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SHAPING VIBRANT INDIA

Revamping the Trading Plan under Insider Trading Regulations

September 2024

Contents

Trading Plan Amendments w.e.f 24 September 2024

Background

Insider trading is prohibited in India under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations, 2015”). However, insiders, i.e., connected persons and such other persons who may perpetually possess or have access to Unpublished Price Sensitive Information (UPSI), are permitted to trade in the securities of the company through Trading Plans (TPs). The concept of ‘Trading Plans’ (TPs) was introduced under the PIT Regulations, 2015 to enable these perpetual insiders to plan for trade in a compliant manner in future. The regulatory intent behind provisions of TPs is to ensure that insiders who possess UPSI do not influence their pre-decided trading decisions.

Collation of database and market feedback

The database and market feedback indicated that the existing regulatory requirements for executing trade as per TPs are onerous, making them less popular. This may be corroborated with the fact that during the last five years, on an average, around 30 TPs have been submitted annually by the insiders to stock exchanges, which is extremely low given the large number of listed companies and the insiders who deal with UPSI in their respective companies.

Data on the adoption of trading plans by insiders over past 5 financial years is given in the table below.

*Table 1: Year-wise data on trading plans disclosed by insiders.

Stock Exchange	2018-19	2019-20	2020-21	2021-22	2022-23
NSE	20	38	23	31	12
BSE	17	31	20	24	64

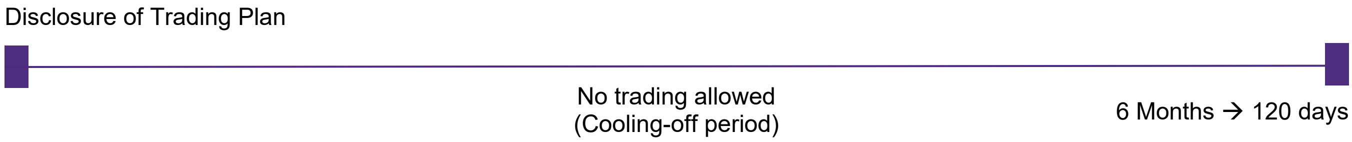
Journey to revamp TP provisions

To facilitate and increase the adoption of TP by persons who may be perpetually in possession of UPSI, SEBI constituted a Working Group (WG) on 3 July 2023, comprising officials of SEBI, stock exchanges and market participants to review provisions of TP. The WG submitted its report to the SEBI on 15 September 2023. Based on the report, the SEBI released a consultation paper on 24 November 2023 and finally came up with amendments in the PIT Regulations on 25 June 2024, effective from 24 September 2024.

Critical analysis of key amendments

1. Revision in minimum cool-off period between disclosure of TP and implementation of TP [Regulation 5(2)(i)]

Minimum cool-off period



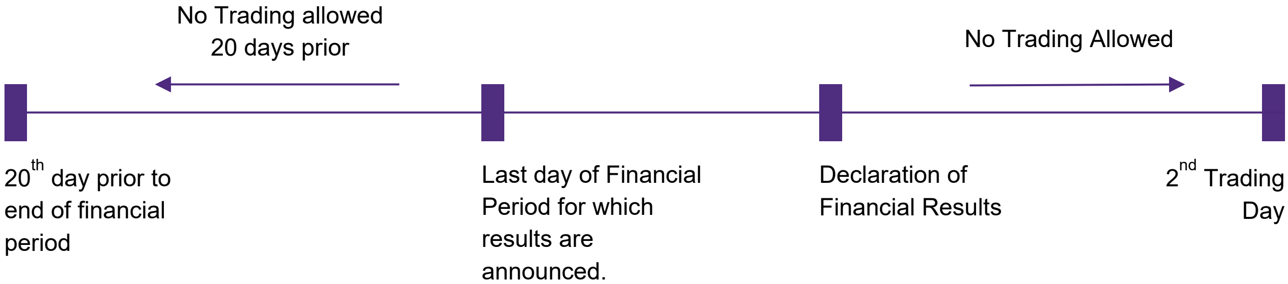
Erstwhile Regulation	**Amendment**
Insiders cannot start trading until six months after the TP was disclosed to the public.	The minimum cool-off period between the disclosure and implementation of a TP is now reduced from 6 months to 120 calendar days.

SEBI's rationale for the amendment*

This 120-day period is sufficient for any UPSI known to the insider at the time of formulating the TP to become public, thereby preventing insider trading. This change also aligns with the typical duration of quarterly result announcements, ensuring insiders do not have access to the UPSI that could lead to misuse of the TP.

2. Omission of black-out period [Regulation 5(2)(ii)]

Black-out period



Erstwhile regulation	Amendment
There was a black-out period during which TPs could not engage in trading from the 20th trading day before the end of any financial period for which results were required to be announced until the 2nd trading day after the disclosure of such financial results.	The black-out period requirement has been removed to give insiders more flexibility in executing trades through TPs.

SEBI's rationale for the amendment*

Due to the black-out period provision, insiders had only a few trading days in the entire year to plan their trades. Additionally, an exemption already exists for designated persons to implement TPs during closure of the trading window, (Clause 4(3) of Schedule B of the PIT Regulations, 2015). Therefore, the black-out period requirement has been eliminated.

3. Omission of minimum coverage period of trading plan [Regulation 5(2)(iii)]

Erstwhile regulation	Amendment
The minimum coverage period prescribed for a TP was 12 months.	This was discontinued to give insiders more flexibility in structuring their TP

SEBI's rationale for the amendment*

Currently, while formulating a TP the insider must plan for a period of at least 18 months, consisting of mandatory 6 months cool-off period prior to execution of the trades and the minimum coverage period of 12 months. Additionally, regulations also require that there shall be no overlap between 2 TPs of an insider. If there is any change in the financial needs or economic outlook of the insider, causing plan to become economically unviable, they would not be able to exercise any discretion by deviating or revoking the plan.

Considering that a period of 12 months, is too long for an insider to plan as market conditions while formulating the TP may be vastly different by the time it is implemented. Therefore, the minimum coverage period requirement has been eliminated.

4. Price limit to protect an insider from adverse price fluctuation and date or interval during which trade execution will take place. [Regulation 5(2)(v)]

Erstwhile regulation	Amendment
Insiders had to specify the value/number of securities, nature of trades, and trade intervals or specific dates in their TPs. (There was no provision for setting price limits to protect against significant adverse price movements.)	The regulations require more specific details in TPs for each trade: • A specific date or a period not exceeding five consecutive trading days. • Optional price limits: An upper limit for buy trades and a lower limit for sell trades, within +/-20% of the closing price on the day before TP submission. If corporate actions like bonus issues or stock splits occur after TP approval, insiders can adjust the number of securities and price limits with the compliance officer's approval. Stock exchanges must be notified of these adjustments.

SEBI's rationale for the amendment*

- Date or interval during which Trade Execution will take place:

  Since there is currently no cap on the duration of 'time period' ('interval'), some TPs specify the entire duration of TP as time period for execution of trade. While this provides greater flexibility for insiders, it may also allow them to misuse any new UPSI and time the market, as they have full flexibility to decide the exact dates on which the trades must be executed during execution period. Hence, the amendment now, requires the insiders to specify short 'time periods' of five consecutive trading days within which trading quantity/ value/ price must be mentioned for execution.

- Price limit to protect insider from Adverse Price Fluctuation:

  The current provisions do not enable the insider to mention their price limit for the trade, based on their risk appetite, within which they wish to execute the transaction. Given that the insider must formulate TP well in advance, there is always an uncertainty as to what will be the prevailing prices at the time of execution of the trade. This, along with the provision of mandatory execution of TP, exposes the insider to a risk of fluctuation in market price.

  These amendments provide insiders with increased flexibility and protection against significant adverse price fluctuations due to unexpected market conditions.

5. Omission of exemption from contra-trade provisions [Second proviso to Regulation 5(3)]

Contra trade

Mr. A	Purchased 100 shares on 01.05.2024 →	Ms. B
Mr. A	Sold 80 shares on 01.07.2024 →	Mr. C

Erstwhile regulation	Amendment
Insiders were allowed to execute contra trades within a TP with a gap of less than six months.	Restrictions on contra-trades now applied to trades under an approved TP.

SEBI's rationale for the amendment*

The restriction of contra-trade on insiders is intended to prevent misuse of UPSI in possession of insider and thereby disallow them to take an opposite view within short span of time. Since, there seems to be no reasonable and genuine need for any insider to plan in advance two opposite trades with a gap of less than six months from each other and further to prevent insiders from misusing the exemption by taking opposite positions, the contra-trade restrictions have been put in place for an approved TP.

6. Deviation from TP [Regulation 5(4)]

Erstwhile regulation	Amendment
Once approved, a TP was irrevocable, and the insider had to implement it without deviation, unless they possessed UPSI at the time of formulation, which had not become public by the implementation date.	Insiders may deviate from the TP in cases of permanent incapacity, bankruptcy, or operation of law. Further, if a price limit is set, trades can only be executed within that limit.

Steps to address: Non-implementation (full/ partial) due to reasons such as incapacity, bankruptcy, operation of law, or insufficient liquidity

01 Report to the compliance officer within two trading days after the TP ends.

02 The compliance officer will present the matter to the audit committee with recommendations.

03 The audit committee will review the reasons and notify the stock exchanges of their decision the same day.

04 If the audit committee rejects the insider's reasons, the compliance officer will act according to the code of conduct.

SEBI's rationale for the amendment*

It is not fair or desirable to permit the insider to deviate from the trading plan based on which others in the market have assessed their views on the securities except in situations beyond the control of the insider.

7. Notification of TP to stock exchange [Regulation 5(5)]

Erstwhile regulation	Amendment
There was no time limit for the compliance officer to notify the approved TP to the stock exchange.	The compliance officer must **approve or reject the TP within two trading days of the receipt** and notify stock exchanges of the approved plan **on the day of approval.**

SEBI's rationale for the amendment*

Since no deadline was prescribed within which the compliance officer shall submit an approved TP to the stock-exchange, hence regulations have been put in place for the same. WG has further noted that currently, there is no uniformity in reporting details of the TP and hence, has recommended that a suitable format may be specified in consultation with market participants.

Conclusion

The amended regulations provided greater flexibility for the TPs under PIT Regulations, 2015. Previously, the stringent requirements made TPs unpopular.

The amendments aim to ensure fair practices, enhance investor protection, and encourage the adoption of trading plans by those who perpetually possess UPSI. The amendment has taken effect from 24 September 2024. It remains to be seen how insiders will respond to these new changes to make TPs more engaging and acceptable.

*Source:
SEBI Consultation paper on providing flexibility in Provisions relating to 'Trading Plans' under the SEBI (Prohibition of Insider Trading) Regulations, 2015 read with Report of the Working Group to review provisions relating to 'Trading Plans' under the SEBI (Prohibition of Insider Trading) Regulations, 2015

Link: https://www.sebi.gov.in/reports-and-statistics/reports/nov-2023/consultation-paper-on-providing-flexibility-in-provisions-relating-to-trading-plans-under-the-sebi-prohibition-of-insider-trading-regulations-2015_79317.html

https://www.sebi.gov.in/sebi_data/commondocs/nov-2023/Annexure-A-Report_of_Working_Group_on_Trading_Plans_final_p.pdf

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