proceedings under this Chapter and the violation alleged to have been committed by the noticee.

(3) The notice issued under sub-regulation (2) shall require the intermediary to make its submission(s), if any, within twenty-one days from the date of receipt of the notice, only

through a written response, along with documentary evidence, if any, as to why the certificate of registration granted under the Act or the regulations made thereunder should not be cancelled or suspended.

(4) No further opportunity beyond the timeline specified in sub-regulation (3) shall be allowed.

(5) No further opportunity of hearing shall be granted while disposing of the proceedings under this regulation.

(6) After considering the facts and circumstances of the case, material on record and the written submissions, if any, the competent authority shall endeavor to pass an order within twenty-one days from—

(i) the date of receipt of the written submissions of the intermediary; or

(ii) the date of expiry of the time period allowed to file the written submissions under sub-regulation (3) in case no written submissions are filed within the specified period.

(7) The competent authority may pass an appropriate order of cancellation or suspension of the certificate of registration of the intermediary or any other order, as deemed fit.

(8) The competent authority, while passing the order, if considered necessary, impose such conditions upon the intermediary as it deems fit to protect the interest of the investors or its clients or the securities market.

(9) The competent authority may, while passing the order, require the intermediary to satisfy the Board on the factors including though not limited to the following —

(a) the arrangements made for maintenance and preservation of records and other documents as required under the relevant regulations;

(b) redressal of investor grievances;

(c) transfer of records, funds or securities of its clients;

(d) the arrangements made for ensuring continuity of service to the clients;

(e) defaults or pending action, if any; and

(f) such other conditions as may be imposed by the competent authority in the interest of investors or the client of intermediary or the securities market.

(10) On and from the date of cancellation of the certificate, the intermediary concerned shall forthwith –

(a) return the certificate of registration so cancelled to the Board, if the same has been issued in physical form and shall not represent itself to be a holder of the certificate for carrying out the activity for which such certificate had been granted;

(b) cease to carry on any activity in respect of which the certificate had been granted;

(c) transfer its activities to another person holding a valid certificate of registration to carry on such activity or allow its clients or investors to withdraw or transfer their securities or funds held in its custody or to withdraw any assignment given to it, without any additional cost to such client or investor;

(d) make provisions as regards liability incurred or assumed by it;

(e) take such other action including action relating to any record(s) or document(s) and securities or money of the investors that may be in the custody or control of such person, within the time and in the manner, as may be required under the relevant regulations or as may be directed by the Board while passing an order under this Chapter or otherwise.

(11) A copy of the order passed under this Chapter shall be sent to the intermediary concerned and to be uploaded on the website of the Board.

(12) The copy of the order of cancellation of the certificate of registration shall be sent to the stock exchange(s) or the clearing corporation(s) or the depository(ies) or the body or body corporate recognized by the Board for administration and supervision of the intermediary, as the case may be, and they shall upload such copy of the order on their respective websites.”
