

## M&A Hotline

December 08, 2008

### AMENDMENT TO THE SEBI INSIDER TRADING REGULATIONS - 2008

#### PROLOGUE

Securities and Exchange Board of India (“SEBI”) has made amendments to SEBI (Prohibition of Insider Trading) Regulations, 1992 (“Insider Regulations”) by issuing a notification No. LAD-NRO/GN/2008/29/44801 called the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008 (“Amended Regulations”).

The Insider Regulations, framed under the Securities Exchange Board of India Act, 1992 (the “SEBI Act”), are intended to prevent insider dealing in securities which are listed on a stock exchange. Insider Regulations are basically punitive in nature with respect to describing what constitutes insider trading and then seeking to punish such an act in various ways. We understand that the Amended Regulations have been brought in light referring to the three consultative papers (“Consultative Paper”) which SEBI had issued in the first quarter of 2008.

#### KEY HIGHLIGHTS OF THE AMENDED REGULATIONS

- Definition of ‘insider’:** The new definition is just a split of the earlier definition but has a significant change. Earlier the definition of insider included a person who is or was connected or who is deemed to have been connected with the company and such person has received or has access to unpublished price sensitive information (“UPSI”). However, with the amendment, the definition has been broadened and it has become apparent that an insider would include any person who holds or has access to UPSI (including tippees), no matter he is or was or is deemed to be connected with the company.
- Restriction on trading:** SEBI has amended the Model Code of Conduct relating to listed companies to the effect that all the directors, officers and designated employees of a listed company would not be allowed to enter opposite transaction i.e sell or buy any number of shares during the next six months following the prior transaction. There is also an absolute prohibition on such persons from taking positions in derivative transactions in the shares of the company at any time.  
Earlier this issue was addressed in the Consultative Paper by proposing to introduce short swing profits rule wherein any trader would have to deposit with the company any profits which may have been derived by any such trader; but with the amendment, SEBI has gone further and prohibited any such opposite trade (buy or sell) within 6 months. This could prove to be a significant restriction as there is no situation which is carved out from such prohibition, says **Mr. Siddharth Shah**, head of Corporate and Securities practice, Mumbai. For example, persons exercising employee stock option plans may be prohibited from selling within this period or generally prohibit a person from doing a sale transaction in certain general economic situation warranting opposite transaction to cut for the losses.
- Action in the event of default:** Earlier, only for violation under regulation 12 (model code of conduct) and 13 (disclosures to the company and stock exchange) of the Insider Regulations, the provisions of Section 24 of the SEBI Act were specifically invoked which also includes criminal prosecution amongst other monetary punishments. However, for any other violation under the Insider Regulations, it was not clear whether only the penalty under the provisions of Regulation 15 G under the SEBI Act would apply or such violations can also attract provisions of Section 24 of the SEBI Act. It has been now made clear that any violation of the provisions of the Insider Regulations can be processed directly under the provisions of Section 24 of the SEBI Act.
- Adherence to the Model Code of Conduct:** It has been prescribed under the Amended Regulations that the clauses of the Model Code of Conduct for listed companies shall not be diluted in any manner. With this amendment, it is now made clear and there is no ambiguity that the companies should have their internal code which is in no manner diluting the applicability of the provisions under the Model Code.
- Disclosure time frame:** Under the Insider Regulations, it was prescribed that the disclosures by the acquirer to the company shall be made within 4 working days and the disclosures, in turn, by the company to the stock exchange shall be made within 5 days of such receipt of information. Under the Amended Regulations, the disclosures by the acquirer shall be made within 2 working days to the company and further by the company to the stock exchange within 2 working days. For clarity purposes, now the regulations also define working days to mean any day where the regular trading is permitted on the concerned stock exchange where securities of company are listed.  
This amendment has been brought in line with the SEBI (Substantial Acquisition and Takeover) Regulations, 1997 as was discussed in the Consultative Paper. Under the Insider Regulations, a total of 9 days had elapsed prior to the price sensitive information was disseminated to the public. The total time period is now restricted to 4 working days. The rationale of the same is to ensure immediate dissemination of information to the public.

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Further, the directors or officer of a listed company were earlier under the obligation to disclose only to the company but now they are under the mandatory obligation to disclose the details of the total number of shares or voting rights held and change in shareholding or voting rights to the company as well as to the stock exchange where the shares of the company are listed.

6. *Dependents*: Under the Amended Regulations, SEBI has included the aspect of disclosures of the holdings of the dependents of any person who is a director or officer of a listed company under the ambit of the Insider Regulations. Every company shall define who shall be considered as a dependent of the person who is a director or the officer of such company. With this amendment, now the onus is on the company to define as to who the persons to be included as dependents are and what the criterion is for the same viz: financial interdependence, relatives as defined under the Companies Act etc. This would be even difficult for the companies since there is no definition of dependent person laid down under any regulations, as on date.
7. *E filing*: Under the Amended Regulations, it has been prescribed that the disclosures may also be made through electronic filing in accordance with the system devised by the stock exchange. The concept of e-filing has been introduced from an administrative perspective so that such dissemination of information can be easily done to the public and by saving ample time and efficiency. This would help the concerned person more particularly a foreign investor/entity to adhere to the stricter disclosure norms more so when the time period for such disclosures have been reduced from a total of 9 working days to 4 working days.

CONCLUSION

Interestingly, Insider Regulations in India were introduced way back in 1992 but had not seen much of an action and focus of the regulators. With these amendments, giving more clarity to the regulations, it seems that SEBI has now also decided to focus on the enforcement of Insider Regulations.

The changes made to the Insider Regulations by SEBI definitely stiffen the insider-trading norms. Although most of the recommendations of the Consultative Paper have been inserted vide the Amended Regulations, the recommendation relating to pre-clearance of trades as well as restrictions on trading by insiders within a certain period of time (during corporate announcements, buybacks, etc.) which had been termed to be rigid and restrictive are not dealt with under the Amended Regulations.

- Abir Roy, Sambhav Ranka & Vyapak Desai

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