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SEBI STANDARDISES REPORTING OF INSIDER TRADING VIOLATIONS

29 July 2019

The Securities and Exchange Board of India (SEBI) by its circular of 19 July 2019 (Circular) has standardised the reporting of violations of the code of conduct (Code) formulated by listed companies, intermediaries and fiduciaries under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (Regulations).

Pursuant to the last amendment to the Regulations effected from 1 April this year, listed companies, intermediaries, and fiduciaries (Relevant Persons) were required to revise their Code to enhance compliance under the Regulations and monitoring thereof.

The Regulations not only provide for monitoring but also taking disciplinary actions against designated persons if they are found violating the insider trading norms. Such disciplinary actions can be in the form of wage freeze, suspension, recovery, clawback and any other action, which the Relevant Person would consider appropriate. Typically, the compliance officer of the Relevant Person would report the violation to the board or a committee of the Relevant Person. Depending on the findings and recommendations of the board/ committee, appropriate actions are taken against the non-compliant designated person.

Additionally, the Relevant Persons are required to notify SEBI of any violations of the Code by 'designated persons'. So far as there was no standardised procedure for reporting specified by SEBI, the Relevant Persons were adopting varied practices to report violations. While some had adopted systematic processes for dealing with violation of the Code and subsequent reporting, in many instances the Relevant Persons did so on an *ad hoc* basis.

SEBI, through the Circular re-emphasised the importance of such reporting while observing that in many instances incomplete details relating to the violations were received by it. This hindered SEBI's ability to examine the violation(s) and to take any further actions where needed.

To bridge the gap, SEBI has now prescribed a format for reporting such violations, which *inter alia* prescribe inclusion of (a) relevant details as to whether the designated person is a member of the promoter, or promoter group, (b) the name of the scrip, (c) number of scrips traded, (d) value of the transaction, (e) details of violations under the Regulations, (f) action taken by the Relevant Person along with reasons and (g) details of previous instances of violations, etc. These details are crucial for SEBI to determine whether any further action is required to be taken in the matter.

This Circular further mandates the Relevant Persons to maintain a database of such violations by the designated persons.

Comment:

Previously, there was uncertainty as to manner of reporting as well as the information to be provided to SEBI. The Circular has brought in much needed clarity on the process to be adopted by the Relevant Persons while reporting violation(s) of the Code. By standardising the reporting, SEBI will be able to better assess the gravity of violation(s) and actions taken by the Relevant Persons, or decide further action as may be necessary. Some aspects on which further clarity would be welcome relate to the timing of filing the report with SEBI - the Regulations stipulate informing SEBI about the violations promptly. The report also requires the Relevant Person to include details of "actions taken" by the Relevant Persons. Disciplinary action is taken only after following due processes, which may be a time-consuming process. Therefore, it is unclear as to whether waiting for the process to complete would be adequate compliance of the requirements under the Regulations as also the Circular.

The Relevant Persons will also have to consider modifying the database of designated persons to enable recording of violations by them. This database can be inspected by SEBI as and when required.

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