

Closing trading windows: To trade or not to trade

The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (Insider Trading Regulations) require listed companies to use a trading window for monitoring trades by designated persons and their immediate relatives. The compliance officer is responsible for closing the trading window under certain circumstances when designated persons are reasonably expected to be in possession of unpublished price sensitive information. With certain exceptions, designated persons and their immediate relatives are not permitted to trade when the trading window is closed. When open, designated persons are required to apply to the compliance officer for pre-clearance of trades. Trading has been defined broadly to include subscribing, buying, selling or dealing in securities, or agreeing to do so.

Following the recommendation of a committee on fair market conduct, SEBI issued amendments to the Insider Trading Regulations which became effective on 1 April 2019. The amendments expressly included promoters and promoter group as designated persons. They also introduced a provision into the code of conduct stating that the trading restriction period “can” apply from the end of every quarter until 48 hours after the declaration of financial results. Prior to these amendments, the practices of listed companies varied: some closed the trading window a week or so prior to the end of the quarter, some closed it from the beginning of a quarter and others closed it 15 days prior to the announcement of the results.

Many companies interpreted the new provision as advisory and not mandatory (that is can as opposed to shall) and did not close the trading window from 1 April 2019. They took the view that they would announce the last quarter’s financial results at the end of April or during May and under the previous practice, this would allow them to close their trading windows 15 days prior to such announcements.

On 2 April 2019, the Bombay Stock Exchange and the National Stock Exchange of India issued a clarification stating that the new provision was mandatory and that the trading window “is required to be closed not later than the end of every quarter”. Many companies were taken by surprise and rushed to close their trading windows. Questions arose on the new provision, such as whether the promoters and promoter group were restricted from any trading in securities, including participating in a buy-back, preferential issue or rights issue or entering into an agreement to sell shares, when the trading window was closed. As a listed company is permitted to announce results up to 45 days from the end of the quarter, these new regulations meant that promoters and promoter group could not trade or agree to trade for up to 180 days in a year.

Acknowledging the representations made by various stakeholders, SEBI discussed the impact of the above trading window provision at its board meeting in June 2019. On 25 July 2019, SEBI amended the Insider Trading Regulations changing the word “can” to “shall” (mandatory not advisory) and confirmed the position of the stock exchanges that the trading window was required to be closed from the end of every quarter until 48 hours after the declaration of financial results. The amendments also introduced exceptions to the trading window restrictions.

Subject to pre-clearance by the compliance officer and compliance with relevant SEBI regulations, off-market transactions between insiders, block trades, transactions based on statutory or regulatory

obligations, exercise of employee stock options, trades in accordance with the trading plans and pledge of shares for a bona fide purpose, such as raising of funds will be permitted during the trading window closure. Transactions undertaken in accordance with SEBI regulations such as conversion of warrants or debentures, subscription to rights issues, further public offerings, preferential allotments and tendering of shares in buy-back offers, open offers and delisting offers will also be permitted during the trading window closure.

However, transactions not specifically covered under these exceptions, if undertaken by promoters, promoter group and other designated persons, continue to be restricted during the trading window closure (and if the trading window is open, are subject to prior clearance by the compliance officer of the listed company). Interpreting these events as a matter of corporate governance, the amendments issued by SEBI in July 2019 are a welcome move and have removed the incongruous interpretations that compliance officers of listed companies and designated persons, including promoters, were forced to grapple with from 1 April 2019.

*This insight/ article has been authored by **Jabarati Chandra**, Partner and Pratchi Mishra, Associate. They can be reached on jchandra@snrlaw.in and pmishra@snrlaw.in for any questions. It was first published by [India Business Law Journal](#) in its **September 2019 Issue**. This insight/ article is intended only as a general discussion of issues and is not intended for any solicitation of work. It should not be regarded as legal advice and no legal or business decision should be based on its content.*

S&R
ASSOCIATES
ADVOCATES



NEW DELHI

64 Okhla Industrial Estate
Phase III
New Delhi 110 020
Tel: +91 11 4069 8000

MUMBAI

One Indiabulls Centre
1403 Tower 2 B
841 Senapati Bapat Marg, Lower Parel
Mumbai 400 013
Tel: +91 22 4302 8000