

# Regulatory Hotline

August 10, 2022

## SEBI AMENDS INTERMEDIARIES REGULATIONS: ANOTHER STEP TOWARDS EFFECTIVE REGULATION

The Securities and Exchange Board of India ("SEBI") vide its notification dated August 1, 2022<sup>1</sup> amended the SEBI (Intermediaries) Regulations, 2008 (the "Intermediaries Regulations"). Substituting the word 'competent authority' for 'designated member', the SEBI (Intermediaries) (Amendment) Regulations, 2022 ("Amendment Regulations") has widened the scope of SEBI's powers of initiating proceedings against the wrongdoers and taking adequate action against them.

### THE AMENDMENTS

#### Introduction of 'competent authority'

The Intermediaries Regulations, *inter alia*, provide for actions to be taken by SEBI in case of default by a person registered under the Securities and Exchange Board of India Act, 1992 ("Act") and / or the regulations made thereunder, as an intermediary<sup>2</sup>, in addition to providing the manner of suspension or cancellation of such intermediary's registration certificate.

Prior to the issuance of the Amendment Regulations, the Intermediaries Regulations only permitted a 'designated member' to initiate proceedings against any person who had been granted a certificate of registration, to call up the noticee to make its submission, to remit the matter to the designated authority (if required), or to grant the noticee personal hearing before passing any order with regard to cancellation or suspension of its certificate and debarment. Interestingly, the term 'designated member' was defined to mean only the Chairman or a Whole Time Member ("WTM") of SEBI, practically limiting only four members of SEBI to act as designated members.<sup>3</sup>

The Amendment Regulations, now, has amended Regulation 22(c) of the Intermediaries Regulations to give power to a 'competent authority' to take the above actions. The term 'competent authority' has been defined to mean "a Whole Time Member or an officer of SEBI, not below the rank of a Chief General Manager, as may be designated for the purpose by SEBI". This allows the Chief General Manager and the officers above its rank, including executive directors of departments / divisions to act as competent authorities for cancellation or suspension of registration, and take such steps that were earlier permitted only to the Chairman and WTM's.

#### SEBI empowered to initiate default proceedings

Regulation 23 of the Intermediaries Regulations empowers SEBI to take actions against any person who has been granted a registration certificate under the Act or regulations made thereunder, if such person (i) fails to comply with any conditions subject to which a certificate of registration has been granted to him, (ii) contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder.

Prior to the amendment, Regulation 24(1) empowered only designated members, i.e., the Chairman and WTDs to approve the initiation of proceedings of the nature specified in Regulation 23. However, now, Regulation 24(1) stands amended as under:

*"SEBI may approve the initiation of proceedings for any default of the nature specified in regulation 23 against any person who has been granted a certificate of registration under the Act and regulations made thereunder."*

Thus, the amended provisions give SEBI the power to approve the initiation of such proceedings, thereby implying that any member or officer of SEBI or any person chosen by SEBI, and to whom the SEBI delegates<sup>4</sup> this power, would have the authority to initiate default proceedings against any person who had been granted a certificate of registration.

### TAKEAWAYS

With the inclusion of more SEBI officers in the scheme of maintenance of regulatory discipline in the securities market, the investors can take a short sigh of relief. The expansion of responsibilities within SEBI should assist the market regulator in its efforts to create a pleasant scenario for all the stakeholders involved in the functioning of the market.

The accelerated participation of the retail investors in the Indian public market in the recent times also seems to have nudged SEBI to take measures to protect such investors from being subject to any fraudulent practices. This is espoused by the fact that SEBI in the recent times has been coming out with press releases, informal guidance and settlement orders, cautioning the investors to be wary of certain unregulated platforms and practices. Please refer to our hotlines [\[here\]](#) titled "SEBI settlement order – Research Analysts not to provide model portfolio products" and

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[\[here\]](#) titled “*SEBI’s concerns on algorithmic trading by retail investors*”, highlighting the said issues.

In view of the above, the Amendment Regulations can be seen as a step by the market regulator to enhance its vigilance and provide itself with adequate arms and ammunition to tackle the perpetrators.

– Ritul Sarraf, Prakhar Dua & Kishore Joshi

You can direct your queries or comments to the authors

<sup>1</sup> SEBI/LAD-NRO/GN/2022/91, available at <https://egazette.nic.in/WriteReadData/2022/237793.pdf>

<sup>2</sup> Regulation 2(1)(g) of the SEBI (Intermediaries Regulations), 2008.

<sup>3</sup> See SEBI’s organization chart [here](#).

<sup>4</sup> Section 19 of the SEBI Act, 1992 provides for delegation of powers to any member, officer of SEBI or any other person.

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