

Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, 2015.

[August 24th, 2015]

SEBI (Prohibition of Insider Trading) Regulations, 2015 ("the Regulations") were notified *vide* notification dated 15th January, 2015. The regulations came into effect from May 15th, 2015. Subsequently SEBI received certain queries from the market participants seeking guidance on the interpretation of some provisions of the Regulations. Under regulation 11 of the Regulations, SEBI may provide guidance to the market to remove any difficulties in the interpretation or application of the provisions of these regulations. The queries received and the guidance sought is detailed below for the guidance of market participants:-

ESOPs:

1. Does the contra trade restriction (for a period not less than six months) under clause 10 of Schedule B of the Regulations also apply to the exercise of ESOPs and the sale of shares so acquired?

Guidance: Exercise of ESOPs shall not be considered to be “trading” except for the purposes of Chapter III of the Regulations. However, other provisions of the Regulations shall apply to the sale of shares so acquired.

For Example:

(i) If a designated person has sold/ purchased shares, he can subscribe and exercise ESOPs at any time after such sale/purchase, without attracting contra trade restrictions.

(ii) Where a designated person acquires shares under an ESOP and subsequently sells/pledges those shares, such sale shall not be considered as contra trade, with respect to exercise of ESOPs.

(iii) Where a designated person purchases some shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) and subsequently sells/pledges (say on October 01, 2015) shares so acquired under ESOP, the sale will not be a contra trade but will be subject other provisions of the Regulations, however, he will not be able to sell the shares purchased on August 01, 2015 during the period of six months from August 01, 2015.

(iv) Where a designated person sells shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) the acquisition under ESOP shall not be a contra trade. Further, he can sell/pledge shares so acquired at any time thereafter without attracting contra trade restrictions. He, however, will not be able to purchase

further shares during the period of six months from August 01, 2015 when he had sold shares.

CONTRA TRADE:

2. *In case an employee or a director enters into Future & Option contract of Near/Mid/Far month contract, on expiry will it tantamount to contra trade? If the scrip of the company is part of any Index, does the exposure to that index of the employee or director also needs to be reported?*

Guidance: Any derivative contract that is cash settled on expiry shall be considered to be a contra trade. Trading in index futures or such other derivatives where the scrip is part of such derivatives, need not be reported.

3. *Whether contra trade is allowed within the duration of the trading plan?*

Guidance: Any trading opted by a person under Trading Plan can be done only to the extent and in the manner disclosed in the plan, save and except for pledging of securities (Refer question 6).

4. *Whether the restriction on execution of contra trade in securities is applicable in case of buy back offers, open offers, rights issues FPOs etc by listed companies?*

Guidance: Buy back offers, open offers, rights issues, FPOs, bonus, ¹[exit offers] etc. of a listed company are available to designated persons also, and restriction of 'contra-trade' shall not apply in respect of such matters.

5. *Whether restriction on execution of contra trade is applicable only to designated persons of a listed company or whether it would also apply to the designated employees of market intermediaries and other persons who are required to handle UPSI in the course of business operations?*

Guidance: The code prescribed by the Regulations is same for listed companies, market intermediaries and other persons who are required to handle UPSI in the course of business operations. Therefore, restrictions with regard to contra trade forming part of clause 10 of code of conduct shall apply to all according to the Regulations.

¹ Inserted by Press note No. 77/2016 dated 12.04.2016 w.e.f. 17.02.2016.

PLEDGE:

6. (a) *Whether SEBI's intent is to prohibit creation of pledge or invocation of pledge for enforcement of security while in possession of UPSI?*

(b) *Whether creation of pledge or invocation of pledge is allowed when trading window is closed?*

Guidance: Yes. However, the pledgor or pledgee may demonstrate that the creation of pledge or invocation of pledge was *bona fide* and prove their innocence under proviso to sub-regulation (1) of regulation 4 of the Regulations.

7. *What should be the value of the pledge / revoke transaction for the purpose of disclosure? Is it the market value on date of the pledge / revoke transaction or is it the value at which the transaction has been carried out between the pledgor and pledgee? For instance, if the pledgor has availed a loan of Rs 10 Lacs against which he has pledged shares worth Rs 15 Lacs, would the transaction value be Rs 10 Lacs or Rs 15 Lacs.*

Guidance: For the purpose of calculation of threshold for disclosures relating to pledge under Chapter III of the Regulations, the market value on the date of pledge/revoke transaction should be considered. In the above illustration, the value of transaction would be considered as fifteen lakh rupees.

MISCELLANEOUS:

8. *Who will be approving authority for trades done by the Compliance Officer or his immediate relatives, as Insiders?*

Guidance: The board of directors of the company shall be the approving authority in such cases and may stipulate such procedures as are deemed necessary to ensure compliance with these regulations.

9. *Whether separate code of conduct can be adopted for listed company and each of intermediaries in a group?*

Guidance: In case of a group, separate code may be adopted for listed company and each of intermediaries, as applicable to the concerned entity.

10. *Whether Chief investor relations officer will also be responsible along with compliance officer for not disseminating information or non-disclosure of UPSI?*

Guidance: Regulation 2 (c) clearly provides the functions and responsibilities of the compliance officer. Specific responsibilities to deal with dissemination of

information and disclosure of unpublished price sensitive information are given to Chief Investor Relations Officer (CIRO) under clause 3 of Schedule A.

It is company's discretion to designate two separate persons as CIRO and Compliance Officer, respectively for fulfilling specified responsibilities. In cases where both CIRO and CO have been designated for overlapping functions, they shall be jointly and severally responsible.

11. If a spouse is financially independent and does not consult an insider while taking trading decisions, is that spouse exempted from the definition of 'immediate relative'?

Guidance: A spouse is presumed to be an 'immediate relative', unless rebutted so.

²***12. Whether the requirement to maintain Structured Digital Database under Regulation 3(5) is applicable on intermediaries and fiduciaries***

Guidance : The requirement to maintain structured digital database under Regulation 3(5), containing the names of such persons or entities with whom UPSI is shared, is applicable to listed companies, and intermediaries and fiduciaries who handle UPSI of a listed company in the course of business operations.

Investment Company

13. What is the scope of the term 'investment company' as mentioned in Regulation 9(4) (iii)?

Guidance : The regulation 9 (4) (iii) intends to include only those non-individual corporate promoters of intermediaries or fiduciaries as designated person, whose main object or principal activity, is investing in securities of other companies. For e.g. if the promoter of a broking entity is a Bank, then such promoter shall not be specified as designated person to be covered by the code of conduct of the intermediary. However, if the promoter of a broking entity is an investment company which holds investments in various companies, then such an entity shall be specified as designated person to be covered by the code of conduct of the intermediary.]

² Inserted on 5th July, 2019.