

SECURITIES AND EXCHANGE BOARD OF INDIA

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

1. Objective

1.1. This Memorandum seeks approval of the Board for amending SEBI (Prohibition of Insider Trading) Regulations, 2015¹ (hereinafter referred to as **PIT Regulations**) with respect to

1.1.1. Regulation 3(5) – Structured digital database

1.1.2. Regulation 7(2) - Continual Disclosures

1.1.3. Regulation 9 - Code of Conduct (CoC)

1.1.3.1. Clause 4 (3) (b) of Schedule B – Allowing Offer for Sale and such other transaction(s) during trading window closure

1.1.3.2. Clause 12 of Schedule B (for Listed companies) and Clause 10 of Schedule C (for Intermediaries and Fiduciaries) – Crediting of amount(s) levied for CoC non-compliances into IPEF

1.1.3.3. Clause 13 of Schedule B and Clause 11 of Schedule C – Substituting the word “Board” with “Stock Exchange(s)”.

2. Regulation 3(5) – Structured Digital Database (SDD)

2.1. Listed companies/intermediaries/fiduciaries who handle Unpublished Price Sensitive Information (UPSIs) are mandated to maintain a trail of such information flow digitally.

2.2. The relevant provision under Regulation 3 (5) of PIT Regulations is as follows:

¹ Amended on (i) Dec 31, 2018, (ii) Jan 21, 2019, (iii) Jul 25, 2019 and (iv) Sep 17, 2019

“The board of directors shall ensure that a structured digital database is maintained containing the names of such persons or entities as the case may be with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such databases shall be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database”.

2.3. The aforesaid regulation does not explicitly specify certain particulars such as nature of unpublished price sensitive information (UPSI) shared, persons or entities who have shared the information, the time period of preserving information in the SDD and maintenance of SDD. SEBI is also in receipt of certain representations in this regard.

2.4. In order to bring in more clarity, it is proposed to specify the following details in the regulation:

2.4.1. Nature of UPSI

2.4.2. Details of persons or entities who have shared the information

2.4.3. The information in the SDD shall be preserved for a period of not less than eight years after completion of the relevant transactions. This is in line with the similar provision in SEBI (LODR) Regulations, 2015.

2.4.4. Such SDD shall be maintained internally by listed companies/intermediaries/fiduciaries and shall not be outsourced.

2.5. Further, for exceptional cases, viz. investigation/enforcement proceedings which may be initiated by Board in connection with the UPSI, upon receipt of any intimation from the Board for preserving such information, the relevant details of SDD shall be maintained till further intimation from the

Board.

2.6. Regulation 3(5) of PIT Regulations uses the words “persons or entities”. In terms of section 3(42) of the General Clauses Act, 1897, the word “person” includes any company or associations or body of individuals, whether incorporated or not. Accordingly, it is proposed that in Regulation 3(5) of PIT Regulations, the words “persons or entities as the case may be” omitted.

2.7. In order to bring further clarity and to make the requirement of maintaining the SDD mandatory for intermediaries and fiduciaries, it is proposed to amend the Regulation 3(5) of PIT Regulations, as follows:

2.7.1. Regulation 3 (5)

The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.”

2.7.2. With respect to period of preservation of information in SDD, a new sub-clause may be inserted as under:

“3 (6) The board of directors or head(s) of the organization of every person required to handle unpublished price sensitive information shall ensure that the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings.”

3. Regulation 7(2) - Continual Disclosures

3.1. The relevant provisions are as follows:

“Regulation 7 (2) Continual Disclosures

(a) Every promoter, member of the promoter group, designated person 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;

(b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.”

3.2. It has been observed that while entities are broadly complying with the above requirements on time, there have been few cases of delay or non-

compliance due to manual submissions. Such non-compliances are considered technical/ procedural in nature and taking up such matters for investigation requires considerable time and effort. Further, such cases not only clog the system but also divert the efforts of SEBI from pursuing more impactful matters.

3.3. In order to eliminate such non-compliances, it has been proposed to automate the process of filing of such disclosures under Regulation 7(2) of PIT Regulations at stock exchange(s) level (System Driven Disclosures).

3.4. Once the system driven disclosures are put in place, it is envisaged that there will be no disclosure based non-compliances. Certain benefits from the System Driven Disclosures are as follows:

3.4.1. The relevant disclosure(s) will be timely, fairly and accurately displayed on the exchange platform without the intervention of entities involved.

3.4.2. The disclosures on stock exchange(s) will remove the hassle of procedural compliances by companies and difficulties faced by the entities in complying with the regulations.

3.4.3. Also facilitate ease of doing business by focusing on their core businesses while ensuring the regulatory mandate of timely disclosures.

3.5. The modalities to achieve the above objective shall be dealt with by issuing a detailed circular to the market participants.

3.6. In order to enable the above automation of disclosures, it is proposed to amend the PIT Regulations by inserting a new provision under Regulation 7 (2), as follows:

“Regulation 7 (2) Continual Disclosures

(a)

.....

(b)

.....

(c) The above disclosures shall be made in such form and such manner as may be specified by the Board from time to time.”

4. Regulation 9 – Code of Conduct (CoC)

4.1. Allowing Offer for Sale (OFS) and such other transaction(s) during trading window closure

4.1.1. The clause 4 of schedule B of PIT Regulations deals with the trading window restrictions which inter alia, states as follows:

“4(1).....

.....*Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.*

(2) Trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results.....

(3) The trading window restrictions mentioned in sub-clause (1) shall not apply in respect of –

(a)

(b) transactions which are undertaken in accordance with respective regulations made by the Board such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public

issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer.”

4.1.2. It may be observed that clause 4(3)(b) provides an indicative list of transactions for which the trading window restrictions are not applicable. However, there is no specific mention in the said clause w.r.t OFS.

4.1.3. OFS is a method used for share sale through the stock exchange platform. It is for information that SEBI through circulars has laid down detailed process for making OFS. Since, OFS transactions are carried out in accordance with the regulatory framework laid down by SEBI, it will be appropriate to include the transactions which are undertaken through such other mechanism as may be specified by the Board from time to time in the aforesaid clause.

4.1.4. In order to bring clarity, it is proposed to amend the clause 4 (3)(b) of schedule B of PIT Regulations, as follows:

“(3) The trading window restrictions mentioned in sub-clause (1) shall not apply in respect of –

(a)

(b) transactions.....
delisting offer or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time.”

4.2. Crediting of amounts collected for CoC non-compliances into IPEF

4.2.1. The relevant clauses of schedule B² and schedule C³ under Regulation 9 of PIT Regulations are as follows:

Clause 10 of Schedule B and Clause 8 of Schedule C:

“The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer

*.....
..... Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.*

Clause 12 of Schedule B and Clause 10 of Schedule C:

“Without prejudice to the power of the Board under the Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, clawback, etc., that may be imposed, by the required to formulate a code of conduct under sub regulation..... of regulation 9, for the contravention of the code of conduct.”

² Applicable to Listed Companies

³ Applicable to Intermediaries and Fiduciaries

4.2.2. As required under clause 13 of schedule B and clause 11 of schedule C, the listed companies/intermediaries/fiduciaries report to SEBI about non-compliances by their designated persons (DPs) and immediate relatives of DPs, which are broadly of the following nature:

4.2.2.1. Pledge creation/ invocation/trade during trading window closure period.

4.2.2.2. Trades carried out by portfolio manager in non-discretionary account without the knowledge of the DP

4.2.2.3. Inadvertent trade (due to punching errors, not being aware) during Trading window closure period

4.2.2.4. Code of conduct non-compliance by promoter involving insignificant amount

4.2.2.5. Contra trade by DP

4.2.2.6. Pre-clearance for trading not obtained

4.2.3. The listed companies/intermediaries/fiduciaries take action against the delinquent for non-compliance of CoC by

4.2.3.1. Issuing warning letter

4.2.3.2. Wage cut

4.2.3.3. Non-grant of ESOPs,

4.2.3.4. Restraining from dealing in the shares of the company

4.2.3.5. Collection-of certain amount

4.2.4. As regards the amount(s) levied by the listed companies/intermediaries/ fiduciaries, there is no uniform approach followed with respect to utilization of such amount(s) (except for disgorgement of profits for contra trade violation as per the extant provisions). While some companies are remitting such amount(s) to

Investor Protection and Education Fund (IPEF) administered by SEBI, others either retain it for education of its employees or remit such amounts to charitable organizations.

4.2.5. In order to have uniform approach in utilization of such amount(s) levied, it is proposed that such amount(s), if any, levied by listed companies/ intermediaries/fiduciaries for non-compliances of their CoC be remitted to Investor Protection and Education Fund administered by Board under the Act. This is in line with the disgorgement of profit for contra trade violation and remitting the same into IPEF as per the extant provisions.

4.2.6. It is for the information of the Board that Regulation 4 (1) (j) of the SEBI (Investor Protection and Education Fund) Regulations, 2009 (“IPEF Regulations”), states that in the interest of investors, SEBI may specify any other amount which may be credited to the IPEF, which has not been specifically mentioned in Regulation 4 (1) of IPEF Regulations.

4.2.7. Further, clause 12 of schedule B and clause 10 of schedule C of the PIT Regulations, inter alia, uses the word “clawback” as one of the measures that may be taken by the listed company/intermediary/ fiduciary, for the contravention of the CoC. A clawback is generally a contractual agreement between the employee and the employer in which the employee agrees to return previously paid or vested remuneration to the employer under certain circumstances. However, every employment agreement may not have a “clawback” clause or provision. Whereas, disgorgement as an equitable remedy, aims at depriving the wrongdoer of his ill-gotten gains. Such action of disgorgement may be taken irrespective of the presence of any enabling clause or provision in any employment contract.

Accordingly, it is proposed that the word “clawback” may be replaced with the word “disgorgement” in clause 12 of schedule B and clause 10 of schedule C of the PIT Regulations.

4.2.8. In view of the above, it is proposed to amend the clause 12 of schedule B and clause 10 of schedule C of the PIT Regulations, as follows:

Clause 12 of Schedule B and clause 10 of schedule C under Regulation 9 of PIT Regulations:

“Without prejudice to the power of the Board under the Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, disgorgement, etc., that may be imposed, by the required to formulate a code of conduct under sub regulation..... of regulation 9, for the contravention of the code of conduct. Any amount collected under this clause shall be remitted to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act”.

4.3. Substituting the word “Board” with “Stock Exchange(s)” for CoC non-compliances filings

4.3.1. The relevant clauses of schedule B and schedule C under Regulation 9 of PIT Regulations are as follows:

Clause 13 of Schedule B and Clause 11 of Schedule C:

“The code of conduct shall specify that in case it is observed by the required to formulate a code of conduct under sub-regulation of regulation 9, that there has been a violation of these regulations,.....shall inform the Board promptly.”

4.3.2. Currently, the intimations received from listed companies/ intermediaries/fiduciaries are maintained in non IT based environment. It is desirable that such intimations are captured electronically in an IT based environment to create a data repository, which can be used for conducting examination of cases or for any other data analysis, in future.

4.3.3. In order to create such data repository, it is proposed that such intimations are filed electronically with stock exchange(s). It may be informed that as per SEBI (LODR) Regulations, 2015 and SEBI (SAST) Regulations, 2011, the entities are currently filing their regular reports/statements/disclosures/ other information with Stock Exchanges (SE's) electronically.

4.3.4. The modalities for filing of CoC non-compliances by the entities with the SE's and matters related thereto shall be dealt with by issuing a circular to the market participants.

4.3.5. Accordingly, it is proposed to amend the clause 13 of schedule B and clause 11 of schedule C of PIT Regulations, as follows:

Clause 13 of Schedule B under Regulation 9 of PIT Regulations:

“13. it shall promptly inform the Stock Exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by the Board from time to time.”

Clause 11 of Schedule C under Regulation 9 of PIT Regulations:

“11. such intermediary or fiduciary shall promptly inform the Stock Exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by the Board from time to time.”

5. The Board is requested to consider and approve the proposals contained at para 2.7, 3.6, 4.1.4, 4.2.8 and 4.3.5 of this memorandum to amend the PIT Regulations, and approve the amendments as enclosed in **Annexure A** and the draft amendment regulations in **Annexure B**. The Board is also requested to authorize the Chairman to take such necessary consequential and incidental steps to give effect to the decisions of the Board.

(The Board Memorandum must be read in conjunction with the press release issued on June 25, 2020 and minutes of the meeting.)

Annexure A

Regulation	Current Regulation	Proposed Regulation
(i) Structured Digital Database (SDD)		
3(5)	The board of directors or head(s) of the organization of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.
3(6)		The board of directors or head(s) of the organization of every person required to handle unpublished price sensitive information shall ensure that the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement

Regulation	Current Regulation	Proposed Regulation
		proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings.
(ii) 7 (2) – Continual Disclosures		
	(a) (b)	(a) (b) (c) The above disclosures shall be made in such form and such manner as may be specified by the Board from time to time
(iii) 9 – Code of Conduct		
SCHEDULE B Minimum Standards for Code of Conduct for Listed Companies Clause 4(3) (b) – Allowing Offer for Sale (OFS) and such other transaction(s) during trading window closure or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time.

Regulation	Current Regulation	Proposed Regulation
<p>SCHEDULE B Minimum Standards for Code of Conduct for Listed Companies</p> <p>Clause 12 – Amount collected by listed companies</p>	<p>12.</p> <p>...</p>	<p>12.disgorgement</p> <p>.....</p> <p>Any amount collected under this clause shall be remitted to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.</p>
<p>SCHEDULE B Minimum Standards for Code of Conduct for Listed Companies</p> <p>Clause 13 – Inform to Board</p>	<p>13.....,</p> <p>it shall inform the Board promptly</p>	<p>13.....,</p> <p>it shall promptly inform the stock exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by the Board from time to time</p>
<p>SCHEDULE C Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries</p> <p>Clause 10 – Amount collected by intermediaries or fiduciaries</p>	<p>10.</p>	<p>10.disgorgement</p> <p>.....</p> <p>Any amount collected under this clause shall be remitted to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.</p>
<p>SCHEDULE C Minimum Standards for Code of Conduct for intermediaries and</p>	<p>11.....</p> <p>..... such intermediary or fiduciary shall</p>	<p>11.,</p> <p>such intermediary or fiduciary shall promptly inform the stock exchange(s) where the concerned securities are traded, in such form</p>

Regulation	Current Regulation	Proposed Regulation
Fiduciaries Clause 11 – Inform to Board	inform the Board promptly.	and such manner as may be specified by the Board from time to time.

**THE GAZETTE OF INDIA
EXTRAORDINARY
PART – III – SECTION 4
PUBLISHED BY AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION**

Mumbai, the _____, 2020

**SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER
TRADING) (AMENDMENT) REGULATIONS, 2020**

No. SEBI/LAD-NRO/GN/2020/_____ – In exercise of the powers conferred under Section 30 read with clause (g) of sub-section (2) of Section 11 and clauses (d) and (e) of Section 12A of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, namely: –

1. These regulations may be called the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2020.

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, –

I. in regulation 3,

i. sub-regulation 5, shall be substituted with the following, namely-

“(5) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.”

ii. after sub-regulation 5, the following shall be inserted, namely, -

“(6) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings.”

II. in regulation 7, in sub-regulation 2, after clause (b), the following shall be inserted, namely, —

“(c) The above disclosures shall be made in such form and such manner as may be specified by the Board from time to time.”

III. in Schedule B,

i. in clause 4, sub-clause 3 (b), after the words “delisting offer”, the words “or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time” shall be inserted.

ii. clause 12 shall be substituted with the following, namely-

“Without prejudice to the power of the Board under the Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, disgorgement, etc., that may be imposed, by the listed company required to formulate a code of conduct under sub-regulation (1) of regulation 9, for the contravention of the code of conduct. Any amount collected under this clause shall be remitted to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.”

iii. in clause 13, the words “inform the Board promptly” shall be replaced by the words “promptly inform the stock exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by the Board from time to time”.

IV. in Schedule C,

- i. clause 10 shall be substituted with the following, namely-

“Without prejudice to the power of the Board under the Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, disgorgement, etc., that may be imposed, by the intermediary or fiduciary required to formulate a code of conduct under sub-regulation (1) and sub-regulation (2) of regulation 9, for the contravention of the code of conduct. Any amount collected under this clause shall be remitted to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.”

- ii. in clause 11, the words “inform the Board promptly” shall be replaced by the words “promptly inform the stock exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by the Board from time to time”.

AJAY TYAGI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

1. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 was published in the Gazette of India on January 15, 2015 vide No. LAD-NRO/GN/2014-15/21/85.

2. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 was amended on,-

- i. December 31, 2018 by the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 vide No. SEBI/LAD-NRO/GN/ 2018/59;
- ii. January 21, 2019 by the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2019 vide No. SEBI/LAD-NRO/GN/ 2019/02.
- iii. July 25, 2019 by the Securities and Exchange Board of India (Prohibition of Insider Trading) (Second Amendment) Regulations, 2019 vide No. SEBI/LAD-NRO/GN/ 2019/23.
- iv. September 17, 2019 by the Securities and Exchange Board of India (Prohibition of Insider Trading) (Third Amendment) Regulations, 2019 vide No. SEBI/LAD-NRO/GN/ 2019/32.
