

Whether information disclosed in research/analyst reports amounts to UPSI?

22 April 2020

In recent orders passed by the Securities and Exchange Board of India (**SEBI**) regarding selective disclosure of unpublished price sensitive information (**UPSI**) by Manappuram Finance Ltd (**MFL**) in respect of: (i) Aditya Birla Sun Life AMC Limited; (ii) SBI Funds Management Private Limited; (iii) IDFC Asset Management Company Ltd; (iv) BNP Paribas Asset Management (I) P Ltd.; and (v) Kotak Mahindra Life Insurance Company Limited, SEBI considered the issue of whether trading by investors, based on analyst/research reports which contain UPSI, without knowing that such information is UPSI, would be considered insider trading. Leaning towards protecting the innocent investor in such cases, SEBI held that information shared with investors through research/analyst reports may be relied upon by such investors as being generally available information (i.e. not UPSI), even before specific disclosures/announcements are made by the company about it.

In this case, the analyst report contained a specific disclaimer that the recommendations in the report were based on publicly available information. However, in a situation where it could be shown that investors were aware that a report was based on UPSI, it is possible that SEBI would have investigated the role of the investors who would have traded based on such a report.

Besides recognizing that UPSI published in widely circulated analyst/research reports do not continue to remain 'unpublished', this order underlines the importance of investors paying close attention to the disclosed sources of information included in analyst reports and making sure there is no stated source of UPSI that forms the basis of their recommendations. Such an assessment would depend on the facts and circumstances of each case including:

- a. **Content and Disclaimer:** The content of the analyst report will have to be assessed. In this case, the analyst report had a specific disclaimer which expressly stated that the recommendations in the report were based on publicly available information.
- b. **Meetings with company representatives:** SEBI also held that mere references in the research report to meetings or calls with the representatives of the listed company are not sufficient to indicate to the reader that such information may be UPSI. Meetings between analysts and management of listed companies are a common practice in the industry before preparation of research reports. It is primarily a company's duty not to divulge any UPSI during such meetings and the obligation of the research analyst not to publish research reports based on any UPSI.

SEBI holds that information shared with investors through research/analyst reports may be relied upon by the investors as being generally available information (i.e. not UPSI), even before there is a specific disclosure/announcement about it by the company.

UPDATES

- c. **Manner of dissemination and outreach:** Further, it is relevant to consider the manner of dissemination (and outreach) of the UPSI upon its publication (prior to the trade). Disclosing the UPSI on stock exchanges by the listed company is only one of the ways in which UPSI may be validly disclosed. In this case, the research report containing UPSI about losses of MFL in a certain quarter had been circulated to 2194 email addresses by the research analyst, including media houses. Immediately after the circulation of the analyst report, the representatives of MFL held a conference call with the investors of MFL where the same UPSI was discussed and confirmed. Further, a news channel covered this on television (and referred to the analyst report and the conference call). Therefore, the information about losses of MFL in a certain quarter was not considered as UPSI at the time of the trades in this case.
- d. **Corroboration by other sources:** Relying on its order in the case of *63 Moons Technologies* dated 31 January 2018, SEBI noted that the coverage of the UPSI by the news channel was not speculative in nature since it was corroborated by the conference call and by information disclosed by MFL on the stock exchanges shortly after. Further, SEBI also noted that the corroboration of a research report by further similar research reports (by other research analysts) would also be relevant.

SEBI concluded that the UPSI had become public information since (i) the analyst report was circulated to over 2000 clients, including news platforms; (ii) a news channel extensively covered the same, before disclosure was made to the stock exchanges. Therefore, trades executed based on such information would not be considered insider trading.

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