



भारतीय प्रतिभूति
और विनिमय बोर्ड
*Securities and Exchange
Board of India*

CHIEF GENERAL MANAGER
INTEGRATED SURVEILLANCE DEPARTMENT

ISD/OW/34644/2016
December 23, 2016

A Subrahmanian
President Operations & Compliance Officer
Prabhudas Lilladher Pvt Ltd
3rd Floor, Sadhana House, 570
PB Marg, Worli
Mumbai 400018

Dear Sir,

Re: Request for Interpretive Letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

1. Please refer to your letter dated October 17, 2016 seeking an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 (hereinafter referred to as the "Scheme").
2. In your letter under reference you have inter alia made the following submissions-
 - i. Regulation 2(1)(d)(ii) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (**PIT Regulations**) states as under-

“Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, -

(j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest.”

In this respect, you have stated that the term "Connected person" is defined with reference to possession of "Unpublished Price Sensitive Information (UPSI)"., You have further stated that the above reference to a concern, firm, trust, HUF, company or association of persons is applicable to "director of a listed company" or immediate relative of the director of a listed company or banker of the listed company. The above definition shall not include directors of an Unlisted market intermediary, his immediate relative or banker of the Unlisted Market Intermediary.

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.
दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in



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- ii. Regulation 2(1)(i) states that "*securities*" shall have the meaning assigned to it under the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or any modification thereof except units of a mutual fund;

As per your understanding, certain bonds can also be exempted from the definition subject to no UPSI is attracted inherently on such bonds

- iii. You refer to Regulation 9(1) of the PIT Regulations which mandates the formulation of a code of conduct by listed company and market intermediary to regulate monitor and report trading by its employees and other connected persons towards achieving compliance with PIT Regulations.

You also refer to para 3 of Schedule B of the PIT Regulations which states that "*Employees and connected persons designated on the basis of their functional role ("designated persons") in the organisation shall be governed by an internal code of conduct governing dealing in securities. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation.*"

As per your submission, seniority and professional designation coupled with access to UPSI will make a person eligible to be identified as "Designated Person". The code of conduct to be framed under the Regulation shall apply only to such "Designated Persons". Monitoring trades/details of non-Designated persons is purely optional.

- iv. Additionally a reference is made, with respect to para 10 of schedule B, specifying the restriction of no contra trade for six months, on a designated person permitted to trade, and the section of subsequent guidance note dated August 24, 2015, issued by SEBI covering contra trade restriction regarding ESOPs and Derivatives. The said guidance note had inter alia stated that restriction of 'contra trade' shall not apply in respect of buy back offers, open offers, rights issues, FPOs, bonus, exit offers etc and reference to the same is made here.

With respect to the above, you have stated that "contra trade" is not defined under the Regulations and would mean (a) selling/pledging a security within 6 months of its purchase and (b) buy the same security within 6 months of its sale. Further the following 3 situations are interpreted as under by the applicant:



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- a. For a listed Market intermediary, the restriction on contra trade is only with respect to deals/trades in securities of own company and not for other listed companies.
 - b. For holding/associate/subsidiary company of a listed Market intermediary, the restriction on contra trade is in respect of deals/trades in securities of listed group companies and not for other listed companies.
 - c. For other market intermediaries, the restriction is not applicable in respect of any listed companies.
- v. Finally, reference is also made to the inclusion of financially independent spouse in the definition of 'immediate relative'. While the guidance note date August 24, 2015 specifically states that a spouse is presumed to be an 'immediate relative', unless rebutted so, you have stated that the spouse (of the Employee of the Market Intermediary) who is financially independent and does not consult the employee while taking trading decisions may declare his position as such in writing to the market intermediary. Based on such declaration, the market intermediary may exclude such person from the purview of the Code of Conduct for Employee Trading (as framed by the market intermediary under the Regulation).
- vi. It is noted that certain interpretation is also provided relating to the provisions of the now repealed SEBI (Prohibition of Insider Trading) Regulations, 1992, and the same is not being alluded to as the said Regulation is not in force anymore.
3. In the light of aforesaid submissions, you have sought an interpretive letter on the following questions:
- i. Whether Regulation 2 (1) (d) (ii)(j) is applicable to the directors of an unlisted Market Intermediary or his immediate relative or bankers of an unlisted Market Intermediary.
 - ii. Whether certain bonds can also be exempted from the definition subject to no UPSI attracted inherently on such bonds.
 - iii. Whether a Senior Professional who does not have access to UPSI can request the Compliance officer for exclusion as "designated person" under the Code of Conduct specified in Schedule B. Whether the burden of proof on "Non-access to UPSI" lies with such Senior Professional or with the Compliance Officer and the Board Directors who accorded such exclusion.
 - iv. Whether Contra Trade would mean (a) selling a security within 6 months of its purchase and (b) buying the same security within 6 months of its sale. Whether your interpretation with respect to restriction on contra trade for market intermediaries is correct. If yes, can it lead to a situation that the "contra trade" restriction is not applicable to a Market Intermediary who is not

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- a listed company and may result in any dilution of the provisions of Regulation 9 (1) and Item no. 3 & 10 of Schedule B.
- v. Whether your interpretation can be applied to Investment by "Designated Persons" in Portfolio Management Scheme" also.
- vi. Whether the "rebut" by a spouse of an "employee"/"designated person" through written declaration, is sufficient enough for the market intermediary to exclude such spouse from the purview of code of conduct for employee trading.
4. Without necessarily agreeing with your analysis given in your above mentioned letter, our views on the issue raised by you are as under-

At the outset it may be pertinent to point out that PIT regulations by nature are prohibitive Regulations and the applicability of its provisions, is with respect to Insiders and such concerned securities to which a UPSI might pertain; so as there is no undue advantage accrued to such class of investors, on account of their access to UPSI; at the expense of other investors or general market participants.

- i. With regard to your query mentioned at para 3(i) above, it may be stated that any person, irrespective of being listed or unlisted, may be covered by the definition of "connected persons" if that person has a connection with the company that may put him in possession of UPSI. Attention is drawn to Section 2(1)(d)(ii)(j) of the PIT Regulations which states as under-

"(j). a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;"

It may be stated that the term "company" in the phrase "director of company or his immediate relative or banker of the company" in the above mentioned regulation implies a listed company to which UPSI may pertain.

- ii. With regard to your query mentioned at para 3(ii) above it may be stated that the exclusion provided from the definition of securities in Regulation 2(1)(i) of the PIT Regulations, is with respect to Mutual funds unit only.
- iii. With respect to your query mentioned at para 3(iii), it may be stated that employees and connected persons are designated on the basis of functional role and not only on seniority. The code of conduct applies to all connected persons and not only to designated persons. It may further be stated that designated persons are specified by the Board of Directors in consultation with the compliance officer.



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- iv. With respect to the query at 3(iv) and 3(v), it may be stated that “Contra Trade” is not defined in the PIT Regulations. However, Contra trade may be construed as opposite trading or reversal of the actual position.

In regard to your interpretation of the PIT Regulations at Table 1 of your letter dated October 17, 2016, attention may be drawn to Clause 10 of Schedule B of the PIT Regulations which states that-

“The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such a relaxation does not violate these regulations...”

From the above, it may be stated that the restriction to execute contra trades is construed to be only in respect of securities to which the UPSI pertains and will be applicable to designated persons as they are reasonably expected to have access to UPSI and thus insiders.

It may also be pointed out that in case of Intermediaries, a restricted list is maintained by the compliance officer for pre approval of trades, in accordance with Schedule B of PIT regulations.

- v. With respect to the query at 3(vi) above, it is noted that the Guidance note on PIT Regulations dated August 24, 2015 states that *A spouse is presumed to be an ‘immediate relative’, unless rebutted so.* Further, whether a written declaration is sufficient or not is a hypothetical question and validity of the same can only be ascertained on case to case basis.
5. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the question referred.
6. You may also note that the above views are expressed only with respect to the clarification sought in your letter under reference with respect to the PIT Regulations and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI of the laws administered by any other authority.

Yours faithfully,

Sunil Kadam