

## **Securities and Exchange Board of India (Informal Guidance) Scheme, 2003**

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## **Securities and Exchange Board of India (Informal Guidance) Scheme, 2003**

Securities and Exchange Board of India (Informal Guidance) Scheme, 2003

### **1. 1 :-**

This Scheme shall be called "Securities and Exchange Board of India (Informal Guidance) Scheme, 2003".

### **2. 2 :-**

2.1 This Scheme is being issued under section 11(1) of the SEBI Act, in the interests of better regulation of and orderly development of the securities market.

2.2 The Scheme shall come into operation from 24-6-2003.

### **3. 3 :-**

3.1 In this Scheme, unless the context otherwise requires:

(a) 'Act' means the Securities and Exchange Board of India Act, 1992;

(b) 'Board' means the Securities and Exchange Board of India established under section 3 of the Act;

(c) 'Department' means a Department of SEBI and includes a Division of SEBI;

(d) 'Scheme' means the SEBI (Informal Guidance) Scheme, 2003.

3.2 Words and expressions not defined in this Scheme shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956 or the Companies Act, 1956, or any statutory modification or re-enactment thereof, or any rules or regulations made thereunder, as the case may be.

**4. 4 :-**

Any intermediary registered with SEBI under section 12 of the Act and any listed company will be eligible to make a request for informal guidance under this scheme.

**5. 5 :-**

The informal guidance mentioned in para 4 may be sought for and given in tv/o forms:

(i) No-action letters: in which a Department of SEBI indicates that the Department would or would not recommend any action under any Act, Rules, Regulations, Guidelines, Circulars or other legal provisions administered by SEBI to the Board if the proposed transaction described in a request made under para 6 is consummated.

(ii) Interpretive letters: in which a Department of SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by SEBI in the context of a proposed transaction in securities or a specific factual situation.

**6. 6 :-**

A request seeking informal guidance shall comply with the following:

(i) It shall state that it is being made under this scheme and also state whether it is a request for a no-action letter or an interpretive letter;

(ii) It shall be accompanied with a fee of Rs. 25,000;

(iii) It shall be addressed to the concerned Department of SEBI;  
and

(iv) It shall describe the request, disclose and analyse all material facts and circumstances involved and mention all applicable legal provisions.

**7.7 :-**

SEBI may dispose of the request as early as possible and in any case not later than 60 days after the receipt of the request. The Department may give a hearing or conduct an interview if it feels necessary to do so. The requestor shall be entitled only to the reply. The internal records or views of SEBI shall be confidential.

**8.8 :-**

SEBI may not respond to the following types of requests:

(i) those which are general and those which do not completely and sufficiently describe the factual situation;

(ii) those which involve hypothetical situations;

(iii) those requests in which the requestor has no direct or proximate interest;

(iv) where the applicable legal provisions are not cited;

(v) where a no-action or interpretive letter has already been issued by that or any other Department on a substantially similar question involving substantially similar facts, as that to which the request relates;

(vi) those cases in which investigation, enquiry or other enforcement action has already been initiated;

(vii) those cases where connected issues are pending before any Tribunal or Court and on issues which are sub-judice; and

(viii) those cases where policy concerns require that the Department does not respond.

**9.9 :-**

Where a request is rejected for non-compliance with para 6 or under para 8, the fee if any paid by the requestor shall be refunded to him after deducting therefrom a sum of Rs. 5,000 towards processing fee.

**10. 10 :-**

SEBI shall not be under any obligation to respond to a request for guidance made under this scheme, and shall not be liable to disclose the reasons for declining to answer the request.

**11. 11 :-**

Confidentiality of request:

(a) Any person submitting a letter or written communication under this scheme may request that it receive confidential treatment for a specified period of time not exceeding 90 days from the date of the Department's response. The request shall include a statement of the basis for confidential treatment.

(b) If the Department determines to grant the request, the letter or written communication will not be available to the public until the expiration of the specified period.

(c) If it appears to the Department that the request for confidential treatment should be denied, the requestor will be so advised and such person may withdraw the letter or written communication within 30 days of receipt of the advise, in which case the fee, if any, paid by him would be refunded to him.

(d) In case where a request has been withdrawn under clause (c), no response will be given and the letter or written communication will remain in the SEBI files but will not be made available to the public.

(e) If the letter or written communication is not withdrawn, it shall be available to the public together with any written staff response.

**12. 12 :-**

A no-action letter or an interpretive letter issued by a Department constitutes the view of the Department but will not be binding on the Board, though the Board may generally act in accordance with such a letter.

**13. 13 :-**

The letter issued by a Department under this scheme should not be construed as a conclusive decision or determination of any question of law or fact by SEBI. Such a letter cannot be construed as an order of the Board under section 15T of the Act and shall not be appealable.

**14. 14 :-**

Where a no-action letter is issued by a Department affirmatively, it means that the Department will not recommend enforcement action to the Board, subject to other provisions of this scheme.

**15. 15 :-**

The guidance offered through the letters issued by Departments is conditional upon the requestor acting strictly in accordance with the facts and representations made in the letter.

**16. 16 :-**

SEBI shall not be liable for any loss or damage that the requestor or any other person may suffer on account of the request not being answered or being belatedly answered or the Board taking a different view from that taken in a letter already issued under this scheme.

**17. 17 :-**

Where the Department finds that a letter issued by it under this scheme has been obtained by the requestor by fraud or misrepresentation of facts, notwithstanding any legal action that the Department may take, it may declare such letter to be non est and thereupon the case of the requestor will be dealt with as if such letter had never been issued. Where SEBI issues a letter under this scheme, it may post the letter, together with the incoming request, in the SEBI website, subject to the provisions of para 11.