# SEBI mulls bounties for insider trading informants

By Manoj Kumar, Hammurabi & Solomon

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The Securities and Exchange Board of India (SEBI) recently circulated a discussion paper on amendments to the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT regulations), towards provisioning for an informant mechanism.

The PIT regulations define insider trading as trading of securities while in possession of unpublished price sensitive information (UPSI). While persons indulge in insider trading indirectly through proxies, SEBI, like most other regulators, has been facing challenges in effectively verifying instances of insider trading violations because of insufficient evidence.

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The discussion paper states that the mandate of the SEBI Act, 1992, is to "protect the interests of investors in securities and to promote the development of and regulate the securities market, which makes it imperative for SEBI to employ all legitimate means to detect and initiate action against insider trading at the earliest to instil confidence among investors and ensure the integrity of the securities markets in line with the mandate conferred upon it".

The proposed amendments seek to establish systems and processes (among listed companies and SEBI) to incentivize individuals to report insider trading violations with rewards of up to ₹100 million (US$150,000) if SEBI undertakes disgorgement of at least ₹50 million from the action taken based on true, credible and original information.

The features of the proposed amendments are:

- **Furnishing information**: Information relating to any insider trading violation that has occurred or is about to occur (either through trading or communication) may be voluntarily provided by any individual to SEBI via a voluntary information disclosure form along with the source of the information.
- **Informing anonymously**: Information can be provided anonymously through a practising advocate. The advocate would need to adhere to the obligations applicable to the informant.
- **Office for informant protection**: In addition to SEBI's investigation and inspection wings, a specific wing for informant protection would also be set up for coordination with informants, framing policies and processes to assess and verify the information before taking enforcement action. The office would also decide on the rewards for the informants.
- **Confidentiality**: Except where any information is required to be relied on in proceedings, the office for informant protection would ensure the identity of the informant and the information remains confidential.
- **Impact on listed companies**: Internal codes and policies, as applicable, would need to be revised by listed companies and other entities to which PIT regulations apply to prevent employees from being penalized for volunteering to provide information as discussed above.
- **Amnesty scheme**: Informants would be offered amnesty for cooperating in regulatory investigations.

The US Security Exchange Commission's whistleblower protection framework also relies on the same three pillars for the whistleblower protection plan, i.e. bounties on offer, anonymity and job protection. The Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010, which institutionalizes this framework in the US, however, must not be applied on a one-size-fits-all basis as each jurisdiction has its own set of challenges.

Apart from resource constraints in creating a separate wing, the suggested framework needs to set out a nuanced approach to identify frivolous complaints. Admittedly, SEBI has been facing hardships in proving insider trading charges against alleged offenders. Where does that then leave the genuine whistleblowers whose complaints may be dismissed as frivolous for insufficiency of evidence pending investigation?

Additionally, the promised anonymity of complainants comes with a caveat that the confidentiality of a complainant's identity could be revoked for enforcement action. While complainants may be allowed to file complaints through lawyers, client-attorney privilege may come in the way of compelling disclosure of complainant's identity if required during enforcement.

If this regime of anonymity, bounties on offer and job-protection is introduced companies will need to strengthen their market conduct governance practices. SEBI also needs to work towards preventing misuse of the regime by bounty hunters.

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