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Growing Asia's Markets

29 July 2022

To,
Manaswini Mahapatra
General Manager, Investment Management Department,
Securities and Exchange Board of India,
Plot No.C4-A, 'G' Block,
Bandra Kurla Complex,
Bandra (East), Mumbai 400051, India

Dear Ms., Mahapatra,

RE: Suggestions in relation to the Consultation Paper on 'Applicability of the Securities and Board of India (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") to Mutual Fund ("MF") Units'

On behalf of ASIFMA members, we have been working with Shruti Rajan (Partner, Trilegal) and ASIFMA members on this SEBI consultation to share with you the industry's suggestions in relation to the applicability of the Securities and Board of India (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") to Mutual Fund ("MF") Units as outlined below:

1. We are writing with reference to the consultation paper issued by the Securities and Exchange Board of India ("SEBI") dated 8 July 2022 on the applicability of the PIT Regulations to MF Units.

2. We appreciate SEBI's efforts and focus towards strengthening market conduct and the overall levels of vigilance within the Indian securities market. While insider trading in mutual fund units remains adequately legislated for under the existing framework applicable to access persons of asset management companies, we welcome SEBI's continual efforts to improve upon the regime.

3. The feedback set out in the enclosed Annexure A sets out some key points for consideration from the vantage point of the securities industry in India. We hope you will find this useful.

Please feel free to reach out to me at lvanderloo@asifma.org (Tel: +65 6622 5972; M: +65 8514 8215) for additional details for any questions or clarifications on the Annexure A.

Sincerely,

Laurence Van der Loo
Executive Director
Technology & Operations
ASIFMA

ANNEXURE A

Please see set out below comments and suggestions from our end on consultation paper on applicability of PIT Regulations to MF Units ("**Consultation Paper**").

NAME OF THE PERSON / ENTITY: Asia Securities Industry & Financial Markets Association

Sr. No.	Para of consultation paper/ proposed amendment	Suggestions/ comments	Rationale
1.	*Paragraph I of the Annexure to the Consultation Paper:* It is proposed that the words '*except units of a mutual fund*' under the Regulation 2(1)(i) of the existing PIT Regulations be omitted. [***Paragraph 3.1 of the Consultation Paper***]	This definition should be made applicable only to the proposed Chapter II-A of the PIT Regulations. Therefore, the proposed definition of securities to include MF units may be included with other definitions under the proposed Chapter II-A.	Under the proposed framework, the amended definition of securities will be made applicable to the entire PIT Regulations and not merely Chapters II-A, III-A and V. Therefore, it will have the unintended implications of covering monitoring mechanisms and other pre-clearance compliances for other chapters as well where the term 'securities' has been employed, such as Schedule C of the PIT Regulations. Mutual funds as a product, are fundamentally different from shares of a listed company and applying the proposed definition of securities across the board in the PIT Regulations will result in a much broader remit than intended and may lead to many incongruities.
2.	*Paragraph 3.11 of the Consultation Paper:* It is clarified under the Consultation Paper that all the provisions of PIT Regulations are applicable to units of other pooled investment vehicles such as alternative investment funds ("**AIF**"), real estate	AIFs and AIF units must be excluded from the purview of these Regulations.	AIFs are privately pooled investment vehicles that raise funds through private placements, and the units of which are not available for subscription/ redemption to the general public. Such pooled investment funds raise funds from investors and invest them in accordance with the regulations framed by SEBI. AIFs

	investment trust and infrastructure investment trust, as on date.		can invest only a certain proportion of their investible funds in listed equities. Hence, there is neither any basis nor any benefit to the public markets in introducing the insider trading regime in a manner that require pre-clearances and attendant requirements from AIFs and AIF unit-holders.
3.	<u>*Paragraph V (5A) (1) (d) of the Annexure to the Consultation Paper:*</u> It is proposed to define a connected person as any person who within the past two months of the concerned Act has been directly or indirectly associated with the Mutual Fund/AMC/Trustees in any capacity, including but not limited to a "*contractual, fiduciary or employment relationship"* Further, by inclusion of '*an intermediary as specified in Section 12…'*, in the definition of the "connected person", intermediaries, their director(s) and officials, are deemed to be connected persons irrespective of their nexus to a Mutual Fund. [***Paragraph 3.5.4 of the Consultation Paper***]	Please see below our suggested modifications: (i) For AMCs, SEBI may consider narrowing the proposed ambit of connected persons to bring it in line with the definition of Access Persons in the October 28, 2021 circular, i.e., employees, Board Members of AMC(s) and Trustees and Access Persons. (ii) A specific exemption should be carved out for intermediaries that do not receive Unpublished Price Sensitive Information ("**UPSI**") in the ordinary course of providing services to AMCs. In this regard, SEBI may consider explicitly identifying intermediaries who are likely to receive UPSI (for eg. an advisor to the fund), in the ordinary course of	As noted by the Consultation Paper itself in paragraph 2.5, it is not the intention of SEBI to make the regulatory approach onerous. However, the inclusion of such a wide cast of characters within the definition of "connected persons" by *ipso facto* extrapolating the existing definition under PIT Regulations will not be tenable, given that the nature of UPSI in relation to MF units is fundamentally distinct from securities of a listed entity. The universe of UPSI and what may impact net asset value in relation to MF units is much narrower than the diverse pieces of information that can have an impact on other asset classes such as equities, listed debt or single stock futures. This is evident upon a plain reading of paragraph V(5A)(1)(b) of the annexure to the Consultation Paper (***Paragraph 3.5.2 of the Consultation Paper***), wherein UPSI has been identified in the context of mutual funds, which is distinct from the definition of UPSI applicable to the securities of a listed entity under the existing PIT Regulations.

			business and not cast a wide net over all intermediaries covered under the SEBI Act, especially those as well as other entities which might have little to no association with MF related UPSI.	Therefore, the definition of the connected person must also be correspondingly whittled down to the universe of persons likely to have access to those heads of information covered under the definition of UPSI for the purposes of MF units under Chapter IIA. The framework as it exists today in terms of the Circular dated October 28, 2021 captioned '*Investment/ trading in securities by employees of AMC(s) and Trustees of Mutual Funds*' is sufficient to regulate the insider trading in relation to mutual fund units by the designated persons. The likelihood of connected persons, as widely defined by the proposed framework, would capture a large group of persons who normally would not have any access to UPSI. To illustrate, a stock broker would not in the normal course of business have access to any UPSI despite facilitating transactions in equities by AMCs. In this regard, regulation 25 (7)(a) of the SEBI (Mutual Funds) Regulations, 1996 ("**MF Regulations**") explicitly specify that an AMC shall not through any broker associated with the sponsor, purchase or sell securities, which is average of 5% or more of the aggregate purchases and sale of securities made by the MF in all its schemes. For trades exceeding average of 5% of the aggregate purchases and sale of securities with other brokers (i.e. other than brokers associated with sponsor), the asset management company has recorded in writing the justification for exceeding the limit of 5 per cent and reports of all such investments are sent to the trustees on a quarterly basis. Therefore, the MF is required to

			avoid concentration of trades with a particular broker and thus one broker having visibility of trades would not happen. Similarly, under paragraphs 2(e) and 2(f) of the Part-B, Fifth Schedule of the MF Regulations, fund managers are prohibited from providing any confidential information or disclosing any material non- public information. Even in case of custody services provided by registered custodians to mutual funds and their schemes, they would not in normal course have access to any UPSI. The same is applicable to the bankers who merely act as collection bankers to the schemes of MF. Given that the aforementioned businesses provide execution services to mutual fund and schemes and are not involved in any advisory capacity, they are not privy to commercial decisions, strategy or forward-looking information in any manner whatsoever. Therefore, it is advisable that the 'business as usual' categories such as brokers, custodians, bankers or any other intermediaries that do not give advisory services and do not have any forward-looking information, be excluded from the definition of connected persons.

4.	*Proviso (iii) to the Paragraph V (5C)(1) of the Annexure to the Consultation Paper:* It is proposed that the insider may prove his innocence by demonstrating that the transaction in question is triggered by systematic plans, where such systematic plans are registered at least sixty days prior to such transaction or triggered by irrevocable trading plans, where such plan has been approved by Compliance Officer and disclosed on an independent platform as decided by SEBI, at least sixty days before the commencement of trades. [***Paragraph 3.6(iii) of the Consultation Paper***]	The words '*where such plan has been approved by Compliance Officer and disclosed on an independent platform as decided by SEBI, at least sixty days before the commencement of trades*' should be omitted, since it increases unnecessary compliance burden on the organizations/ entities.	A compliance officer of an intermediary cannot reasonably approve financial transactions such as systematic plans, on behalf of its employees. By coding it into the regulations, the expectation will be for compliance officers to clear all such investment plans. Given the popularity of mutual funds as an investment product and a savings tool and the number of employees who would potentially have such plans in place, the compliance burden in the present case would be significantly disproportionate, and open the compliance officer's acts to unwarranted scrutiny.

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