



CHIEF GENERAL MANAGER  
INTEGRATED SURVEILLANCE DEPARTMENT

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

ISD/OW/26665/2018

05 October 2018

HDFC Securities Ltd.  
I Think Techno Campus, Building B, Alpha  
Office Floor 8, Nr. Kanjurmarg Station  
Opp. Crompton Greaves, Kanjurmarg (E)  
Mumbai – 400042

Sir/Madam,

**Re: Request for Interpretive Letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 regarding transactions done under the Securities Lending and Borrowing Scheme (SLBS)**

1. This has reference to your letter dated 07 August 2018 seeking guidance by way of an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003.
2. You have, *inter alia*, represented as follows:
  - a) Securities lending is a temporary lending of securities by a lender to the borrower. NSE platform, through NSCCL, offers SLB. It offers an anonymous trading platform and gives the players the advantage of settlement guarantees.
  - b) The lender gets risk-free income on securities lying idle in demat account. The reasons to borrow securities may vary among borrowers and include securities required to support a trading strategy, financing strategy or fulfilling settlement obligations.
  - c) HSL approached certain clients who are senior employees (designated persons) of few companies for lending their shares allotted to them under ESOP under SLB mechanism. These clients raised queries regarding applicability of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter, referred to as the PIT Regulations) for such SLB transactions.
  - d) These clients/ designated persons by virtue of their employment could be considered as insider and may be in possession of unpublished price sensitive information (UPS) of their employer company whose shares they intend to lend in SLB mechanism.
  - e) As per subsection (xv) of section 47, transactions done in SLB segment shall not be regarded as transfer under section 45 of the Income Tax Act.

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.

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- f) Hence, ownership of securities remains with the lender and does not get passed on to the borrower at any point. 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.
  - g) Quotes of securities which are available on SLB platform have no correlation to market price of the underlying securities. The lending/borrowing fee is not determined by the price movement of the underlying securities and it depends on demand and supply.
  - h) With the introduction of physical settlement of derivatives by Exchanges, SLB activity is likely to surge. However, due to apprehension of attracting provision of the PIT Regulations, owners of securities are not willing to lend their securities through SLB mechanism.
3. In light of the above submissions, you have sought interpretive letter from SEBI with respect to whether transactions of lending and borrowing of securities done under SLBS fall within the definition of 'trading/trade' as defined in the PIT Regulations and attract the provisions of the PIT Regulations.
4. Without necessarily agreeing with your analysis given in the captioned letter, interpretation on the above query is as under:
- a) SLB is a mechanism for lending and borrowing of securities (i.e. equity shares) in the form of contracts, which are traded on an automated screen based order-matching platform. The price of such contracts is lending fee, which may derive its value from the underlying securities.
  - b) It is seen that in SLB mechanism, the title of the securities lent vests with the borrower during lending period, the borrower is entitled to deal with or dispose of the securities borrowed and there is an agreement to return (as per terms of the SLB contracts) the underlying securities to lender at the end of the contract.
  - c) Further, in the instant matter, the underlying securities are amenable for price discovery on an Exchange platform.
  - d) Regulation 2 (L) of the PIT Regulations defines trading *to mean and include subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly.* Further, explanatory note to the said regulation, inter alia, states that '*...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,*



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*selling or subscribing, such as pledging etc. when in possession of unpublished price sensitive information.'*

- e) Considering the contents of regulation 2(L) and the nature of the SLB mechanism, the transactions of borrowing/lending done under SLB mechanism constitute trade for the purpose of PIT Regulations.
  - f) Further, as per Regulation 4(1) of the PIT Regulations, no insider shall trade in securities that are listed or proposed to be listed on stock exchange when in possession of UPSI.
  - g) Accordingly, borrowing or lending of securities by an insider while in possession of UPSI with respect to underlying securities shall result in insider trading in terms of regulation 4(1) of the PIT Regulations provided that the insider may prove his innocence by demonstrating the circumstances as stated therein.
5. This position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different interpretation. 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 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 or of the laws administered by any other authority.

Yours faithfully,

  
A Sunil Kumar