

Enquiry and Adjudication Proceedings

August 10, 2018



Power and Functions of SEBI

- Legislative- Regulations, Circulars & Guidelines
- Administrative- Development & monitoring
- Quasi Judicial

Quasi Judicial

- Proceedings under Section 11(4) and 11B of SEBI Act
- Adjudication Proceedings
- Enquiry Proceedings under Securities and Exchange Board of India (Intermediaries) Regulations, 2008

Enquiry Proceedings

- Under Chapter V of Securities and Exchange Board of India (Intermediaries) Regulations, 2008
- Under Chapter VA Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (summary procedure)

Enquiry

- Procedure

- Appointment of designated authority
- Issuance of notice.
- Action in case of violation
 - recommending,—
 - (i) suspension of certificate of registration for a specified period;
 - (ii) cancellation of certificate of registration;
 - (iii) prohibiting the noticee to take up any new assignment or contract or launch a new scheme for the period specified in the order,

Enquiry

continued...

- (iv) debarring a principal officer of the noticee from being employed or associated with any registered intermediary or other registered person for the period specified in the order;
- (v) debarring a branch or an office of the noticee from carrying out activities for the specified period;
- (vi) warning the noticee.

- Order of Designated member
- Appeal to Securities Appellate Tribunal under section 15T of the SEBI Act

Adjudication Proceedings

- Appointment by Board
- Procedure under:
 - Securities and Exchange Board of India (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995
 - Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005
 - Depositories (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005
- Penalty under Chapter VIA of the Act
- Appeal to SAT under section 15T of the Act

Requirement for AO/DA

- Appointment of AO not below the rank of a Division Chief under Section 15 I of SEBI Act, 1992 and/or Section 19H of Depositories Act, 1996 and/or Section of 23-I of the Securities Contracts (Regulation) Act, 1956
- Designated Authority not below the rank of a Division Chief is appointed for conducting enquiry under SEBI (Intermediaries) Regulations, 2008, who after receipt of reply from the Noticee submits the report to the Designated Member.

Procedure for Adjudication

- Issuance of SCN
- Receipt of reply
- Inspection of documents
- Examination/ Cross-Examination of witnesses
- AO has powers to summons witnesses
- Conducting Personal Hearing
- Passing of Order

SCN

- ▶ Appeal No. 16/2010 Jatin Manubhai Shah v. SEBI
“Notice is the first limb of the principle of Natural Justice. It must be precise and unambiguous. It should apprise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation.”
- Hand Delivery to the entity or his duly authorized representative
- Rules amended w.e.f. 28.05.2015 to include delivery by Fax, E-mail, Courier, Speed Post with Acknowledgment Due, Registered Post Acknowledgement Due
- If not delivered by above modes -
 - Affixture by pasting on outer door witnessed by two persons
 - Upon failure of affixture, publication of Notice is done in at least 2 newspapers.
- Noticee is given 14 days from the receipt of SCN to file reply.

Post SCN

- ▶ After examination of reply, AO can close the proceedings after passing speaking order.
- ▶ If not closed then a notice for personal hearing is sent.
- ▶ Principles of Natural Justice to be followed.
- ▶ Legal representation is allowed.
- ▶ As a matter of practice not more than 2 adjournments are allowed before proceeding with the matter ex-parte.
- ▶ Inspection of Documents.
- ▶ New evidence made available during the hearing.
- ▶ Minutes of the hearing prepared and copy of the same given to the party.
- ▶ Given time for additional submissions and written arguments (if any).

Penalties under Chapter VI-A

Section	Minimum Penalty	Maximum Penalty
15A - Failure to furnish information, return, etc	Rs. One Lakh per day	Rs. One Crore
15B - Failure to enter into agreement with clients	Rs. One Lakh per day	Rs. One Crore
15C - Failure to redress investors' grievances	Rs. One Lakh per day	Rs. One Crore
15D – Defaults by Mutual Funds	Rs. One Lakh per day	Rs. One Crore
15E – Default by Asset Management Companies	Rs. One Lakh per day	Rs. One Crore

15F - Penalty for failure in case of stock brokers

15F(a) – failure to issue contract notes		Five times of the amount of contract note
15F(b) Failure to deliver security	Rs. One Lakh per day	Rs. One Crore
15F(c) – Excess Brokerage	Rs. One Lakh per day	Five times of the amount of Excess Brokerage
15G – Insider Trading	Rs. Ten Lakh	Three times the profit made
15H – Non-disclosure in takeovers	Rs. Ten Lakh	Three times the profit made
15HA – Fraudulent and Unfair Trading	Rs. Five Lakh	Three times the profit made
15HB – All Other cases		Upto Rs. One Crore

Section	Violation	Penalty w.e.f 08.09.14	Maximum
23D of SCRA	Penalty for failure to segregate securities or moneys of client or clients	Minimum 1 Lakh	Maximum 1 Crore
23E of SCRA	Penalty for failure to comply with provision of listing conditions or delisting conditions	Minimum 5 Lakh	Maximum 25 Crore
23F of SCRA	Penalty for excess dematerialisation or delivery of unlisted securities	Minimum 5 Lakh	Maximum 25 Crore
23G of SCRA	Penalty for failure to furnish periodical returns by the Stock Exchanges	Minimum 5 Lakh	Maximum 25 Crore
19D of Depository Act	Depositories Act, 1996- Penalty for delay in dematerialisation or issue of certificate of securities	Minimum 1 Lakh	Maximum 1 Crore
19E of Depository Act	Penalty for failure to reconcile records of dematerialised securities by a depository or participant or any issuer or its agent or any person, who is registered as an intermediary	Minimum 1 Lakh	Maximum 1 Crore

Factors for deciding Penalty

- Section 15J: While adjudging quantum of penalty under section 15I, the adjudicating officer shall have due regard to the following factors, namely:
 - (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
 - (b) the amount of loss caused to an investor or group of investors as a result of the default;
 - (c) the repetitive nature of the default.

Issues and Challenges

- Service of SCNs and Hearing Notices
 - Wrong or Incomplete Address
 - Non Cooperation by entities
- Delay tactics by entities
 - Inspection of Documents
 - Cross Examination
 - Seeking Various Documents
 - Seeking Adjournments
 - Misuse of Consent Process