FINSEC
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Securities and Investment Regulations

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INSIDER TRADING REGULATIONS, 2015

SEBI released the much awaited SEBI (Prohibition of Insider Trading) Regulations, 2015 ("2015 Regulations") which restructures the existing legal regime on the prohibition of insider trading. The following table highlights some of the significant changes in the 2015 Regulations vis-à-vis the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("1992 Regulations") and contains a brief analysis of the change.

1992 Regulations	2015 Regulations
Definition of 'connected persons' broadened	
No provision specifically included persons who frequently communicate with officials.	Persons who frequently communicate with the company officials having access to UPSI included in the definition of 'connected persons'.
There is a conceptual expansion of people who are deemed to be insiders under the 2015 Regulations. It provides a list of persons deemed to be connected and confers a right to rebut the presumption. Whereas under the 1992 Regulations it was mainly relationship based, under the 2015 Regulations it is more access based.	
Communication of UPSI	
Prohibition on insider from communicating UPSI to any person who is prohibited from dealing in securities while in possession of such UPSI	Mere communication of UPSI is an offence, even in absence of any trading in securities. Communication only permissible when in furtherance of legitimate purpose.
Under both the 1992 and 2015 Regulations, mere communication of UPSI attract sanctions. Insider trading must involve actual trading of securities when in possession of UPSI and imposition of sanctions on mere communication in absence of any trade is improper and unjust. Idle talk between people has been criminalised, rather than substantive action or harm.	
Due Diligence	
Permissibility of conducting due diligence prior to investment is unclear.	Due diligence is permissible if the board of the company believes that it is in the best interest of the company. In cases where open offer is not triggered by the proposed transaction, an additional obligation to disclose all UPSI at least 2 days prior to the proposed transaction.
2015 Regulations provide clarity on the issue of due diligence which was not dealt by 1992 Regulations. This is a great development as the new law outlaws abuse of power rather than a legitimate commercial transaction. But SEBI could have extended this protection to transactions relating to preferential allotment of securities to insiders because any purchase of securities by the promoters by way of preferential allotment of securities would be covered under the definition of insider trading, which will make it difficult for promoters to infuse fresh capital into the listed company. Also, SEBI will have to relook at the impact of advance disclosure requirement on proprietary and confidential information which may become available to competitors and would thus harm the company.	

1992 Regulations	2015 Regulations
Trading Plan	
No concept of trading plan was provided.	An insider may carry out trades pursuant to a trading plan which is approved and disclosed to the public.
The 2015 regulations allow persons to engage in regular divestments in relation to the company without attracting the sanctions in relation to insider trading. However, the issues related with this immunity might make it impractical. For instance, the trading plan would be disclosed to the public in advance, therefore it would be easy for investors to front run the insider and artificially increase or decrease the price of the scrip before the expected date of trading. The concept of trading plan may only be practical where the scrip of the company is highly liquid and/or where the trading plan is not for large quantities of the shares.	
Unpublished Price Sensitive Information	
Definition of UPSI included all information that was not published by the company or its agents.	There is a shift to the threshold of 'generally available information' which includes information that is accessible to the public on a non-discriminatory basis. Any information that is not generally available information is defined as UPSI.
It is unclear whether unconfirmed information that is generally available would be seen as UPSI. According to 2015 Regulations, information will be considered published only if made on the stock exchanges. This may unnecessarily reduce the flow of information because dissemination of information by way of any other medium would not be considered as wide and concurrent distribution of information than the information available on the stock exchange's website.	
Defences	
The regulations provide defences for dealing in securities of one company by another company while in possession of UPSI in certain situations.	Any insider who has traded while in possession of UPSI may adopt certain defences.
This is a hugely positive development. The 2015 Regulations provide substantive defences to legitimate commercial transactions or where no harm to the market would result.For instance two insiders with privileged information could trade between themselves or in an organisation those with access and those who trade are people who are unconnected with sufficient procedures to ensure that regulations are not violated.	

SEBI Imposes Restrictions on Wilful Defaulters

SEBI recently released a discussion paper on "Proposed Amendments to Regulations framed under SEBI Act, 1992 for Imposing Restrictions on Wilful Defaulters," to review its policy regarding imposing restrictions on "wilful defaulters" from accessing capital markets.

Under the existing framework, an issuer who is declared as "wilful defaulter" by the RBI is restricted from making a public issue or rights issue of convertible debt instruments. SEBI has proposed to extend the restriction to public issue of equity securities, debt securities and non-convertible redeemable preference shares where the issuer, its promoter, group company or director of the issuer who is declared as "wilful defaulter" by the RBI.

However, the discussion paper allows "wilful defaulters" to raise capital by way of rights issue or private placement to QIBs, with full disclosure in the offer document. The rationale behind this dispensation is to permit such defaulting companies to raise funds from its own shareholders and from sophisticated investors such as QIBs, who do not require as much protection as retail investors. SEBI has also proposed to impose restriction on "wilful defaulters" from taking control of another listed entity. But, in case of a hostile takeover a "wilful defaulter" is allowed to make a counter offer to protect itself.

RBI's tag of "wilful defaulter" restricts an entity from receiving any financial aid from the banks. Therefore, the proposal to restrict an issuer from making a public issue of equity securities will considerably stifle the "wilful defaulter" from raising funds. This blanket restriction will make it difficult for the banks to recover their dues and the "wilful defaulter" to repay its debts. It will be in the interest of the "wilful defaulter" and its creditors if it is allowed to raise money by way of issuing equity securities as it would assist the defaulting company in making its overdue payments to the lenders. Therefore, so long as a "wilful defaulter" makes full and adequate disclosure, SEBI should permit such an issuer to raise capital through issuance of equity securities.

Improving India's Municipal Bond Market

Urban Local Bodies are often in need of innovative funding mechanisms to cater to the needs of the growing population. Even though ULBs have traditionally issued bonds for raising funds, its market remains underdeveloped. In order to tackle this, SEBI published a concept paper titled "Proposed regulatory framework for issuance of debt securities by Municipalities."

The proposed regulations therein permit either the ULB or its subsidiary, created in the form of a corporate municipal entity, to undertake the issuance of bonds. As part of investor protection, the proposed regulations restrict the participation of an issuer with either negative net worth or who has previously defaulted in its repayment obligations.

Revenue bonds will be the only kind of municipal bonds that can be issued through a public offering, as they would be serviced by revenues from a particular project or a specific set of projects. These bonds are compulsorily required to be listed and may be issued only after obtaining in-principle approval from a stock exchange and after obtaining a minimum credit rating of A+ from a recognised credit rating agency. The funds raised can be used only for the projects that have been specified in the offer document. A separate escrow account will be maintained for servicing them with the earmarked revenue from the projects and a monitoring agency shall be appointed to ensure compliance.

General obligation bonds are not backed by revenues from any particular project and may not be issued through a public offering. However, the proposed regulations permit both kinds of bonds to be issued through a private placement to institutional investors. Listing of privately placed bonds will require compliance with other conditions such as dematerialisation of the bonds and a minimum subscription per investor of Rs. 25 lakh. All municipal bonds, whether issued through public offering or private placement, require the issuer to maintain 100% asset cover sufficient to discharge the entire principal amount.

ULBs in India have only raised approximately Rs. 13 billion till date. The proposed regulations provide a clear mechanism for undertaking the issuance of municipal bonds and may play an important role in improving the regulatory conditions that presently hinder such issuance. If the US municipal securities market ($3.7 trillion) is anything to go by, developing India's municipal bond market will result in immense development.

IPOs and Fast Track Issues

SEBI, recently released a discussion paper titled "Revisiting the capital raising process", with the primary objective of shortening the timeline for raising capital through an IPO and to relax the eligibility criteria for raising capital through a fast-track FPO or rights issue in order to allow more companies to access these routes of capital raising.

Proposals related to IPOs

SEBI intends to shorten the existing post-issue timeline from T+12 ("T" being the issue closing date) to T+6 through leveraging the secondary market infrastructure. As of now, retail applications in an IPO can be made through SCSBs (ASBA bids), syndicate members or registered brokers. The discussion paper proposes to allow the submission of ASBA applications through DPs and RTAs. The discussion paper proposes remove physical bid-cum-application forms by providing investors the option to fill and sign forms on digital platforms provided by the broker/SCSB/DP/RTA. This long overdue change is a promising development.

With regard to non-ASBA bids, the discussion paper proposes a faster mechanism to collect the money from investors through a web based electronic transfer platform viz. NACH provided by the National Payments Corporation of India. Although removing physical cheques from the issuance process is a necessary change, making ASBA mandatory may be a better way to achieve the same result. Further, the option for withdrawal of bids after the closure of the issue is proposed to be eliminated and the basis of allotment is proposed to be prepared on T+3 as opposed to T+8.

Proposals related to fast-track FPOs and rights issues

The eligibility criteria prescribed under ICDR Regulations for raising capital through a fast-track FPO or rights issue has been felt to be very restrictive. The current requirement of average market capitalisation of Rs. 3000 crores would make only 183 companies eligible to raise capital. The discussion paper proposes to lower this threshold to allow more companies to utilise these faster alternatives to raise capital.

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