



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

CHIEF GENERAL MANAGER
INTEGRATED SURVEILLANCE DEPARTMENT

ISD/OW/30123/2016

November 2, 2016

Bina Chandarana
Kotak Mahindra Bank Limited
27BKC, C 27, G Block
Bandra Kurla Complex
Bandra (East), Mumbai 400051

Dear Sir,

Re: Request for Interpretive Letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

1. Please refer to your letter dated September 26, 2016 seeking an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 addressed to the Corporation Finance Department, SEBI.
2. You have, *inter alia*, represented as follows-
 - i. You refer to Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (the "PIT Regulations") requiring the board of directors of every listed company and market intermediary to formulate a code of conduct, adopting the minimum standards set out in Schedule B without diluting the provisions of the Regulations. As per Clause 10 of Schedule B, the code of conduct is required to specify a period (not being less than 6 months), within which a designated person who is permitted to trade shall not execute a contra trade. Clause 3 requires the designated persons to be defined as covering employees and connected persons designated on the basis of their functional role in the organization. Consequently, as per your interpretation all senior managers end up being defined as designated persons.
 - ii. Further, it is stated that PIT Regulations do not provide clarity on whether the restriction on contra trade is only in respect of the listed company's own securities or all listed securities. A plain reading of the clause suggests that it is applicable on all securities. However, it is contended that designated persons of a listed company may not be in possession of unpublished price sensitive information (the "UPSI") in respect of other listed securities and thus

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दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.

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contra trade restrictions should not be applicable on them. It is also stated that even in case of intermediaries designated persons would not have UPSI of all companies.

- iii. In addition, you also refer to clause 4 of the Guidance note on SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**Guidance note**"). The said clause exempts Buy Back offers, open offers, rights issues, FPOs, bonus, exit offers etc. of a listed company from the restriction of 'contra trade'. The applicant contends that similar clarity is required as regards applicability of restrictions on contra trade in case of securities acquired through subscription in IPOs. To further the argument, it is stated by you that in the earlier regulations the minimum holding period, in respect of subscription in the primary market (initial public offers), was 30 days.
3. In the light of aforesaid submissions, you had sought an interpretive letter on the following questions:
- i. Whether the restriction on contra trade by Designated Persons is applicable only in respect of the listed company's own securities or for all listed securities?
- ii. Whether the guidance provided by SEBI exempting the applicability of restriction on contra trade in respect of Buy back offers, open offers, rights issues, FPOs, bonus, exit offers etc. will also be applicable in case of securities subscribed in an IPO.
4. Without necessarily agreeing with your analysis given in your above mentioned letter, our views on the issue raised by you are as under-
- i. With regard to your first query mentioned at para 3(i) above, following provisions of the PIT Regulations may be applicable-

Regulation 9 of the PIT Regulations provides that-

"The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner."

Clause 3 of Schedule B of the PIT Regulations provides that-

*"Employees and connected persons designated on the basis of their functional role ("**designated persons**") in the organisation shall be governed by an*

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internal code of conduct governing dealing in securities. The board of directors shall in consultation with the compliance officer 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."

Clause 4 of Schedule B of the PIT Regulations provides that-

"Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed."

Clause 10 of Schedule B of the PIT Regulations provides that-

"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 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."

From the reading of Clause 3 and 4 with Clause 10 of Schedule B of the PIT Regulations it is inferred that the code of conduct restricts contra trades in those securities of which the UPSI is available with the designated persons.

- ii. With regard to your second query mentioned at para 3(ii) above, it may be stated that the neither PIT Regulations nor the guidance note dated August 24, 2015 exempts contra trades in cases of securities subscribed in an IPO.
5. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the question referred.



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6. You may also note that the above views are expressed only with respect to the clarification sought in your letter under reference with respect to the PIT Regulations and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI of the laws administered by any other authority.

Yours faithfully,

Sunil Kadam