



CIRCULAR

SEBI/HO/EFD2/CSD/CIR/P/2019/0000000072

June 18, 2019

To,

Whomsoever it may concern

Dear Sir/ Madam,

Subject: Factors for assuring confidentiality in a settlement application filed under Chapter IX of the SEBI (Settlement Proceedings) Regulations, 2018.

A person who may have committed a violation of securities laws, other than those detailed in Tables VII to IX of Schedule II of the SEBI (Settlement Proceedings) Regulations, 2018, may make full disclosure of such violation and also provide substantial assistance in examination/investigation/inspection/inquiry/audit/any other proceedings (hereinafter referred to as “examination proceedings”) that is initiated/is ongoing/yet to be initiated by the Board, against any person in respect of violation of the securities laws for the purpose of seeking grant of confidentiality and reduced settlement charges.

2. In order to assure confidentiality to an applicant who provides assistance in examination proceedings, the Board may assess the information/assistance/co-operation rendered during such examination proceedings by *inter alia* considering, the following factors:-

(A) ASSISTANCE PROVIDED: - Nature of co-operation, based on, but not limited to the following,-

- (i) Whether the co-operation was provided before he or she had any knowledge of any pending examination proceedings and related action;

Explanation- A ‘*related action*’ is a judicial or administrative action in respect of the same cause of action brought by:

- a. The Union or State Government;
 - b. A regulatory authority established by or under any law;
 - c. A self-regulatory organization; or
 - d. A recognized stock exchange.
- (ii) Whether the applicant was the first person to report the misconduct to the Board or to offer co-operation and such co-operation was truthful, complete and reliable;
- (iii) Whether the co-operation was voluntary or pursuant to the terms of an agreement with any other law enforcement or regulatory organization/agency;
- (iv) Whether the co-operation resulted in substantial assistance in conclusion of such examination proceedings and resulted in conserving of time and resources;
- (v) Whether any hardship was experienced by the applicant as a result of such co-operation;
- (vi) Whether the applicant provided non-privileged information, which was not requested by the Board but otherwise might not have been discovered;
- (vii) Whether the co-operation was in the form of original information (sufficiently specific and credible) to cause the Board to commence an examination proceedings or to inquire concerning different conduct as part of a current examination proceedings;
- (viii) Whether the Board brought a successful judicial or civil and administrative action based on the original information.

Explanation – For information to be considered *original*, it may be:-

- i. Derived from an independent knowledge and analysis of the person providing, but not from confidential communication protected under the Indian Evidence Act, 1872 (1 of 1872);
 - a. ‘*Independent knowledge*’ means information in possession of the applicant that is not derived from publicly available sources but may include his experiences, communications and observations in his business or social interactions;
 - b. ‘*Independent analysis*’ means the applicant’s own analysis, done alone or in combination with others. Analysis means examination and evaluation of

information that may be publicly available, but which should reveal information that is not generally known or available to the public.

- ii. Not derived from an allegation made in a judicial or civil and administrative hearing/in a governmental report/hearing/audit/investigation, unless the applicant is the source of such information.
- (ix) Whether the applicant encouraged/authorized others to assist the Board who might not have otherwise participated in the examination proceedings.

(B) GRAVITY OF THE SUBJECT MATTER:-

- (i) The nature and type of defaults under the securities laws;
- (ii) The age and repetitive nature of defaults.
- (iii) The adverse effect upon investors due to the defaults involved.

(C) FACTORS WHICH MAY ADVERSELY AFFECT THE APPLICANT'S CLAIM FOR CONFIDENTIALITY:-

- (i) Past history of securities laws violations by the applicant;
- (ii) The extent of involvement of the applicant in the violation of securities laws assessed in the context of the individual's knowledge and position of responsibility at the relevant time;
- (iii) The degree to which the applicant tolerated illegal activity. Whether the applicant had taken adequate steps to prevent the violations from occurring or continuing, such as notifying the Board or other appropriate law enforcement agency of the misconduct or, in the case of a violation involving a business organization, notifying members of the management who are not involved in the misconduct;
- (iv) Whether the applicant is/was an auditor/accountant/compliance officer; an associated person of a regulated entity (such as a broker or dealer); a fiduciary for other persons regarding financial matters; an officer or director of listed companies; or a member of senior management and hence ought to have exercised a higher standard of diligence but failed to do so.
- (v) The plausibility of the reasons for the applicant to delay reporting of the violations of the securities laws;

- (vi) The degree to which the applicant knowingly interfered with an entity's established legal, compliance or audit procedures to prevent or delay detection of the reported violation;
 - (vii) The efforts undertaken by the applicant to remediate/mitigate/indemnify the harm caused by the violations;
 - (viii) The sanctions imposed on the applicant by other Central/State authorities and industry organizations/professional bodies for the defaults which are the subject matter in the examination proceedings;
3. Applicants desirous of filing a settlement application under Chapter IX of the SEBI (Settlement Proceedings) regulations, 2018 may take note of the aforesaid at the time of filing the application with the Board.
 4. This Circular is issued in exercise of the powers conferred under sub-section (1) of Section 11 of the Securities and Exchange Board of India Act, 1992 read with Regulation 19 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018.
 5. This circular shall come into force with immediate effect.

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