

# FAIRNESS OF PENALTY REGULATIONS ON FINANCIAL MARKET INTERMEDIARIES GLOBAL TRENDS

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## ESSENCE OF FINANCIAL MARKET:

- Market needs to be Honest, Effective and Allow Customers to get Fair deals.
- Market Should Work Well for Investors, Corporates and for Economies.
- Primary Responsibilities of Regulator is to Protect Investor and Investment.
- Main Function of Regulators is to Regulate Financial Sector which plays a critical role in the lives of everyone and creates the Foundation of a Modern Society

## FAIRNESS OF REGULATIONS.

- Fairness means, Capacity to take Perspective of another and to adjust our conduct based on other's Perspective.
- Fairness in Financial Market is limited Primarily to Create Equal opportunities to participate in Market and Ensure "Level Playing Fields"
- Fairness and Efficiency are two sides of the same COIN .If a Market is Unfair, it in effect is also Inefficient As per IOSCO.
- Fairness is a concept which is applied to the World of Regulations and Regulatory Policies for it's Smooth Conducts.
- Fairness holds Significant dispensability of Consumer Protection and Social Justice.

## VULNERABILITY OF MARKET PRACTICE AND IT'S ABUSE.

- When Market becomes Unfair due to Market Abuse and Vulnerability of Market Practice. The Regulators take birth to Create Capability of Users .
- Regulator Steps into maintain Fairness of Regulation and to Protect Market Structure and to achieve Consumer's Protection , to reform the market and Change the dynamics of Commercial business model and the model for Public delivery System.
- The Fairness Agenda built on various Pillars viz Social Justice, Consumer's Protection, Market Efficiency and to Safeguard Market failure.
- The Regulator's basic Objective is to Create Regulations in a Predictive and Preventable manner, to identify the Principle of Market Interventions and Impose Monetary or Non monetary Penal action

## **TRIGGERED POINT OF ACTION BY REGULATORS.**

- When the Breach becomes Deliberate or Reckless.
- The Duration and Frequency of the Breach.
- Whether any benefit Gained or Loss avoided due to breach.
- Whether the breach reveals failure of Internal control or Systematic Weakness of the management system.
- Whether Potential Impacts of the breach damaged the Orderliness and confidence of the market and put it's into Risk.
- Whether Loss or Risk of Loss caused to Investor and other User's.
- The Nature of financial Crime attributable to the breach.

## PRACTICE IN UK BY FCA (FINANCIAL CONDUCT AUTH.)

- FCA Seek to deprive Firm from the Financial Benefit derived from the breach where ever it is practicable to quantify.
- Where Success of a Firm Business model depend upon on Breaching FCA rules it's seeks to deprive all the Financial benefits.
- FCA determine a Percentage of the Firms "Relevant Revenue" which is the relevant revenue obtained by the Firm due to Breach.
- The "Relevant Revenue" Percentage form the basis of Monetary Penalties .The Seriousness of Breach decide the Scale of Penalties between 0% to 20 % This range is divided into Five Fixed Level on Sliding Scale on the seriousness of the breach.
- Fines are mainly Imposed to Protect Clients Money, Market Abuse and misappropriation, Misrepresentation and unsuitable advice.

# PRACTICE IN USA BY SEC (SECURITIES EXCH, COMMIS)

- “SEC” has been granted power with a 3 tiered Structure for Imposing the Penalties based on seriousness of damage.
- The First Tier Provides \$ 5000 to Individual and \$ 50000 to Corporation on the Violation of “Gross Amount of Pecuniary Gain”
- The Second Tier Provides \$ 50000 to Individual and \$ 250000 to Corporations on the Violation involved “Frauds deceit, manipulation or deliberate or reckless disregard of a regulatory requirements.
- The Third Tier Provides \$100000 to Individual and \$ 500000 for a Corporation on the violation involved in tier 2 and in addition to above any Directly or Indirectly caused Substantial Losses or created a Significant risk of Substantial losses to other Persons.
- Penalty against corporation based on twin objects Direct or indirect benefits to it and Shareholders harm due to violation.

## PRACTICE IN JAPAN BY FINANCIAL INST. & EXCH. ACT (FIEA)

- The Financial Instruments and Exchange Act (FIEA) is the most basic and important direct regulations on Capital Markets in Japan.
- The Financial Services Agency (FSA) is responsible for inter alia, ensuring the stability of the Japanese Financial System, protecting investors and carrying out surveillance over securities transactions.
- Monetary Penalties are Provided in Chapter 8 of FIE Act The Major penalties are as follows
- Article-197 (1) - A fine of not more than 10 million YEN or Imprisonment with work for not more than 10 years or both for violation of misstatement on Registration document. False indecation on important matters when making public notice or public announcement. Mis-statement on tender offer, gaining property benefit by committed crime.



## PRACTICE IN JAPAN BY FINANCIAL INST. & EXCH. ACT (FIEA) .....

- Article-197(2) – A fine of not more than 5 million YEN or Imprisonment with work for not more than 5 years or both for violation of Failure to issue notification for public offering or secondary distribution of securities, violated the provision of Article 15(1) and, failed to submit Annual Securities Report. Mis-statement on Internal Control Report, Quarterly or Semiannual Securities Report.
- Article-198 - A fine of not more than 3 million YEN or Imprisonment with work for not more than 3 years or both for violation of conducted Financial Instruments. Doing business without obtaining registration or established a financial instrument market or foreign financial instrument market.

# PRACTICE IN INDIA BY SEBI (SECURITIES EXCHANGE BOARD OF INDIA)

- A penalty of Rs.1,00,000/- each day during which default continue or Rs.1,00,00,000/- which ever is less for violation of(a) failure to furnish information, return, etc.(b) Failure by any person to enter into an agreement with clients,© Failure to redress investors' grievances, (d)for failure to deliver any security or(e) fails to make payment of the amount due to the investor within the period specified in regulation.
- A penalty not exceeding five times the amount of Trade for which contract note was required to issued by the broker have failed to issued.
- A penalty of Rs.1,00,000/- or five time the amount of brokerage charge in excess of the specified brokerage.
- A penalty of Rs.25,00,00,000/- or three times the amount of profit out of fraudulent and unfair trade practices.

# CONCLUSION

- In terms of study conducted on the fairness of security market we come to a conclusion that the regulator world over imposed penalty to maintained fairness in the regulatory market.
- The regulatory action towards penalties is implemented to safeguard the society-wishes, protect investor communities and designated investment firms.
- The basic objective of penalty imposing is to deter the firm or individual who committed breach and to prevent other's from committing further or similar breaches.
- The UK regulator imposed the penalty based on "Relevant Revenue" and a percentage thereof. Whereas USA, Japan & India imposed the monetary penalty based on seriousness of the breaches. The Japan penalty structure also includes imprisonment.

## CONCLUSION. (CONTD...)

- The aim of the law should be to ensure that there is a free, open, fair and transparent market for the growth and development of the business. Regulator in its haste to uphold the law, seems to have overlooked certain key and fundamentals principles of natural justice. The looming threat of humongous penalties for even mere clerical violations and advertent delays has resulted in many players in the market especially small brokers and sub-brokers from shutting shop.
- It is in the interest of the justice that the adjudicator ought to be allowed to consider all surrounding factors like its Global regulatory counter parts appear to do and be able to reduce quantum of penalty otherwise applicable to an infraction.
- An Urgent need is felt that to maintain Fairness of the market Handholding exercise should be undertaken for clerical penalties rather than imposing penalties. Legislation should be positive and fair.

**THANKING YOU**