

August 07, 2018

Securities and Exchange Board of India
Integrated Surveillance Department
SEBI Bhavan, Plot No – C4 .A, "G Block"
Bandra Kurla Complex
Bandra East
Mumbai – 400051

Kind Attn: Shri A Sunil Kumar, Chief General Manager

Dear Sir,

Request for an interpretative letter under SEBI (Informal Guidance) scheme, 2003 regarding clarification on applicability of provisions of SEBI (Prohibition of Insider Trading) Regulations 2015 for transactions done under the Securities Lending and Borrowing Scheme (SLBS).

Query:

Whether transactions of lending and borrowing of securities done under Securities Lending and Borrowing Scheme (SLBS) fall within definition of 'trading/trade' as defined in SEBI (Prohibition of Insider Trading) Regulations, 2015 and attract provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015

Reference to SEBI (Prohibition of Insider Trading) Regulations, 2015

Regulation 2(l) defined trading as "trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly.

HDFC Securities Limited

Registered Address: I Think Techno Campus, Building - B, "Alpha", Office Floor 8, Near Kanjurmarg Station, Opp. Crompton Greaves, Kanjurmarg (East), Mumbai 400 042. Tel: +91-22-30753400 Fax: +91-22-30753435 www.hdfcsec.com

Corporate Identity Number (CIN)-U67120MH2000PLC152193

BSE: INB011109437 | INF011109437 | NSE: INB231109431 | INF231109431 | INE231109431

For any complaints / grievance: services@hdfcsec.com

Compliance Officer: Binkle R. Oza, Contact: +91 22 3045 3600. Email: complianceofficer@hdfcsec.com

Note to Regulation 2(l) states that under the parliamentary mandate, since the Section 12A (e) and Section 15G of the Act employs the term 'dealing in securities'; it is intended to widely define the term "trading" to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc when in possession of unpublished price sensitive information.

Regulation 4 (1) states that, No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information

Securities Lending and Borrowing (SLB)

NSE platform, through NSCCL, offers Securities Lending and Borrowing Scheme (SLBS). Brief on the product features and its advantages are as follows:

- Securities lending is a temporary lending of securities by a lender to the borrower. SLB mechanism is very popular globally. This mechanism provides liquidity to the equity market and thereby increases the market efficiency. In India, SLB is an Exchange traded product. NSE offers an anonymous trading platform and gives the players the advantage of settlement guarantees. It provides the lender and the borrower a secured platform to transact without worries of counter party default. In most other countries this product is an OTC (over the counter) product, whereby the custodians facilitate the transaction of borrowing and lending among institutions. It is a negotiated transaction between two parties in most countries. Thus, the lender has to deal with counter party risk, collateral adequacy, sufficiency risk, and other related risks.
- Users and Usage benefits as under:

Benefits to Lenders

- (i) Risk-free Income on securities lying idle in demat account.
- (ii) Protection of all rights as owner.
- (iii) Settlement Guaranteed by Clearing Corporation
- (iv) Low transaction costs.
- (v) Potential to improve the portfolio performance.

Motivation for Borrowers: The reasons to borrow securities may vary among borrowers like securities required to support a trading strategy, financing strategy or simply filling a settlement obligation at the Exchange.

Facts:

HDFC Securities Limited (HSL) is a registered stock broker with SEBI and a trading member with BSE and NSE. It is also registered with AMFI as distributor Mutual Funds, and Corporate agent of Insurance registered with IRDA. HSL offers various products to its customers which are available on the Exchange platform.

While marketing SLB product to select senior employees (designated persons) of few companies for lending shares allotted to them under ESOP, queries were raised on applicability of SEBI (Prohibition of Insider Trading) Regulations, 2015 for such SLB transactions. These designated persons by virtue of their employment, could be considered as insider and they may be in possession of UPSI of their employer company whose shares they intend to lend in SLB. Regulation 4 of SEBI (Prohibition of Insider Trading) Regulations prohibits trading in securities of listed company, by insider or his immediate relatives, when they are in possession of UPSI

As per Subsection (xv) of section 47 transactions done in the SLB shall not be regarded as transfer under section 45 of the Income Tax Act. Hence, in SLB mechanism, ownership of securities remains with the lender and do not get passed on to the borrower at any point in time, unlike pledge transactions, where possibility of transfer of ownership exists. The lender gets lending fees and gets back all the securities on a pre-defined settlement date irrespective of price movement of those securities during intervening period provided the transactions are within the guidelines issued by SEBI under Section 3 of SEBI Act, 1992 (15 of 1992) or sub section (1) of section 3 of RBI Act, 1934

Quotes of securities which are available on SLBS platform have no correlation to market price of the underlying securities. Further the lending / borrowing fee is not determined by the price movement of the underlying securities. The lending / borrowing fees are not sensitive to the market price of underlying and it depends on demand and supply. With the introduction of physical settlement of Derivatives by Exchanges, SLB activity is likely surge.

①

However, due to apprehension of attracting provision of SEBI (Prohibition of Insider Trading) Regulations, owners of securities are not willing to lend their securities through SLB mechanism although it provides good opportunity for investors and liquidity to the SLBS platform without any risk.

Conclusion:

By very nature, SLB transactions represent lending and borrowing of securities, not resulting in transfer of ownership. Also lending /borrowing of securities in SLBS do not have impact on market price of underlying securities. Based on the above it is submitted that SLB transactions may not be included in the definition of "trading" or "trade" as defined in SEBI (Prohibition of Insider Trading) Regulations and accordingly, provision of SEBI (Prohibition of Insider Trading) Regulations, 2015 may not be applicable to such SLB transactions.

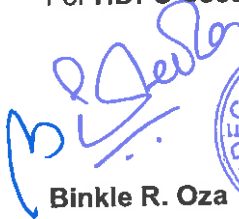
We request for an interpretative letter from you on the above matter in accordance with SEBI Informal Guidance, 2003 on the applicability of Insider Trading Regulations.

We are enclosing herewith a demand draft of Rs 25000/- in favour of Securities and Exchange Board of India payable at Mumbai towards fees for informal guidance and request for your opinion.

We would appreciate a quick response in the above matter.

Thanking you

For **HDFC Securities Limited**




Binkle R. Oza

Compliance Officer