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RESPONSIBILITIES OF FIDUCIARIES UNDER SEBI (PIT) REGULATIONS, 2015

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Abstract

Securities and Exchange Board of India (SEBI) is a regulatory body that controls the securities market and safeguard the interests of investors. It plays a pivotal role in regulating the Indian securities market. Earlier the absence of a regulatory authority led to a major market irregularity such as Harshad Mehta Scam in 1992, which led to the need of a strong and independent regulatory authority for securities market in India. Hence in 1992 SEBI Act was passed and it established SEBI. SEBI has power to make regulations to govern the capital market under SEBI Act, 1992. One among such regulations is SEBI (Prohibition of Insider Trading) Regulations 2015. These regulations aim to curb insider trading by prohibiting the misuse of unpublished price sensitive information (UPSI) to ensure fairness and transparency in securities trading. Further it imposes stringent obligations on fiduciaries such as maintaining confidentiality, establishing code of conduct, appointing compliance officers, implementing robust internal controls, due diligence and much more. Despite these provisions, the absence of a clear statutory definition of 'fiduciary' creates ambiguity during compliance requirements. Further more the fiduciary compliance is self-regulatory and it is not examined by the regulatory authority. Hence this paper focuses on the PIT regulations reflecting on the SEBI's role, gaps in regulating and the fiduciaries responsibilities. These gaps have to be addressed through clear definitions and structured compliance with a time bound reporting mechanisms to ensure effective prevention of insider trading and maintaining investor confidence in Indian securities market.

Keywords: SEBI, fiduciary, PIT, insider trading, UPSI, due diligence

Introduction

Securities and Exchange Board of India is known as SEBI. It is a statutory regulatory agency that the Indian government set up in 1992 under The Securities Exchange Board of India Act, 1992 (SEBI Act, 1992)¹. To control the securities market and safeguard the interests of investors who buy securities. Mutual funds and the stock market are likewise subject to SEBI regulation. "The Securities and Exchange Board of India's basic responsibilities are to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, as well as for matters connected therewith or incidental thereto," according to the Preamble of the SEBI. A regulatory authority that reports to the Indian government's Ministry of Finance is called SEBI. The SEBI headquarters are in Mumbai's Bandra Kurla Complex. In the North, South, West, and East of the nation, the SEBI has regional offices. These offices are located, respectively, in New Delhi, Chennai, Ahmedabad, and Kolkata. Before the establishment of SEBI there was no regulatory authority to regulate on the Indian capital market hence which led to several scams such as Harshad Mehta Scam 1992.² Prior to the establishment of SEBI, the Capital Issues Act of 1947's Controller of Capital Issues oversaw the regulation of the Indian financial markets. SEBI has the power to make regulations under section 30³ of Act, 1992. It makes regulations for all the aspects related to capital market one such regulation is SEBI (Prohibition of Insider Trading) Regulations, 2015 which is also known as SEBI (PIT) Regulations.

SEBI (PIT) Regulations, 2015

SEBI (PIT) Regulations was made by SEBI in order to regulate and prohibit insider trading. Insider trading is the term used to describe trading in securities by people who are insiders, or people who are related to the company. The execution of such trading may be attributed to the use of unpublished price sensitive information ("UPSI"), which is information that is selectively made available to insiders and, as a result, is harmful to the interests of all investors.⁴ While insider trading frequently leads to ill-gotten gains, it can also occasionally be used to prevent losses. Insider trading is at the heart of numerous financial frauds that have become well-known in the stock market. It is thought to be one of the crucial areas that needs to be successfully and efficiently regulated in order to attract and keep investors while also ensuring

¹ **Securities and Exchange Board of India Act, 1992** (as amended) (India), available at https://www.sebi.gov.in/sebi_data/attachdocs/1456380272563.pdf

² Securities and Exchange Board of India (SEBI), About SEBI, <https://www.sebi.gov.in/about-sebi.html>.

³ **Securities and Exchange Board of India Act, 1992, Section 30 (India)**, https://www.sebi.gov.in/sebi_data/attachdocs/1456380272563.pdf

⁴ **Pallavi Baghel (Dr.)**, *From Routine to Restricted: Expanding Scope of UPSI Under SEBI 2025 Amendment*, Chartered Sec. Aug. 2025, at 144 (India), <https://www.icci.edu/media/webmodules/CSJ/August-2025/28.pdf>

a more transparent and equitable return for the company's shareholders.⁵ "SEBI" founded in the year 1988, became the regulatory authority to keep any instances of insider trading under control because the Companies Act of 1956 did not contain any provisions for it. SEBI is given authority to regulate insider trading under Section 12-A of the SEBI Act of 1992, and under this section, it is also given authority to publish regulations for regulating insider trading. Because of the authority this clause grants SEBI, The SEBI (Prohibition of Insider Trading) Regulations, 2015⁶ were put into action. Any conduct that results in one person profiting at the expense of all investors is unquestionably a threat that needs to be stopped. For the purposes of the 2015 laws, professional organizations that support or provide advice to listed businesses, such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks, etc., are collectively referred to as fiduciaries.⁷ According to the 2015 regulations, company secretaries do in fact come within the category of fiduciaries, as is also stated in the Guidance Note on Prevention of Insider Trading by The Institute of Company Secretaries of India (ICSI)⁸. ICSI has made a clear guidance but it is not legally binding, it does not create legal obligations and if in case there is any ambiguity in the law the guidance note's interpretation will not have any binding effect on the SEBI or courts. Further more it does not provide risk mitigation measures as they Solely rely on SEBI. These fiduciaries are required, among other things, to create a code of conduct that will regulate the trading of securities by the people they have chosen. The majority of insider trading cases in India have highlighted the misuse of UPSI. For example, Hindustan Lever Limited (HLL) Vs SEBI (1997)⁹, Ketan Parekh Scam (2001)¹⁰, Rakesh Agrawal Vs SEBI (1996)¹¹ and much more that have been uncovered in the past had to do with wrongdoing by individuals who work for the

⁵ Drishti, *Insider Trading and Corporate Governance in India: Evaluating SEBI's Efficacy and the Need for Reform* (Apr. 7, 2025) SSRN, <https://ssrn.com/abstract=5436815>

⁶ Securities and Exchange Board of India (SEBI), Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (Last Amended on November 24, 2022), https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-last-amended-on-november-24-2022_65864.html.

⁷ Anu Tiwari, *FIG Paper (No. 26 – Series 3): Navigating SEBI's Definition of UPSI*, Cyril Amarchand Mangaldas (Oct. 2023)

⁸ The Institute of Company Secretaries of India, *Guidance Note on Prevention of Insider Trading* (Revised ed. Jan. 2022) (India), https://www.icsi.edu/media/webmodules/GN7_Guidance_Note_on_Prevention_of_Insider_Trading.pdf

⁹ Ankoosh Mehta & Percival Billimoria, *Insider Trading: Hindustan Lever Limited v. SEBI*, Cyril Amarchand Mangaldas (Nov. 7, 2017), <https://corporate.cyrilamarchandblogs.com/2017/10/insider-trading-hindustan-lever-limited-v-sebi/>

¹⁰ Akash Jaiswal, *A Legal Study on Ketan Parekh Scam 2001*, Indian Journal of Law & Legal Research (Feb. 16, 2023), <https://www.ijllr.com/post/a-legal-study-on-ketan-parekh-scam-2001>

¹¹ Bluebook Citation (full for footnote / reference list): Rakesh Agrawal v. Securities and Exchange Board of India, Sebi enforc. order (Nov. 3, 2003), https://www.sebi.gov.in/enforcement/orders/nov-2003/rakesh-agrawal-vs-sebi_16029.html

company, not so much by fiduciaries. Without a doubt, the duties imposed on fiduciaries will help them achieve the desired results, but is this efficient, is the point in concern. The Secretarial Auditor audits the compliance of listed companies with the 2015 regulations; however, fiduciaries, which are not corporations subject to Secretarial Audit, do not have their compliance with the 2015 regulations evaluated. Additionally, SEBI has not yet established a method of monitoring the compliance of fiduciaries. This can imply that there have been instances of fiduciaries failing to comply fully or partially.

Responsibilities casted on fiduciaries

SEBI (PIT) Regulations 2015 castes certain responsibility on the fiduciaries, which critically effects the regulatory framework. The regulations have strengthened by 2025 amendment. They impose stricter compliance requirement on fiduciaries. Regulation 3(1)¹² provides the primary fiduciary duty of confidentiality, it stipulates that fiduciaries shall not communicate, provide, allow access to or produce UPSI except for legitimate purposes, performance of duties or in case of discharge of legal obligations. Regulation 3(5)¹³ provides that fiduciaries who share UPSI must maintain a structure digital database (SDD) consisting of name, PAN or other authorized identities, date and time of sharing UPSI. This created an accountability and traceability obligation for fiduciaries. Regulation 9¹⁴ mandates the fiduciaries to formulate a code of conduct and appoint a compliance officer. According to regulation 9A¹⁵, it mandates that fiduciaries establish effective system of due diligence and internal controls. Fiduciaries have to regulate trading windows, pre-clearance of trades, monitoring of trades and disciplinary action for violations. Sanctions for violations are provided under Regulation 10¹⁶ of the PIT regulations. It provides that any contravention of the regulations under PIT regulation will empower the SEBI to deal with such violations as per Section 15G and 15HB of SEBI Act, 1992¹⁷. Section 15G provides provisions pertaining to penalty for insider trading which shall not be less than ten lakh rupees and it may extend up to twenty-five crore rupees or even three

¹² **Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (as amended Mar. 12, 2025) (India)**, <https://www.sebi.gov.in/legal/regulations/mar-2025/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-last-amended-on-march-12-2025- 92672.html>

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ **Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (as amended Mar. 12, 2025) (India)**, <https://www.sebi.gov.in/legal/regulations/mar-2025/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-last-amended-on-march-12-2025- 92672.html>

¹⁷ **Securities and Exchange Board of India Act, 1992** (as amended) (India), available at https://www.sebi.gov.in/sebi_data/attachdocs/1456380272563.pdf

times the number of profits made out of insider trading. Further section 15HB provides penalty for contravention where no separate penalty has been prescribed in the Act, 1992. Powers of SEBI, Regulation 11¹⁸ of PIT regulation provides the power to SEBI to issue directions through circulars to remove any difficulties in the interpretation or application of PIT regulations.

Challenges

Strong provisions are made to regulate the role of fiduciaries by emphasizing on the internal controls. However, the word 'fiduciary' does not have a clear statutory definition this leads to ambiguity in identifying the fiduciaries or persons who owes fiduciary duties. The PIT regulations provide the mechanisms to track fiduciary compliance through structured digital database, internal controls and code of conduct. Compliance can create a burden on small cap companies where the risk profile is low, hence it leads to heavy documentation and formalities unnecessarily. However, PIT regulations do not track the partial compliances by fiduciaries. Moreover, these are examined by SEBI on a post facto basis. This indicated that there is a heavy reliance on self-regulation and examined by SEBI only during when the investigation is triggered. Further more PIT regulations do not provide time bound system for reporting or a periodic mandatory filling of fiduciary compliance to SEBI. This can lead to potential arbitrariness and weak compliance. Hence regulations have to be made in order to track the compliance by fiduciaries in a time bound manner rather than SEBI examining when investigations are triggered. Most importantly there is no extensive focus on cross border activities.

Conclusion

Considering the responsibilities as outlined in the SEBI(PIT) regulations, 2015 amended in 2025, a fiduciary is expected to behave in a way that is fairly high by standard. These standards could be described as resource-intensive because they necessitate ongoing monitoring and reporting to guarantee compliance. The regulation that states the database cannot be outsourced and must be internally maintained with sufficient internal controls and checks, such as time stamping and audit trails to ensure the database has not been tampered with, could present one such challenge. There are no proper guidelines on the non-compliance or partial compliance of code of conduct by fiduciaries in case of prohibiting insiders trading. Further there is lack of implications of the code of conduct and lack of regulatory body to keep a track on the

¹⁸ Ibid

compliance of code of conduct by the fiduciaries. The degree of oversight and control over designated people' compliances in the context of fiduciaries acting on a big scale is another challenge. It should be noted that insider trading is not entirely forbidden; it is permitted under the aforementioned restrictions, such as pre-clearance of deals. Although it may be convenient for certain fiduciaries to outright prohibit insider trading in stocks, this was never the intention of the rule and could be harmful to the securities market as a whole.