

## ERGO

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### SEBI RESTRICTS TRADING BY DESIGNATED PERSONS DURING TRADING WINDOW CLOSURE

12 August 2022 **INTRODUCTION**

With a view to curbing inadvertent trades in the securities of a listed entity during the trading window closure period (Blackout Period), the Securities and Exchange Board of India (SEBI) has introduced a circular dated 5 August 2022 (SEBI Circular) through which it intends to freeze the permanent account number (PAN) of designated persons (DP(s)), thereby restricting them from trading during the Blackout Period. As per the insider trading laws, all persons as part of a listed entity who are perpetually in possession of unpublished price sensitive information (USPI) are considered as a DP of the listed entity. The SEBI Circular would come in effect on 30 September 2022.

Set out below is our analysis and comments on the SEBI Circular.

#### **ANALYSIS**

Insider trading in normal parlance refers to buying and selling of, or otherwise dealing in, securities of a listed entity when a person is in possession of the USPI of the said entity. Under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations), no insider (defined to mean a connected person, or a person in possession of USPI) is allowed to trade in securities that are listed when in possession of USPI. However, various persons associated with a listed entity or otherwise concerned with the affairs of the listed entity are in possession of USPI during certain periods. Knowledge of such information puts such persons in an advantageous position over the general public while trading in securities of the said listed entity.

In order to create a symmetry of information in the market, SEBI had introduced the concept of Blackout Period. Accordingly, the compliance officer has an authority to close the trading window i.e., restrict DP(s) from trading in the securities of the listed entity, when the compliance officer is of the understanding that a DP can reasonably be expected to be in possession of USPI. Further, it is mandatory for the compliance officer to close the trading window at the end of every quarter until 48 hours after declaration of the financial results.

However, SEBI in the recent past had observed a lot of instances whereby trades were inadvertently executed during the Blackout Period either due to ignorance of law on the part of the DPs or due to a *bona fide* oversight by the DPs. Recently, SEBI passed a series of orders in the matter of [Titan Companies Limited](#) where a DP had executed inadvertent trades during the Blackout Period. The Adjudicating Officer of SEBI on taking into account the submissions of the DP found him guilty of violating Clause 4 of Schedule B read with Regulation 9(1) of the PIT Regulations and levied a penalty of INR 2,00,000 for the same.

Therefore, to rationalize the compliance requirement with respect to trading window closure and to prevent inadvertent non-compliance of the same, SEBI has introduced a system whereby PAN of every DP would be frozen by the depositories to restrict a DP from trading during the Blackout Period. Therefore, a DP will be unable to trade during the Blackout Period as their PAN would be frozen.

Initially, the SEBI Circular will only be applicable on declaration of financial results of listed entities that are or were part of the benchmark indices i.e., NIFTY 50 and SENSEX.

#### Implementation of the system

- I. The designated depository (DD) (meaning an agent of a depository, which in turn is an institution or organization which holds the securities of an investor through the designated depositories and provides services in relation to these securities) will enable access to the listed entities on the portal/ platform which the DDs use for the purpose of system driven disclosure (SDD);
- II. On logging into the database, the DD will be able to auto-populate (i) name of the DPs; (ii) PAN of the DPs; and (iii) demat account number/ DP ID and client ID (for PAN exempt entities), as per the last updated information under the database used for SDD. The listed entities will be required to confirm the data procured by the DD and update the same if required;
- III. Further, the listed entity will be required to specify the commencement and the end date of the Blackout Period on the portal/platform, at least 2 trading days prior to the commencement of the Blackout Period. The DD would then provide all details received by it to the stock exchanges and other depositories at least one trading day prior to the commencement of the Blackout Period;
- IV. The demat account of the DPs to be frozen will be identified by the depositories based on the PAN of the DPs. Based on this information, the depositories will restrict the DPs from executing off market transactions and creations of pledge. Further, on the basis of the data-received by the stock exchanges, it will restrict the on-market transactions of DPs in equity shares and equity derivative contracts for the entire Blackout Period;

#### **COMMENT**

The change introduced by the SEBI Circular should be seen as a welcome move as it will be beneficial in rationalizing compliance requirements with respect to trading window closure.

Further, we believe that SEBI has taken the right step to initially implement the system only for listed entities who are or were part of the benchmark indices as it would be much easier to try and test the system on a small portion of reputed entities before it is implemented on a large scale.

While there could still be some challenges in implementing the system, eventually this system will certainly strengthen the compliance under the PIT Regulations.

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