

Date: 26th May, 2016**Securities and Exchange Board of India**Integrated Surveillance Department
SEBI Bhawan, Plot no. – C4-A, 'G Block'
Bandra Kurla Complex
Bandra (East)
Mumbai – 400 051.

Kind Attn: Mr. Sunil Kadam, Chief General Manager

Dear Sir,

Subject : Request for interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 regarding clarification on whether deals under the discretionary portfolio management scheme can amount to 'insider trading'.


Query

Whether deals under discretionary portfolio management scheme by the portfolio manager for the employee of the Bank or his relative is in compliance with provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "Insider Trading Regulations").

1. when the employee of the Bank or his relative has no control over investment making decisions and is in possession of unpublished price sensitive information (UPSI) of the Bank or listed companies with which the Bank deals or
2. when the trading window is closed of the Bank or of the company with which the Bank deals.

References to Insider Trading Regulations

In terms of the sub-regulation (1) of Regulation 4 of SEBI (Prohibition of Insider Trading) Regulations, 2015 no insider shall deal in securities that are listed or proposed to be listed on a stock exchange when in possession of UPSI. The term insider includes the term 'connected persons' and as per Regulation 2(1)(d)(ii) of Insider Trading Regulations, intermediary as specified in section 12 of SEBI Act 1992 are deemed connected persons. The intermediaries specified in Section 12 of the SEBI Act, includes portfolio manager.



Facts

Some employees of the Bank, who by virtue of their employment with the Bank, may be in possession of the UPSI of the Bank and or of the other listed companies with which the Bank deals. Dealing in securities of the Bank or in securities of such listed companies, when in possession of UPSI, by the employee or his relative is restricted under regulation 4 of Regulations 2015.

These employees of the Bank may choose to invest their funds in securities market through portfolio managers under the discretionary portfolio management schemes. The portfolio managers, under the discretionary portfolio management scheme, deals in the securities with the funds of the investors ("investor includes employees of the Bank and his relative"), as per its own discretion and the investor has no direct / indirect control / influence over the investment making decisions. The employees and their relatives provide their funds to the portfolio managers for investment in securities without procuring or communicating any UPSI which they may have access to.

Discretionary Portfolio Management Scheme

Day-to-day investment discretion for the account(s) are fully delegated to portfolio manager and is not shared with the investor. The portfolio manager does not discuss any potential investment / disinvestment decisions with investor before any transaction. The investor does not make suggestions to portfolio manager regarding specific investments / disinvestments and the portfolio manager does not advise the investor of trades prior to their execution. The portfolio manager does not accept specific orders to buy and sell of any security at the direction of its client. The portfolio is a standard portfolio and is not be altered specifically for any investor. Investments in securities of companies as a part of discretionary portfolio management scheme is identifiable and the securities in the portfolio are mandatorily held in a separate demat account with power of attorney in favour of the portfolio manager. The portfolio manager, while exercising his discretion, makes investment / disinvestment in securities, which may include securities of the Bank or securities of a listed company, for which the employee or his relative may be in possession of UPSI by virtue of being employee of the Bank, but the employee of the Bank or his relative has no control directly or indirectly, over investments making decisions of the portfolio manager.

Since the investments made through the portfolio managers, under the discretionary portfolio management scheme, are not on basis of any UPSI. The deals are executed in the normal course of business and hence, we are of the opinion that dealings in the securities under the discretionary portfolio management scheme do not attract regulation 4 of Regulations 2015.

Discretionary Portfolio Management Scheme similar to Mutual Fund Investments

If dealing through discretionary portfolio managers is also considered to be prohibited under the Regulations 2015 then it would be an unjust and unreasonable restriction on the right to property of the investors which includes right to invest in the securities. It would also leave most of the employees with funds in hand and comparatively reduced opportunities for investment in securities market.

The investment / disinvestment decisions under the discretionary portfolio management scheme are solely taken by the portfolio manager without reference to the investor, who is availing services of the portfolio manager, this situation is similar to investment made in a mutual fund, where the fund



manager takes independent decisions about investment / disinvestments and does not act on instructions of individual investor in the mutual fund. Thus the investment made by the portfolio manager under the discretionary portfolio management scheme should be treated as similar to investments in mutual fund where the fund managers take independent decisions about the dealing in the securities and hence may be exempted from the ambit of Regulation 4 of the Insider Trading Regulations.

The purpose of the Insider Trading Regulation is to place a reasonable restriction on the trading of the securities by an insider, when in possession of UPSI. However placing of such restriction in case of dealings undertaken by the portfolio manager under discretionary portfolio management scheme seems to be unreasonable and may not achieve the precise intention for which the Insider Trading Regulations are formulated.

Declaration

Employees furnish a declaration to the effect that they do not have any direct or indirect influence or control over the specific securities selected for the discretionary portfolio management services from the portfolio manager or from the organisation in which the portfolio manager is serving.

Conclusion

In view of the above, the regulations can be interpreted in a liberal manner so as to exempt the dealing in securities under the discretionary portfolio management scheme from the ambit of Regulation 4 of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

We request for an interpretive letter from you on the above matter in accordance with SEBI (Informal Guidance) Scheme, 2003 on the applicability of the regulations under the Insider Trading Regulations.

We are enclosing herewith a demand draft of Rs. 25000/- in favour of Securities and Exchange Board of India payable at Mumbai towards fees for informal guidance and request for your opinion.

We would appreciate your quick response in the matter.

Thanking You

For HDFC Bank Limited



Sanjay Dongre
Executive Vice President (Legal) &
Company Secretary