

**Consultation paper on “Procedure for seeking waiver or reduction of interest in respect of recovery proceedings initiated for failure to pay penalty”**

**Background:**

1. Section 28A of the Securities and Exchange Board of India Act, 1992 ('SEBI Act'), Section 23JB of the Securities Contracts (Regulation) Act, 1956 ('SCRA') and Section 19IB of the Depositories Act, 1996 ('Depositories Act') (collectively referred as “relevant securities laws provisions”) provide that during the exercise of powers for recovery of dues, provisions of Sections 220 to 227, 228A, 229, 232, the Second Schedule and the Third Schedule to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be shall apply with necessary modifications, as if the said provisions and the rules made thereunder were the provisions of these Acts and refer to the amount due under these Acts instead of income-tax under the Income-tax Act.
2. Section 220(2) of the Income-tax Act, 1961 empowers the Recovery Officer of SEBI to recover the outstanding amount along with the applicable interest as specified therein. Section 220(2A) of the Income-tax Act, 1961 confers powers on the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to reduce or waive the amount of interest paid or payable.
3. In line with the above, the Board has delegated the power to waive or reduce the interest levied only in respect of recovery proceedings initiated for failure to pay penalty, to the Competent Authority provided hereunder:
  - a) Panel of Executive Directors of SEBI, where the amount of interest sought to be waived or reduced is less than Rs. 2 crores;
  - b) Panel of Whole-time Members, in other cases.
4. Further, the Board has approved that the waiver or reduction of interest shall not be applicable in the following cases and the same shall be returned forthwith:
  - a) where interest for failure to remit fees to the Board is levied on the intermediaries in accordance with respective intermediary regulations;

b) where the interest on the amount directed to be disgorged or refunded is levied in accordance with the orders passed under section 11, 11B, 11(4) of the SEBI Act.

5. In this regard, the following procedure is proposed to be issued through a circular:

- A.** The application seeking waiver or reduction of interest may be forwarded to the Recovery Officer having the necessary jurisdiction over the matter in the format detailed in **Annexure I**; along with all documents in support of the satisfaction of requirements under clauses (i), (ii) and (iii) of Section 220 (2A) of the Income-tax Act, 1961. The said clauses are reproduced hereunder for ease of reference:
- (i) payment of such amount has caused or would cause genuine hardship to the assessee;*
  - (ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and*
  - (iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him:*
- B.** The application for waiver or reduction of interest may only be sought for the period subsequent to the service of the notice of demand.
- C.** An application may be filed only in the cases where the principal amount due under the notice of demand stands fully paid.
- D.** The Recovery Officer shall place the application before the Competent Authority for consideration.
- E.** The order accepting or rejecting the application, either in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received. However, for applications pending as on the date of issuance of this circular, order accepting or rejecting the application, either in full or in part, shall be passed within a period of twelve months from the end of the month of the issuance of this circular.
- F.** No order rejecting the application, either in full or in part, shall be passed unless the applicant has been given an opportunity of being heard.

## **PUBLIC COMMENTS**

6. Public comments are invited on the above “*Procedure for seeking waiver or reduction of interest in respect of recovery proceedings initiated for failure to pay penalty*”. The comments/ suggestions should be submitted by latest by **December 02, 2024**, through the online web-based form which can be accessed using the following link:

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

7. In case of any technical issue in submitting your comment through web based public comments form, you may write to [sksahu@sebi.gov.in](mailto:sksahu@sebi.gov.in) and [podtpdrrd@sebi.gov.in](mailto:podtpdrrd@sebi.gov.in) with the subject "**Public comments on - Procedure for seeking waiver or reduction of interest in respect of recovery proceedings initiated for failure to pay penalty**"

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**Annexure I**

<b>Information about the Applicant / Defaulter</b>		
1	Name	
2	PAN Number	
3	Address	
4	Email	
5	Mobile Number / Contact Details	
6	Details of Recovery Certificate pursuant to which the application is being made	
7	Details of payments made by you towards the Recovery Certificate	
8	Details of request(s) of waiver/reduction of interest made by you in any other recovery proceedings and its outcome	
9	Details of all the assets	
10	<p>Submissions along with supporting documents for satisfying the following conditions:</p> <p>A. Payment of such amount has caused or would cause genuine hardship to you;</p> <p>B. Default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond your control; and</p> <p>C. You have co-operated in any inquiry relating to any show cause notice issued by SEBI or any proceeding for the recovery of any amount due from you.</p>	