



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CONSULTATION PAPER

REVIEW OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INFORMAL GUIDANCE) SCHEME, 2003

TABLE OF CONTENTS

I. OBJECTIVE	2
II. BACKGROUND	2
III. SALIENT FEATURES OF THE EXISTING IG SCHEME	2
IV. NEED FOR REVIEW	4
V. REVIEW OF THE IG SCHEME AND PROPOSED CHANGES	4
VI. EXPANDING THE ELIGIBILITY CRITERIA	4
VII. RATIONALIZATION OF FEES	5
VIII. UPDATING OBSOLETE PROVISIONS	6
IX. CENTRALIZED PROCESSING OF APPLICATIONS AND CREATION OF NODAL CO-ORDINATION CELL	6
X. INTERFACE WITH THE APPLICANT	7
XI. PUBLIC COMMENTS	8
Annexure-I	10

I. OBJECTIVE

1. This consultation paper solicits comments and inputs from the public with respect to the proposed changes in the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 including changes with respect to expanding the scope of the scheme, enhancing the fee levied and rationalizing various processes.

II. BACKGROUND

2. In order to streamline the process for issuing clarifications sought by market participants, the Board in its meeting held on May 3, 2003, approved the issuance of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ('**IG Scheme**'), which came into effect from June 24, 2003. Subsequently, the IG Scheme was amended in 2004 and 2023 to include additional categories of entities eligible to seek the benefit of the scheme and to mandate payment of application fees through digital mode.

III. SALIENT FEATURES OF THE EXISTING IG SCHEME

3. Applicants eligible to seek informal guidance: Initially, only listed companies and intermediaries registered with SEBI under section 12 of the Securities and Exchange Board of India Act, 1992 ('**SEBI Act**') were eligible to make a request for informal guidance ('**IG**') under the IG Scheme. In 2004, the following categories of persons were also made eligible to seek guidance under the IG Scheme, namely:
 - (i) a company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the Board or the Central Listing Authority;
 - (ii) a mutual fund trustee company or an asset management company; and
 - (iii) an acquirer or prospective acquirer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

4. Nature of guidance: It may be noted that the guidance under the IG Scheme is given in the following forms:
 - (i) No-action letter: The department of SEBI indicates whether it would or would not recommend action in terms of the securities laws (including any Act, Rules, Regulations, Guidelines, Circulars) or any other legal provisions administered by SEBI, in case the proposed transaction is consummated by the applicant.
 - (ii) Interpretive letter: The department of SEBI provides its interpretation on a specific provision of any securities laws (including any Act, Rules, Regulations, Guidelines, Circulars) or any other legal provision administered by SEBI, in the context of the proposed transaction.
5. Requirement for seeking informal guidance: The applicant is required to describe the request, disclose all material facts and circumstances involved and mention all applicable legal provisions and pay a fee of ₹25,000/-.
6. Time period for answering the informal guidance: In terms of the IG Scheme, SEBI is required to dispose of the request not later than sixty days after the receipt of the request. The Departments may grant a hearing or conduct an interview, if necessary. The applicant is only entitled to a reply. The internal records, notings and views of SEBI are however kept confidential.
7. Rejection of the request: SEBI may not respond to the request if, *inter alia*, it is based on a hypothetical situation or where the applicant has no direct or proximate interest. The request may also be rejected, if the applicable legal provisions are not cited or if a guidance has already been issued on a substantially similar question involving substantially similar facts. If the request relates to a matter in which investigation, enquiry or other enforcement action has already been initiated or is pending before any Tribunal or Court, such request shall also be rejected.

SEBI is not under any obligation to respond to a request or disclose the reasons for declining a request.

8. Confidentiality or request: The applicant may request confidential treatment of the request for a period not exceeding ninety days from the date of the response of the department. In such cases, the department may either accept the request or reject the same.

IV. NEED FOR REVIEW

9. The IG Scheme came into effect from June 24, 2003 and was amended in 2004 to include additional categories of entities eligible to seek the benefit of the scheme. The IG Scheme has benefitted various market participants by bringing about certainty in the interpretation of securities laws. Considerable time has elapsed since the introduction of the IG Scheme and given the experience of SEBI while processing informal guidance applications, the provisions of the IG Scheme needs to be reviewed and updated in order to keep up with the ever evolving market needs.

V. REVIEW OF THE IG SCHEME AND PROPOSED CHANGES

10. In view of the above, changes as elaborated in the following paragraphs are proposed in the informal guidance processes.

VI. EXPANDING THE ELIGIBILITY CRITERIA

11. As mentioned in the aforesaid paragraphs, only a limited category of persons is eligible to make a request for guidance under the IG Scheme.

12. The market infrastructure institutions ('MII') like stock exchanges, clearing corporations and depositories, managers of pooled investment vehicles¹ such as Alternate Investment Fund, Real Estate Investment Trust, Infrastructure Investment Trust and Collective Investment Scheme may be considered for inclusion in the list of eligible person.
13. In view of the above, it is proposed that stock exchanges, clearing corporations, depositories and managers of a pooled investment vehicle registered with the Board may be included in the list of eligible applicants who may seek guidance under the IG Scheme.

VII. RATIONALIZATION OF FEES

14. Presently, a fee of ₹25,000/- (plus GST) is charged from an applicant while making an application under the IG Scheme. In the absence of revision in fees for almost two decades, it is being considered that the fee be revised to ₹75,000/- (plus GST) under the revised IG Scheme.
15. Further, in case of rejection of an informal guidance application, a processing fee of ₹5000/- is deducted while refunding the fee to the applicant. Since the fee is proposed to be revised, the processing fee is also being considered to be revised from ₹5000/- to ₹15000/-.

¹ It may be noted that 'pooled investment vehicle' is defined under the Securities Contracts (Regulation) Act, 1956 as a fund established in India in the form of a trust or otherwise, such as mutual fund, alternative investment fund, collective investment scheme or a business trust as defined in sub-section (13A) of section 2 of the Income Tax Act, 1961 and registered with the Securities and Exchange Board of India, or such other fund, which raises or collects monies from investors and invests such funds in accordance with such regulations as maybe made by the Securities and Exchange Board of India in this behalf.

VIII. UPDATING OBSOLETE PROVISIONS

16. The current IG Scheme contains references to few provisions which have become obsolete over a period of time. The Securities and Exchange Board of India (Central Listing Authority) Regulations, 2003 was repealed with effect from January 2, 2007. However, the IG Scheme still contains a reference to the "Central Listing Authority". Similarly, IG Scheme refers to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 which has also been repealed by the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Accordingly, it is being proposed that the IG Scheme be suitably updated.

IX. CENTRALIZED PROCESSING OF APPLICATIONS AND CREATION OF NODAL CO-ORDINATION CELL

17. Under the IG Scheme, an applicant has to approach the concerned department of SEBI for seeking informal guidance. In some cases, the applicant may not be aware about the department which is concerned about the particular informal guidance.

18. Further, there are multiple operational departments in SEBI which deal with informal guidance applications and there is no nodal office within SEBI which monitors the processing of such applications.

19. Hence, designating a nodal co-ordination cell would provide a single window to the market participants to approach SEBI for seeking informal guidance under the IG Scheme which may further the ease of doing business. Further, the applicant may be required to seek informal guidance in a standard form as per the format stipulated in the IG Scheme.

20. In view of the above, it is being proposed that the IG Scheme may be revised to provide for a nodal co-ordination cell with a centralized e-mail address which shall receive applications only through online mode and monitor the processing of the disposal of application.

X. INTERFACE WITH THE APPLICANT

21. Currently, the IG Scheme provides that 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 and enables the Department to give a hearing or conduct an interview with the applicant, if any clarifications are required for providing informal guidance. The departments usually write a physical letter to the concerned entity for seeking such clarifications. Further, it is observed that in many cases, the applicants do not provide the desired clarifications to the department within a reasonable timeline.

22. The usage of physical letters to seek clarifications and the delayed responses by the applicant tends to increase the processing time. With a significant change in access to technology over the past two decades, the use of electronic mail as a mode of communication with the applicant may be mandated.

23. In view of the above, it is being proposed to revise the IG Scheme to:

- (i) provide applicant time period up to 15 days to respond to the clarifications requested by SEBI, failing which the application may be rejected by the department. The time period taken up to 15 days may be excluded from the overall timeline of 60 days to respond to an application;
- (ii) mandate the departments to use electronic e-mail as a mode of communication for seeking clarifications from the applicant.

24. In accordance with the aforesaid proposals, a revised draft of the Securities and Exchange Board of India (Informal Guidance) Scheme 2024 is enclosed as **Annexure-I**.

25. Public comments are sought on the following recommendations along with supporting rationale:

- (i) Whether regulated entities such as Stock Exchanges, Clearing Corporations, Depositories and Trustees and Managers of a pooled investment vehicle registered with the Board may be included in the list of eligible applicants under the IG Scheme?
- (ii) Whether the fee and the processing fee chargeable under the IG Scheme may be revised from 25,000 and ₹5,000 to ₹75,000 and ₹15,000, respectively?
- (iii) Whether the obsolete provisions under the IG Scheme may be suitably revised?
- (iv) Whether a nodal co-ordination cell may be created with a dedicated e-mail address for receiving applications through online mode and monitor the processing of the disposal of application?
- (v) Whether the applicant may be provided up to 15 days to respond to the clarifications sought by SEBI, failing which the application may be rejected by the department?
- (vi) Whether any further changes are required in the draft Securities and Exchange Board of India (Informal Guidance) Scheme 2024?

XI. PUBLIC COMMENTS

26. Public comments are invited for the proposals at paragraph 25. The comments/ suggestions should be submitted latest by September 15, 2024, by clicking on [this link](#).

27. In case of any technical issue in submitting your comment through web based public comments form, you may contact the following through email with a subject: "Issue in submitting comments on Consultation Paper on Review of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003" to consultationlad@sebi.gov.in with a copy to Durgesh Kumar Thakur, DGM at durgeshkt@sebi.gov.in.

Issued on: **August 30, 2024**

ANNEXURE-I

Securities and Exchange Board of India (Informal Guidance) Scheme, 2024

1. *This Scheme shall be called the Securities and Exchange Board of India (Informal Guidance) Scheme, 2024.*

2.1 *This Scheme is being issued under sub-section (1) of section 11 of the Securities and Exchange Board of India Act, 1992, in the interests of orderly regulation and development of the securities market.*

2.2 *The Scheme shall come into operation from [Publication date to be inserted] and the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 shall cease to have effect from such date.*

3.1 *In this Scheme, unless the context otherwise requires:*

- (a) 'the 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 the Board;*
- (d) 'Scheme' means the Securities and Exchange Board of India (Informal Guidance) Scheme, 2024.*

3.2 *Words and expressions not defined in this Scheme shall have the same meaning as have been assigned to them under the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the Companies Act, 2013, or any statutory modification or re-enactment thereof, or any, rules, regulations or circulars made thereunder, as the case may be.*

4. *The following persons may apply for informal guidance under the scheme:*

- (a) any intermediary registered with the Board;*

- (b) any person or entity, by whatever name called, who is appointed to manage the investments of a pooled investment vehicle registered or trustee of such pooled investment vehicle;*
- (c) any company whose securities are listed on a recognised stock exchange;*
- (d) any company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the Board;*
- (e) any acquirer or prospective acquirer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;*
- (f) any recognized stock exchange or clearing corporation; and*
- (g) any depository registered with the Board.*

5. *The informal guidance mentioned in paragraph 4 may be sought for and given in two forms:*

- (a) **No-action letters:** In a No-action Letter, the Department may indicate that it 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 an application made under paragraph 6 is consummated.*
- (b) **Interpretive letters:** In an Interpretative Letter, the Department may provide 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. *An application seeking informal guidance shall comply with the following:*

- (a) it shall be filed electronically through an e-mail addressed to the nodal co-ordination cell of SEBI at [E-mail id created for nodal co-ordination cell to be inserted] as per the format stipulated in Schedule-I;*
- (b) it shall state that it is being made under this scheme and also state whether it is an application for a no-action letter or an interpretive letter;*

(c) it shall be accompanied with a fee of ₹75,000/- by way of direct credit into the bank account of the Board through NEFT/RTGS/IMPS or online payment using the SEBI payment gateway or any other mode as may be specified by SEBI from time to time. The confirmation of payments made electronically through NEFT/RTGS/IMPS modes or online payment using the SEBI payment gateway should be sent to the nodal co-ordination cell and also to e- mail id: - tad@sebi.gov.in in the format as given below:

- (i) Name of payer: _____
- (ii) Date of payment: _____
- (iii) Amount Paid: _____
- (iv) Transaction no: _____
- (v) Name of the Bank in which payment is made: _____
- (vi) IFSC Code: _____
- (vii) Virtual Account Code: _____
- (viii) Purpose: _____
- (ix) Whether registered with GST: _____
- (x) If Yes, GST number: _____; and

(d) it shall describe the request made to the Board, disclose and analyse all material facts and circumstances involved and mention all the applicable legal provisions.

7. The dealing department may dispose of the application as early as possible and in any case not later than 60 days after the receipt of the application. The time taken for the applicant to respond to the clarifications sought by the Department shall be excluded while calculating the aforesaid timeline. The Department may seek clarifications from the applicant through electronic mail and if the applicant does not respond to the clarifications sought within 15 days, the application may be rejected by the dealing department. The applicant shall be entitled only to the reply of the department and the internal records or views of SEBI shall be confidential.

8. *The department may respond to the applications, except in the following cases:*
- (a) those which are general and those which do not completely and sufficiently describe the factual situation;*
 - (b) those which involve hypothetical situations;*
 - (c) those applications in which the applicant has no direct or proximate interest;*
 - (d) where the applicable legal provisions are not cited;*
 - (e) 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 application relates;*
 - (f) those cases in which investigation, enquiry or other enforcement action has already been initiated;*
 - (g) those cases where connected issues are pending before any Tribunal or Court and on issues which are sub-judice; and*
 - (h) those cases where policy concerns require that the Department does not respond.*
9. *Where an application is rejected for non-compliance with paragraphs 6, 7 or 8, the fee paid, if any, by the applicant shall be refunded to the applicant after deducting therefrom a sum of ₹15,000 towards the processing fee.*
10. *The Board shall not be under any obligation to respond to an application for guidance made under this scheme and shall not be liable to disclose the reasons for declining to answer the application.*
11. *Confidentiality of an application may be considered as per the following process:*
- (a) any person submitting the application under this scheme may request that it may receive confidential treatment for a specified period of time not exceeding 90 days from the date of the Department's response. The application 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 applicant will be so advised and such person may withdraw the letter or written communication within 30 days of receipt of the advice, in which case the fee, if any, paid by her would be refunded to her.*
- (d) in case where an application 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 response of the Board.*

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

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 the Board. Such a letter cannot be construed as an order of the Board under section 15T of the Act and shall not be appealable.

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

16. SEBI shall not be liable for any loss or damage that the applicant or any other person may suffer on account of the application 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. Where the Department finds that a letter issued by it under this scheme has been obtained by the applicant 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 applicant will be dealt with as if such letter had never been issued.

18. Where the Department issues a letter under this scheme, it may upload the letter, together with the incoming application, on the SEBI website, subject to the provisions of paragraph 11.

SCHEDULE-I

Standard Form of Informal Guidance Application

Name of the Applicant	
Category of Applicant	
If guidance is sought in representative capacity, details thereof	
Nature of informal guidance	No-action Letter <input type="checkbox"/> Interpretative Guidance <input type="checkbox"/>
Details of fee paid	
Details of the transaction	
Relevant regulatory provisions	
Query	
Whether confidentiality is required	
Contact details of the Applicant	
