

Sensitization: The key to implementation of PIT Regulations

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Background of the Regulations

The strong and decisive steps taken by the Securities and Exchange Board of India with respect to the Prohibition of Insider Trading Regulations have been quite a matter of concern for last couple of months. The modifications in the existing SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations') were majorly brought in vide SEBI (Prohibition of Insider Trading) Amendment Regulations, 2018¹ which shall soon become effective from April 1, 2019. Another amendment in the said Regulations with respect to the disclosure requirements by the members of promoter group was brought in vide SEBI (Prohibition of Insider Trading) Amendment Regulations, 2019² which came into effect from January 21, 2019. These amendments were the result of the TK Vishwanathan Committee Report on Fair Market Conduct (hereinafter referred to as "Report") which was released in August 2018³.

The Requirements and the Intent of the amendment

The broad purpose of the amendment in the PIT Regulations was to revise the prevailing framework and to deal with the serious concern pertaining to market abuse, in order to ensure a fair conduct in the securities market. The intent of the recommendations of the Report was to strengthen the surveillance, investigation and enforcement mechanisms being undertaken by the entities so as to protect the market integrity as well as the interest of investors from market abuse.

By way of compliance to the Regulations, the companies are required to take a number of measures to fortify their internal control mechanisms casting various responsibilities on the Board of Directors, audit committee, CEO, and the compliance officer.

The penalty prescribed by Sec 15G of SEBI Act, 1992, for any non-compliance of PIT Regulation is an amount which can extend to rupees twenty-five crore rupees or three times the amount of profits made out of insider trading. This apart, the companies also have to face negative impact on its goodwill and reputation and also resultant effect on the market price of shares.

¹https://www.sebi.gov.in/legal/regulations/dec-2018/securities-and-exchange-board-of-india-prohibition-of-insider-trading-amendment-regulations-2018-dated-december-31-2018_41570.html

²https://www.sebi.gov.in/legal/regulations/jan-2019/securities-and-exchange-board-of-india-prohibition-of-insider-trading-amendment-regulations-2019-dated-january-21-2019_41761.html

³https://www.sebi.gov.in/reports/reports/aug-2018/report-of-committee-on-fair-market-conduct-for-public-comments_39884.html

Further, it is to be noted that the burden of proof under the PIT Regulations lies on the insider to establish his innocence.

As per the Regulations, the term insider includes “*Any person in receipt of unpublished price sensitive information*”, within its wide ambit. Accordingly, the large set of people within or outside the organization who may be handling the UPSI may not be expected to be aware of such hideous repercussions while trading in the securities.

It is pertinent to realize the fact that mere putting a code in place or amendments therein or framing large set of documentations or manuals and setting up technical databases may not serve the real purpose of bringing the true essence of implementation of the Regulations unless the same is sensitized across the organization and brought to the notice of the target audience, be it the designated persons of the highest authority or the support staff handling such UPSI.

Each and every employee in the organization needs to be minutely intimated of the implications of the Regulations time and again so that they handle any UPSI consciously in accordance with the Regulations. This article deals with the broad parameters which the companies should consider while analyzing the essence of such sensitization.

Why is sensitization required?

Owing to the various amendments made in the PIT Regulations and considering the small time frame of 90 days provided to the companies for its implementation which includes the amendment in the exiting codes, adoption of the amended codes by the board, setting up of a mechanism to create and maintain a structured digital database with respect to sharing of UPSI, the effective implementation of the revised Regulations is surely a challenge for the companies. The efforts of the companies will see desired result only when the purport of the Regulations is percolated deep within and across the organization and any abuse of market can be prevented and pinned down.

Also, it is important for employees to understand the significant ramifications that can result from using or disclosing material nonpublic information to anyone (including co-workers, family members, or others). The intent of the Regulations will see daylight where even the blue-collared staff is sensitized about the Regulations and severe repercussions of any non-compliance. Although, the board and the management of the companies may have set up a proper framework and mechanism to prevent insider trading, however, it cannot be expected from the junior employees in the hierarchy to be well versed with the requirements and the implications of the Regulations. Therefore, in order to avoid such unforeseen consequences which might take place due to such unawareness, it is of utmost importance for the companies to sensitize the employees wrt the same.

Thus, sensitization is an essential element which is required in order to inculcate the ethical values to be followed within the organization and to promote ethical behavior on a day-to-day basis and create a corporate culture of trust, honesty, integrity, transparency, accountability by prohibiting directors/employees from using the inside information to their own investment advantage and also being cautious while disclosing such information for use by outsiders.

Who is to be sensitized?

As we know, there are three codes under UPSI viz, Code of Conduct for Prohibition of Insider Trading (for the companies and the intermediaries respectively) and Code of Practice and Procedures for Fair Disclosure of Unpublished Price Sensitive Information. The audience for all the three codes are different (may be overlapping) group of people within/ outside the organization. Entire gamut of audience of all three codes, which range from the chairperson of the company to the auditor / banker of the company, are required to be sensitized about the nitty gritty of the Regulations including the Codes.

The group of the personnel who are supposedly the spokesperson of the company needs to be sensitized about the quality and quantity of information shared by them at each press conference or alike.

The “insiders”, being a wide term in itself, including any person who have access to UPSI, needs to be sensitized about the sensitivity and need of confidentiality of unpublished information.

As mentioned earlier, the ambit of “insider” is wide enough to cover any person who has access to UPSI. Therefore, each and every person who has access to UPSI shall be expected to have the required awareness of the restrictions on them while holding such price sensitive information. Herein, it is pertinent to note that these insiders would not only include the designated persons in the organization but also all those to whom the information may flow during the course of operations. The chain of information flow will also be extended to trainees, interns, the support staff and even the outsiders who have access to UPSI.

What is to be sensitized?

The insiders need to be sensitized atleast about the following:

- What all is considered as a price sensitive and confidential information;
- When is an information said to be published
- How to handle UPSI
- What are the pre-requisite of sharing of any UPSI
- When is a person considered to be a designated person
- When can a person trade / not trade in securities
- What to be done in case a person gets access to any UPSI
- What to be done in case the person become aware about / suspects any leak of UPSI
- Provisions with respect to blowing of whistle in case of leak / suspected leak of UPSI
- What is the penal provision wrt abuse of market
- Case laws

What is the mode of sensitization?

Sensitization is a means of making people familiar and responsive to certain ideas, events, or situations that require their intervention. The intent behind such sensitization is providing them an experience or knowledge of the requirements and restrictions brought in by the regulations, so that they may be able to understand and comprehend it in a better manner. This can be brought about by the means of appropriate sharing of every related event and information with its detailed components minutely with the concerned persons time and again. The first step to sensitization is entering into a Non Disclosure / Confidentiality Agreement with the employees and making the parties aware of the necessity of the same. The mode of such sharing shall be the simplest channels of communications including:-

- Workshops on recent updates;
- Seminars;
- Webinars;
- Interactive sessions within the departments/team;
- Orientation and familiarization programs; and
- Induction and trainings

for the employees working at various levels in the organization. Companies should conduct training programs regarding their insider trading policies periodically with employees for ongoing monitoring and updating, and effectively communicating any updates to these policies to their employees. Training and awareness programs should also effectively communicate the consequences that the employee and the company could face for violations of insider trading regulations. Also, periodic mailers may be sent to such target audience in order to avoid any inadvertence or negligence of the same.

When shall the sensitization be done?

Sensitization, rather than being a one-time activity is actually a periodic event which needs to be taken care of the by the organization at regular intervals. With the change in the people at different level of hierarchy and change in the regulations taking place, the organization should endeavor to keep its people abreast of the requirement and repercussion of any foul in compliance of the Regulations.

Conclusion

The idea of putting down any policy for a company can only be successful once it is implemented in spirit. The Codes framed under PIT and the other advanced mechanism being adopted by the companies in this regard will bear desired results only once the same idea is spread across in an interactive manner across organization. Not all the audience of the Codes are expected to be conversant with legal documents, leave apart the provisions of the regulation. Accordingly, efforts should be taken to disseminate the same in an audience-friendly medium.