



Monthly Updates - SEBI (May 1 – May 31, 2019)

I. **Framework for the process of accreditation of investors for the purpose of Innovators Growth Platform** [Circular no. SEBI/HO/CFD/DIL2/CIR/P/2019/67, dated May 22 ,2019]

Introduction

SEBI, with the goal of kick-starting listing of startups in India, had launched ‘Institutional Trading Platform’ for listing of shares. However, it failed to gain any traction in the market. Therefore, SEBI came up with a slew of reforms starting with renaming the platform as ‘Innovators Growth Platform (IGP)’ and relaxed norms for listing of startups for raising funds and getting their shares traded on stock exchanges.

The eligibility to be listed on IGP and the framework for accreditation of investors as prescribed in the circular is discussed below:

Innovators growth platform (IGP)

Innovators growth platform is a trading platform for listing and trading of specified securities of issuers that comply with the eligibility criteria specified in regulation 283 of the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”).

Any company, that intensively uses information technology, intellectual property, data analytics, biotechnology or nanotechnology to provide products, services or business platforms with substantial value addition is eligible to list on the IGP. However, on the date of filing draft offer documents with SEBI, a minimum of twenty-five percent of the pre-issue capital should be held for at least a period of two years by any of the following:

1. Qualified institutional Buyers
2. Family Trust with Net worth of more than five hundred crore rupees
3. ***Accredited Investors for the Purpose of Innovators Growth Platform****
4. And other regulated entities provided under Section 283(1) IV of ICDR Regulations

**Note that not more than ten per cent of the pre-issue capital may be held by Accredited Investors.*

Accredited Investors (AI)

SEBI, via this circular, has laid down the framework for accreditation of investors for the purpose of IGP. It discusses the procedure and process of accreditation of investors and the powers of Depositories /Stock exchanges to grant accreditation and maintain data of AI.

Any individual with total gross income of ₹ 50 lakhs annually and minimum liquid net worth of ₹ 5 crores; or a body corporate with net worth of ₹ 25 crores is eligible to be an AI. Further, the investor, having a demat account with a Depository, is required to make an application to the Stock Exchanges/Depositories in the manner prescribed by them for recognition as an AI. The accreditation, once granted, shall be valid for a period of three years from the date of issue unless the AI becomes ineligible due to change in financial status in which case such AI shall inform the Stock Exchange/Depository of such ineligibility.

Moreover, at the time of application by a Company for listing on IGP, the merchant bankers shall ensure due diligence with regard to eligibility of AIs and that their holding in the Company desirous of listing on IGP is in accordance with the Regulation 283(1) of the ICDR Regulations.

SEBI has directed the Exchanges / Depositories to Implement the procedure for accreditation within 45 days from the date of issue of the Circular and disseminate the provisions of the same on their website. They shall also communicate the status of implementation to SEBI.

II. Enhanced disclosure in case of listed debt Securities [Circular no. SEBI/HO/MIRSD/DOS3/CIR/P/2019/68, dated May 27 ,2019

Introduction

SEBI has issued the following guidelines to further secure the interests of investors in listed debt securities, enhance transparency and to enable Debenture Trustees (DTs) to perform their duties effectively and promptly:

1. Disclosures

- DTs are required to disclose the nature of compensation arrangement with their clients on their websites, including the minimum fee and factors determining them.
- ISIN wise details of interest/ redemption due to the debenture holders in respect of all issues during a financial year must be displayed on website within 5 working days of start of financial year. Further, details of new issues handled during the financial year must be updated within 5 days of closure of the Issue.
- DTs should update the status of payment ISIN-wise against such issuers not later than 1 day from the due date. In case of delay in payment, the calendar must be updated specifying the date of such payment, with a remark 'delayed payment'.
- Issuers of Debentures now have to forward the details of debenture holders to the DT at the time of allotment and thereafter by the seventh working day of every next month in order to enable DTs to keep their records updated.

2. Additional covenants in case of privately placed issues

In privately placed issues, additional Covenants to be added to the summary term sheet, as per the agreement between the issuer and investor, are as follows:

- i. **Default in Payment:** In case of default in payment of Interest and/or principal redemption on the due dates, additional interest of at least @ 2% p.a. over the coupon rate shall be applicable for the defaulting period.

- ii. **Delay in Listing:** In case of delay in listing of the debt securities beyond 20 days from the deemed date of allotment, the Company shall pay penal interest of at least @ 1 % p.a. over the coupon rate from the expiry of 30 days from the deemed date of allotment till the listing of such debt securities to the investor.

Amendments can be made to incorporate the additional covenants in the summary term sheet issued and/or agreement executed on or after May 7, 2019.

III. SAT ORDER ON INSIDER TRADING (Appeal No. 466/2016- Piramal Enterprise Limited. V. Securities and Exchange Board of India) – May 15, 2019

SAT converted the fine imposed by SEBI on Piramal Enterprise Limited (PEL) for lapses on insider trade control into a warning because there was no evidence of lack of integrity on the part of PEL, and it was considered harsh to penalize it.

Facts

Abbott had approached PEL with an offer to acquire its Domestic Healthcare Business on January 18, 2010. During February-May 2010 due diligence was carried out by the PEL on the offer. On May 10, 2010 Shri Ajay Piramal, Chairman of the Board individually informed other Board Members regarding the proposed transactions. On May 20, 2010 the Chairman of the PEL informed other Board Members that the meeting of the Audit Committee and the Board of Directors of the PEL will be held on May 21, 2010 and accordingly these meetings were held on May 21, 2010. In this meeting the Board of Directors approved the acceptance of the offer from Abbott for a consideration of 3.72 billion USD and a corporate announcement was made by PEL at 11:59 AM to both BSE Limited and National Stock Exchange of India Limited.

An investigation was initiated by SEBI into possible violation of Prohibition of Insider Trading Regulations, 1992 (“PIT Regulations”) and possible violations of Clause 49 of the Listing Agreement by PEL. During the investigation, vide letter dated January 21, 2011 PEL informed SEBI that Shri Anand Piramal, Shri Rajesh Laddha and Prof. Nitin Nohria were privy to the decision at every stage in the matter of sale of its domestic healthcare business to Abbott.

Shri Anand Piramal was the son of the Chairman of PEL and was neither a Board Member nor held any position in PEL. Shri Rajesh Laddha was an Executive Director and Chief Operating Officer of PEL. He held a position in Senior Management but was not a Member/ Director in the Board of Directors. Prof. Nohria was only a consultant.

Further, SEBI held Shri N. Santhanam, Compliance Officer guilty of not closing the trading window during the sale to Abbott. Shri N. Santhanam then filed an appeal and the matter was settled under the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014.

Based on these facts an order was passed by the Adjudicating Officer of SEBI on October 03, 2016 imposing a penalty of Rs.5 lakh on PEL for violating Clauses 3.2.1 and 3.2.3(f) of the Model Code of Conduct for Prevention of Insider Trading for listed companies (“Model Code”) read with Regulation 12(3) PIT Regulations for failure to close the trading window during Unpublished Price Sensitive Information (UPSI) and for 24 hours beyond the UPSI being made public. Further, a penalty of Rs.1 lakh was imposed on PEL under Section 15HB of the SEBI Act, 1992 for violating Clauses 1.2 and 2.2 of the said Model Code for failure to handle the price sensitive information relating to sale of the domestic healthcare business on a ‘need to know’ basis.

Charges

The two charges against the appellants were: -

- i) Disclosure of information relating to a proposed transaction to people who were not required to know about the transaction, thereby violating the relevant Clauses of the Model Code for listed Companies under PIT Regulations, 1992.
- ii) Failure to close the trading window, thereby violating the relevant Clauses of the Model Code for listed Companies under PIT Regulations, 1992

SAT Judgement

1st Charge

The information relating to sale of the healthcare division of PEL was given to Shri Anand Piramal and others only on a 'need to know' basis as provided under PIT Regulations. Shri Anand Piramal was a promoter of the appellant PEL and the same had been disclosed to the stock exchanges on various occasions. Moreover, he was a "deemed to be connected person" under 2(h)(viii) of PIT Regulations. Being a promoter, holding about 2% of equity capital of PEL, he had to give an undertaking relating to multiple Clauses in the transaction. Hence, he had to know in advance the decision relating to selling part of PEL. Therefore, penalty imposed for the alleged violation of the Model code was not sustainable.

2nd Charge

SAT found that the trading window was not closed at any point of time. The contention that the trigger came in only when the Board approved the Transaction on May 21, 2010 was not accepted.

Further, the argument that only the Compliance Officer was responsible for the closure of the trading window since the Board of Directors had an overall responsibility only could not be accepted. Sale of a division of a company was not a routine matter like adoption of annual accounts or quarterly accounts or other standard disclosures. It was a decision that had to be taken as per the Model Code and PEL had to decide the trigger point in such matters. Once, PEL decided the trigger date, the onus could be passed on to the Compliance Officer which was not done. Hence, there was a failure to abide by the Model Code of Conduct

Order

SAT held that the object of the Act was not only to protect the investors but also the securities market. The appellant was part of the securities market and its existence was required for the healthy growth of the securities market. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures.

In the present case, SAT observed that fairness and transparency was shown by PEL in the execution of the deal and there was no evidence of lack of integrity on the part of PEL, and that it would be harsh to penalize it, howsoever small the penal amount it may be.

Accordingly, the imposition of penalty was converted into one of warning with a further direction that if any such incident occurs in future, it would be open to SEBI to proceed in accordance with law.

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