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Significant Amendments Applicable For Nov 2020 Exams

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

Reference	Old Regulation	New Regulation
Para 11	<p>In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars:</p> <p>Provided that where any direction is issued by the Board in a specific case relating to interpretation or application of any provision of these regulations, it shall be done only after affording a reasonable opportunity of being heard to the concerned persons and after recording reasons for the direction</p>	<p>In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars:</p> <p>Provided that where any direction is issued by the Board in a specific case relating to interpretation or application of any provision of these regulations, it shall be done only after affording a reasonable opportunity of being heard to the concerned persons and after recording reasons for the direction.</p> <p>For the purpose of Chapter IIIA, the Board may,-</p> <p>by circular, specify procedures and processes for carrying out the purposes of these regulations;</p> <p>remove any difficulty in the interpretation or application or implementation of the provisions of these regulations, by issuing clarifications and specifying procedures through circulars or guidelines.]</p>

Chapter III-A was added in the amendment

CHAPTER III-A

Definitions.

7A. (1) In this Chapter, unless the context otherwise requires:-

- (a) 'Investor Protection and Education Fund' means the Investor Protection and Education Fund created by the Board under section 11 of the Act;
- 'Informant' means an individual(s), who voluntarily submits to the Board a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur, in a manner provided under these regulations regardless of whether such individual(s) satisfies the requirements, procedures and conditions to qualify for a reward;
- (b) 'Informant Incentive Committee' means the High Powered Advisory Committee constituted by the Board in the manner as may be specified under regulation 11 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018.

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- (c) 'insider trading laws' means the following provisions of securities laws,-
- i. Section 15G of the Act;
 - ii. regulation 3 of these regulations;
 - iii. regulation 4 of these regulations;
 - iv. regulation 5 of these regulations; and
 - v. regulation 9 or regulation 9A of these regulations, in so far as they pertain to trading or communication of unpublished price sensitive information.
- (d) 'irrelevant, vexatious and frivolous information' includes, reporting of information which in the opinion of the Board, -
- (i) Does not constitute a violation of insider trading laws; or
 - (ii) Is rendered solely for the purposes of malicious prosecution; or
 - (iii) Is rendered intentionally in an effort to waste the time and resource of the Board.
- (e) 'Legal Representative' means a duly authorised individual who is admitted to the practice of law in India;
- (f) 'Monetary Sanctions' shall mean any non-monetary settlement terms or any direction of the Board, in the nature of disgorgement under securities laws aggregating to at least Rupees one crore arising from the same operative facts contained in the original information.
- (g) 'Original Information' means any relevant information submitted in accordance with these regulations pertaining to any violation of insider trading laws that is:-
- (i) derived from the independent knowledge and analysis of the Informant;
 - (ii) not known to the Board from any other source, except where the Informant is the original source of the information;
is sufficiently specific, credible and timely to - (1) commence an examination or inquiry or audit, (2) assist in an ongoing examination or investigation or inquiry or audit, (3) open or re-open an investigation or inquiry, or (4) inquire into a different conduct as part of an ongoing examination or investigation or inquiry or audit directed by the Board;
 - (iii) not exclusively derived from an allegation made in a judicial or administrative hearing, in a Governmental report, hearing, audit, or investigation, or from the news media, except where the Informant is the original source of the information; and
 - (iv) not irrelevant or frivolous or vexatious.

Explanation. –Information which does not in the opinion of the Board add to the information already possessed by the Board is not original information.

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- (h) 'own analysis' means the examination and evaluation of the relevant information by the Informant that may be publicly available, but which reveals analysis that is not known to SEBI:
- Provided that such analysis is not derived from professional or confidential communication protected under the Indian Evidence Act, 1872 (1 of 1872);
- (i) 'own knowledge' means relevant information in the possession of the Informant not derived from publicly available sources:
- Provided that such knowledge is not derived from professional or confidential communications protected under the Indian Evidence Act, 1872 (1 of 1872);
- (j) 'Reward' means any gratuitous monetary amount for which an Informant is declared eligible as per the provisions of these regulations;
- (k) 'securities laws' means the Act, the Securities Contract (Regulations) Act, 1956 (42 of 1956), the Depositories Act, 1996 (22 of 1996), the relevant provisions of any other law to the extent it is administered by the Board and the relevant rules and regulations made thereunder;
- (l) 'voluntarily providing information' means providing the Board with information before receiving any request, inquiry, or demand from the Board, any other Central or State authorities or other statutory authority about a matter, to which the information is relevant;
- (2) Words and expressions used but not defined in these regulations but defined in securities laws, shall have the same meanings respectively assigned to them in those laws or any statutory modification or re-enactment there to **Submission of Original Information to the Board**

- 7B. (1) An Informant shall submit Original Information by furnishing the Voluntary Information Disclosure Form to the Office of Informant Protection of the Board in the format and manner set out in Schedule D. The Voluntary Information Disclosure Form may be submitted through informant's legal representative:

Provided that where the Informant does not submit the Voluntary Information Disclosure Form through a legal representative, the Board may require such Informant to appear in person to ascertain his/her identity and the veracity of the information so provided.

Explanation. – Where any information pertaining to any violation of the Securities Laws is received in a manner not in accordance with the manner provided under these regulations, the Board may require such information to be filed with it in accordance with these regulations or reject the same.

- (2) The legal representative shall,-

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- i. Verify the identity and contact details of the Informant;
- ii. Unless otherwise required by the Board, maintain confidentiality of the identity and existence of the Informant, including the original Voluntary Information Disclosure Form;
- iii. Undertake and certify that he/she,-
 - (a) Has reviewed the completed and signed Voluntary Information Disclosure Form for completeness and accuracy and that the information contained therein is true, correct and complete to the best of his/her knowledge;
 - (b) Has obtained a irrevocable consent from the Informant to provide to the Board with original Voluntary Information Disclosure Form whenever required by the Board; and
 - (c) Agrees to be legally obligated to provide the original Voluntary Information Disclosure Form within seven (7) calendar days of receiving such requests from the Board.
- iv. Submits to the Board, the copy of the Voluntary Information Disclosure Form in the manner provided in Schedule D of these regulations along with a signed certificate as required under clause (iii) of this sub-regulation (2).

An Informant shall while submitting the Voluntary Information Disclosure Form shall expunge such information from the content of the information which could reasonably be expected to reveal his or her identity and in case where such information cannot be expunged, the Informant may identify such part of information or any document that the Informant believes could reasonably be expected to reveal his or her identity.

Receipt of Original Information by the Board

- 7C.** (1) The Board may designate a division to function as the independent Office of Informant Protection.
- (2) The Office of Informant Protection shall perform such functions as may be specified by the Board, including,-
- i. Receiving and registering the Voluntary Information Disclosure Form;
 - ii. Making all necessary communications with the Informant;
 - iii. Maintaining a hotline for the benefit of potential Informant;
 - iv. Maintaining confidentiality of the legal representative of the Informant and act as an interface between the

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informant and the officers of the Board;

- v. Interacting with the Informant Incentive Committee;
 - vi. Issuing press releases and rewards relating to Informant; and
 - vii. Submitting an annual report to the Board relating to the functioning of the Office of Informant Protection.
- (3) On receipt of the Voluntary Information Disclosure Form, the Office of Informant Protection shall communicate the substance of the information along with the evidence submitted by the informant to the relevant department or division of the Board for examination and initiation of necessary action, if any.
- (4) The Board shall not be required to send any intimation or acknowledgement to the Informant or any other person, of the examination or action initiated by the Board, if any, pursuant to receipt of the Voluntary Information Disclosure Form or information under these regulations, including rejection thereof.

Informant Reward.

- 7D. (1) Upon collection or substantial recovery of the monetary sanctions amounting to at least twice the Reward, the Board may at its sole discretion, declare an Informant eligible for Reward and intimate the Informant or his or her legal representative to file an application in the format provided in Schedule-E for claiming such Reward:

Provided that the amount of Reward shall be ten percent of the monetary sanctions collected or recovered and shall not exceed Rupees One crore or such higher amount as the Board may specify from time to time:

Provided further that the Board may if deemed fit, out of the total Reward payable, grant an interim reward not exceeding Rupees Ten lacs or such higher amount as the Board may specify from time to time, on the issue of final order by the Board against the person directed to disgorge.

- (2) In case of more than one Informant jointly providing the Original Information, the Reward, as specified in the intimation under sub-regulation (1), shall be divided equally amongst the total number of Informants.
- (3) The Reward under these regulations shall be paid from the Investor Protection and Education Fund.

Determination of amount of Reward.

- 7E. (1) The amount of the Reward, if payable, shall be determined by the Board.

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- (2) While determining the amount of Reward under sub-regulation (1), the Board may specify the factors that may be taken into consideration by the Informant Incentive Committee.
- (3) An Informant may be eligible for a Reward whether or not he reported the matter to his organization as per its internal legal and compliance procedures and irrespective of such organization's compliance officer subsequently providing the same Information to the Board.

Application for Reward.

- 7F.** (1) Informants who are considered tentatively eligible for a Reward, shall submit the Informant Reward Claim Form set out in Schedule E to the Board within the period specified in the intimation sent by the Board.
- (2) Prior to the payment of a Reward, an Informant shall directly or through his or her legal representative, disclose his or her identity and provide such other information as the Board may require.

Rejection of claim for Reward.

7G. No Reward shall be made to an Informant:-

- (1) who does not submit original information;
- (2) who has acquired the Original Information, through or as a member, officer, or an employee of:-
 - (i) any regulatory agency constituted by or under any law in India or outside India, including the Board;
 - (ii) any self-regulatory organization; the surveillance or investigation wings of any recognised stock exchange or clearing corporation; or
 - (iii) any law enforcement organization including the police or any central or state revenue authorities.
- (3) against whom the Board may initiate or has initiated criminal proceedings under securities laws;
- (4) who wilfully refused to cooperate with the Board during its course of investigation, inquiry, audit, examination or other proceedings under securities laws;
- (5) who:
 - (i) knowingly makes any false, fictitious, or fraudulent statement or representation; or
 - (ii) uses any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or

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entry; or

(iii) fails to furnish the complete information available with him or accessible by him in relation to the alleged violation.

(6) who is obligated, under any law or otherwise, to report such Original Information to the Board, including a compliance officer under securities laws.

Provided that the Board may if deemed fit, at its sole discretion, exempt a person from any of these disqualifications.

Informant confidentiality.

7H. (1) Any information including Original Information may, at the discretion of the Board, be made available:

(a) when it is required to be disclosed in connection with any legal proceedings in furtherance of the Board's legal position;

(b) as permitted by these regulations; or

(c) as may be otherwise required or permitted by law.

(2) Original Information may, at the discretion of the Board, be made available to -

(i) any regulatory agency constituted by or under any law in India or outside India;

(ii) any self-regulatory organization;

(iii) the surveillance or investigation wings of any recognised stock exchange or clearing corporation; or

(iv) any law enforcement organization including the police or any central or state revenue authorities; or

(v) a public prosecutor in connection with any criminal proceedings

Provided that sharing of information shall be in accordance with such assurances of confidentiality as the Board determines appropriate

Explanation - Nothing in these regulations is intended to limit, or shall be construed to limit, the ability of the public prosecutor to share such evidence with potential witnesses or accused in connection with any criminal proceedings.

(3) The Original Information and identity provided by an Informant shall be held in confidence and exempted from disclosure under clauses (g) and (h) of sub-section(1) of section 8 of the Right to Information Act, 2005 (No. 22 of 2005)

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- (4) Subject to the law of evidence for the time being in force, nothing in these regulations shall prejudice the right of the Board to use or to rely on information received otherwise.
- (5) No person shall have the right to compel disclosure of the identity, existence of an Informant or the information provided by an Informant, except to the extent relied upon in any proceeding initiated against such person by the Board.

Explanation 1. – The confidentiality in respect of the identity and existence of the Informant shall be maintained throughout the process of investigation, inquiry and examination as well as during any proceedings before the Board and save where the evidence of the Informant is required during such proceedings, advance notice of such evidence may be provided to the noticee at least seven (7) working days prior to the date of the scheduled hearing for evidence.

Explanation 2. – In proceedings before any authority other than the Board, the Board may request maintenance of confidentiality of the identity and existence of an Informant in such proceeding.

Protection against retaliation and victimisation

7I. (1) Every person required to have a Code of Conduct under these regulations shall ensure that such a Code of Conduct provides for suitable protection against any discharge, termination, demotion, suspension, threats, harassment, directly or indirectly or discrimination against any employee who files a Voluntary Information Disclosure Form, irrespective of whether the information is considered or rejected by the Board or he or she is eligible for a Reward under these regulations, by reason of:

- (i) filing a Voluntary Information Disclosure Form under these regulations;
- (ii) testifying in, participating in, or otherwise assisting or aiding the Board in any investigation, inquiry, audit, examination or proceeding instituted or about to be instituted for an alleged violation of insider trading laws or in any manner aiding the enforcement action taken by the Board; or breaching any confidentiality agreement or provisions of any terms and conditions of employment or engagement solely to prevent any employee from cooperating with the Board in any manner.

Explanation 1. - For the purpose of this Chapter, “employee” means any individual who during employment may become privy to information relating to violation of insider trading laws and files a Voluntary Information Disclosure Form under these regulations and is a director, partner, regular or contractual employee, but does not include an advocate.

Explanation 2. - Nothing in this regulation shall require the employee to establish that,-

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- (i) the Board has taken up any enforcement action in furtherance of information provided by such person; or
 - (ii) the information provided fulfils the criteria of being considered as an Original Information under these regulations.
- (2) Nothing in these regulations shall prohibit any Informant who believes that he or she has been subject to retaliation or victimisation by his or her employer, from approaching the competent court or tribunal for appropriate relief.
- (3) Notwithstanding anything contained in sub-regulation (2), any employer who violates this Chapter may be liable for penalty, debarment, suspension, and/or criminal prosecution by the Board, as the case may be:
- Provided that nothing in these regulations will require the Board to direct re- instatement or compensation by an employer.
- (4) Nothing in these regulations shall diminish the rights and privileges of or remedies available to any Informant under any other law in force.

Void Agreements

- 7J. (1) Any term in an agreement (oral or written) or Code of Conduct, is void in so far as it purports to preclude any person, other than an advocate, from submitting to the Board information relating to the violation of the securities laws that has occurred, is occurring or has a reasonable belief that it would occur.
- (2) No person shall by way of any threat or act impede an individual from communicating with the Board, including enforcing or threatening to enforce, a confidentiality agreement (other than agreements related to legal representations of a client and communications there under) with respect to such communications.

Explanation. - No employer shall require an employee to notify him of any Voluntary Information Disclosure Form filed with the Board or to seek its prior permission or consent or guidance of any person engaged by the employer before or after such filing.

No Amnesty

- 7K. (1) Nothing in these regulations shall be deemed to provide any amnesty or immunity to an Informant for violation of securities law.
- (2) Where an action against an Informant is deemed appropriate the Board may take into account the co-operation rendered in the final determination of any penalty, sanction, direction or settlement thereof, as the case may be.
- (3) Where an action against an Informant is deemed appropriate, the

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Board while determining the value of monetary sanctions shall not take into account the monetary sanctions that the Informant is ordered to pay or that which any other person is ordered to pay if the liability of such other person is based substantially on the conduct that the Informant directed, planned, or initiated.

- (4) An Informant who may be liable for enforcement action by the Board based on his or her conduct in connection with securities laws violations reported in the Voluntary Information Disclosure Form filed with the Board, may simultaneously or at any time thereafter file an application seeking settlement with confidentiality under Chapter IX of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018.
- (5) Notwithstanding any action taken by the Board against an Informant, the Informant may, after payment of any monetary amounts be eligible for a Reward.

Functions of Informant Incentive Committee

- 7L.** (1) The Informant Incentive Committee shall be assisted by the Office of Informant Protection.
- (2) The Informant Incentive Committee shall give its recommendations to the Board on the following matters,-
- i. Eligibility of Informant for reward;
 - ii. Determination under regulations 7E and 7G; and
 - iii. Such other issues relating to Informant as the Board may require from time to time.
- (3) The Informant Incentive Committee shall conduct its meetings in the manner specified by the Board in this regard.

Public dissemination and incentivisation of Informant.

- 7M.** (1) The Board shall upload on its website the following,-
- i. Annual report of the Office of Informant Protection Press release informing the public that an intimation to the Informant has been issued under Regulation 7D;
 - ii. Press release informing the public that a Reward has been paid under these regulations and the amount of Monetary Sanctions recovered pursuant to the information provided by the Informant;
 - iii. The Order issuing the Reward;

Explanation. – Nothing in this regulation shall require the Board to disclose information that could identify the Informant or the information provided by the Informant.]