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REGULATING INSIDER TRADING IN THE AGE OF SOCIAL MEDIA: CHALLENGES IN ENFORCING SEBI'S 2021 FRAMEWORK

~ *Simran P Kanchagar*

INTRODUCTION

Insider trading usually means an individual buys or sells a company's stock and securities while in possession of unpublished price-sensitive information (UPSI)¹. If the UPSI were to be publicly disclosed, it would materially impact the firm's stock price. The problem is with information asymmetry because they hold their respective office, someone associated with the company has access to information that is not generally available to the investing public. Therefore insider trading, the legal consequences, and ameliorative solutions are a vital aspect of maintaining the integrity of the capital markets.

India has the Securities and Exchange Board of India (SEBI) that is a regulatory authority in respect to insider trading. The SEBI (Prohibition of Insider Trading) Regulations, 2015, amended from time to time, set out the process for identifying and punishing insider trading. In this respect the regulations define key organisations, such as "insider", "connected person", and "unpublished price sensitive information" pitching in the foundation for enforcement.

The function of social media with regard to influencing the stock market involves the process of spreading a social media post or a report in the media that garners an investor's attention². This information quickly spreads through the market, and investors and analysts interpret that information, generating a social sentiment that has the capability to influence what the market expects. This in turn increases buying and selling pressure, which sends the stock price into

¹ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, Extraordinary, Part III, sec. 4 (India).

² SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2021, Notification No. SEBI/LAD-NRO/GN/2021/09, Gazette of India (Mar. 9, 2021).

extreme movement. That action creates a cycle that will continuously influence investor behaviour³.

It specifically relates to the use of channelling social media platforms like Twitter, Instagram, Reddit etc to spread falsehoods related to a company's financial data to influence stock behaviour. Primarily this includes pump and dump schemes where stock prices are artificially inflated (pump) and then the stock crashes (dump) leaving investors holding the bag in losses. There is now also a phenomenon referred to as "Meme Stocks" which is essentially a differentiated stock that gains a sudden viral presence on social media platforms resulting in an increase in price and volume, which has no correlation with the underlying financial performance of the company and is extremely risky as it generally dies down with the hype.

Popular social media influencers with large followings are frequently viewed as pretending to be financial advisers, while advocating for which stocks to invest in, oftentimes biased and promoted leaving the investor not having the full story. The media is blamed for creating a sense of urgency within investors within the market to purchase a stock without knowing the full risks, thus making them feel they have a potential opportunity cost if they do not do it right away.

LEGAL IMPLICATIONS OF INSIDER TRADING

Insider trading has significant legal ramifications. SEBI has jurisdiction to initiate civil and criminal proceedings against persons or entities that commit this wrong/unlawful conduct. Penalties can range from financial penalties, disqualifications in the form of bans in the stock market in India, and even imprisonment⁴. The financial penalties act as disincentives/deterrents to potential violators in order to protect retail investors.

Insider trading is deemed a serious violation under the SEBI Act. This parliamentary Act also gives SEBI the authority to investigate the commission of the offence, issue show-cause notices, and impose penalties for the offence⁵. For example, a person found guilty of having

³ European Securities and Markets Authority, Trends, Risks and Vulnerabilities Report 36 (2022).

⁴ Securities and Exchange Board of India Act, 1992, § 11C, No. 15, Acts of Parliament, 1992 (India).

⁵ Securities and Exchange Board of India, Press Release No. 20/2021: SEBI Warns Investors Against Unregistered Social Media Tips (May 28, 2021).

engaged in insider trading can face penalties of either 3 times the profit made or avoided a loss or a monetary penalty that is applicable, whichever is the greater amount.

Judicial precedents in India have dealt with the interpretation of statutory laws on the subject of insider trading. Courts have suggested that possessing UPSI and trading afterwards will invite regulatory intervention unless one can show the UPSI did not affect the outcome of the trades. Insider Trading, Legal Implications and Prevention Mechanisms are, therefore, an important pillar of investor protection mechanisms.⁶

PREVENTION MECHANISMS

Preventing insider trading is complicated and serious, and any prevention mechanism must be strong. The main forms of prevention involve awareness, ethical conduct, and compliance.

- **Code of Conduct:** A listed company must have a Code of Conduct that governs, monitors and reports on the trading of designated persons. This includes employees, directors, and professionals who can potentially access UPSI⁷.
- **Code of Fair Disclosure:** Any listed company must have a Code of Fair Disclosure, which ensures the quick and equal dissemination of UPSI. It is intended to prevent the selective or private sharing of sensitive information.
- **Structured Digital Database:** A company or organization must establish a structured digital database for documenting the sharing of UPIS. This serves as a deterrent for potential unauthorized sharing.
- **Trading Window Mechanism:** SEBI regulations require a company to shut down the trading window when UPSI is likely to be received. Trading cannot occur in that window in order to prevent any irresponsible sharing of UPSI.
- **Pre- clearance and Reporting:** Designated persons, must gain pre-clearance for trades. Designated persons must also report their transactions as an additional monitoring and accountability mechanism.

⁶ Rakesh Agrawal v. Securities & Exch. Bd. of India, (2003) 57 CLA 213 (SAT) (India).

⁷ Securities and Exchange Board of India, Master Circular on Insider Trading Regulations, SEBI/HO/ISD/ISD/CIR/P/2021/577 (Sept. 2021).

- Whistleblower Protocol: Companies should establish strong whistleblower protocols allowing employees to report violations confidentially. This protocol strengthens the enforcement of Insider Trading, Legal Implications, and Prevention Mechanisms.
- Training and Awareness Sessions: Regular training and awareness sessions allow for educating employees regarding the importance of compliance and the significant ramifications of violations.

CURRENT REGULATORY FRAMEWORK OF SEBI

At the current time, there is no specific legislation that addresses influencers, but it is expected that they act in compliance with Section 12-A, Clause (e) of the SEBI Act, 1992⁸, which states that any person who is involved in buying or selling any securities while aware of substantial, confidential information about that security, must not convey that information to anyone else if that would breach SEBI Act or any rules or regulation issued under it, and Regulation 4 of the PFUTP Regulations, which prevents a person from disseminating information that the person knows to be false or misleading and is likely to have an impact on the behaviour of an investor. However, the ever-increasing reach of social media has led to more detailed amendments, such as on 29 January 2025, SEBI released a detailed circular which prohibited intermediaries from dealing with any entity which provided investment advice without being registered with SEBI or from making any return or performance claims in respect of a security without obtaining SEBI consent. Moreover, they have added that financial educators are only permitted to use stock price data more than three months old and will not be permitted to use any updates presented in real time. One of the most notable features of this circular is the comprehensive definition of "association" which is broader than is described in Section 16 A of the 2024 Regulations⁹.

SEBI mandates that regulated organizations must not engage with unregistered influencers in any way or through any transaction specifically referring to financial collaborations, referral arrangements, marketing partnerships, and/or online partnerships. Further, influencers whose sponsorships may be compensated from intermediaries of investing platforms or the securities promote market, must not enter indirect sponsorships or hidden endorsements.

⁸ SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, Regulation 4 (India).

⁹ Securities and Exchange Board of India, Circular on Engagement with Finfluencers, SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2025/19 (Jan. 29, 2025).

CHALLENGES OF CURRENT REGULATORY FRAMEWORK OF SEBI

1. **Tracing Information Leaks Through Social Media:** Social media platforms such as X (formerly Twitter), Telegram, WhatsApp, Reddit, and Discord have become informal channels for sharing financial tips and rumors. Information can spread virally in seconds, often through anonymous or encrypted accounts. SEBI faces major hurdles in identifying the original source of insider information when posts, screenshots, or forwards circulate rapidly across multiple digital ecosystems.

2. **Establishing the Link Between Information and Trading Activity:** Even if SEBI traces a suspicious message or post, proving that it was material unpublished price-sensitive information (UPSI) and that trades were executed on the basis of that information is complex. Digital communication leaves traces, but correlating them with trading intent or benefit requires extensive data analytics and forensic linking between device IDs, trading accounts, and message patterns.

3. **Limitations in Digital Surveillance and Jurisdiction :** The 2021 Framework emphasizes compliance monitoring by listed companies and intermediaries, but SEBI's enforcement powers are limited when the insider information is leaked on foreign-hosted social media or encrypted messaging apps, and the actors are outside SEBI's territorial jurisdiction. Cooperation with global tech platforms and foreign regulators is time-consuming and often limited by data privacy laws (like the GDPR), reducing SEBI's ability to act swiftly.

4. Compliance Gaps Among Intermediaries and Influencers

The 2021 Framework expanded compliance duties to fiduciaries and digital intermediaries — but influencers, research analysts, and content creators on social media often operate outside formal regulatory structures. There is ambiguity about whether such individuals qualify as “connected persons” under Regulation 2(d). SEBI struggles to enforce disclosure and trading window norms for those indirectly connected to listed companies.

RECOMMENDATIONS ON SEBI ENHANCED REGULATION AND PLATFORM ACCOUNTABILITY

Regulate platform accountability: The Securities and Exchange Board of India (SEBI) ought to regulate social media channels for stock manipulation. Prominent channels like Instagram, YouTube, Twitter and others that attract the highest audience not least should partner with the government regulators to develop standards for marking cancelling financial information that appears misleading and suspend such information from being on the platform. Meanwhile, channels could look to use AI or automated systems to mark missing information for non-

compliance and violating the guidelines should attract fines as recommendations. Social media interacts or serves as the finished product used by the authorities and regulators to process interaction with the influencers who may not have the proper minimum qualifications to communicate their advice to hype the investors and affect market behaviour so the collaboration from the channels are equally important in limiting the provide misinformation acting to inflate their stock price¹⁰.

Strengthen influencer liability:Even though SEBI has issued circulars and consultation papers for influencers and registered intermediaries there is still an existing gap to hold them accountable for their actions. When influencers give financial advice resulting out of a personal gain the content should be explicitly marked as ‘promotional.’ There should be a standard threshold for influencers for the amount of followers they have to regulate them if they are into activities of providing financial information related to the stock market. SEC has rules for influencers and financial advisors, a similar approach should be adopted by the SEBI to set up disclosure requirements to be made by such influencers to disclose conflict of interest.

Investor Protection Fund (IPF) for Social Media-Driven Manipulation:The investor protection fund should be utilized more widely so that investors who have suffered losses from stock manipulation get adequately restored and compensated. The fund assures that all investor losses are paid. All the penalties that SEBI imposes on the companies goes into the fund so it is also appropriate to use the fund for compensation of investors since at its core, the fund is about investor protection.

CONCLUSION

The emergence of social media-induced stock manipulation has raised new restrictions on the securities market necessitating, again, the need for in genre and contemporary rules and regulations pertaining to investor safeguarding and market behaviour broadly. The case studies referenced demonstrate the need for contemporary regulations and rules as there is clearly insufficiency that exists to restrict and or manage those practices, which could mitigate loss upfront rather than backward looking. Since the Securities and Exchange Board of India is the only regulatory body in our country governing the financial markets, it remains dependent upon

¹⁰ U.S. Securities and Exchange Commission, Guidelines for Investment Advisers and Social Media Compliance (2022).

to manage these irregularities. Crucial changes to be made rely on regulating bloggers and social media platforms, as well establishing timely redress and grievance policy. The use of an investor's protection fund may aid in mitigating loss to investors. As well, a forward looking goal exists with technology advancement yielding gains for the sake of interest of all market participants, ultimately instead of creating disparity and barriers in market processes. Nonetheless, significant and persistent barriers arise in the guise of the global, large, anonymous nature of social media crimes, worsened by technological and jurisdictional limitations.