

## **NOTIFICATION OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015**

Securities and Exchange Board of India (“SEBI”) has replaced the Insider Trading Regulations of 1992 with SEBI (Prohibition of Insider Trading) Regulations, 2015 (“**2015 Regulations**”) which have become effective from May 15, 2015. 2015 Regulations have widened the definition of certain terms such as ‘connected person’ and ‘Unpublished Price Sensitive Information’ (“UPSI”), and has introduced a new concept i.e. trading plan which was not in existence in India earlier. 2015 Regulations has established more effective mechanism to prohibit the offence of insider trading.

Under the 2015 Regulations, definition of ‘Insider’ means any person who is: (a) a ‘connected person’; or (b) in possession of or having access to UPSI. Definition of ‘connected person’ under 2015 Regulations has been expanded to include all persons who have contractual, fiduciary or employment relationship with the company and who are in regular touch with the company or its officers. Further, definition of UPSI in the 2015 Regulations includes information that is not ‘generally available’<sup>1</sup>, but if becomes generally available may affect the price of the securities. Thus, an offence of insider trading, will only be committed when such ‘connected person’ of the company has traded in securities of the company while in possession of UPSI.

Further, Regulation 5 of the 2015 Regulations introduces the concept of trading plans<sup>2</sup> in India. Such trading plans permit insiders of the company to trade in securities who otherwise restricted to trade due to apprehension of possessing UPSI of the company subject to the trading plans being approved by the Compliance Officer of the company and disclose to the public. Regulation 6 of 2015 Regulations specifies that an insider has to disclose about his trading in securities and such disclosure would also include trading by such insider’s immediate relatives or by any other person for whom such insider takes trading decision. The object of such disclosure is to restrict the trading in the securities if it is done while in possession of UPSI.

Regulation 8 of 2015 Regulations mandates that the Company, whose securities are listed on stock exchanges, has to draft a code of practice and procedure which will entail fair disclosure of UPSI. Such code for fair disclosure should be prepared as per Schedule A of 2015 Regulations which includes *inter alia* that even if UPSI gets disclosed inadvertently or otherwise, the company should rectify the mistake by making the information available to the public. Furthermore, regulation 9 of 2015 Regulations provides that every company whose securities are listed and every market intermediary which is registered with SEBI has to formulate code of conduct according to schedule B of 2015 Regulations to regulate, monitor and report the trading by its employees and other connected persons.

For the offence of insider trading, Section 24 of Securities and Exchange Board of India Act, 1992 imposes punishment of imprisonment up to 10 years or fine of up to Rs. 25 crore or both. However an insider can escape from insider trading liability if he is able to prove his case by exercising certain defences which are incorporated in the proviso of regulation 4 (1) of 2015 Regulations.

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<sup>1</sup> Generally available information" means information that is accessible to the public on a non-discriminatory basis

<sup>2</sup> An insider can formulate trading plan in advance to effect trade in securities of the Company in subsequent date