

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, March 27, 2001.

LISTED COMPANIES (PROHIBITION OF INSIDERS TRADING) GUIDELINES

**CHAPTER I
Preliminary**

1. Short title and commencement.- (1) These guidelines may be called the Listed Companies (Prohibition Of Insiders Trading) Guidelines.

(2) These shall come into force at once.

2. Definitions.- In these guidelines, unless the context otherwise requires:-

- (a) "Act" means the Securities and Exchange Commission of Pakistan Act, 1997;
- (b) "associate" means an associate as defined in clause (ab) of sub-section (1) of section 2 of the Ordinance;
- (c) "Company" means a company as defined in clause (7) of sub-section (1) of section 2 of the Companies Ordinance, 1984.
- (d) "Commission" means the Securities and Exchange Commission of Pakistan.
- (e) "connected person" means any person who-
 - (i) is a director, as defined in clause (13) of sub-section (1) of section 2 of the Companies Ordinance, 1984; or
 - (ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or

business relationship between himself and the company and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company;

- (f) "dealing in securities" means an act of buying, selling or agreeing to buy, sell or deal in any securities by any person either as principal or agent;
- (g) "insider" means-
 - (i) a person who is a director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company or the beneficial owner holding directly or indirectly not less than 10% of the shares of a listed company; or
 - (ii) a person who, is or was connected with the company or is deemed to have been connected with the company, and who is reasonably expected to have access, by virtue of such connection, to unpublished price sensitive information in respect of securities of the company who has received or has had access to such unpublished price sensitive information;
- (h) "Listed" in relation to securities, means securities which have been allowed to be traded on a stock exchange.
- (i) "officer" means a person as defined in clause (24) of sub-section (1) of section 2 of the Companies Ordinance, 1984 and includes an auditor of the company;
- (j) "Ordinance" means the Securities and Exchange Ordinance, 1969;
- (k) "person is deemed to be a connected person" if such person-

- (i) is a company under the same management or group or any subsidiary company;
 - (ii) is an official or a member of a stock exchange or of a clearing house of that stock exchange, or any employee of a member of a stock exchange;
 - (iii) is an investment bank, share transfer agent, registrar to an issue, Trustee of Term Finance Certificates, Investment Advisor, Investment Company (closed end mutual fund) or an employee thereof, or, is a member of the Board of Directors of an investment company or a member of the Board of Directors of the Asset Management of an Investment Scheme (open-end mutual fund) or is an employee having fiduciary relationship with the company;
 - (iv) is a member of the Board of Directors, or an employee, of a financial institution as defined in clause (15A) of sub-section (1) of section 2 of the companies Ordinance 1984;
 - (v) is an official or an employee of a self-regulatory organisation recognised by the Commission;
 - (vi) is a relative of any of the aforementioned persons; or
 - (vii) is a banker of the company.
- (l) "stock exchange" means a stock exchange which is registered with the Commission under section 5 of the Ordinance, 1969;
- (m) "unpublished price sensitive information" in relation to a listed security means any information which relates to the following matters or is of concern, directly or indirectly, to a company, and

is not generally known or published by such company for general information, but which if published or known, is likely to materially affect the price, of securities of that company in the market:-

- (i) financial results (both half-yearly and annual) of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of shares by way of rights, bonus, etc.;
- (iv) any major expansion plans or execution of new projects;
- (v) amalgamation, mergers and takeovers;
- (vi) disposal of the whole or substantially the whole of the undertaking;
- (vii) such other information as may affect the earnings of the company; and
- (viii) any changes in policies, plans or operations of the company.

CHAPTER II

Prohibition on dealing, communicating or counseling

3. Prohibition on dealing, communicating or counseling by insiders.- No person who is or has been, at any time during the preceding six months associated with a company shall:

- (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on a stock exchange

on the basis of any unpublished price sensitive information;
or

- (ii) communicate any unpublished price sensitive information to any person, with or without his request for such information, except as required in the ordinary course of business or under any law; or
- (iii) counsel or procure any other person to deal in securities of any company on the basis of unpublished price sensitive information.

4. Violation of provisions relating to insider trading.- A person who deals in securities or communicates any information or counsels any person dealing in securities in contravention of the provisions of paragraph 3 shall be guilty of insider trading and shall be liable to penal action under section 15B of the Ordinance.

CHAPTER III

Liability, Action by Commission on behalf of Issuer

5. Liability.- (1) Every connected person who purchases, sells or otherwise deals in and with securities of an issuer with the knowledge of unpublished price sensitive information with respect to the issuer that has not been generally disclosed is liable to compensate the seller or purchaser of the securities, as the case may be, for damages as a result of the trade unless,

- (a) the connected person proves that the person reasonably believed that the unpublished price sensitive information had been generally disclosed; or
- (b) the unpublished price sensitive information was known or ought reasonably to have been known to the seller or purchaser, as the case may be.

(2) Every insider who informs another person of unpublished price sensitive information with respect to the issuer that has not been generally disclosed, shall be liable to compensate for damages any person that thereafter sells securities of the issuer to or purchases securities of the issuer from the person that received the Information unless;-

- (i) the person who informed the other person proves that the informing person reasonably believed the unpublished price sensitive information had been generally disclosed;
- (ii) the unpublished price sensitive information was known or ought reasonably to have been known to the seller or purchaser, as the case may be; or
- (iii) in the case of an action against an issuer or a person in special relationship with the issuer, the information was given in the necessary course of business;

(3) Any person who has access to information concerning the investment program of a mutual fund in Pakistan or in the investment portfolio managed for a client by an investment adviser and uses that information for his, her or its direct benefit or advantage to purchase, sell or otherwise deal in and with securities of an issuer for his, her or its account where the portfolio securities of the mutual fund or the investment portfolio managed for the client by the investment adviser includes securities of that issuer is accountable to the mutual fund or the client of the investment adviser, as the case may be, for any benefit or advantage received or receivable as a result of such purchase or sale.

(4) Every person who is an insider or associate of an issuer that,-

- (a) sells or purchases the securities of the issuer with knowledge of a unpublished price sensitive information with respect to the issuer that has not been generally disclosed; or
 - (b) communicates to another person, other than in the necessary course of business, knowledge of unpublished price sensitive information with respect to the issuer that has not been generally disclosed.
- (5) Where more than one person in a special relationship with an issuer is liable under sub-paragraph (1) or (2) of this paragraph as to the same transaction or series of transactions, their liability is joint and several.
- (6) In assessing damages under sub-paragraph (1) or (2) of this paragraph, the Court may consider,
- (a) if the plaintiff is a purchaser, the price paid by the plaintiff for the security less the average market price of the security in the twenty trading days following general disclosure of the unpublished price sensitive information; or
 - (b) if the plaintiff is a vendor, the average market price of the security in the twenty trading days following general disclosure of the unpublished price sensitive information less the price received by the plaintiff for the security,

In addition to the above, the Court may consider such other measures of damages as may be relevant in the circumstances.

6. Action by Commission on behalf of issuer

(1) Upon application by the Commission or by any person who was at the time of a transaction referred to in sub-paragraph (1) or (2) of paragraph 5 or is at the time of the application a security holder of the issuer, the Court may, if satisfied that,

- (a) the Commission or the person has reasonable grounds for believing that the issuer has a cause of action under sub-paragraph (4) of paragraph 5; and
- (b) the issuer has failed to obtain prosecution of an action commenced by it under paragraph 5,

make an order, upon such terms as to security for costs and otherwise as to the Court seems fit, requiring the Commission or authorizing such person or the Commission to commence or continue an action in the name of and on behalf of the issuer to enforce the liability created by sub-paragraph (4) of paragraph 5.

(2) Where an action under sub-regulations (3) or (4) of regulation 5 is,

- (a) commenced;
- (b) commenced and prosecuted; or
- (c) continued,

by a board of directors of an issuer or the Court may order that the costs properly incurred by the Board in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the issuer, if the Court is satisfied that there were apparent grounds for believing the action was in the best interest of the issuer and the security holders thereof.

- (3) Where an action under sub-paragraph (3) or (4) of paragraph 5 is,
 - (a) commenced;
 - (b) commenced and prosecuted; or
 - (c) continued,

by a person who is a security holder of the issuer or the Court may order that the costs properly incurred by such person in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the issuer, if the Court is satisfied that,

- (i) the issuer failed to commence the action or had commenced it but had failed to prosecute it diligently; and
 - (ii) there are apparent grounds for believing that the continuance of the action is in the best interest of the issuer and the security holders thereof.
- (4) In determining whether there are apparent grounds for believing that an action or its continuance is in the best interest of an issuer and the security holders thereof, the Court shall consider the relationship between the potential benefit to be derived from the action by the issuer and the security holders thereof and the cost involved in the prosecution of the action.
- (5) Notice of every application under sub-paragraph (1) or (2) of paragraph 5 shall be given to the Commission, the issuer or the mutual fund as the case may be, and each of them may appear and be heard thereon.

- (6) Every order made under sub-paragraph (1) or (2) of this paragraph, requiring or authorizing the Commission to commence and prosecute or continue an action, shall provide that the issuer or mutual fund, as the case may be, shall co-operate fully with the Commission in the commencement and prosecution or continuation of the action, and shall make available to the Commission all books, records, documents and other material or information known to the issuer or mutual fund or reasonably ascertainable by the issuer or mutual fund relevant to such action.

CHAPTER IV

Investigation

7. Investigation by the Commission.- (1) Where the Commission, on the basis of the information available with it, is of the opinion that it is necessary to investigate and inspect the books of account, other records and documents of an insider and that of the member of a stock exchange for such a purpose, it may appoint an enquiry officer for the said purpose.

(2) The purpose referred to in sub-paragraph (1) may include:-

- (a) to investigate into the complaint received from an investor, market intermediary or any other person on any matter having a bearing on the allegations of insider trading; and
- (b) to investigate suo-moto on the basis of its own knowledge or information in its possession to protect the interest of investors and the securities market.

8. Procedure for investigation.- (1) Before undertaking any investigation under paragraph 7, the Commission shall provide an opportunity of being heard with a reasonable notice to the insider for that purpose.

(2) Notwithstanding anything contained in sub-paragraph (1), where the Commission is satisfied that in the interest of investors or in public interest no such notice should be given, it may by an order in writing direct that the investigation be taken up without such notice.

(3) On being empowered by the Commission, the enquiry officer shall undertake the investigation and inspection of books of accounts, records and documents of the insider. Such a person shall be bound to discharge his obligations as provided in paragraph 9.

9. Obligations of insider on investigation by the Commission.- (1) It shall be the duty of every insider, who is being investigated, to produce to the enquiry officer such books of account and other documents in his custody or control and furnish the statements and information relating to the transactions in securities market within such time as the enquiry officer may require.

(2) The insider shall allow the enquiry officer to have reasonable access to the premises occupied by such insider and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock broker or any other person and also provide copies of documents or other materials which, in the opinion of the enquiry officer are relevant.

(3) The enquiry officer, in the course of enquiry, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the insider.

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the insider to give the enquiry officer all assistance in connection with the investigation, which the insider may be reasonably expected to give.

10. Submission of Report to the Commission.- The enquiry officer shall furnish enquiry report to the Commission within such time as may be specified by the Commission.

11. Communication of findings, etc.- (1) The Commission shall after consideration of the enquiry report communicate the findings to the insider and he shall be given an opportunity of being heard before any action is taken by the Commission on the findings of the enquiry report.

(2) On receipt of the explanation, if any, from the insider, the Commission may call upon the insider to take such measures as the Commission may deem fit to protect the interest of investors and in the interest of the securities market and for due compliance with the provisions of the Act, the Ordinance and the guidelines.

12. Appointment of Auditor.- Notwithstanding anything contained in paragraph 6, the Commission may appoint an auditor who shall be a practicing Chartered Accountant to investigate into the books of account or the affairs of the insider:

Provided that, the auditor so appointed shall have the same powers of the enquiry officer as stated in paragraph 6 and the insider shall have the obligations specified in paragraph 9.

13. Directions by the Commission.- On receipt of the explanation, if any, from the insider under sub-paragraph (2) of paragraph 11, the Commission may without prejudice to its right to initiate criminal prosecution under section 15B of the Ordinance, give such directions to protect the interest of investors and in the interest of the securities market and for due compliance with the provisions of the Act, the Ordinance and the guidelines, as it deems fit for all or any of the following purposes, namely:-

- (a) directing the insider not to deal in securities in any particular manner;
- (b) prohibiting the insider from disposing of any of the securities acquired in violation of these regulations;
- (c) restraining the insider to communicate or counsel any person to deal in securities.