COMMENTS ON THE

"DRAFT OMNIBUS FRAMEWORK FOR RECOGNIZING SELF-REGULATORY ORGANISATIONS (SROS) FOR REGULATED ENTITIES (RES) OF THE RESERVE BANK OF INDIA"

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The Esya Centre is a New Delhi based technology policy think tank. The Centre's mission is to generate empirical research and inform thought leadership to catalyse new policy constructs for the future. More details can be found at *www.esyacentre.org*.

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Introduction

Comments on the "Draft Omnibus Framework for Recognizing Self-Regulatory Organisations (SROs) for Regulated Entities (REs) of the Reserve Bank of India"

The Reserve Bank of India (RBI) released the Draft Omnibus Framework for recognizing Self-Regulatory Organisations for Regulated Entities of the Reserve Bank of India (Draft Framework) for public comments on December 21, 2023. The Esya Centre[1] is pleased to be afforded an opportunity to respond to the Draft Regulations.[2]

The Draft Framework outlines the broad objectives, functions, and eligibility criteria for self-regulatory organizations (SROs) tasked with governing different regulated entities (REs). Our comments are divided into two parts, with Part I providing an overview of our submissions and Part II delving into greater detail.

Part I - General Overview

The RBI's work towards establishing a framework for self-regulation of different REs is laudable, particularly in light of the rapid technological innovation and advancement in financial and banking services. As the Draft Framework notes, SROs can play a pivotal role in fine-tuning regulatory policy by developing technically sound and progressive standards, gathering and disseminating relevant information, and fostering transparency.

The Draft Framework, as currently formulated, provides the minimum requirements that an SRO for any RE must adhere to. As such, it leaves sufficient room to create SRO frameworks that respond to and reflect the needs and requirements of different REs, such as fintechs, commercial banks, and non-banking financial companies (NBFCs). Indeed, the RBI has already released a Draft SRO Framework for Fintechs, signalling its intent to create

1. The Esya Centre is a New Delhi-based technology policy think-tank. Its mission is to generate empirical research and inform thought leadership to catalyse new policy constructs for the future. It simultaneously aims to build domestic institutional capacities for generating ideas that enjoin the triad of people, innovation and value, consequently helping reimagine the public policy discourse in India. More information can be found at: www.esyacentre.org.

2. The response is prepared by Mohit Chawdhry (Fellow) and Noyanika Batta (Junior Fellow) on behalf of the Esya Centre.

sector-specific SROs.[3] While the high-level and non-prescriptive approach adopted by the Draft Framework is apt, given its omnibus nature, certain aspects must be addressed in greater detail to ensure proper and consistent functioning. These are:

1. **Specify that SROs will be set up for categories/sub-classifications of REs:** The Draft Framework proposes creating SROs for each class or category of REs, but this could be more explicitly defined. Clarifying that SROs can be established for entire sectors or specific sub-sectors will cater to the unique characteristics and needs of each sub-category, significantly improving the effectiveness and practicality of self-regulation in the diverse realm of REs.

2. **Clarify whether the Draft Framework envisions a single SRO or multiple SROs for each sub-category of RE:** The Draft Framework does not clarify whether more than one SRO can be set up for a single sub-category of REs. While the ideal number of SROs will vary depending on the nature of the REs in question, the final framework must nonetheless outline the RBI's general position on a single SRO vs. multiple SROs.

3. **Adopt timelines for the acceptance or rejection of an SRO application by the RBI:** The final Framework must clearly specify the timelines within which the RBI will decide on an application for recognition as an SRO. We recommend a timeline of 45 days, in keeping with existing timelines prescribed by the RBI for granting approval to an SRO for NBFCs.

4. **Provide for the involvement of civil society organisations in the functioning of SROs:** The effectiveness and accountability of SROs envisioned under the SRO framework can be bolstered by involving civil society organisations, such as think tanks, advocacy groups, academic institutions, and consumer rights organisations. These organisations can play a crucial role in information gathering and shaping governance and ethics standards in collaboration with SROs.

3 . https://rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=1260

Part II - Detailed Submissions

1. Specify that SROs will be set up for sub-categories of REs

The Draft Framework suggests establishing a self-regulatory organization (SRO) for each class or category of Regulated Entities (RE). However, this language could be more precise. It would be beneficial to specify that SROs can be formed for the entire sector or specific sub-sectors as needed. This distinction is crucial because a class of regulated entities can be interpreted as a broad group encompassing various entities with differing incentives and interests.

Take, for example, Payment Systems Operators, a category of REs. This group includes diverse entities like UPI apps, mobile wallet companies, ATM service providers, clearance corporations, business correspondents and others. These entities differ markedly in their functions and objectives. The challenge arises in achieving consensus among such varied stakeholders. For example, despite the RBI establishing a self-regulatory framework for PSOs in 2020[4], an SRO for this group is yet to be set up. Reports indicate that stakeholders have struggled to reach the necessary consensus for establishing an SRO, partly due to very limited conversations that happen between each of the segments of the payments industry.[5] To bring all of them together under a single umbrella is challenging.

The need for specificity is further exemplified in other sectors. For example, the Securities and Exchange Board of India (SEBI) has proposed SROs for the mutual fund industry. Within this industry, stakeholders have argued for the need to differentiate between mutual fund distributors and registered investment advisors, suggesting separate SROs for each.[6] Similarly, the RBI itself has set up an SRO (MFIN) specifically for NBFC-MFI, a particular class of Non-Banking Financial Companies (NBFCs).[7] By clarifying that SROs can be tailored to either sectors or specific sub-sectors, the framework can better accommodate the diverse nature and needs of different classes of REs. This

4 . https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT583EB873C7EE0B4AEF8ACE7893E7588CDE.PDF

5 . https://economictimes.indiatimes.com/tech/startups/fintech-firms-struggle-to-create-common-rules-for-epayments/articleshow/99648380.cms?from=mdr

6 . https://www.livemint.com/money/personal-finance/will-mutual-fund-agents-advisers-have-separate-self-regulators-1554228040977.html

7 . https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=30052#:~:text=The%20SRO%20holding%20recognition%20from,MFIs%2C%20responsibility%20of%20ensuring%20borrower

approach could facilitate more effective self-regulation that aligns with the unique characteristics and goals of each group.

This also aligns with findings by the OECD[8], which noted that homogeneity of products is a key factor in the success of industry self-regulation. Product similarity can simplify self-regulation applications. Self-regulatory initiatives tend to be more effective when the products concerned are essentially alike. In contrast, self-regulation proves less effective when the products concerned are complex and difficult to compare. Further, a lack of homogeneity can make it difficult for the industry to detect wrongful activities among its players.

Therefore, a more nuanced approach to the formation of SROs, considering the specific characteristics and homogeneity of each sub-category, could greatly enhance the effectiveness and feasibility of self-regulation within the diverse landscape of REs.

2. Clarify whether the Draft Framework envisions a single or multiple SROs for each sub-category of RE

The Draft Framework does not specify whether more than one SRO can be established for different REs, leading to ambiguity and uncertainty for prospective applicants. Illustratively, the Draft Framework for SROs in Fintech, released after the Draft Omnibus Framework, notes that achieving consensus on the number of SROs would be crucial to the successful implementation of the framework.[9] While the number of SROs will likely vary based on the sub-category of RE it pertains to, the Draft Framework should nevertheless outline a general position, keeping in mind the benefits and drawbacks of a single SRO versus multiple SROs. The following table highlights the respective benefits and drawbacks of recognizing single vs. multiple SROs:

8 . https://one.oecd.org/document/DSTI/CP(2014)4/FINAL/En/pdf

9 . https://rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=1260

	BENEFITS	DRAWBACKS
Single SRO	Minimises opportunities for regulatory arbitrage[10]	Susceptible to regulatory capture and monopolization[11]
	Reduces administrative complexity and the time and cost burden involved in self-regulation[12]	Flexibility to accommodate a diversity of products and services is questionable[13]
	Promotes uniformity in the development and applications of industry standards and practices[14]	
Multiple SROs	Competitive pressures between SROs typically improve the quality of self-regulation[15]	Differences in rules and interpretations lead to uncertainty and economic inefficiencies[16]
	Provides market participants with a diversity of regulations and fee structures to choose from[17]	A multiplicity of standards and codes of conduct creates uncertainty for market participants and end users[18]

10 . https://www.osc.ca/en/securities-law/instruments-rules-policies/2/25-404/csa-position-paper-25-404-new-self-regulatory-organization-framework

11 . https://www.sec.gov/tm/staff-paper-cross-market-regulatory-coordination

12 . https://www.osc.ca/en/securities-law/instruments-rules-policies/2/25-404/csa-position-paper-25-404-new-self-regulatory-organization-framework

13 . https://core.ac.uk/download/pdf/228599252.pdf

14 . https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1747445

15 . https://dash.harvard.edu/bitstream/handle/1/3746486/Paper%20Philipp%20Fischer%20FINAL.pdf;sequence=2#:~:text=

16 . https://www.govinfo.gov/content/pkg/GAOREPORTS-GAO-02-362/html/GAOREPORTS-GAO-02-362.htm

17 . https://dash.harvard.edu/bitstream/handle/1/3746486/Paper%20Philipp%20Fischer%20FINAL.pdf;sequence=2#:~:text=

18 . https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1014&context=llmp

	BENEFITS	DRAWBACKS
	Well-suited to markets with diverse stakeholders and segments	More likely to result in duplication of regulatory efforts[19]

3. Adopt timelines for the acceptance or rejection of an SRO application by the RBI

The Draft Framework outlines the process and conditions governing the recognition of SROs by the RBI. However, the Draft Framework does not provide a timeline within which the application is to be decided on by the RBI. Specifying such a timeline is vital as it ensures that applications for recognition as an SRO are not kept in abeyance and that applicants have the necessary procedural clarity. Illustratively, the RBI has specified clear timelines for different regulatory approvals[20], including the following:

NATURE OF APPROVAL	TIMELINE PRESCRIBED
Recognition of SRO for NBFCs	45 days
In-principle approval of Private Bank license	90 days
Grant of Certificate of Authorization to Commence a payments system under the Payments and Settlements Systems Act 2007	30 days
License for Primary Dealer Business	90 days

Hence, the Draft Framework should clearly specify the time period within which an application for recognition as an SRO will be approved or rejected by the RBI. A period of 45 days from the date of the application may be prescribed, given that this is the time period stipulated for deciding on an application for recognition of an SRO for NBFCs.

19 . https://www.sec.gov/tm/staff-paper-cross-market-regulatory-coordination

20 . https://rbi.org.in/Scripts/Timlines.aspx

4. Provide for the involvement of civil society organisations in the functioning of SROs.

The Draft Framework's involvement of private entities in setting ethical and governance standards and gathering relevant information on key developments in their respective sectors is commendable. At the same time, the functioning of SRO's can be made more effective and accountable by involving civil society organisations (CSOs), such as academicians, think tanks, advocacy groups, and consumer rights groups. The involvement of CSOs can contribute to the effective monitoring of self-regulatory efforts while also increasing consumer awareness through information and education campaigns.[21] Additionally, the knowledge and information possessed by such organisations can form a valuable input in the standard-setting process, particularly where governance or ethical standards are concerned.[22]

International organisations and national governments have sought to increase CSO participation in self regulation and standard setting due to the above-mentioned benefits. For instance, the International Monetary Fund's (IMF) Guidelines on Engagement with Civil Society Organisations envisions their participation in targeted consultations on its work program and policy agenda, including key issues such as financial sector taxation and fiscal transparency.[23]At the national level, the European Union's Digital Services Act provides numerous avenues for CSOs to be involved in contributing to the regulation of online platforms. In particular, CSOs are expected to monitor the online space for new threats and flag potential violations of the Act.[24] Moreover, CSOs are also expected to actively contribute to the setting of voluntary standards that will operationalise obligations that platforms are required to fulfill.[25]

21 . https://doi.org/10.1787/5js4k1fjqkwh-en

22 . https://www.lse.ac.uk/accounting/assets/CARR/documents/D-P/Disspaper37.pdf

23 . https://www.imf.org/external/np/exr/cs/pdf/CSOGuidelinesMarch2016.pdf

24 . http://dsa-enforcement.vergnolle.org/assets/S.%20Vergnolle%20-%20Putting%20collective%20intelligence%20to%20the%20enforcement%20of%20the%20Digital%20Services%20Act.pdf

25 . https://democracyreporting.s3.eu-central-1.amazonaws.com/images/644a891e20b3a.pdf

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