

Prohibition of Fraudulent  
and Unfair Trade Practices  
Regulations

# Change in Definition of “Dealing in Securities”

Regulation	Post Amendment
2(1)(b)	<p>“dealing in securities” includes:</p> <ul style="list-style-type: none"><li>i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons <b>including</b> as principal, agent, or intermediary referred to in section 12 of the Act;</li><li>ii) <b>such acts which may be knowingly designed to influence the decision of investors in securities; and</b></li><li>iii) <b>any act of providing assistance to carry out the aforementioned acts.</b></li></ul>

Now, Person need not have “transacted”;  
“Inducement” also made covered under “dealing in Securities”

## Definition of \* “Fraud” under 2(1) (c).....

*The ingredients of the first part of the definition are*

- 1. includes an act, expression, omission or concealment whether in a deceitful manner or not;*
- 2. By a person or by any other person with his connivance or his agent while dealing in securities;*
- 3. So that the same induces another person or his agent to deal in securities;*
- 4. Whether or not there is any wrongful gain or avoidance of any loss.*

*The second part of the definition includes specific instances*

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) a promise made without any intention of performing it;*
- (5) a representation made in a reckless and careless manner whether it be true or false;*
- (6) any such act or omission as any other law specifically declares to be fraudulent,*
- (7) deceptive behavior by a person depriving another of informed consent or full participation.*
- (8) a false statement made without reasonable ground for believing it to be true.*
- (9) The act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.....*

*\* No Amendment*

## **\* Regulation 3 : Prohibition of certain dealing in securities**

*No person shall directly or indirectly—*

*(a) buy, sell or otherwise deal in securities in a fraudulent manner;*

*(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

*(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

*(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under*

## \* Regulation 4: Prohibition of Manipulative, Fraudulent and Unfair trade practice

*Regulation 4(1): Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.*

*Regulation 4(2): Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:*

## Amendment in Regulation 4(2)- (a), (f) & (r)

Regulation	Post Amendment
4(2)(a)	<b>Knowingly</b> indulging in an act which creates false or misleading appearance of trading in the securities market.
4(2)(f)	<b>Knowingly</b> publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities ( <b>including financial results, financial statements, mergers and acquisitions, regulatory approvals, etc.</b> ) which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
4(2) (r)	<b>Knowingly</b> planting false or misleading news which may induce sale or purchase of securities.

SEBI in its amended regulations included the word “ Knowingly” to exclude the inadvertent or accidental trades.

## Amendment in Regulation 4(2) (c)

Old  
Regulation

advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue

Post  
Amendment

**Inducing** any person to subscribe to an issue of the securities for fraudulently securing the minimum subscription to such issue of securities, by advancing or agreeing to advance any money to any other person **or through any other means**;

The term “inducement” is added and hence actual action not needed.  
Now “any kind of mechanism” to induce any person to subscribe the shares.



## Amendment in Regulation 4(2) (d)

Old  
Regulation

paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security

Post  
Amendment

Inducing any person for dealing in any securities for artificially inflating, depressing, maintaining or causing fluctuation in the price of securities **through any means** including by paying, offering or agreeing to pay or offer any money or money's worth, directly or indirectly, to any person;

SEBI has enhanced the scope of this provision by making it inclusive and including inducement through any mechanism directly or even indirectly.



## Amendment in Regulation 4(2) (e)

Old Regulation	any act or omission amounting to manipulation of the price of a security
Post Amendment	any act or omission amounting to manipulation of the price of a security <b>including influencing or manipulating the reference price or bench mark price of any securities;</b>

Widened the scope of the provision to cover prices calculated under various statutory provisions.

*Though terms like “reference price/benchmark price neither defined nor used*

## Amendment in Regulation 4(2) (h)

Old  
Regulation

selling, dealing or pledging of stolen, counterfeit whether in physical or dematerialized form:

Post  
Amendment

selling, dealing or pledging of stolen, counterfeit or fraudulently issued securities whether in physical or dematerialized form:

Provided that if:-

- (i) the person selling, dealing in or pledging stolen, counterfeit or fraudulently issued securities was a holder in due course; or
- (ii) the stolen, counterfeit or fraudulently issued securities were previously traded on the market through a bonafide transaction, such selling, dealing or pledging of stolen, counterfeit or fraudulently issued securities shall not be considered as a manipulative, fraudulent, or unfair trade practice;

Now, dealing in fraudulently issued securities would also tantamount to “Fraud”  
However, a proviso has been inserted to protect the holder in due course as well as a person who purchased in, good faith, the securities previously traded on exchange

# Amendment in Regulation 4(2) (k)

Old  
Regulation

an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors

Post  
Amendment

disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities

In light of the recent cases of misusing the technology and social media platform, the ambit has been increased from 'advertisement' to include information disseminated through any physical or digital means including internet

## Amendment in Regulation 4(2) (m)

Old Regulation	an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position
Post Amendment	a <b>market participant</b> entering into transactions on behalf of client without the knowledge of or instructions from client or mis-utilizing or diverting the funds or securities of the client held in <b><u>fiduciary capacity</u></b> .

In light of the recent cases of unauthorized trading by brokers on behalf of their clients, the scope of the provision has been expanded.

## Amendment in Regulation 4(2) (n)

Old  
Regulation

circular transactions in respect of a security entered into intermediaries in order to increase commission to artificially provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price or volume of such security

Post  
Amendment

circular transactions in respect of a security entered into **between persons (including intermediaries) in—order—to—increase ~~commission~~** to artificially provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price or volume of such security

The provision has now been extended to all persons and any circular transaction leading to manipulation of price/volume of security will be treated as “Fraud” irrespective of any increase or not in commissions

## Amendment in Regulation 4(2) (o)

**Old Regulation** encouraging the clients by an intermediary to deal in securities solely with the object of enhancing his brokerage or commission

**Post Amendment** fraudulent inducement of ~~encouraging the~~ any person by a market participant ~~an intermediary~~ to deal in securities ~~solely~~ with the object of enhancing his brokerage or commission or income;

The provision is not only applicable to intermediary but all Market Participants.

Further, the provision has been revised to include on “fraudulent advise/inducement”  
(and would exclude genuine investment advise etc.)

# Amendment in Regulation 4(2) (p)

**Old Regulation** an intermediary predating or otherwise falsifying records such as contract notes.

**Post Amendment** An intermediary predating or otherwise falsifying records ~~such~~ as including contract notes, client instructions, balance of securities statement, client account/ statements etc.

The requirement is not made “Inclusive”



## Amendment in Regulation 4(2) (q)

**Old Regulation** an intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract.

Post  
Amendment

Any order in securities placed by **a person**, while directly or indirectly in possession of information that is not publicly available, regarding a substantial impending **transaction in that security, its underlying security or its derivative**.

The scope of the provision has been enhanced from an intermediary to any person to curb increasing “Front-running”.

Transaction now cover any securities and not restricted to future and options.

## Amendment in Regulation 4(2)(s)

Regulation	Post Amendment
4(2)(s)	<p>— mis-selling of <b>units</b> securities or services relating to securities market <b>a mutual fund scheme</b></p> <p>Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to units securities market <del>of a mutual fund scheme</del> by any person directly or indirectly, by-</p> <ul style="list-style-type: none"><li>(i) <b>knowingly</b> making a false or misleading statement, or</li><li>(ii) <b>knowingly</b> concealing or omitting material facts <del>of the scheme</del>, or</li><li>(iii) <b>knowingly</b> concealing the associated risk factors <del>of the scheme</del>, or</li><li>(iv) not taking reasonable care to ensure suitability of <del>scheme</del> <b>the securities</b> or service to the buyer.</li></ul>

With this amendment, SEBI has widened the scope and included mis-selling of any kind of securities or services in the securities market under this provision.

## Sub-Regulation 4(2)- (i), (j) & (l) deleted altogether

Regulation	Provision
4(2)(i)	<del>an intermediary promising a certain price in respect of buying or selling of a security to a client and waiting till a discrepancy arises in the price of such security and retaining the difference in prices as profit for himself</del>
4(2)(j)	<del>an intermediary providing his clients with such information relating to a security as cannot be verified by the clients before their dealing in such security.</del>
4(2)(l)	<del>an intermediary reporting trading transactions to his clients entered into on their behalf in an inflated manner in order to increase his commission and brokerage</del>

*Removed being redundant*

# Addition of Explanation: “MARKET PARTICIPANT”

The onus of applicable provision of Regulation 4(2) has been further extended to intermediaries (like stock-broker, share transfer agent, Merchant Banker etc.) as well as to their **employees and agents**.

**Explanation – 2 to Regulation 4(2): Market Participant shall include any person or entity registered under Section 12 of the Act and its employees and agents**

As per Section 12 of SEBI Act ‘**Market Participant**’ shall include the following entities:

- stock broker
- sub-broker
- share transfer agent
- banker to an issue
- trustee of trust deed
- registrar to an issue
- merchant banker
- Underwriter
- portfolio manager
- investment adviser;
- and such other intermediary who may be associated with securities market

The background of the slide features a close-up, low-angle shot of a modern glass skyscraper. The glass panels are highly reflective, showing a clear blue sky and the blurred green fronds of palm trees. In the center of the image, the logo of the Securities and Exchange Board of India (SEBI) is visible, rendered in a light blue and white color scheme. The logo consists of a stylized 'S' and 'E' intertwined within a square frame. Overlaid on this background is a central text box with a light yellow background and a thin black border, containing the main title of the slide.

**Power to issue directions by SEBI for violation of  
Insider Trading and PFUTP Regulations**

# Power to issue directions under Section 11(4) read with 11(B) of SEBI Act

Directions that can be issued by SEBI during the pendency of investigation/Enquiry or upon completion thereof

1. Suspending the trading of any security in a recognized stock exchange.
2. Restraint on accessing the securities market and prohibiting dealings in securities.
3. Impounding and retaining the proceeds.
4. Attachment of Bank Accounts.
5. Not to alienate an asset forming part of any transaction.
6. Power to direct any person, who made profit or averted loss by indulging in any transaction or activity, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention. (After the completion of Enquiry)

# Penal Provisions for violation of Insider Trading Regulations

## Penalty for Insider Trading

15G.If any insider who,—

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or
- (ii) communicates 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) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

**shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.**



# Penal Provisions for Insider Trading

## Penalty for disclosure violation under Insider Regulation

15A.If any person, who is required under this Act or any rules or regulations made thereunder,—

(a).....

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty **which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day** during which such failure continues subject **to a maximum of one crore rupees**

## Penalty for violation of Insider Regulations not covered under 15G and 15A(b)

**15HB.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which **shall not be less than one lakh rupees but which may extend to one crore rupees***

# Penal Provisions for Fraudulent and Unfair Trade Practices

## Penalty for fraudulent and unfair trade practices

*15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which **shall not be less than five lakh rupees** but which **may extend to twenty-five crore rupees or three times the amount of profits** made out of such practices, whichever is higher.*

# Power to initiate Prosecution under Section 24 SEBI Act

24. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both which may extend to twenty-five crore rupees or with both.

24. (2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

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