

Processing of waiver applications by the Exchanges in case of commonly listed entities

Background

SEBI vide SOP Circular ref. no. SEBI/HO/CFD/CMD1/CIR/P/2020/48 dated January 22, 2020 (erstwhile circular ref. no. SEBI/HO/CFD/CMD/CIR/P/2018/77 dated May 03, 2018) directed the Exchanges to put in place a framework to monitor submissions made by listed entities and to initiate actions such as levy of penalties, moving of security to 'Z' category, freezing of promoter holdings and suspension of trading in securities of non-compliant listed entities.

Further, SEBI vide its abovementioned SOP Circular has directed the Exchanges that they may deviate from the actions prescribed in SOP Circulars, if found necessary, only after recording reasons in writing.

In view of the above, the Exchanges have jointly formulated a "Policy for Exemption of Fines" and the same was noted by SEBI on January 22, 2020. The Exchanges have also constituted Internal Committees for reviewing the requests received for waiver of SOP fines.

As per the abovementioned "Policy for exemption of fines" the non-compliant companies are required to file an application for waiver of fine only on achieving compliance with provisions of Listing regulation/s.

Procedure

The Exchanges in consultation with SEBI have agreed upon the following procedure for allocating the listed companies:

- The Exchanges shall segregate the commonly listed companies amongst themselves. The process shall be done in such a way that approximately equal number of companies are allocated to each Exchange.

After completion of six months the group of companies will be exchanged between both the Exchanges for the next six months.

Note: - Commonly listed companies here mean companies which are listed and are also non-compliant at both Exchanges. Commonly listed companies will not include companies-

- a) which are non-compliant at only one Exchange e.g., if ABC Limited is listed on both the Exchanges, falls under the group which is to be handled by NSE but observed to be non-compliant at BSE only, the same shall be disposed of by BSE only.
- b) whose compliance at the other exchange is later than the Exchange in whose bucket the company falls for that period. E.g., if ABC Limited is listed on both the Exchanges, falls under the group which is to be handled by BSE but has delayed compliance at both the Exchanges, but delay is greater at NSE or non-compliance continues at NSE, the same shall be disposed of by NSE only and BSE will not consider the exemption

application. This will ensure that compliance is met at both the Exchanges and the Exchange where there is a larger delay will be able to consider the justification for the delay.

- The companies shall be segregated based on the date of application. i.e. all applications received during a 6-month period will be considered by one exchange.
- Companies making an application seeking waiver of fines, along with applicable processing fees, should have cleared their earlier dues, including fines (other than that for which waiver is applied for) and fees, to all the Exchanges where it is listed, prior to making an application. Companies shall also make detailed submission seeking waiver of SOP Fines considering the extant Policy for Exemption of Fines and shall indicate whether it intends to seek personal hearing before the concerned Committee.
- Companies are advised to submit all the supporting documents along with application and shall resist from filing response or supporting documents/information on a piece meal basis.
- The decision taken by one Exchange on waiver requests will be applicable to the same waiver requests received by other Exchanges to maintain the uniformity in decision at both Exchanges.
- Second time waiver (Review) requests received from companies will be placed before the committee of the Exchange which had handled the request for the first time, irrespective of the date of receipt of applications.

For example: The waiver application by ABC Limited was handled by BSE Limited (other Exchange) when the company was falling under group allocated to BSE Limited. If ABC Limited files a review application against the rejection order filed by BSE Limited after the completion of the 6-month period of interchanging the companies between the Exchanges, the same shall continue to be handled by BSE Limited only.

Though the company may fall under the group which is to be handled by other Exchange (NSE), the second application of review will be placed at BSE (the Exchange which had handled the initial application of the Company).

- Newly listed companies shall be added to the segregation every quarter.

The above procedure shall be effective for applications seeking waiver of SOP fines, submitted to the exchanges on or after April 1, 2022.

Personal Hearing:

Personal hearing, if sought by the companies, will be conducted only by the Exchange which is handling (disposing) the waiver requests for that Company/Group for that period.

Processing Fees

Exchanges shall levy processing fees for considering the waiver requests on the following basis

- 1) Fees shall be levied on companies which apply for waiver.
- 2) Waiver processing fees shall be Rs. 10,000 per application. Companies may submit a single application for multiple requests for waiver pertaining to different regulations/ period.
It may be noted that the application for waiver is to be submitted at all the exchanges where the fines have been levied, however, processing fees are to be submitted only to the designated exchange.
- 3) In case the Company is not satisfied with the decision of the Exchange and intends to apply for review, the fees applicable for such review shall be Rs. 20,000 per application.
- 4) In the event that the waiver request is accepted fully, the Exchange shall refund the processing fees charged. In case of Partial waiver of the fines, processing fees of Rs. 5000 shall be refunded and balance fees may either be refunded / adjusted against outstanding fines.
- 5) No processing fees shall be charged if the fine amount for which waiver is requested is less than Rs. 5000.
- 6) Time limit for filing of waiver/ review request shall be 3 months from the date of compliance by the Company. If any Company wishes to apply for waiver beyond this timeline, the same shall only be admitted by the Exchange if it can demonstrate circumstances to the satisfaction of the Exchange.

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