

# Comments on Consultation Paper on inclusion of Mutual Fund Units in PIT Regulations

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Consultation Paper on Applicability of SEBI PIT Regulations to MF units

Sr. No.	Para of consultation paper/ proposed amendment	Suggestions/ Comments	Rationale
1.	<b>Para I of the proposed amendment – Definition of Securities:</b> The words “except units of a mutual fund” in reg. 2 sub-regulation (1) of clause (i) may be omitted.	Units of overnight schemes should be excluded from the definition of securities.	1. Overnight schemes are a type of open-ended schemes that invest in the debt securities maturing the next day. The units of such schemes are not amenable to insider trading. 2. Para 2.3.1.2 of the SEBI circular on Investment/trading in securities by employees and Board members of AMC(s) and Trustees of Mutual Funds <sup>1</sup> exclude the investment in overnight schemes.
2.	<b>Para I of the proposed amendment – Applicability of SEBI PIT Regs. to Units:</b> After sub-regulation (2) to reg. 2, following may be inserted: “(3) With respect to dealing in the units of a Mutual Fund, only the provisions of Chapter IIA, IIIA and V are applicable.	Revised sub-regulation “(3) With respect to dealing in the units of <b>own mutual fund schemes, whether listed or unlisted</b> , only the provisions of Chapter IIA, IIIA and V are applicable.”	SEBI should clearly bifurcate the provisions applicable to the units of own mutual fund and those applicable to other listed securities. Further, the fact that the provisions apply to both listed and unlisted should be clear.

<sup>1</sup> [https://www.sebi.gov.in/legal/circulars/oct-2021/investment-trading-in-securities-by-employees-and-board-members-of-amc-s-and-trustees-of-mutual-funds\\_53618.html](https://www.sebi.gov.in/legal/circulars/oct-2021/investment-trading-in-securities-by-employees-and-board-members-of-amc-s-and-trustees-of-mutual-funds_53618.html)

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3.	<b>Para IV of the proposed amendment</b> – Separate Chapter “Chapter IIA” titling “Restrictions on communication in relation to, and trading by insiders in, the units of mutual funds” is inserted which shall only be applicable to Mutual Fund Units;	Revised heading “Restrictions on communication in relation to, and trading by insiders in, the units of <b>own</b> mutual fund schemes”	Heading aligned with Schedule B1 to indicate that applicability is only in case of units of own mutual fund schemes.
4.	<b>Reg. 5A (d) (ii) (b) of the proposed amendment-</b> (d) "connected person" shall mean: (ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established,  (b) Sponsor, holding company or associate company or group company or subsidiary company of the Sponsor or Asset Management Company and Trustees;	Revised clause: (d) "connected person" shall mean: (ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established,  (b) Sponsor, holding company or associate company <del>or group company</del> or subsidiary company of the Sponsor or Asset Management Company and Trustees;	The term group company is not clear. Further, the definition of connected persons under Reg. 2 (1) (d) (ii) (b) of the PIT Regulations also does not include group company.
5.	<b>Reg. 5B(5) of the proposed amendment -</b> Board of directors of an Asset Management Company with the approval of the Trustees shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential,	Approval of trustees for executing non-disclosure agreements (NDA) to maintain confidentiality and non-disclosure obligations should not be required as it may delay the process.	As per reg. 3(4) of PIT Regs., the board of directors of the listed company is required to ensure that the parties execute NDA.  Similarly, the proposed amendment also requires the board of directors of Asset Management Company (AMC) to ensure that parties execute NDA, however,

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	except for the purpose of specified herein and shall not otherwise deal in the units of a Mutual Fund when in possession of unpublished price sensitive information.		approval of the Trustees is not relevant as anyways the board of AMC is responsible for the said obligation.
6.	<b>Reg. 5C(1) of the proposed amendment -</b> No insider shall trade in the units of a scheme of a Mutual Fund, when in possession of unpublished price sensitive information, which may have material impact on the Net Asset Value or may have material impact on the interest of the unit holders of the scheme.	The words ‘which may have material impact on the Net Asset Value or may have material impact on the interest of the unit holders of the scheme’ may be deleted.	This may be open to interpretation and may be subjective. Also, the proposed definition of UPSI covers the same.
7.	<b>Following provisions of the proposed amendment -</b> 1. Reg. 5E(1), 5F, 5G(2) - The board of directors of every Asset Management Company/Trustees... 2. Reg. 5G(3) - The Audit Committee of an Asset Management Company/ Trustee Company... 3. Reg. 5G(6) - If an inquiry has been initiated by an Asset Management Company/ Trustees... 4. Other clauses such as Clause 11, 12 of Schedule B1 of the proposed amendment	Only AMC should be retained instead of either AMC or Trustee for fulfillment of obligations under the Regulations. It may periodically report on the compliances to the Trustees.	The AMC can ensure that the concerned employees of the Trustees are identified as Designated Persons in addition to its own concerned employees. Retaining AMC/Trustee will pose confusion as to whether either of them is required to ensure compliance or both.

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8.	<b>Reg. 5F of the proposed amendment -</b>	Meaning of Designated Persons should include promoters of AMC and Trustee as well.	While this has been aligned with the meaning of Access Persons under SEBI Circular of October 28, 2021 it should also include promoters of the AMC and Trustee, as included in Reg. 9(4) of the Regulations.
9.	<b>Clause 1 of Schedule B1 of the proposed amendment -</b> The compliance officer shall report to the Trustees and in particular, shall provide reports to the Chairman of the Audit Committee of the Asset Management Company, and to the Trustees at such frequency as may be stipulated by the Trustees, but not less than once in a year.	The Compliance Officer should report to the board of directors of the AMC.	The requirement for the compliance officer to report to Trustees, may not be the right channel. The compliance officer, as appointed by AMC, should provide reports to the Audit Committee of AMC and in turn, the AMC may be mandated to submit the said periodic reports to the trustees.
10.	<b>Clause 6 of Schedule B1 of the proposed amendment</b> When the closure period is not applicable, trading in the Mutual Fund Units by designated persons, their immediate relatives and any other person for whom such person takes trading decisions including initiation of systematic transactions shall be subject to pre-clearance by the compliance officer. However, with respect to transactions in units by the designated persons pursuant to the mandatory requirement under 'Alignment of interest of Key Employees	There is no specific prescription in the SEBI Circular dated October 28, 2021 on pre-clearance for purchase and sale of mutual fund units. It is altogether exempted from the pre-clearance requirement. <b>Revised clause:</b> “xxx However, with respect to transactions in units by the designated persons pursuant to the mandatory requirement under 'Alignment of interest of Key Employees ('Designated Employees') of Asset Management companies with the Unit	Presently, Para 2.5.1 of the SEBI circular exempts the employees of AMC to obtain pre-clearance for purchase or sale of units of mutual fund schemes.  However, the proposed amendment states that the pre-clearance requirement for mandatory trades will be as per SEBI Circular (and the SEBI Circular is silent on this aspect).  As the acquisition will be pursuant to statutory obligation, the requirement of pre-clearance should not apply. However, after the lock-in, it is possible to redeem the units while in possession in UPSI and

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	(‘Designated Employees’) of Asset Management companies with the Unit holders of the Mutual Fund Schemes’ or otherwise shall be as prescribed in the Circulars issued by Board in this regard.	holders of the Mutual Fund Schemes’ or otherwise <del>shall be as prescribed in the Circulars issued by Board in this regard,</del> <b>the requirement of pre-clearance shall apply only at the time of redemption.</b>	therefore, the requirement of pre-clearance should be applicable.
11.	<b>Clause 9 of Schedule B1 of the proposed amendment –</b> The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade.	<ol style="list-style-type: none"> <li>1. The contra-trade restrictions should be for 30 calendar days and not 6 months.</li> <li>2. The contra-trade restriction should apply within the same scheme.</li> <li>3. The contra-trade restrictions should not be applicable for trading in the units of liquid funds as that is mainly used for parking surplus funds.</li> </ol>	<ol style="list-style-type: none"> <li>1. Para 2.3.1.2 of the SEBI circular provides the restriction of 30 calendar days within which an employee cannot undertake contra-trade. SEBI should consider aligning with the requirement of SEBI Circular as the rationale for 6 months restriction is not clear.</li> <li>2. Further, the restriction will apply only where there is buy and sell within the same scheme. For e.g., buying of X units in ABC scheme and redeeming Y units in PQR scheme should not be considered as a contra trade. This should also be captured correctly in the PIT Regulations.</li> <li>3. Liquid funds are preferred by investors to park their money for short periods of time typically 1 day to 3 months. The contra-trade restrictions on the units of liquid funds can defeat the purpose of investment in such funds.</li> </ol>
12.	<b>Para 2.5 of the consultation paper - Applicability of PIT Regulations to units</b>	The PIT Regs. are applicable to the listed units of PIVs. If SEBI intends to extend	SEBI informal guidance in the matter of <a href="#">SBI Funds Management Private Ltd</a> indicated that the PIVs are

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	<p><b>of other Pooled Investment Vehicles (PIVs):</b></p> <p>At present, in PIT Regulations, in the definition of Securities only units of Mutual Funds are excluded and thus, all the provisions of PIT Regulations are applicable to units of other PIVs such as AIFs, REITs and InvITs as on date.</p>	<p>the scope of PIT Regs. to the unlisted units of PIVs as well that invest in securities listed or proposed to be listed, it should be done by adding a separate chapter similar to Chapter IIA where UPSI, DP and CP and other obligations should be prescribed in the context of PIVs.</p>	<p>required to comply with PIT Regs. in the capacity of an intermediary or fiduciary as the unit of AIF schemes may invest in securities listed or proposed to be listed.</p> <p>The PIT Regs. are applicable to the listed units of PIVs. SEBI Circular of October 28, 2021 is applicable only to all mutual funds, AMCs, Trustees and AMFI. It is not applicable to other PIVs, their sponsors and investment managers.</p> <p>Therefore, if SEBI intends to extend the scope of PIT Regs. to the unlisted units of PIVs as well, it should be done by adding a separate chapter similar to Chapter IIA where UPSI, DP and CP and other obligations should be prescribed in the context of PIVs.</p> <p>However, SEBI should take note that unlike units of mutual fund schemes, there is limited public participation in the units of PIVs and ascertain if at all it is required to extend the applicability of PIT Regulations to the unlisted units of PIVs.</p>