

SECURITIES AND EXCHANGE BOARD OF INDIA

Memorandum to the board

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

1.0 Objective:

1.1 This memorandum seeks approval of the Board for amending SEBI (Prohibition of Insider Trading) Regulations, 2015 to extend the disclosure requirements to the promoter group in line with the provisions in erstwhile SEBI (Prohibition of Insider Trading) Regulations, 1992.

2.0 Background:

- 2.1 Regulations 7(1) and 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations, 2015') respectively specify the initial disclosure requirements upon becoming promoter or being appointed as key managerial personnel and director of a company and continuous disclosure requirements upon reaching certain threshold of trade value by the said entities. While the disclosure requirements are cast upon promoters, key managerial personnel and directors of a company, there is no obligation on entities belonging to 'Promoter group' to make such disclosures.
- 2.2 During the course of investigation of a case, it was observed that one of the entities under promoter group of a company did not disclose a trade having total trade value in excess of ten lakh rupees as required under Regulation 7(2)(a) of the PIT Regulations, 2015. Upon seeking clarification, the promoter group entity responded that the requirement for disclosure under the said regulation is applicable only for promoters, employees and directors. The entity further mentioned that being a part of the promoter group, it is not required to make any disclosure under the said regulation.
- 2.3 The terms 'promoter' and 'promoter group' are defined under SEBI (ICDR) Regulations, 2018 (hereinafter referred to as 'ICDR Regulations, 2018'). As per the said regulation, the term 'promoter group' refers to, inter-alia, certain entities which

are immediate relatives of the promoter or entities where the promoter group holds at least twenty per cent of the share capital. Further, the term 'promoter' does not include 'promoter group' but the term 'promoter group' includes 'promoter'.

2.4 The extract of the relevant regulations from PIT Regulations, 2015 and ICDR Regulations, 2018 is placed as Annexure A.

3.0 Analysis:

3.1 The erstwhile regulation on insider trading i.e. SEBI (Prohibition of Insider Trading) Regulations, 1992 did require the promoter group to comply with various disclosure requirements. The said provision was incorporated in the regulation by way of an amendment in 2011. The extract of the relevant regulations from SEBI (PIT) Regulations 1992 is placed as Annexure B.

3.2 Subsequently, SEBI (PIT) Regulations, 1992 were repealed and replaced by the PIT Regulations, 2015 based on N.K. Sodhi Committee report dated December 7, 2013. The said report does not include any discussion or any rationale for the exclusion of the 'promoter group' from making the disclosure requirement.

3.3 In view of the above, it appears that exclusion of the promoter group from making the disclosure requirement may not be the intent of the PIT Regulations, 2015 as the term 'promoter' and 'promoter group', in general parlance is often used interchangeably.

3.4 Under SEBI (SAST) Regulations 2011, the disclosure obligations are applicable not only on promoters but also on promoter group entities.

3.5 In view of the above, it is proposed to make suitable amendment to Regulation 7 of PIT Regulations, 2015 to restore the various disclosure requirements on promoter group as well. Further, the definition of the 'promoter group' may also be included by referring to the definition of promoter group under ICDR Regulations, 2018.

3.6 Incidentally, SEBI vide notification dated 11th September, 2018 had notified ICDR Regulations, 2018. Since the ICDR Regulations, 2009 stands repealed upon commencement of ICDR Regulations, 2018, it is also proposed to align the definition of the term 'promoter' under regulation 2(1)(h) of PIT regulations 2015, with the provisions of ICDR Regulations, 2018.

4.0 Recommendation:

In view of the above, the following changes are recommended to the PIT Regulations, 2015:

- 4.1 To insert a new provision for the definition of the term 'promoter group'
- 4.2 To align the term 'promoter' with the provisions of ICDR, Regulations, 2018
- 4.3 To make suitable amendment to Regulation 7 of PIT Regulations, 2015 to restore the various disclosure requirements on promoter group as well.
- 4.4 Accordingly, a draft of the proposed amendment to the PIT Regulations, 2015 is placed as Annexure C to this memorandum.

5.0 Proposal:

- 5.1 The Board is requested to consider and approve the proposal contained at para 4 of this memorandum.
- 5.2 The Board is also requested to authorize the Chairman to take consequential and incidental steps to give effect to the decisions of the Board.

Relevant extract from SEBI (PIT) Regulations, 2015 and SEBI (ICDR) Regulations, 2018

1. SEBI (PIT) Regulations, 2015

Regulation 2(1)(h) of SEBI (PIT) Regulations, 2015 defines promoter as under:

2(1)(h) "promoter" shall have the meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 or any modification thereof;

Regulation 7 of SEBI (PIT) Regulations, 2015 on the requirements of disclosures is as under:

7 (1) Initial Disclosures

- (a) Every promoter, key managerial person and director of every company whose securities are listed on any recognized stock exchange shall disclose his holding of securities of the company as on date of these regulations taking effect, to the company within thirty days of these regulations taking effect;*
- (b) Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.*

7(2) Continual Disclosures

- (a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.*

2. SEBI (ICDR) Regulations, 2018

Regulation 2(oo) of SEBI (ICDR) Regulations, 2018 defines promoter as under:

2(oo) “promoter” shall include a person:

- i) who has been named as such in a draft offer document or offer document or is identified by the issuer in the annual return referred to in section 92 of the Companies Act, 2013; or*
- ii) who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise; or*
- iii) in accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act:*

Provided that nothing in sub-clause (iii) shall apply to a person who is acting merely in a professional capacity;

Provided further that a financial institution, scheduled commercial bank, foreign portfolio investor other than Category III foreign portfolio investor, mutual fund, venture capital fund, alternative investment fund, foreign venture capital investor, insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by the Board from time to time, shall not be deemed to be a promoter merely by virtue of the fact that twenty per cent. or more of the equity share capital of the issuer is held by such person unless such person satisfy other requirements prescribed under these regulations;

Regulation 2(pp) of SEBI (ICDR) Regulations, 2018 defines promoter group as under:

2(pp) “promoter group” includes:

- i) the promoter;*
- ii) an immediate relative of the promoter (i.e. any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and*
- iii) in case promoter is a body corporate:*
 - A) a subsidiary or holding company of such body corporate;*

B) any body corporate in which the promoter holds twenty per cent or more of the equity share capital; and/or any body corporate which holds twenty per cent or more of the equity share capital of the promoter;

C) any body corporate in which a group of individuals or companies or combinations thereof acting in concert, which hold twenty per cent or more of the equity share capital in that body corporate and such group of individuals or companies or combinations thereof also holds twenty percent. or more of the equity share capital of the issuer and are also acting in concert; and

iv) in case the promoter is an individual:

A) any body corporate in which twenty per cent or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of their relative is a member;

B) any body corporate in which a body corporate as provided in (A) above holds twenty per cent or more, of the equity share capital; and

C) any Hindu Undivided Family or firm in which the aggregate share of the promoter and their relatives is equal to or more than twenty per cent. of the total capital;

v) all persons whose shareholding is aggregated under the heading "shareholding of the promoter group":

Provided that a financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor, mutual fund, venture capital fund, alternative investment fund, foreign venture capital investor, insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by the Board from time to time, shall not be deemed to be promoter group merely by virtue of the fact that twenty per cent. or more of the equity share capital of the promoter is held by such person or entity:

Provided further that such financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor, mutual fund, venture capital fund, alternative investment fund and foreign venture capital investor insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by the Board from time to time shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;

Relevant extracts from SEBI (PIT) Regulations, 1992

Regulation 13 of SEBI (PIT) Regulations, 1992 on the requirements of disclosures is as under:

13. (1) *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—*

- (a) the receipt of intimation of allotment of shares; or*
- (b) the acquisition of shares or voting rights, as the case may be.*

(2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

(2A) Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.

Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total

number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

Proposed Amendments to SEBI (PIT) Regulations 2015

Definition of “Promoter” and “Promoter group”

2(1)(h) "promoter" shall have the meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 or any modification thereof;

2(1)(ha) "Promoter group" shall have the meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 or any modification thereof;

Disclosures by certain persons.

7 (1) Initial Disclosures

- (a) Every promoter or part of promoter group, key managerial person and director of every company whose securities are listed on any recognized stock exchange shall disclose his holding of securities of the company as on date of these regulations taking effect, to the company within thirty days of these regulations taking effect;
- (b) Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter or part of promoter group shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter or part of promoter group, to the company within seven days of such appointment or becoming a promoter or part of promoter group.

7(2) Continual Disclosures

- (a) Every promoter or part of promoter group, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one

transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.