

Consultation Paper on Strengthening the Investor Grievance Redressal Mechanism in the Indian Securities Market by harnessing Online Dispute Resolution mechanisms

I. Executive Summary

1. This consultation paper seeks to suggest changes to strengthen the existing complaint resolution procedure in the securities market in India by making use of Online Dispute Resolution mechanisms.
2. Presently, in case an investor is facing any issue, she first approaches the concerned intermediary for resolution of the issue/complaint. If she is not satisfied with the resolution, the investor lodges a complaint with the SCORES portal. If she is still unsatisfied the investor may opt for MII based mediation and/or arbitration for resolution of her complaint, for specific intermediaries only.
3. The Market Infrastructure Institutions (stock and commodities exchanges and depositories) presently have an effective process in place. MIIs have laid down a three step time-bound process for resolving disputes concerning their constituents including brokers, depository participants, and their clients, and more recently, Listed Companies, and Registrar and Transfer Agents. This includes mediation/ conciliation undertaken by the Investor Grievance Redressal Committee (IGRC), and if necessary followed by arbitration, and if required followed by appellate arbitration. The other intermediaries also have a grievance redressal process, distinct from the MII-run grievance redressal process. here is scope to make the processes followed by the MIIs themselves more efficient and accessible, especially given the improvement in grievance redressal processes worldwide post the COVID-19 pandemic.
4. This consultation paper seeks inputs on:
 - (1) Strengthening the existing MIIs administered mediation/conciliation and arbitration mechanism, by making these processes more accessible and effective:
 - a. By suggesting that these processes are conducted online on an end-to-end basis using the capacity, technology, and other assistance of online dispute resolution institutions;
 - b. By modifying these processes for the benefit of the investor.
 - (2) Extending the MIIs administered mediation/conciliation and arbitration mechanism as modified in (1) above for resolution of investor/client grievances against all specified securities market intermediaries. This will make the grievance redressal process more simplified, streamlined and efficient for the investors.
5. The proposed modifications in the existing MIIs administered mediation/conciliation and arbitration mechanism include relabelling the IGRC process as mediation/ conciliation, providing for a sole mediator/ conciliator/ arbitrator irrespective of the amount of the dispute, and doing away with appellate arbitration. Suggestions for various ways in which these grievance redressal mechanisms can be funded are also sought.

II. Introduction and brief background

6. At the outset, it should be mentioned that the Indian stock market, comprising various constituents such as the stock and commodity exchanges, depositories, stock brokers, depository participants, have effectively and efficaciously dealt with investor grievances and disputes through the following measures:
 - a. Time-bound mechanism for resolution of investor complaints by the concerned intermediary,
 - b. In the event of complainant not being satisfied by the resolution, reference to mediation and conciliation undertaken by the Investor Grievance Redressal Committee – IGRC – as constituted by the stock exchange, and doing so in a time-bound manner, and
 - c. In the event of the IGRC process failing to resolve the matter, reference is made to the arbitration mechanism of the stock exchange, which resolves and decides the matter in a time bound manner.
7. There is also a similar system established under the aegis of the commodities exchanges, and the depositories for grievances and disputes concerning depository participants and their clients.
8. Such mediation/conciliation and arbitration mechanisms as administered by the exchanges (including stock and commodity exchanges) and depositories (together referred to as Market Infrastructure Institutions – MIIs) have served the Indian stock market quite well. MII administered mediation/conciliation and arbitration mechanism has also earlier this year¹ been extended to disputes pertaining to or emanating from investor services pertaining to Listed Companies / Registrar and Transfer Agents.

In order to further strengthen the Investor Grievance Redressal Mechanism, and basis report of an internal Working Group constituted for this purpose, it is felt that this is an appropriate juncture for:

 - a. Such MIIs administered mediation/conciliation and arbitration mechanism to be conducted in an online format on an end-to-end basis,
 - b. Undertake certain changes to the MIIs administered mediation/conciliation and arbitration mechanism, and
 - c. Such MII administered online mediation/conciliation and online arbitration mechanism to be extended for resolution of investor/client grievances pertaining to all specified securities market intermediaries.
9. At the onset of Covid-19 and its prevalence, the MII administered mediation/conciliation and arbitration mechanism were conducted in an online mode, using video conferencing tools. The existing partially online mode can be enhanced much further by effective use of tools, technologies and platforms which will enable an end-to-end online experience for investors, intermediaries, mediators/conciliators and arbitrators in conducting the mediation/conciliation and arbitration process online. Such tools include multimodal communication between the parties, automatic case-status updates, easy scheduling and appointment of arbitrators/mediators, etc.

¹ See SEBI Circular: SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/76 dated May 30, 2022

10. Such tools, technologies and platforms have gained wide acceptance and recognition, in the form of usage by the National and State Legal Services Authorities (NALSA/SALSAs) which have conducted online Lok Adalats. Emerging digital ecosystems such as the Account Aggregator framework and Open Network for Digital Commerce (ONDC) are also utilizing online dispute resolution solutions and platforms. Commercial enterprises are also utilizing these mechanisms for speedy, cost effective and efficient resolutions of grievances and disputes. A committee constituted by Niti Aayog, chaired by Justice Sikri (Retd.), has in its report also advocated usage of such online dispute resolution mechanisms².
11. Accordingly, MIIs would be required to upgrade the current mediation/conciliation and arbitration mechanism such that it is conducted as online mediation/conciliation and online arbitration. This process, as is the case presently, may be initiated post exhausting all means of resolution of complaints filed by the investor through the concerned intermediary/ entity, MII (as applicable) and the SCORES Portal.

III. *Proposals and questions*

12. Issues sought to be addressed by the proposed measures or which may arise in respect of the proposed measures

- A. *Hybrid approach (mix of online and offline) or Online only approach:* As such, in case of MII administered online mediation/conciliation and online arbitration, online access to the parties including the investors, is expected to provide both time and cost savings to the parties, and not inconvenience them in having to travel or be at any specific location for the dispute resolution process. However, it may be useful to specify availability of a hybrid option, which serves to address any concern of digital divide including lack of access to suitable devices for initiating such proceedings, low internet speed, low digital literacy, etc. Therefore, while online resolution of disputes will be the default option, investors will have an option to participate physically in case they are not comfortable with online proceedings.

It is envisaged that in such a hybrid option the investors will be able to participate in the online mediation/conciliation and online arbitration process utilizing arrangements made or facilities available at designated MII offices/ Investor Service Centers (ISCs) across the country to effectively participate in or to initiate such online processes. The party insisting on physical arbitration however will not be able to insist that the other parties or mediators/ conciliators/ arbitrators also be present physically for the process. The intermediaries and the mediators/conciliators and arbitrators can participate in such processes online from their respective offices/locations. This will ensure that the new process is at least as accessible as the existing process of resolution.

Questions:

- *Would such hybrid option, as envisaged, be sufficient and suitable, or should any further alternative be considered?*
 - *Should an online only approach also be considered? How do we promote the usage of online mediation/ conciliation or arbitration over physical processes?*
- B. *Relabelling the IGRC into a panel of mediators:* As such, under the existing process, the role of IGRC as constituted by the MIIs, is intended to be that of mediating or conciliating between the parties to a dispute or grievance.

² <https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf>

Accordingly, it is proposed that the IGRC be relabeled as a panel of mediators and/or conciliators. When matters arise and in line with existing procedure, a sole mediator or sole conciliator shall be appointed for conducting online mediation or conciliation process. Such a process is expected to be concluded within 21 days or three weeks (*currently 15 working days*) from the notification of the mediator or conciliator. If within such a period, the consensual resolution is not arrived at, the matter shall be referred to online arbitration at the request of a disputing party.

Question:

- *Would relabeling IGRC into a panel of mediators and conciliators be suitable and appropriate for MII administered online mediation/conciliation and online arbitration, and be beneficial for the dispute resolution process as a whole?*

C. **Sole arbitrator and panel of arbitrators:** Currently, in the MII administered arbitration mechanism, for matters involving claim of upto Rs 25 lacs, a sole arbitrator is appointed, and for matters involving claim of greater than Rs 25 lacs, a panel of three arbitrators are appointed. The fees per arbitrator together with stamp duty, service charge, etc. are collected by the MII from both the parties to the dispute (investors only pay if the dispute is over a certain sum). Upon passing of the arbitral award, the amount paid by the party in whose favor the award has been passed is refunded the same, and the amount paid by the party against whom the award has been passed, is utilized towards payment of the arbitrator fees.

To reduce the costs for the parties, ease/eliminate the coordination issues in forming a panel and enable availability of a higher number of arbitrators for resolution of matters, it is proposed that all matters, irrespective of the amount of claim, shall be dealt with by a sole arbitrator, and accordingly, the requirement of a panel of arbitrators will be discontinued.

Question:

- *Would stipulation of sole arbitrator, irrespective of the amount of claim, be suitable and appropriate for MII administered online mediation/conciliation and online arbitration, and be beneficial for the dispute resolution process as a whole? Should a higher qualification for arbitrators be prescribed for claims over a certain threshold?*

D. **Appellate Arbitration:** Currently, the MII administered arbitration mechanism operates two tiers of arbitration i.e., after a sole arbitrator or a panel of three arbitrators has passed an award, the party aggrieved by such award can file an appeal with an appellate panel of arbitrators. The appellate panel is required to consist of three arbitrators who are different from the one(s) who passed the arbitral award appealed against. The appellant is required to pay the fees for the appellate arbitration at predetermined slabs basis the amount of claim.

With a view to provide finality to the award by an arbitrator, end the two-tiered arbitration process, reduce the costs for the parties, ease/eliminate the coordination issues in forming a panel and enable availability of a higher number of arbitrators for resolution of matters, it is proposed to discontinue the appellate arbitration system.

It is noted that under the Arbitration & Conciliation Act, 1996, arbitral awards can be challenged in a court of competent jurisdiction (on very limited and specific grounds), and such right of appeal continues to subsist in the proposed approach. It is also noted that the MII administered dispute resolution process is expected to provide online mediation, and which if fails to resolve the matter, would lead to online arbitration: thus

two opportunities for effective resolution still subsist, with one predicated on consensual resolution and the other as a binding arbitral award.

Question:

- *Would discontinuation of appellate arbitration be suitable and appropriate for MII administered online mediation/conciliation and online arbitration, and be beneficial for the dispute resolution process as a whole?*

E. Extending MII administered online mediation/conciliation and online arbitration to specified securities market intermediaries: Currently, different securities market intermediaries adopt varying modes and manners of resolving investor/client grievances. At times, such variance is also on account of regulations governing the intermediary being silent, or merely prescribing other appropriate arrangements between the intermediary and its constituents for grievance redressal or dispute resolution or stipulating arbitration.

Given the effectiveness of MII administered mediation/conciliation/arbitration mechanism for broker-client issues and all disputes pertaining to or emanating from investor services pertaining to Listed Companies / RTAs (and its impending upgrading to online processes of conducting the same), it is felt that for sake of consistency, efficiency and effective redress of investor grievances/issues/disputes in the securities market, that it would be appropriate to requiring that all such grievances/issues/disputes pertaining to specified securities market intermediaries be governed by the MII administered mediation/conciliation and failing which, the arbitration mechanism. These mechanisms are however not applicable where the MIIs themselves or their subsidiaries are a party to the dispute, to avoid any conflict of interest. For such disputes where an MII or its subsidiary(s) themselves are involved as a party in the dispute with its own members, then such disputes will have to be referred to the dispute resolution process of another MII.

Additionally, any intermediary which does not adhere to a consensual resolution arrived at in the course of online mediation/conciliation, would be required to deposit the entire amount as agreed in the consensual resolution, prior to the said party approaching online arbitration. This is to encourage consensual resolution among the parties. In case of any dispute arising out of the mediation/conciliation settlement agreement, the parties may approach the next stage of arbitration for resolution of such a dispute. Such arbitration however will not reopen the dispute, but will merely resolve any dispute concerning the consensual resolution arising out of mediation/ conciliation.

A question that arises from extending the MII administered online mediation/conciliation and online arbitration to specified securities market intermediaries would be which MII should an investor approach to initiate mediation/conciliation/arbitration proceedings against a specific intermediary. This scenario would only arise in the case of the intermediaries presently outside the ambit of MII based dispute resolution process. It is envisaged that the current linkage structure for MII-intermediary would continue. For example, a stock broker would continue to be administered by the concerned stock exchange where the stock broker is a member. The investor would need to file her arbitration request with the concerned MII (where the stock broker is a member). In case the intermediary is registered with more than one MII, the investor has the freedom to choose at which MII to initiate her request. A similar treatment would be applicable for depository participants, listed companies, and RTAs.

Question:

- *Should any class of securities market intermediaries be excluded from or included within the coverage under the MII administered online mediation/conciliation and online arbitration?*
 - *For a list of securities market intermediaries proposed to be covered given a direct investor/client nexus, see **Annex A**.*
- *What should be the structure of linkages between a specific MII and intermediary? Can the following options be considered?*
 - *Intermediary ties up with only one: MII and the investor may only approach this MII for initiation of mediation/conciliation/arbitration proceedings. In case an investor approaches the inappropriate MII, the MII would direct the investor to the appropriate MII.*
 - *Intermediary has to tie up with all MIIs:*
 - *An investor may file her mediation/conciliation/arbitration request with any MII. However, the request would be assigned to any one MII as per round-robin scheduling.*
 - *The investor is given an option to specify her choice of MII for conducting the proceedings against the intermediary.*
 - *Any other structure or approach that could be considered?*

F. Capacity: The current capacity of MII administered mediation/conciliation/arbitration mechanism may suffice for the current set of matters under its ambit. By extending the mechanism to all investor grievances/issues/disputes in the securities market as arise between all securities market intermediaries and their investors/clients, such capacity may prove insufficient. Such insufficiency may be in the form of availability of qualified mediators/conciliators or arbitrators. Certain measures as specified above, of stipulation of sole arbitrator and discontinuation of panel of arbitrators or discontinuation of appellate arbitration, may provide only partial relief and hence require further measures also being considered. Furthermore, in requiring adoption of tools, technologies and platforms for an end-to-end online mediation/conciliation/arbitration mechanism, the present infrastructure deployed by MIIs may not be sufficient.

Accordingly, it is proposed that MIIs should partner or tie up with one or more Online Dispute Resolution institutions (ODR Institutions) for undertaking online mediation/conciliation and online arbitration process, and also draw upon the mediators, conciliators and arbitrators that such ODR Institutions have empaneled. SEBI may specify appropriate norms for MIIs undertaking such partnerships and tie ups with ODR Institutions from time to time

As such, the ODR Institutions should be independent and free from any conflict in relation to the securities market intermediaries (including the MIIs) or their clients/investors and ensure the same during its association with the MIIs. Furthermore, the mediators/conciliators/arbitrators empanelled with such ODR institutions should also be completely neutral and independent in dealing with the matters referred to them. Training needs of the mediators, conciliators and arbitrators empaneled with such ODR institutions may be undertaken by National Institute of Securities Markets (NISM).

Questions:

- *Would capacity issues be sufficiently and suitably addressed by requiring MIIs to partner with the ODR institutions, or should any further alternative be considered?*
- *Are there any other measures necessary for ensuring suitability of ODR institutions that partner the MIIs or with whom the MIIs tie up?*

- Are there any other measures necessary to specify for avoiding or mitigating any conflict of interests, of the ODR institution or the mediators /conciliators /arbitrators?

G. Costs: Currently, in the MII administered mediation/conciliation and arbitration mechanism (applicable to broker-client grievances/disputes), costs of such mechanisms are borne in the following manner:

- For mediation / conciliation by IGRC: borne by the MII³
 - *Note: currently IGRC is constituted as a Committee, and it is proposed to change over to a panel of mediators and conciliators, with sole mediator or sole conciliator being appointed in the course of online mediation/ conciliation.*
- For arbitration⁴: At present, the fees vary as per the following parameters:

S. No.	Amount of Claim /Counter Claim, whichever is higher	If claim is filed within six months	If claim is filed after six months from the date of dispute or after one month from the date of IGRC order, whichever is later	If the claim is filed beyond the timeline prescribed in adjacent column (only for trading member)
1	≤ Rs. 10,00,000	1.3% subject to a minimum of Rs.10,000	3.9% subject to a minimum of Rs. 30,000	Additional fee of Rs. 3,000/- per month over and above fee prescribed in adjacent column
2	> Rs 10,00,000 - Rs. 25,00,000	≤ Rs. 13,000 plus 0.3% amount above Rs. 10 lakh	Rs. 39,000 plus 0.9% amount above Rs. 10 lakh	Additional fee of Rs. 6,000/- per month over and above fee prescribed in adjacent column
3	> Rs.25,00,000	Rs. 17,500 plus 0.2% amount above Rs. 25 lakh	Rs. 52,500 plus 0.6 % amount above Rs. 25	Additional fee of Rs. 12,000/- per month

³ See SEBI circular SEBI/HO/MIRSD/DOC/CIR/P/2020/226 dated November 6, 2020

⁴ This is based on the information available on the NSE website.

		subject to maximum of Rs.30,000	lakh subject to maximum of Rs.90,000	over and above fee prescribed in adjacent column
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- No deposit fees for investor for claims upto Rs. 20 lakhs

As noted earlier, currently the fees per arbitrator together with stamp duty, service charge, etc. are collected by the MII from both the parties to the dispute. Upon passing of the arbitral award, the amount paid by the party in whose favor the award has been passed is refunded the same, and the amount paid by the party against whom the award has been passed, is utilized towards payment of the arbitrator fees.

Questions:

- *Should the expenses of conducting online mediation/conciliation and of the mediator/conciliator be free for parties?*
 - *In such a case, who will bear the costs and how will it be continually funded?*
 - *Alternatively, should transaction fees be chargeable from the users of the securities market for meeting the MII administered online mediation/conciliation and online arbitration operational expenses (especially to support mediation on a free of cost basis for investors)?*
 - *Alternatively, should subscription fees or usage fees be charged from the intermediaries to be paid directly to the MIIs for the dispute resolution process? This fee could be a baseline fee for all intermediaries and/ or an additional fee depending on the volume of cases against such intermediaries.*
 - *(Please note that any fees/ charges for the dispute resolution process will be charged approximately on a cost basis.)*
- *Should all parties (investor/client or intermediary(s)) be charged uniformly for all claims made in online arbitration especially since MII administered online mediation/conciliation and online arbitration is being extended to all specified securities market intermediaries?*
- *Should the requirement of additional levy for claims made after a specified period by the intermediaries be continued (for faster resolution of disputes, and to discourage delayed filing of arbitrations by intermediaries)?*
- *Should the principle of refund to the party who secured the award and payment to the arbitrator by the party against whom the award passed be continued?*

H. Interim Relief: Currently, in the MII administered mediation/conciliation and arbitration mechanism (applicable to broker-client grievances/disputes), interim relief upto a pre-specified limit is made available to the investor. Similarly, in case of a broker invoking appellate arbitration (proposed to be done away with) or appealing to the courts against the award, prespecified amounts are released to the investor by the MII as interim relief. Such amounts are released from the Investor Protection Fund (and recoverable from the broker). There is an upper threshold of total payments as interim reliefs at Rs 10 lacs.

On extending the MII administered online mediation/conciliation and online arbitration to specified securities market intermediaries, such intermediaries can be required to maintain an on-account deposit of a prespecified amount that may be utilized as and

towards interim relief, and replenished if it declines below such prespecified amounts. Accordingly, interim relief, to the extent of on-account deposit placed by the intermediary, can be provided to the investor who have arrived at a consensual resolution with an intermediary in the course of online mediation/conciliation or who have received favourable awards in the course of online arbitration.

Questions

- *What should be the levels of deposit required to be maintained by the various specified securities market intermediaries with an MII for meeting requirements of interim relief? How often should it be replenished? How should these levels of deposit be calculated?*
- *Can the interest income of the deposit amount be used for funding the MIIs based dispute resolution process?*
- *Any other measures or approach that can ease the enforcement of outcomes of online mediation/conciliation and online arbitration?*

I. Publication of statistics and status of matters, disposals, etc. MIIs will be required to publish aggregated statistics of:

- references received for online mediation/conciliation
- outcomes of such mediation/conciliation
 - In favour of investor
 - In favour of intermediary
 - Withdrawn or settled
 - Dismissed
- Status of adherence of outcomes of mediation/conciliation
- References received for online arbitration
- Outcomes of such online arbitration
 - In favour of investor
 - In favour of intermediary
 - Withdrawn or settled
 - Dismissed
- Status of adherence of outcomes of arbitration
- Status of appeals if any preferred against arbitral awards

Question:

- *What other information, data being published can assist in ensuring efficacy of online mediation/conciliation and online arbitration?*
- *Should intermediaries also be required to publish data/information on status, disposal etc of arbitration matters?*

Annex A

A. List of securities market intermediaries proposed to be covered given a direct investor nexus:

- *AIFs - Fund managers*
- *CIS – Collective Investment management company*
- *Mutual Funds - AMCs*
- *InvITs - Investment Manager*
- *REITs - Managers*

B. List of securities market intermediaries proposed to be covered given a direct client nexus:

- *Clearing Corporations and their constituents*
- *Credit Rating Agency and rating clients*
- *Custodian of Securities*
- *Debenture Trustees and issuers*
- *Designated Depository Participant*
- *Investment Advisors and their clients*
- *KYC Registration Agency and their clients*
- *Merchant Banker and their clients*
- *MIIs and their constituents*
- *Portfolio Managers and their clients*
- *Proxy Advisory and their clients*
- *Proxy advisors and listed entities*
- *Research Analyst and their clients*
- *Vault Managers and EGR Holders/depositors*

C. Current coverage extends to:

- *Depository Participants and*
- *Stock brokers and commodity brokers (which are within the MIIs administered mediation/conciliation and arbitration mechanism)*
- *Listed companies and Registrars and Share Transfer Agents (which are within the stock exchange administered arbitration mechanism)*

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Public Comments

Public comments are invited for the proposal on strengthening the Investor Grievance Redressal Mechanism in the Indian Securities Market by harnessing Online Dispute Resolution mechanisms. The comments/ suggestions may be provided as per the format given below:

Name of the person/ entity proposing comments:
Name of the organization (if applicable):
Contact details:
Category: whether market intermediary/ participant (mention type/ category) or public (investor, academician etc.)

Sr No.	Extract from consultation paper	Issues (with page/para nos., if applicable)	Proposals / Suggestions	Rationale

Kindly mention the subject of the communication as, “Comments on Consultation Paper on Strengthening the Investor Grievance Redressal Mechanism in Indian Securities Market”.

Comments as per aforesaid format may be sent to the following, latest by January 9, 2023 (within 21 days from date of publication of this consultation paper on SEBI website) through the following modes:

- By email to; ia_ho@sebi.gov.in or
- By post to the following address:

Mr Manjesh Roy, GM / Mr Rohan Singh Meena, AGM
Office of Investor Assistance and Education
Securities and Exchange Board of India, SEBI Bhavan II, C-7, G-Block,
Bandra Kurla Complex, Bandra (East), Mumbai - 400051