



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

CHIEF GENERAL MANAGER
INTEGRATED SURVEILLANCE DEPARTMENT

ISD/OW/30056/2016
November 1, 2016

S. Ganguli
Tide Water Oil Co. (India) Limited
Yule House,
8 Dr. Rajendra Prasad Sarani
Kolkata -700001

Dear Sir,

Re: Request for Interpretive Letter pursuant to Para 5(ii) of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 seeking guidance on the interpretation of provisions of the Securities and Exchange Board of India (Prohibition of Insider Trading), Regulations, 2015, in respect of "Trading Plans".

1. Please refer to your letter dated September 27, 2016 seeking an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 addressed to the Corporation Finance Department, SEBI.
2. In your letter under reference you have inter alia made the following submissions-
 - i. M/s Standard Greases and Specialties Pvt. Ltd. ("SGSPL") acquired through an open offer, the shares of M/s. Tide Water Oil Company (India) Limited ("TWOCIL") from the open market consequent to which the shareholding of SGSPL is 27.69% of the paid up share capital of TWOCIL. SGSPL has two nominees on the Board of directors of TWOCIL and one of the said two nominees is also a director SGSPL. One of the aforesaid nominees who is not a director at SGSPL is the Managing Director of M/S Tata Capital Limited. M/S Tata Capital Limited has promoted a private equity fund named M/s Tata Capital Growth Fund, which acted in concert with SGSPL in the aforesaid open offer. The said open offer now stands complete.
 - ii. SGSPL is joint promoter of TWOCIL, pursuant to the relevant provision of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR").
 - iii. SGSPL now proposes to acquire further shares of TWOCIL in pursuance of the provisions of Regulation 4(1)(iii) and Regulation 5 of the Securities and Exchange Board of India (Prohibition of Insider Trading), Regulations, 2015 ("PIT Regulations").
 - iv. Reference is drawn to Regulation 5(1) of PIT Regulations, which provides that "an insider shall be entitled to formulate a trading plan and present it to the

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SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.

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- compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan."
- v. Reference is also drawn to Regulation 5(2) of PIT Regulations, which inter alia states under clause(v) that such trading plan shall *set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected;*
 - vi. SGSPL has formulated a draft trading plan which inter alia specifies the number of shares of TWOCIL to be purchased during the trading period as proposed in the plan subject to maximum value per share. The instant application is for seeking guidance under the aforesaid in respect of the aforesaid specification of number of shares to be purchased during the plan period subject to maximum value per share.
 - vii. Reference is drawn to Regulation 5(4) of PIT Regulations, which provides that, "the trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan."
 - viii. Reference is also made to Regulation 5(2)(v) of PIT Regulations which inter alia states that "*it is intended that while Regulations should not be too prescriptive and rigid about what a trading plan should entail, they should stipulate certain basic parameters that a trading plan should conform to and within which, the plan may be formulated with full flexibility*". It is further stated in the said note that the plan may set out the value of securities or the number of securities to be invested or divested. Therefore it is inferred by you that subject to aggregate value of shares or aggregate number of shares to be traded during the plan period and subject to compliance with other applicable provisions of law, the relevant trading plan can be flexible.
3. In the light of aforesaid submissions, you have sought an interpretive letter on the following queries:
- i. Is there any scope under the Regulation 5(2)(v) of PIT Regulations or anywhere in PIT to add a condition of "maximum value per share not exceeding a certain amount" along with the specification of number of shares to be purchased during the trading plan period?
 - ii. Can a plan include inter alia that a certain number of shares would be purchased during the trading plan period subject to "maximum value per share not exceeding a certain amount"?
 - iii. Regulation 5(4) of PIT Regulations provides inter alia that the trading plan once approved cannot be deviated from. Would inclusion of the condition being "maximum value per share not exceeding a certain amount" along with



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the total number of shares to be purchased, defeat the aforesaid restriction from deviation of plan as referred in Regulation 5(4) of PIT Regulations?.

4. Without necessarily agreeing with your analysis given in your above mentioned letter, our views are as under-

i. Attention is drawn to Regulation 5(2)(v) of the SEBI PIT Regulations, which states as under-

“(2) Such trading plan shall:-

(v) set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and

NOTE: It is intended that while regulations should not be too prescriptive and rigid about what a trading plan should entail, they should stipulate certain basic parameters that a trading plan should conform to and within which, the plan may be formulated with full flexibility. The nature of the trades entailed in the trading plan i.e. acquisition or disposal should be set out. The trading plan may set out the value of securities or the number of securities to be invested or divested. Specific dates or specific time intervals may be set out in the plan.”

- ii. From a plain reading of Regulation 5(2)(v) of the PIT Regulations, it appears that the provision mandates setting out either the value of trades or the number of securities to be traded. From the letter dated September 27, 2016, it appears that you intend to include a certain number of shares in the trading plan subject to “maximum value per share not exceeding a certain amount”.
- iii. It may be stated that such condition on the purchase of shares subject to a certain limit on the price of the shares, may lead to deviation from the number to shares that will be specified in the trading plan.
- iv. It appears that the intention of the legislation is to make the parameters decided by the entity, mandatory in nature and the same has to be specific, so that eventually there is no room for ambiguity or scope for market abuse. Further, placing a condition of maximum price also induces uncertainty into the trading plan which may not be in compliance with Regulation 5(4) which requires that a trading plan once formulated cannot be deviated from. Hence, if an entity plans to include a certain number of shares to be purchased in a trading plan, it has to mandatorily confirm to the same.
- v. Further, it could also be construed that being an insider, the entity is providing hint or inducing the investors on the future pricing of its securities. Therefore such disclosure of future pricing would entail market abuse and thus it may be construed as not being in the spirit of the regulations.



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- vi. In this regard, attention is drawn to para 3 of the Guidance Note dated August 24, 2015 on SEBI (Prohibition of Insider Trading) Regulations, 2015 which states that “*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.*”
 - vii. With respect to query at para 3(i) it is stated that there is no scope under the Regulations 5(2)(v) of the PIT Regulations to add a condition of “maximum value per share not exceeding a certain amount” along with the specification of number of shares to be purchased during the trading plan period.
 - viii. With respect to query at 3(ii) and 3(iii), it may be stated that the inclusion of the condition being “maximum value per share not exceeding a certain amount” along with the total number of shares to be purchased may defeat the restriction from deviation of trading plan as referred in Regulation 5(4) of the PIT Regulations.
5. This position is based on the representations and submissions made to the Department in your letter under reference. Different facts or conditions might require a different result. This letter expresses the Department’s position on applicability of the respective Regulations / Guidelines as referred above only in the instant case. It does not express decision of the Board on the questions presented.
 6. You may note that the above views are expressed only with respect to the clarification sought on the applicability of the respective Regulations/Guidelines as referred above and do not affect the applicability of any other law or requirements.

Yours faithfully,

Sunil Kadam