



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

CHIEF GENERAL MANAGER
INTEGRATED SURVEILLANCE DEPARTMENT

SEBI/HO/ISD/ISD/OW/P/2016/32258/1

November 25, 2016

The Managing Director & CEO
SBI Capital Markets Limited
202, Maker Tower 'E'
Cuffe Parade,
Mumbai 400005

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.
2. In your letter under reference you have inter alia made the following submissions-
 - i. As per your understanding in reference to PIT Regulations, the Regulations will become applicable to an intermediary when they are an insider; i.e. either they are in possession of Unpublished Price Sensitive Information (UPSI) or they are connected person in respect of a company whose shares are being traded by the intermediary. Therefore, all provisions stated in the Regulations would be applicable only when an Intermediary is in possession of UPSI or they come under the definition of connected persons (as defined in Regulation 2(1)(d) in relation to the company whose shares are being traded by the intermediary.
 - ii. Further, being an intermediary, you are maintaining a restricted list in compliance with the PIT Regulations. All the companies in which SBICAP is handling any assignment and is privy to any UPSI are put in this restricted list. Neither SBICAP nor any of its employees are allowed to trade in the shares of the companies which are in the restricted list. Trading is only allowed in the shares of the companies with which SBICAP is not connected in any way and about which it does not have any UPSI. It is also submitted by the applicant that since they are not trading in shares of companies which are in their restricted list, they are always abiding by Regulation 4, which restricts trade in securities when in possession of UPSI.

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.

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



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- iii. You refer to the definition of "insider" under –Regulation (g) of Regulation 2 of PIT Regulations described as a connected person or a person in possession of or having access to UPSI. It is further contended that you are not a 'connected person' and do not have any UPSI of the companies which are not in your restricted list. Hence, you are not an "insider" as defined in the PIT Regulations in respect of the company.
- iv. Further, it is asserted that since you are not a connected person for such company, neither SBICAP nor any of its employees are "designated persons" as per clause 3 of the schedule B (Code of conduct) of the PIT Regulations. Reference is then drawn to clause 10 of schedule B (Code of conduct) requiring the designated persons not to execute any contra trade within a period of six months and inference made that since you are not designated persons as stated above, the contra trade restriction should not be applicable to you. The contra trade restriction is only applicable for trading in the shares of the companies in which SBICAP has UPSI, .i.e. the companies which are in the restricted list and not any other company. The same rule is applicable to SBICAP and all its employees.
3. In the light of aforesaid submissions, you appear to seek an interpretive letter on the following questions:
- i. Whether the restriction on SBICAP or any of its employees, of not executing a contra trade within six months as provided in clause 10 of Schedule B of PIT Regulations, is applicable on securities which are not in their restricted list.?
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 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 organization shall be governed by an internal code of conduct governing dealing in securities. The board of*

for



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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 organization. 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 7 of Schedule B of the PIT Regulations provides that-

"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 preclearance of trades."

Further Clause 8 of Schedule B of the PIT Regulations provides that-

"prior to approving any trades, the compliance officer shall be entitled to 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."

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 7, 8 and 10 of Schedule B of the PIT Regulations, it may be inferred that the code of conduct restricts the

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contra trades in those securities of which the designated persons are reasonably expected to have access to UPSI and such restriction is construed to be in respect of securities to which the UPSI pertains.

It is noted from your letter that being an intermediary, SBICAP is maintaining restricted list of all the companies in which SBICAP handling any new assignment and is privy to any UPSI. It is understood that restricted list maintained by SBICAP for pre-approval of trades is, in accordance with Schedule B of PIT Regulations. However, contra trade restriction either on SBICAP or any of its employees for trading in securities of the listed companies which are not in the restricted list would depend on the connection that SBICAP or its designated employee has with the concerned listed company and subsequent possession of or access to UPSI.

If SBICAP or its employee is a connected person with a listed company and possess or have access to UPSI, such restriction shall be applicable, while on the other hand, for securities of the listed companies where no connection and possession or access to UPSI is envisaged, there may not be a need to impose the above restriction.

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.
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