

Legal Update

Promoters to now make disclosure under Insider trading Regulations

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Background

There have been various changes to the Insider Trading Regulations since 1992. The same have always been done in order to promote healthy and transparent disclosures by the companies and to curb the exercise of insider trading.

Recently, in July SEBI came up with changes in Takeover Code, Mutual Fund Regulations and Insider Trading Regulations. SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 were thereafter notified on August 16, 2011. The regulations in terms of disclosure requirements which were previously restricted to only directors, officers, designated employees of the company including dependants have been broadened and are now extended to even promoters and promoter group of the company for the purpose of transparent disclosures and prevention of insider trading. Thus, the disclosure requirements under regulation 13 now include disclosures by Promoters and Promoter group as well.

Amendment to SEBI (Prohibition of Insider Trading) Regulations, 1992

The Board now mandates disclosures under Regulation 13 to be made by promoters and persons who are part of promoter group of a listed company. The amendment relates to initial disclosures relating to their shareholding at the time of becoming promoter or part of promoter group and also continuous disclosures whenever there is a change in their holdings exceeding Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

Presently, similar disclosures are required to be made by the directors and officers of the company.

A snapshot of the amended regulations is briefed in the table below:

Regulation no.	New Regulation	Old Regulation
Sub-regulation 2A inserted after sub-regulation 2 under regulation 13	Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person,	NIL

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	within two working days of becoming such promoter or person belonging to promoter group;	
Sub-regulation 4A inserted after sub-regulation 4 under regulation 13	Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.	NIL

Sub-Regulation (2) however, also talks about directors and officers along with their dependants as defined by the company. The above sub regulation (2A) inserted only talks about promoter and promoter group and not their dependants. Since sub-regulation (2A) talks about disclosure on becoming promoter or person belonging to promoter group therefore, it seems that the same shall be applicable not for the existing promoters/promoter group but for the new promoters post this amendment. Sub-regulation 2 also extends to disclosure of voting rights held and positions taken in derivatives by directors or officers and their dependents while it seems that the new sub-regulation inserted keeps the promoters and promoter group out of the purview of such disclosure of voting rights held and/or positions taken.

In case of continual disclosure as under sub-regulation 4, the same now also extends to promoter and promoter group by virtue of insertion of sub-regulation 2A. Unlike sub-regulation 2A, the continual disclosure does extend to existing promoter/promoter group.

Consequent amendments will have to be incorporated in the code of conduct on insider trading as required under regulation 12 in line with the new disclosure

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requirements by the promoters as well. Therefore, the model code of conduct of listed companies to that effect shall have to be revised accordingly.

Definition of promoter for the purpose of disclosures under Insider Trading Regulations

Explanation to sub regulation 7 under Regulation 13 of Insider trading Regulations has been inserted and reads as:

For the purpose of these regulations the meaning of promoter and promoter group shall be as per the regulations defined in clause (h) of sub-section 2 of section 11 of the Act.

The said regulations are Securities and Exchange Board of India (Substantial Acquisition and Takeover of Shares) Regulations, 2011, f which Regulation 2 clause (s) and (t) direct us to refer to the Definitions of promoter and promoter group as per Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. Therefore, even the promoters now can be said to come within the ambit of meaning of “insider” as per the Regulations and are assumed to have access to the price sensitive information.

The purpose of inserting the promoters and promoter group within the purview of disclosure requirements under Insider Trading seems to be to bring in more transparency.

The text of the Amendment Regulations can be read at http://www.sebi.gov.in/cms/sebi_data/attachdocs/1314095296758.pdf.

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