

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 31st December, 2018

SECURITIES AND EXCHANGE BOARD OF INDIA

(PROHIBITION OF INSIDER TRADING) (AMENDMENT) REGULATIONS, 2018

No. SEBI/LAD-NRO/GN/2018/59.—In exercise of the powers conferred under Section 30 read with Clause (g) of Sub-section (2) of Section 11 and Clause (d) and Clause (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, 2018.

They shall come into force on April 01, 2019.

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

(1) in regulation 2, in sub-regulation (1),

- (a) in clause (c), following explanation shall be inserted at the end, namely:-

“Explanation—For the purpose of this regulation, “financially literate” shall mean a person who has the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.”

- (b) in clause (h), the numbers “2009” shall be substituted with the numbers “2018”

- (c) after clause (h), following clause shall be inserted, namely:-

“(ha) “proposed to be listed” shall include securities of an unlisted company:

(i) if such unlisted company has filed offer documents or other documents, as the case may be, with the Board, stock exchange(s) or registrar of companies in connection with the listing; or

(ii) if such unlisted company is getting listed pursuant to any merger or amalgamation and has filed a copy of such scheme of merger or amalgamation under the Companies Act, 2013;”

- (d) in clause (n), sub-clause (vi) shall be omitted.

(2) in regulation 3,-

- (a) after sub-regulation (2), following sub-regulation shall be inserted, namely:-

“(2A) The board of directors of a listed company shall make a policy for determination of “legitimate purposes” as a part of “Codes of Fair Disclosure and Conduct” formulated under regulation 8.”

- (b) after sub-regulation (2A), following explanation shall be inserted, namely:-

“Explanation—For the purpose of illustration, the term “legitimate purpose” shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.”

- (c) after explanation to sub-regulation (2A), following sub-regulation shall be inserted, namely:-
- “(2B) Any person in receipt of unpublished price sensitive information pursuant to a “legitimate purpose” shall be considered an “insider” for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.”
- (d) in sub-regulation (3),
- i. in clause (i) after the word “the” and before the words “company is” the word “listed” shall be inserted.
 - ii. in clause (i) the words "the proposed transaction" shall be substituted with the words “sharing of such information”.
 - iii. in clause (ii) after the word “the” and before the words “company is” the word “listed” shall be inserted.
 - iv. in clause (ii) the words "that the proposed transaction" shall be substituted with the words “that sharing of such information”.
 - v. in clause (ii), after the word “determine”, following shall be inserted, namely:-
“to be adequate and fair to cover all relevant and material facts”
 - vi. in the Note, the words “if it” shall be substituted with the words, “when authorised by the board of directors if sharing of such information”
- (e) after sub-regulation (4), following sub-regulation shall be inserted, namely:-
- “(5) 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.”
- (3) in regulation 4,-
- (a) in sub-regulation (1), before the proviso, following explanation shall be inserted, namely:-
“**Explanation-** When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession;”
 - (b) in sub-regulation (1), in proviso, in clause (i), the word “promoters” shall be substituted with the word “insiders”
 - (c) in sub-regulation (1), in proviso, in clause (i), following proviso shall be inserted, namely:-
“Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations.”
 - (d) in sub-regulation (1), in proviso, in clause (i), after the proviso following proviso shall be inserted, namely:-
“Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such

trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information."

(e) in sub-regulation (1), in proviso, after clause (i), following clauses shall be inserted, namely:-

“(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.

(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.

(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.”

(f) in sub-regulation (1), in proviso, clause (ii) and clause (iii) shall be renumbered as clause (v) and clause (vi), respectively.

(4) in regulation 5, in sub-regulation (3), following provisos shall be inserted, namely:-

“Provided that pre-clearance of trades shall not be required for a trade executed as per an approved trading plan.

Provided further that trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan.”

(5) in regulation 7, in sub-regulation (2), in clause (a), the word “employee” shall be substituted with the words “designated person”.

(6) in regulation 9,

(a) in sub regulation (1),

(i) the words “market intermediary” shall be substituted with the words “the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director”.

(ii) after the word “conduct” and before the word “to”, the words “with their approval” shall be inserted.

(iii) after the word "its" and before the word "towards" the words “employees and other connected persons” shall be substituted with the words “designated persons and immediate relatives of designated persons”.

(iv) after the word “Schedule B” and before the word “to” the following shall be inserted, namely:-

“(in case of a listed company) and Schedule C (in case of a intermediary)”

(b) after sub-regulation (1), the following explanation shall be inserted, namely:-

“**Explanation**—For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.”

(c) in the Note to sub-regulation (1),

(i) the word "market intermediary" shall be substituted with the word "intermediary".

(ii) the words "its employees" shall be substituted with the words "designated persons and their immediate relatives"

(iii) the word "schedule" shall be substituted with the word "schedules".

(d) sub-regulation (2), shall be substituted with following words, namely:-

"The board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their designated persons and immediate relative of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule C to these regulations, without diluting the provisions of these regulations in any manner.

Explanation - Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of these regulations."

(e) the Note after sub-regulation (2), shall be substituted with following words, namely:-

NOTE: This provision is intended to mandate persons other than listed companies and intermediaries that are required to handle unpublished price sensitive information to formulate a code of conduct governing trading in securities by their designated persons. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct."

(f) in sub-regulation (3), the words "market intermediary" shall be substituted with the word "intermediary".

(g) after sub-regulation (3), a new sub-regulation (4) shall be inserted, namely:-

"(4) For the purpose of sub regulation (1) and (2), the board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:-

(i) Employees of such listed company, intermediary or fiduciary designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors or analogous body;

(ii) Employees of material subsidiaries of such listed companies designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors;

(iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;

(iv) Chief Executive Officer and employees upto two levels below Chief Executive Officer of such listed company, intermediary, fiduciary and its material subsidiaries irrespective of their functional role in the company or ability to have access to unpublished price sensitive information;

(v) Any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to unpublished price sensitive information.”

(7) after regulation 9, a new regulation 9A shall be inserted, namely:-

“Institutional Mechanism for Prevention of Insider trading.

9A. (1) The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.

(2) The internal controls shall include the following:

- a) all employees who have access to unpublished price sensitive information are identified as designated employee;
- b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;
- c) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;
- d) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;
- e) all other relevant requirements specified under these regulations shall be complied with;
- f) periodic process review to evaluate effectiveness of such internal controls.

(3) The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with regulation 9 and sub-regulations (1) and (2) of this regulation.

(4) The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.

(5) Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.

(6) The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.

(7) If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.”

- (8) in SCHEDULE B,
- (a) in the recital, the words “*and sub-regulation (2)*” shall be omitted.
 - (b) in the recital, after the word “**Conduct**” and before the word “**to**”, the words “**for Listed Companies**” shall be inserted.
 - (c) in the recital, the word “**Insiders**” shall be substituted with the words “**Designated Persons**”.
 - (d) in clause (1), after the word “directors” and before full stop, the words “, but not less than once in a year” shall be inserted.
 - (e) in clause (2), the words “the insider’s” and “his” shall be omitted.
 - (f) in clause (3), the words “Employees and connected persons designated on the basis of their functional role (“Designated persons”)” shall be substituted with the words “Designated Persons and immediate relatives of designated persons”.
 - (g) in clause (3), the words “The board of directors shall in consultation with the compliance officer(s) specify the designated persons to be covered by such code on the basis of their role and function in the organisation. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation” shall be omitted.
 - (h) in clause (4), after the word “closed.” following shall be inserted, namely:-

“Trading restriction period can be made applicable from the end of every quarter till 48 hours after the declaration of financial results.

The gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information.”
 - (i) in clause (5), the phrase “The trading window shall also be applicable to any person having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising the company.” shall be omitted.
 - (j) in clause (6), the words “No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.” shall be omitted.
 - (k) clause (7) shall be omitted.
 - (l) in clause (10), proviso to clause shall be inserted, namely:

“Provided that this shall not be applicable for trades pursuant to exercise of stock options.”
 - (m) in clause (11), the words “recording of reasons for such decisions” shall be omitted.
 - (n) in clause (12), after the words “suspension” and before the word “etc.” the words “, recovery, clawback” shall be inserted.
 - (o) in clause (12), the words “persons” shall be substituted with the words “listed company”.
 - (p) in clause (12), the words “and sub-regulation (2)” shall be omitted.
 - (q) in clause (13), the words “persons” shall be substituted with the words “listed company”.
 - (r) in clause (13), the words “and sub-regulation (2)” shall be omitted.
 - (s) in clause (13), the word “they” shall be substituted with the word “it”.
 - (t) after clause (13), a new clause (14) shall be inserted, namely:-

“14. Designated persons shall be required to disclose names and Permanent Account Number or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes:

- (a) immediate relatives
- (b) persons with whom such designated person(s) shares a material financial relationship
- (c) Phone, mobile and cell numbers which are used by them

In addition, the names of educational institutions from which designated persons have graduated and names of their past employers shall also be disclosed on a one time basis.

Explanation—The term “material financial relationship” shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift during the immediately preceding twelve months, equivalent to at least 25% of such payer’s annual income but shall exclude relationships in which the payment is based on arm’s length transactions.”

(u) after clause (14), a new clause (15) shall be inserted, namely:-

“15. Listed entities shall have a process for how and when people are brought ‘inside’ on sensitive transactions. Individuals should be made aware of the duties and responsibilities attached to the receipt of Inside Information, and the liability that attaches to misuse or unwarranted use of such information.”

(9) after SCHEDULE B, SCHEDULE C shall be inserted, namely:-

“SCHEDULE C

[See sub-regulation (1) and sub-regulation (2) of regulation 9]

Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries to Regulate, Monitor and Report Trading by Designated Persons

1. The compliance officer shall report to the board of directors or head(s) of the organisation (or committee constituted in this regard) and in particular, shall provide reports to the Chairman of the Audit Committee or other analogous body, if any, or to the Chairman of the board of directors or head(s) of the organisation at such frequency as may be stipulated by the board of directors or head(s) of the organization but not less than once in a year.

2. All information shall be handled within the organisation on a need-to-know basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. The code of conduct shall contain norms for appropriate Chinese Wall procedures, and processes for permitting any designated person to “cross the wall”.

3. Designated persons and immediate relatives of designated persons in the organisation shall be governed by an internal code of conduct governing dealing in securities.

4. Designated persons may execute trades subject to compliance with these regulations. Trading by designated persons shall be subject to pre- clearance by the compliance officer(s), if the value of the proposed trades is above such thresholds as the board of directors or head(s) of the organisation may stipulate.

5. The compliance officer shall confidentially maintain a list of such securities as a “restricted list” which shall be used as the basis for approving or rejecting applications for pre-clearance of trades.

6. Prior to approving any trades, the compliance officer shall seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.

7. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.

8. 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 a connected person of the listed company and is permitted to trade in the securities of such listed company, shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. 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.

Provided that this shall not be applicable for trades pursuant to exercise of stock options.

9. The code of conduct shall stipulate such formats as the board of directors or head(s) of the organisation (or committee constituted in this regard) deems necessary for making applications for pre-clearance, reporting of trades executed, reporting of decisions not to trade after securing pre-clearance, and for reporting level of holdings in securities at such intervals as may be determined as being necessary to monitor compliance with these regulations.

10. 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 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.

11. The code of conduct shall specify that in case it is observed by the intermediary or fiduciary required to formulate a code of conduct under sub-regulation (1) or sub-regulation (2) of regulation 9, respectively, that there has been a violation of these regulations, such intermediary or fiduciary shall inform the Board promptly.

12. All designated persons shall be required to disclose name and Permanent Account Number or any other identifier authorized by law of the following to the intermediary or fiduciary on an annual basis and as and when the information changes:

- a) immediate relatives
- b) persons with whom such designated person(s) shares a material financial relationship
- c) Phone, mobile, and cell numbers which are used by them

In addition, names of educational institutions from which designated persons have studied and names of their past employers shall also be disclosed on a one time basis.

Explanation – the term “material financial relationship” shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift during the immediately preceding twelve months, equivalent to at least 25% of such payer’s annual income but shall exclude relationships in which the payment is based on arm’s length transactions.

13. Intermediaries and fiduciaries shall have a process for how and when people are brought ‘inside’ on sensitive transactions. Individuals should be made aware of the duties and responsibilities attached to the receipt of Inside Information, and the liability that attaches to misuse or unwarranted use of such information.”

AJAY TYAGI, Chairman

[ADVT.-III/4/Exty./475/18]

Footnotes:

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