

Relationship between regulatory rules and secondary rules

1. [Adjudication Order against Shri Raj Kumar Sekhani in the matter of Pioneer Embroideries Ltd]

a) **Whether the Noticee has violated the provisions of Regulations 3 (i), 4 and 12 (1) & (3) read with Clauses 1.2, 3.2 and 3.3 of the Model code of conduct specified in Part A of Schedule I of the Insider Trading Regulations?**

Regulation 3.

No insider **shall**—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange 19[when in possession of] any unpublished price sensitive information;

Regulation 4.

Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.

Regulation 12 PIT Regulations-“Code of internal procedures and conduct for listed companies and other entities:

(1) All listed companies and organisations associated with securities markets including :

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in *section 4A of the Companies Act, 1956*; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, **shall** frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.

(3) All entities mentioned in sub-regulation (1), **shall** adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

Explanation - (taken from document)

Noticee violated Regulations 12 (3) read with Clauses 3.2 & 3.3 of the Model code of conduct specified in Part-A of Schedule I of the Insider Trading Regulations which makes it liable for monetary penalty under Section 15HB of the SEBI Act

Clauses 3.2.1, 3.2.3 & 3.2.4 of the Model Code of Conduct provide that the trading window for dealing in securities of the Company shall be closed during the time the information regarding declaration of financial results and declaration of dividends is unpublished. The trading shall be opened 24 hours after the information is made public. Further, Clause 3.2.2 provides that when the trading window is closed, the employees/directors shall not trade in the Company's securities in such period.

Order of Regulation used for reasoning:

- A. Reg 3 defines forbidden action
- B. Reg 4 refers back to Reg 3 to prove guilty
- C. Reg 12 defines action to be taken/complied with
- D. Clauses 3.2.1, 3.2.3 & 3.2.4 define trading window, when it should be closed
- E. Finally (C) & (D) are used - monetary penalty under Section 15HB of the SEBI Act

2. [Adjudication Order in respect of Shri G Jayaraman in the matter of Satyam Computer Services Ltd]

(a) Whether the Noticee has violated Clauses 1.2 and 3.2-3 of the Code of Part A, Schedule I under Regulation 12 (1) of the PIT Regulations?

Regulation 12 (1) PIT Regulations-"Code of internal procedures and conduct for listed companies and other entities: All listed companies and organisations associated with securities markets including :

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds
(b) the self-regulatory organisations recognised or authorised by the Board; (c) the recognised stock exchanges and clearing house or corporations; (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations. (3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

Clause 1.0- Compliance Officer

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of 'Price Sensitive Information', pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed

company. Explanation: For the purpose of this Schedule, the term 'designated employee' shall include:- (i) officers comprising the top three tiers of the company management; (j) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct".

3.2 - Trading window

3.2-3 The trading window shall be, inter alia, closed at the time:- (a) Declaration of financial results (quarterly, half-yearly and annually), (b) Declaration of dividends (interim and final), (c) issue of securities by way of public/rights/bonus etc, (d) any major expansion plans or execution of new projects, (e) **amalgamation, mergers, takeovers and buy-back**, (f) disposal of whole or substantially whole of the undertaking, (g) any changes in policies, plans or operations of the company.

Regulation 2

[(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—The following shall be deemed to be price sensitive information :—

- (i) periodical financial results of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of securities or buy-back of securities;
- (iv) any major expansion plans or execution of new projects.
- (v) **amalgamation, mergers or takeovers**;
- (vi) disposal of the whole or substantial part of the undertaking;
- (vii) and significant changes in policies, plans or operations of the company;]

Explanation given: Clause 3.2-1 of the Code prescribed under PIT Regulations provides that the Company shall specify a trading period to be called 'trading window', for trading in the company's securities and the trading window shall be closed during the time the information referred to in clause 3.2-3 of the Code is unpublished. Further, clause 3.2-3A of the Code provides that the time for commencement of closing of trading window shall be decided by the company. Regulation 12 (1) of the PIT Regulations requires that all listed companies shall frame a Code of Internal Procedures and Conduct as near thereto to the Code and as per clause 1.2 thereof, the Compliance Officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of 'price sensitive information' and the implementation of the code of conduct under the overall supervision of the Board of the listed company. It is noted that as per the code framed by SCSL under Regulation 12 of the PIT Regulations, the trading window is required to be closed from the date of existence of UPSI.

In order to decide whether the said acquisition proposal amounted to 'price sensitive information', it is imperative to look into the relevant legal provisions concerning the same.

As per Regulation 2 (ha) of the PIT Regulations, 'price sensitive information' means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

It is observed that the types of information requiring a trading window closure mentioned in clause 3.2-3 of the Code closely resemble the list of information deemed as PSI under Regulation 2 (ha) of PIT Regulations. Serial no. (v) of explanation to regulation 2 (ha) of PIT Regulations mentions amalgamation, mergers or takeovers in the list of information deemed to be 'price sensitive information'. Similarly, Clause 3.2-3 of the Code also includes, at serial no. (e) Amalgamation, mergers, takeovers and buy-back in the list of information at the time of which the trading window has to be closed. I find that the ambit of both the lists is wide enough in scope to cover any proposal related to matters therein, the publication of which is likely to materially affect the price of the securities of a company. the Noticee ought to have closed the trading window when the UPSI came into existence on December 6, 2008 as prescribed under Clauses 1.2 and 3.2-3 of the Code specified in Part A, Schedule I under Regulation 12 (1) of the PIT Regulations by not closing the trading window the Noticee has not fulfilled his duties and responsibilities as the Compliance officer of SCSL, thereby breaching Clauses 1.2 and 3.2-3 of the Code read with Regulation 12 (1) of the PIT Regulations warranting imposition of penalty under Section 15HB of the SEBI Act.

Order of Regulation used for reasoning:

- A. Clause 3.2-1 defines the need for trading window
- B. Clause 3.2-3 mentions when the trading window will be closed
- C. Clause 2.3-3A this time will be decided by the company
- D. Reg 12(1) specifies all listed companies shall frame a Code of Internal Procedures and Conduct as near thereto to the Code
- E. Clause 1.2 mentions compliance officer needs to monitor price sensitive info
- F. Reg 2 (ha) Helps determine if proposal (doc in question) is price sensitive info or not
- G. Clause 2.3-3 mentions info about when the trading window should be closed and it closely resembles info deemed PSI under Reg 2 (ha)
- H. Clauses 1.2 & 3.2-3 read with Reg 12 (1) breached thus penalty under Section 15 HB of SEBI Act

3. [Adjudication Order against Shelter Infra Projects Ltd]

(a). Whether the Noticee has failed to comply with provisions of Clause 22 (d) and 35 of the Equity Listing Agreement, Regulation 12 (1) read with clause 3.2-1 and 3.2-3A

of Schedule I, in Part A and Regulation 12 (2) further read with Clause 2.1 of Schedule II, Part A of the PIT Regulations ?

Listing Agreement [Different Document]

22. The Company will immediately on the date of the meeting of its Board of Directors held to consider or decide the same, intimate to the Exchange within 15 minutes of the closure of the Board Meetings by Letter/fax (or, if the meeting to be held outside the City of Mumbai, by fax/telegram) – ...

(d) any other information necessary to enable the holders of the listed securities of the company to appraise its position and to avoid the establishment of a false market in such listed securities.

Explanation -

Under the provision of Clause 22(d) of the Listing Agreement, the company will immediately on the date of the meeting of its Board of Directors held to consider or decide on e.g. interest on debentures and bonds and redemption amount of redeemable shares or of debentures and bonds will be payable etc., intimate the exchange within 15 minutes of the closure of the Board Meeting by Letter/fax (or if the meeting is held outside the city of Mumbai, by fax/telegram) and any other information necessary to enable the holders of the listed securities of the company to appraise its position and to avoid establishment of a false market in such listed securities.

35. "The issuer company agrees to file with the exchange the following details separately for each class of equity shares/security in the formats as specified in the clause, in compliance with the following timelines, namely:-

(a) One day prior to the listing of its securities on the stock exchanges.

(b) On a quarterly basis, within 21 days from the end of each quarter.

(c) Within 10 days of capital restructuring of the company resulting in a change exceeding +/-2% of the total paid up share capital".

Explanation

Under the provisions of Clause 35 of the Listing Agreement, companies listed on BSE are required to file with BSE on a quarterly basis, within 21 days from the end of each quarter, their Shareholding Pattern in the specified format.

Insider Trading Regulations

12. PIT Regulations-“Code of internal procedures and conduct for listed companies and other entities:

(1) All listed companies and organizations associated with securities markets including: (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ; (b) the self-regulatory organizations recognized or authorised by the Board; (c) the recognized stock exchanges and clearing house or corporations; (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same. (2) *The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.*

Schedule II - CODE OF CORPORATE DISCLOSURE PRACTICES FOR

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

Order of Regulation used for reasoning:

- A. Clause 35 of the Listing Agreement defines an action to be taken
 - B. Not established as a violation
- C. Clause 22(d) of the Listing Agreement defines an action to be taken
 - D. Established as a violation
- E. Regulation 12(2) read with Clause 2.1 of Schedule II that state prompt disclosure of price sensitive information
 - F. Established as a violation
- G. Further violation of Regulation 12(1) read with clause 3.2-1 and 3.2-3A of Schedule I, Part A
 - H. imposition of monetary penalty under Section 23A (a) of the SCRA

- What is the secondary rule referred to?
- Is the same regulatory rule referred to different secondary rules and does that change the penalty?
- Are these pairs almost always the same?

Observations:

1. Clearly Reg 12 (1) links to other clauses in Schedule 1
2. Recurring/ popular reason - trading window (Clause 3.2)
3. Unsaid regulations for clarification ie Definition (Reg 2 (ha))
4. All rules are linked / similar not opposing
5. Other documents can be used eg listing agreement
6. Listing agreement does not lead back to a Regulation (no relationship established)
7. Penalty imposed varies