

Insider Trading: An Analysis of The SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2020

DR. S. SETHURAM

Assistant Professor, SRIT Business School, Sri Ramakrishna Institute of Technology, Coimbatore

Abstract- Insider trading involves trading in a public Company's stock by someone who has non-public, material information about that stock for any reason. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 was notified to put in place a framework for prohibition of insider trading in securities and to strengthen the legal framework thereof. Amendments to the regulations have been made from time to time. The latest amendment has been made through the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2020. The amendments pertain to maintenance of a Structured Digital Database, Continual Disclosures, Minimum Standards for Code of Conduct for Listed Companies and the Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries. The article discusses the amendments and its implications.

Indexed Terms- insider, regulations, securities, trading

I. INTRODUCTION

Insider trading involves trading in a public Company's stock by someone who has non-public, material information about that stock for any reason. Insider trading can be either illegal or legal depending on when the insider makes the trade. It is illegal when the material information is still non-public, and this sort of insider trading comes with harsh consequences.¹

To prohibit insider trading, the Securities and Exchange Board of India notified the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 on January 15, 2015. Amendments to the regulations were made from time to time. The latest amendment was made by the Securities and Exchange Board of India on July 17, 2020 by issuing the Securities and Exchange Board of

India (Prohibition of Insider Trading) (Amendment) Regulations, 2020 to further amend the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

The amendments pertain to maintenance of a structured digital database containing the nature of unpublished price sensitive information, the names of such persons who have shared the information and also the names of such persons with whom information is shared under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 and preservation of database for specified time period. Other areas of amendment are the Continual Disclosures, Minimum Standards for Code of Conduct for Listed Companies and the Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries

II. BACK GROUND

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 was notified on the January 15, 2015 to put in place a framework for prohibition of insider trading in securities and to strengthen the legal framework thereof. According to Regulation 2(1)(g) 'insider' means any person who is: i) a connected person; or ii) in possession of or having access to unpublished price sensitive information. Definition of trading is given under regulation 2(1)(l) 'trading' means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and 'trade' shall be construed accordingly. According to regulation 2(1)(n) 'unpublished price sensitive information' means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: (i) financial results; (ii) dividends; (iii) change in capital structure; (iv) mergers, de-mergers,

acquisitions, delistings, disposals and expansion of business and such other transactions; (v) changes in key managerial personnel; and (vi) material events in accordance with the listing agreement. The principal regulation was amended on December 31, 2018; January 21, 2019; July 25, 2019 and September 17, 2019. The present amendment called as the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2020 was issued on July 17, 2020, the implications of which are discussed hereunder.

III. ANALYSIS AND DISCUSSION

Amendment has been made to the regulation 3 sub-regulation 5 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, which deals with maintenance of a structured digital database in respect of unpublished price sensitive information. Under previous regulation, whenever unpublished price sensitive information was shared to any person, structured digital database was to be maintained by the Board of Directors of every listed Company. Pursuant to the present amendment, along with the listed Companies, even the entities like fiduciaries or intermediaries with whom the Unpublished Price Sensitive Information is shared, are required to maintain such digital database. It is the responsibility of the Board of Directors or Heads of Organisation to maintain this structured digital database.

Further, pursuant to the present amendment, the nature of unpublished price sensitive information and the names of such persons who have shared the information also must be included in the structural digital database.

In terms of the present amendment, the maintenance of structured digital database cannot be outsourced. It has to be maintained internally by the entities. Such a restriction is necessary because the database will contain personal details of the above persons and hence maintenance of database itself is a very delicate issue.

Presently, a new sub- regulation 6 has been inserted under regulation 3 which deals with the preservation of the structured digital database. Henceforth, the

structured digital database should be preserved for minimum a period of eight years subsequent to completion of the relevant transactions. Further, in the event of receipt of any information from the Securities and Exchange Board of India regarding any investigation or enforcement proceedings, the relevant information in the structured digital database should be preserved till the completion of such proceedings. Such lengthy time has been stipulated, so as to avoid any hurdles that may come in the way of the Securities and Exchange Board of India while carrying out any investigations. There will be certain difficulties faced by the listed Company, intermediary or fiduciary in maintaining and preserving structured digital database for the long period of eight years as outsourcing is also prohibited.

The present amendment inserts a new clause (c) in sub-regulation 2 under regulation 7 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015. Consequent to this, the Continual Disclosures to be made by Promoter, Member of the Promoter Group, Designated Person and Director within 2 trading days shall now be made in such form and such manner as may be specified by the Securities and Exchange Board of India.

In Schedule B, under clause 4, sub-clause 3 (b) has been amended to provide that the trading window restrictions will not apply to transactions which are undertaken through such mechanism as may be specified by the Securities and Exchange Board of India from time to time. Already mechanisms such as conversion of debentures, warrants, open offer, delisting offer have been prescribed. Securities and Exchange Board of India may specify additional mechanisms in future.

Clause 12 under Schedule B has been amended to the effect that, any amount collected in respect of contravention of the code of conduct for listed Companies should be remitted to Securities and Exchange Board of India for credit to the Investor Protection and Education Fund. As a result of this amendment there is a proper clarity now, regarding where such amounts are to be deposited

Clause 13 under Schedule B has been amended to the effect that the code of conduct for listed Companies

should specify that in case of a violation of the Prohibition of Insider Trading Regulations, the listed Company will promptly inform the Stock Exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by Securities and Exchange Board of India from time to time. Prior to the amendment such information was to be sent to the Securities and Exchange Board of India. Instead of this, now the Stock Exchange has to be informed. This change has been brought to enable closer surveillance. Clause 10 of Schedule C has been amended to the effect that any amount collected in respect of contravention of the Code of Conduct for intermediaries or fiduciaries should be remitted to Securities and Exchange Board of India for credit to the Investor Protection and Education Fund. As a result of this amendment there is a proper clarity now, regarding where such amounts are to be deposited.

Clause 11 under Schedule C has been amended to the effect that the Code of Conduct for intermediaries or fiduciaries should specify that in case of a violation of the Prohibition of Insider Trading Regulations, the intermediary or fiduciary will promptly inform the Stock Exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by Securities and Exchange Board of India from time to time. Prior to the amendment such information was to be sent to the Securities and Exchange Board of India. Instead of this, now the Stock Exchange has to be informed.

CONCLUSION

The Securities and Exchange Board of India has brought the amendments with the aim to improve the compliance levels. The success of this exercise depends on how well the above discussed changes are implemented.

REFERENCES

- [1] <https://www.investopedia.com/terms/i/insidertrading.asp>
- [2] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.
- [3] Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2020.
- [4] The Companies Act, 2013.
- [5] Dr.S.Sethuram, 'Delisting Regulations: An Analysis of the Amendments and its Implications', Iconic Research and Engineering Journals, Volume 2, Issue 8, 2019, pp.125-127.