

Clarifications on SEBI (Prohibition of Insider Trading) Regulations, 1992.

SEBI has amended certain provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 vide notification dated November 19, 2008 for the purpose of better disclosures and prevention of insider trading. Subsequently we received a few queries from the companies seeking clarification mainly on the interpretation of amendments. The queries received and the clarifications given by us on the same are presented below for information of all the listed companies.

We have received a few queries on the amended Clause 4.2 and existing Clause 4.3 of Part A, Schedule I of the Regulations which read as follows:

4.2 “All directors /officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors /officers/designated employees shall also not take positions in derivative transactions in the shares of the company at any time.

In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted”.

4.3 “In case the sale of securities is necessitated by personal emergency, the holding period may be waived by the compliance officer after recording in writing his / her reasons in this regard”.

- 1. Does the six month restriction under amended clause 4.2 also apply to the exercise of ESOPs and the sale of shares received?**
- 2. If an employee has sold shares on 10th February 2009, can he subscribe to ESOPs on 11th March 2009?**

Clarification : Restriction in Clause 4.2 is intended for transactions in the secondary market and hence is not applicable for the exercise of ESOPs and sale of these shares. In the above example, the employee can subscribe to the ESOPs even if he has sold shares during the previous six months. However, it may be noted that once shares acquired through ESOPs are sold in the market, the restriction on buying would become applicable for next six months. Also, while exercising ESOPs, the code of conduct framed by the company and the fundamental principles for prohibition of insider trading as specified in the Regulations must be complied with.

- 3. If an employee has purchased 100 shares on 1st February 2009 and then again purchased 400 shares on 15th March 2009, when will he be**

able to sell the shares purchased on 1st February 2009? Will it be after 1st August or 15th September?

Clarification : The restriction of six months on sale of shares would apply from the date of the last purchase and not the first purchase. In the above example he can sell the shares after 15th September. The same is true in case of sale of shares on two different dates i.e. the restriction of six months on purchase of shares would apply from the date of the last sale.

- 4. The clause 4.2 stipulates that, no opposite transaction can be entered into for a period of 6 months from the date of prior transaction by a designated employee. Whether the same shall be applicable for shares held on the date of the notification. For example, a designated person has purchased 100 shares on 01.11.2008. Can he sell these shares on 22.12.2008?**

Clarification : As the shares were acquired before the amendments to the Regulations were notified , the designated person may be allowed to sell the shares if it is permitted under the code of conduct of the company

- 5. Clause 4.2 of Part A, Schedule I of the Regulations, provides for holding period of 30 days in case of acquiring shares through IPO. Can the company apply the minimum holding period of 30 days as applicable to IPOs even for bonus issues, ESOPs, rights issues etc.?**

Clarification : Under the existing Regulations, 30 day holding period restriction is applicable for IPOs. In case of issues as referred to above, the company may decide about the holding period as specified in its code of conduct.

- 6. Clause 4.3 of Part A, Schedule I of the Regulations provides that in case the sale of securities is necessitated by personal emergency, the holding period may be waived by the compliance officer after recording in writing his / her reasons in this regard. Can the Compliance Officer extend the waiver clause to the amended Clause 4.2 i.e restrictions on opposite transactions?**

Clarification : Yes. The waiver clause in Clause 4.3 is applicable for the entire Clause 4.2 and hence it may be applied for sale of shares by personal emergencies after recording the reasons in writing and ensuring that there is no element of insider trading.

- 7. Can a designated employee continue to deal in NIFTY / SENSEX index futures ?**

Clarification : There is no restriction under the Regulations for dealing in NIFTY / SENSEX index futures by the designated employees subject to their compliance of code of conduct.

8. For a designated employee already holding derivative positions in the company's shares, is it required for them to liquidate the positions before maturity or it necessary to hold till maturity?

Clarification : As the position in derivatives was taken before the notification of Regulations, the company may take a view about liquidating the derivative position or holding it till maturity.