

Corpsec Hotline

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SEBI PUTS AN END TO PHYSICAL DISCLOSURE REQUIREMENTS UNDER TAKEOVER AND INSIDER TRADING REGULATIONS

BACKGROUND

The Securities and Exchange Board of India ("SEBI") has specified various disclosure requirements in relation to acquisition, sale, and pledge of securities under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations") and SEBI (Prohibition of Insider Trading) Regulations, 2015 ("Insider Trading Regulations"). In order to reduce information asymmetry and streamline such physical disclosure requirements, SEBI recently proposed to discontinue the physical disclosure requirements under the Takeover Regulations and the Insider Trading Regulations. The proposed amendments are in furtherance of SEBI's board meeting dated August 6, 2021¹ ("SEBI Board Meeting"), and SEBI circular dated August 13, 2021² ("SEBI Circular"). A summary of the proposed amendments introduced by the SEBI Board Meeting and the SEBI Circular, along with the historical background of bringing about such amendments is discussed below.

I. SYSTEM DRIVEN DISCLOSURES ("SDD") UNDER THE TAKEOVER REGULATIONS

SEBI, for the very first time, introduced the concept of SDD in the securities market vide its circular dated December 1, 2015³ ("SDD Circular 1"). In terms of the SDD Circular 1, SEBI contemplated that the stock exchanges, the depositories and the Registrar and Share Transfer Agents ("RTAs") have adopted advanced systems and technologies, however, such systems did not comprise entire information as required under the current disclosure obligations (like details of instruments other than equity shares, persons acting in concert, etc.), in order for efficient and smooth running of the SDD. Accordingly, SEBI decided to introduce SDD in a phased manner.

Phase One

Pursuant to the SDD Circular 1, phase one of the SDD would entail the systems to disclose specifically the changes in the equity shareholding of the promoters/ promoter group of the listed companies. The disclosures in phase one of SDD, pertained to acquisition/disposal of equity shares by promoters/promoter group based on specified thresholds under the Takeover Regulations and pledge of equity shares by promoters/promoter group under the Takeover Regulations. As SDD was introduced in the securities market for the very first time, SEBI intended to run SDD in parallel with the existing system in place, i.e., the promoters/ promoter group were required to continue to comply with the physical disclosure obligations as applicable to them under the Takeover Regulations.

In order to further streamline the process of SDD, SEBI vide its circular dated December 21, 2016⁴, limited the role of the RTAs to the extent that the depositories were now required to disseminate the transaction data relating to the promoters/ promoter group on a daily basis directly to the stock exchanges.

Phase Two

Per the SDD Circular 1, SEBI stated that SDD would be implemented in a phased manner. Accordingly, SEBI vide its circular dated May 28, 2018⁵ ("SDD Circular 2"), proposed to implement phase two of the SDD. Pursuant to the SDD Circular 2, the phase two of the SDD entailed to discontinue the physical disclosure requirements with respect to the acquisition/ disposal of shares by non-promoters of the listed companies under the Takeover Regulations. The designated depositories were now mandated to disseminate information relating to increase in the non-promoter shareholding beyond 2% and 5% in the respective company, to other depositories and stock exchanges respectively. Yet again SEBI stated that the second phase of the SDD would continue to run in parallel with the existing system in place.

Proposed Amendment at the SEBI Board Meeting

Although, SDD was implemented by SEBI pursuant to the SDD Circular 1 in 2015, SEBI also continued to run the existing system of physical disclosures by the promoters/ promoter group in parallel. The intention behind the parallel running of both systems was to ensure the authenticity of the information disseminated by the depositories and the disclosures made by the listed companies and the promoters/ promoter group/ non-promoter shareholders.

In terms of the SEBI Board Meeting, the obligation for the physical disclosures would be discontinued under Takeover Regulations with effect from April 01, 2022 for the following:

- i. Acquisition/ disposal of shares aggregating to 5% of the listed company's share capital and any further change of 2% of the listed company's share capital; and
- ii. Physical disclosures relating to annual shareholding⁶ and creation/ invocation/ release of encumbrance

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II. SDD UNDER THE INSIDER TRADING REGULATIONS

Phase One

SEBI vide its circular dated September 9, 2020⁷ ("SDD PIT Circular"), proposed to implement SDD for promoters, members of the promoter group, directors and designated persons of the listed company (hereinafter collectively referred to as the "Entities"), under Regulation 7(2)⁸ of the Insider Trading Regulations. Now, trading in equity shares and equity derivative instruments i.e., future and options of the listed company (wherever applicable), by the Entities was brought under the purview of SDD. However, SEBI under the SDD PIT Circular, provided an end date of March 31, 2021, i.e., the Entities were required to comply with the existing system of physical disclosures as applicable to them under Regulation 7(2) of the Insider Trading Regulations only until March 31, 2021.

Phase Two

In furtherance of the SDD PIT Circular, SEBI vide its circular dated June 16, 2021⁹, included trading in listed debt securities by the Entities of any listed entity, under the purview of SDD.

Amendments vide the SEBI Circular

In terms of the SEBI Circular, SEBI stated that the stock exchanges and the depositories had implemented SDD in accordance with the SDD PIT Circular and that SDD has been operational with effect from April 1, 2021. Accordingly, SEBI clarified that the physical filing of disclosure requirements under Regulation 7(2)(a) and (b) of the Insider Trading Regulations, are no longer mandatory for the listed entities who have complied with the requirements as under the SDD PIT Circular.

CONCLUSION

SDD was introduced as a centralized automated process, with the intention to eliminate human intervention, as the relevant disclosures will now be disseminated by the stock exchanges based on aggregation of data from the depositories. This reduces the possibility of errors in such disclosures and eliminates the instances of late filing/failure to make such disclosures by the listed companies. This would further enhance transparency in the trading activities of the listed entities and would raise the confidence of existing and potential investors.

— Anirudh Arjun, Harman Khorana & Nishchal Joshipura

You can direct your queries or comments to the authors

¹ SEBI Press Release dated August 6, 2021, available at https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-last-amended-on-may-05-2021-_41542.html.

² SEBI Circular dated August 13, 2021, available at https://www.sebi.gov.in/legal/circulars/aug-2021/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures-ease-of-doing-business_51848.html.

³ SEBI Circular dated December 1, 2015, available at https://www.sebi.gov.in/legal/circulars/dec-2015/introduction-of-system-driven-disclosures-in-securities-market_31159.html.

⁴ SEBI Circular dated December 21, 2016, available at https://www.sebi.gov.in/legal/circulars/dec-2016/system-driven-disclosures-in-securities-market_33844.html.

⁵ SEBI Circular dated May 28, 2018, available at https://www.sebi.gov.in/legal/circulars/may-2018/system-driven-disclosures-in-securities-market_39066.html.

⁶ Regulation 30(1) of the Takeover Regulations mandates the promoters and non-promoters holding shares or voting rights entitling them to exercise 25% of the voting rights in the target company to disclose their annual shareholding within 7 days from the end of the financial year to the stock exchange and the registered office of the target company.

⁷ SEBI Circular dated September 9, 2020, available at https://www.sebi.gov.in/legal/circulars/sep-2020/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures_47523.html.

⁸ The Entities are required to disclose to the company within two trading days from the date of acquisition or disposal of securities if the value of the securities traded in one transaction or a series of transaction exceeds INR 10,00,000/-. The listed company is required to notify the particulars of trading undertaken by the Entities within two trading days from the date of receipt of disclosure or becoming aware of such transaction.

⁹ SEBI Circular dated June 16 2021, available at https://www.sebi.gov.in/legal/circulars/jun-2021/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures-for-inclusion-of-listed-debt-securities_50572.html.

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