PART XXXIX

INSIDER TRADING AND PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES

Chapter 1

Insider Trading

Synopsis

The prevention of insider trading is widely treated as an important function of securities regulation. In the United States, which has the most--studied financial markets of the world, regulators appear to devote significant resources to combat insider trading.

This has led many observers in India to mechanically accept the notion that the prohibition of insider trading is an important function of SEBI. The SEBI has formed a regulation in the year 1992 called SEBI (Prohibition of Insider Trading) Regulations, 1992, which has been amended from time to time. The text of the said Regulations has been given in Appendix 1.

Insider trading is prohibited by both Law as well as by the Company policy. Employees are encouraged to follow the Insider Trading Code at all times. Punishment for violation can include wage freeze, termination and even a criminal offence resulting in a fine or penalty.

1. Meaning of "Insider"

Insider means any 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or is deemed to have been connected with the company, and who is reasonably expected to have access, connection to unpublished price sensitive information in respect of securities of a company, or who has received or has had access to such unpublished price sensitive information.

Insider Trading generally involves the act of subscribing or buying or selling of the company's securities, when in the possession of any unpublished price sensitive information about the company. It also involves disclosing any unpublished price sensitive information about the company to others who could subscribe or buy or sell the company's securities. Insider Trading invokes severe civil and criminal penalties not only on the Insider but also on the company in certain circumstances under the Regulations issued in India under the Securities and Exchange Board of India (SEBI) Act, 1992.

It is not hard to see that when company insiders trade on the secondary market, they speed up the flow of information and forecasts into prices. Company insiders are in a unique position to make forecasts about the future risk and return of the shares and bonds of their company, hence they might often correctly perceive market prices to be "too low" or "too high". When they trade on the secondary market, they serve to feed their knowledge into prices, thus making markets *more* efficient.

Insider trading is often equated with market manipulation, yet the two phenomena are completely different. Manipulation is intrinsically about making market prices move *away* from their fair values; manipulators *reduce* market efficiency. Insider trading brings prices *closer* to their fair values; insiders *enhance* market efficiency.

2. Meaning of "Designated employee"

Designated employee shall include officers comprising the top three tiers of the company management and the employees designated by the company to whom the trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

3. Meaning of price sensitive information

Price sensitive information means any information, which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

The following shall be deemed to be price sensitive information:

(*i*) periodical financial results of the company;
(*ii*) intended declaration of dividends (both interim and final);
(*iii*) issue of securities or buy-back of securities;
(*iv*) any major expansion plans or execution of new projects;
(*v*) amalgamation, mergers or takeovers;
(*vi*) disposal of the whole or substantial part of the undertaking;
(*vii*) any significant changes in policies, plans or operations of the company.

4. Disclosure requirements

4.1 Initial Disclosure by member

Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be.

4.2 Initial Disclosure by director or officer

Every director or officer of a listed company shall disclose to the company, the number of shares or voting rights held by him, within 4 working days of becoming a director or officer of the company.

4.3 Continual Disclosure by member

Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company within 4 working days of the receipt of intimation of allotment of shares, or the acquisition or sale of shares or voting rights, as the case may be, the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure and such change exceeds 2% of total shareholding or voting rights in the company.

4.4 Continual Disclosure by director or officer

Every director or officer of a listed company, shall disclose to the company within 4 working days of the receipt of intimation of allotment of shares, or the acquisition or sale of shares or voting rights, as the case may be, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made and the change exceeds Rupees 5 lacs in value or 25000 number of shares or 1% of total shareholding or voting rights in the company, whichever is lower.

4.5 Disclosure by company to stock exchanges

Every listed company, within five days of receipt of above disclosures shall disclose the same to all stock exchanges on which the company is listed.

5. Requirement for specifying period for closing of trading window

Every listed company shall specify a trading period, to be called "Trading Window", for trading in the company's securities.

The trading window shall be, inter alia, closed at the time of:-

(*a*) Declaration of Financial results (quarterly, half-yearly and annual)

(*b*) Declaration of dividends (interim and final)

(*c*) Issue of securities by way of public/rights/bonus etc.

(*d*) Any major expansion plans or execution of new projects

(*e*) Amalgamation, mergers, takeovers and buy-back

(*f*) Disposal of whole or substantially whole of the undertaking

(*g*) Any changes in policies, plans or operations of the company

5.1 Time period for closing and opening of trading window

The time for commencement of closing of trading window shall be decided by the company. When the trading window is closed, the employees/directors shall not trade in the company's securities in such period. The trading window shall be opened 24 hours after the information mentioned above is made public.

In case of ESOPs, exercise of option may be allowed in the period when the trading window is closed. However, sale of shares allotted on exercise of ESOPs shall not be allowed when trading window is closed.

6. Pre clearance of trades

All directors/officers/designated employees of the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transactions as per the pre-dealing procedure as described hereunder.

6.1 Procedure for pre-dealing

1. An application may be made in form specified by the company to the Compliance Officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

2. An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, *inter alia*, the following clauses, as may be applicable:
   (*a*) that the employee/director/officer does not have any access or has not received price sensitive information up to the time of signing the undertaking.
   (*b*) that in case the employee/director/officer has access to or receives price sensitive information after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.
   (*c*) that he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.
   (*d*) that he/she has made a full and true disclosure in the matter.
3. Order in respect of securities of the company shall be executed within one week after the approval of pre-clearance is given. If the order is not executed within one week after the approval is given the employee/director must pre clear the transaction again.
4. Investments in securities shall be hold for a minimum period of 30 days in order to be considered as being held for investment purposes.
5. If the sale of securities is necessitated by personal emergency, the holding period may be waived by the compliance officer after recording in writing reasons in this regard.

7. Reporting requirements for transactions in securities

All directors/designated employees/partners of the organisation/firm shall be required to forward following details of their securities transactions including the statement of dependent family members to the compliance officer:—

(*a*) all holdings in securities by directors/officers/designated employees/partners at the time of joining the organisation.

(*b*) periodic statement of any transactions in securities (the periodicity of reporting may be defined by the firm or organisation. The organisation/firm may also be free to decide whether reporting is required for trades where pre-clearance is also required.

(*c*) annual statement of all holdings in securities.

8. Role and duties of the Compliance Officer under the SEBI (Prohibition of Insider Trading) Regulations, 1992

1. To set forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", monitoring the transactions, whether pre-clearance of designated employees and their dependents' trades are executed within one week and the implementation of the code of conduct.
2. To report to Managing Director/Chief Executive Officer.
3. To suggest any improvements required in the policies, procedures, etc. to ensure effective implementation of the code.
4. To maintain a register of record of all the directors and persons covered within the ambit of the term 'designated employee' and any changes in the same.
5. To assist all the employees in addressing any clarifications regarding the SEBI (Prohibition of Insider Trading) Regulations, 1992 and the Company's code of conduct.
6. To maintain a list/register of all information termed as 'price sensitive information'.
7. To maintain a record of names of files containing confidential information deemed to be price sensitive information and persons in charge of the same.
8. To ensure that computer files are adequately secured.
9. To keep records of periods specified as 'Trading Window'.

10. To ensure that the 'Trading Window' is closed at the time of given in Regulation.
11. To ensure that the closure of the trading window is duly intimated to all concerned.
12. To ensure that the trading window is opened 24 hours after the information unpublished price sensitive information is made public.
13. To ensure that trading restrictions are strictly observed and that all directors/officers/designated employees conduct all their dealings in the securities of the company only when trading window is open.
14. To ensure that no sale of shares allotted on exercise of ESOPs is allowed when trading window is closed.
15. To procure various disclosures as required under Regulation.
16. To inform all stock exchanges on which the company's securities are listed within five days, the information received by way of disclosures under the Regulation.
17. To process applications received for pre-clearance of transactions as per the procedures laid down in the Regulation.
18. To receive and maintain records of periodic and annual statement of holdings from directors/officers/designated employees and their dependent family members.
19. To maintain records of all the declarations in the appropriate form given by the directors/officers/ designated employees for a minimum period of three years.
20. To place before the managing director or a committee of directors as may be specified for the purpose, on a monthly basis all the details of the dealings in the securities by employees/directors/ officers of the company and the accompanying documents that such persons had executed under the pre-clearance procedure.
21. To implement the punitive measures or disciplinary action prescribed for any violation or contravention of the code of conduct.
22. To inform the SEBI of any violation observed, within 7 days of knowledge thereof.

9. Violation of the provisions of the Insider trading is a serious offence

Regulation 2(*ha*) of the Insider Trading Regulations states that the information is deemed to be price sensitive information if it is likely to materially affect the price of securities of a company, if published. Hence actual change of price of the securities is not necessary. Schedule II of the said Regulations attempts to place all shareholders on the same footing with reference to the possession of price sensitive information. Since the price sensitive information, when not disclosed to the Stock exchanges where the shares are listed, gives unfair advantage to those who are in possession of it compared to those who are not in possession of the same.

Insider trading, which has the potential to disturb the confidence of investors and also the integrity of the securities market, is made impossible by disclosure of such price sensitive information at the point of time of creation of that information. Mere non-disclosure of such price sensitive information results in unfair disadvantage to those who are not in possession of that information. This unfair advantage may materialise in the form of disproportionate gain when the insiders in possession of price sensitive information make a profit while indulging in trading by using price sensitive information.

In the case of *Ispat Industries Ltd.* v *SEBI* decided on 1st Dec., 2005, it was held that the amount of disproportionate gain or unfair advantage to the noticee and amount of loss caused to the investors as a result of the default cannot be quantified in view of the absence of availability of any data/material on record in this regard in as much there is no allegation of actual trading by the noticee on the basis of the said unpublished price sensitive information.

Securities laws provide for penalties for violating the provisions of the same. Adherence to regulatory framework is a sine qua non for healthy growth and safety of the securities market. Any violation of the provisions of the said regulations can be treated as a serious offence.

Therefore, imposition of quantum of penalty has to be decided keeping these factors also in mind, in addition to the factors laid down under section 15 J of SEBI Act.

10. Case Study of Reliance Industries Ltd. vs. SEBI [Order dt. 21st Jan., 2004] in purview of Insider Trading Regulations

10.1 Whether the noticees are 'insiders'?

(1) Insider Trading Regulations that are applicable in the present case are the Regulations as existed before 20.02.2002. Regulation 2(*e*) of the said Regulations define an insider as under:

"insider" means any 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, or who has received or has had access to such unpublished price sensitive information".

(2) As per the said definition, any person to be termed as an insider should be a person:

(*a*) Who is or was connected with the company;

(*b*) Who is deemed to have been connected with the company;

(*c*) Who is reasonably expected to have access, by virtue of such connection, to unpublished price sensitive information in respect of securities of the company; or

(*d*) Who has received or has had access to such unpublished price sensitive information by virtue of such connection.

(3) For the purpose of understanding the meaning of expressions 'connected person' or 'person is deemed to have been connected person' as used in the definition of the 'Insider' in regulation 2(*e*) one may have to take assistance from regulation 2(*c*) and regulation 2(*h*) of the said Regulations which are as under:

"2. In these regulations, unless the context otherwise requires:—

(*c*) "connected person" means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or Is deemed to be a director of that company by virtue of sub clause (10) of section 307 of that Act;

(ii) …………………

2 (h) "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 thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956), o sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), as the case may be; or

(ii) …………….

(4) From the facts and allegations in the show cause notice dated 18.02.03, the Committee finds that the combined shareholding of RIL group was 6.62% in March 2001 which decreased to 3.92% around October 2001. Subsequently, however, during 01.10.01 to 13.11.01 Reliance Group acquired the 6.22% shares of L&T.

(5) During the said period RIL Group crossed 5% shareholding in L & T on 5th November and by the 12th November its combined holding reached 10.14% which constituted 2.5 Crore shares. The price of L & T scrip moved in this period from around Rs.167 to around Rs. 209.

(6) On 18th November, 2001 a formal written agreement was entered into between RIL and GIL for sale of a block of 2.5 crore shares of L&T at a price of Rs.306.60 per share. The said price was at a premium of about 47% over the prevailing market price of Rs.208.50 per share.

(7) Shri Mukesh Ambani and Shri Anil Ambani were directors on the Board of L & T during the relevant period i.e. before 18.11.2001. One of the covenants of the agreement-dated 18.11.2001 was that the Ambanis would resign from the Board of L & T.

(8) RIL vide its letter dated 16.04.03 contended that a person to be called an 'insider' should fulfill the following criteria—

(*i*) He should be a person connected with the company;

(*ii*) Such person should also reasonably be expected to have access, by virtue of such connection, to the unpublished price sensitive information.

(9) RIL argued that the show-cause notice overlooks the second limb of the definition of an 'insider,' since, there is no deeming provision for the reasonable expectation of access to, or receipt of, the alleged unpublished price sensitive information unlike connected person. RIL stated that simply because it is a connected person under a deeming provision, the same does not give rise to any presumption that it had access to, or received, the alleged unpublished price sensitive information, that too, by virtue of the connection.

(10) The Committee finds it difficult to accept this contention of RIL. There is no doubt that the Ambanis being directors on the Board of L & T were connected persons within the meaning of regulation 2(*c*) of the said Regulations and further the second limb is also satisfied by the inference drawn from the facts that the Ambanis were reasonably expected to have access, by virtue of their being directors of L&T, to the unpublished price sensitive information. Whether the Ambanis received any unpublished price sensitive information by virtue of their being Directors would be examined subsequently.

(11) As per sub-clause (*i*) of clause (*h*) of regulation 2, RIL and L&T may be deemed to be bodies corporate under same management as per sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969. This is supported by the fact that RIL had 14 directors and L&T had 17 directors at the relevant point of time. Both RIL and L&T had four common directors. As per Explanation I given to the definition of 'inter connected undertakings' in section 2(*g*) of the Monopolies and Restrictive Trade Practices Act, 1969, if one or more directors of one such body corporate constitute one-fourth of the directors of the other, then the two bodies corporate shall be deemed to be under the same management. In the instant case, admittedly four directors of L&T constitute one-fourth of the Directors of RIL. Therefore, it can be safely concluded that RIL and L&T are under the same-management and RIL would be "deemed to be a connected person" with L&T.

(12) Therefore the Committee finds that Ambanis were 'connected persons' and RIL 'a deemed connected person' within the meaning of the above cited provisions of Insider Trading Regulations during the relevant period.

10.2 Whether there was an unpublished price sensitive information in terms of regulation 2 (k) of the said Regulations and whether RIL's dealing in securities of L&T was based on such unpublished price sensitive information?

(1) Admittedly, Reliance Group as on March 31, 2001 held approximately 6.62% of L&T's share capital. Out of these 6.62% shares RIIHL, the wholly owned subsidiary of RIL was holding 1,31,64,062 shares as on 31st March, 1997. Around October 2001, the shareholding of RIL, RIIHL and RCL decreased to 3.92%. However in the first week of November, 2001 Reliance group acquired the shares of L&T.

(2) Shareholding of Reliance Group crossed 5% shareholding in L & T on 5th November and by the 12th of November its combined holding reached 10.14% in L &T. The deals for purchase and sale on 13th November, 2001 were spot deals for consolidation of holding between RIL and its subsidiaries (RIIHL and RCL) and did not take place on any exchange.

(3) Admittedly, the said combined holding of 10.14% of RIL in L&T was sold to GIL. In the minutes of the meeting of Board of Directors of GIL held on 18.11.2001 it was recorded that it received a proposal from RIL for sale of their equity holding in L&T which represents about 10.05% of the total paid up equity share capital of L & T and considered the offer to be attractive as GIL was also engaged in cement business. Further, it was stated that the negotiations for the purchase of the said shares have fructified and subject to the Board's approval, the price has been fixed at Rs.306.60 per share involving the total consideration of Rs.766.50 crore.

(4) It was further noted that on 18.11.2001 a formal written agreement was entered into between RIL & GIL for sale of a block of 2.5 Crores shares of L&T (10.14%) at a price of Rs.306.60 per share.

The said price was at a premium of about 47% over the prevailing market price of Rs.208.50 per share. The Committee noted that clause (3) of the covenant in the share sale/purchase agreement dated 18.11.2001 between RIL and GIL reads as under:

*"3. **Obligations of the Seller***

3.1 The Seller confirms that upon the sale of the shares as aforesaid, it does not hold either by itself or through its affiliates of associates any shares of the Company, or any instrument that would confer or will provide a right to acquire any equity shares or any other instrument that provides or will provide voting rights;

3.2 The Seller undertakes that upon execution of this Agreement, the Seller and its subsidiaries, affiliates or associates will not acquire any equity shares of the Company or any other instrument that would confer a right to acquire any equity shares of the Company. The Seller further undertakes not to deal in shares of the Company and/or any other instrument that would confer a right to acquire any equity shares of the Company or any other instrument that provides voting rights. The Seller makes this covenant so as to bind themselves, their affiliates, associates or any person acting at their behest;

3.3 The Seller acknowledges that the obligations contained in clause 3.1 and clause 3.2 shall be of an enduring nature and in any event the Seller shall be obliged to comply with the same for a minimum period of 5 years from the date hereof;

3.4 Following the sale of the shares as aforesaid the Seller and/or Representatives will in good faith arrange to convene a Board Meeting(s) of the Company as soon as possible to inter-alia transact the following business and support the same:

(i) Informing the Board of Directors of the Company in respect of the shares acquired by the Purchaser from the Seller under the Spot Delivery Contract.

(ii) Submission of letter of resignation by the Representatives to the Board of Directors of

(5) Committee further found that GIL informed exchanges on 18.11.2001 regarding the acquisition from Reliance of 2.50 Crores equity shares of Rs.10 each representing 10.05% of total paid up capital of L& T at a price of Rs.306.60 per share.

(6) Shri M.D.Ambani and Shri A.D.Ambani resigned from the Board of L &T on 23.11.2001 vide their letter dated November 22, 2001. L&T vide its letter dated 23.11.2002 informed the Exchanges that at the meeting of Board of Directors of the Company held on 23.11.2002, the Board appointed Mr. Kumar Mangalam Birla and Ms. Rajeshri Birla as Directors of L &T and accepted the resignation of Mr. M.D.Ambani and A.D.Ambani.

(7) The proposal for the deal was initiated by JM Morgan Stanley (hereinafter known as JMMS) with GIL around 06.11.2001. Further, GIL constituted an internal task team to evaluate the proposal received from JMMS.

(8) No intimation was filed by Reliance group with L&T as required under regulation 7(1) of the Takeover Regulations with regard to the said acquisitions.

(9) Shri D.D. Rathi Group Executive Vice President of Grasim in his statement dated 18.06.2002 stated that the arrangements for the major part of the fund were made on 12.11.2001. A short term loan for Rs. 150 crore was sanctioned by HDFC Bank on 12.11.2001. An amount of Rs. 250 crore were raised through five negotiable commercial papers issued by GIL. Stamp duty of Rs. 12.5 lakh, *i.e.*, Rs. 2.5 lakh on each negotiable commercial paper was paid on 12.11.2001 to the General Stamp Office, Town Hall, Fort, Mumbai. Rs. 200 Crores were raised from Bank of America, Nariman Point Branch and an amount of Rs.600 Crores was raised by Grasim on 12.11.2001.

(10) Non-judicial stamp paper of Rs. 100 on which the agreement was entered into was procured on 12.11.2001 even though executed on 18.11.2001. The covenant in the agreement dated

18.11.2001 mentions about RIL not dealing in the shares of L&T for minimum period of 5 years and resignation by Shri Anil Ambani and Shri Mukesh Ambani from the Board of L&T.

(11) The stand taken by RIL was that the entire discussion regarding sale and purchase had taken place on the 16.11.2001 and the entire share purchase agreement for transaction of Rs. 766 crore was prepared and signed on 18.11.2001.

(12) The above facts and events suggest prima-facie that there had been some exercise by RIL and GIL independently before entering into the said transaction on 18.11.2001. Therefore, the stand taken by RIL and GIL that the entire discussion regarding sale and purchase had taken place only on the 16.11.2001 and the entire share purchase agreement for transaction of Rs. 766 crore was prepared and signed on 18.11.2001 does not appear to be convincing or borne out of facts. The chronologies of purchase/events as per the investigation report are to be noted in this regard.

(13) From the facts placed, it was difficult to believe that no exercise whatsoever was undertaken by RIL and GIL before the transaction date. In light of the facts and findings it is found that before the transaction date *i.e.* 18.11.2001, GIL was arranging for funds and other requirements necessary for entering into an agreement.

(14) The Committee is therefore of the view that RIL acted on the basis of the information. However, the basic issue that emerges for consideration before the Committee is whether RIL was acting based on any unpublished price sensitive information.

(15) Regulation 2(*k*) of the said Regulations define unpublished price sensitive information as under:

2 (k) "unpublished price sensitive information" means any information which relates to the following matter 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/final);
(iii) issue of shares by way of public 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;
(viii) any changes in policies, plans or operations of the company."

(*a*) As per regulation 2(*k*) of the said Regulations, the unpublished price sensitive information must be such information which is of concern, directly or indirectly to the company and is not generally known or published by such company for general information and which relate to matters as in sub-clause (*i*) to (*viii*) under clause (*k*) of regulation 2 of the said Regulations.

(*b*) The matters relating to the information have been exhaustively provided in sub-clauses (*i*) to (*viii*). The issue that emerges for consideration is as to whether the knowledge or understanding of RIL that GIL was interested in buying shares of L& T from RIL could be regarded as falling under any of the categories stated in sub clause (*i*) to (*viii*). Committee is of the considered view that subject to the compliance of other requirements of regulation 2(*k*) this could be covered by sub clause (*vii*) if it had affected the earnings of the company but the record shows that there was no significant fluctuation in the market price of shares of L&T post information of the sale of L&T shares by RIL to GIL becoming known to the public. Another point that had been strongly emphasized by RIL before the Committee was that the said information did not emanate from L&T. It had been submitted by RIL that the information of the impending sale was with RIL not because it was "connected" with L&T, but because it was a potential seller. RIL has submitted that it is not even stated as to how this information came to RIL or to the Ambanis by virtue of their connection with L&T. That no enquiries were made as to whether L&T was aware of any of these transactions and it was just not possible for L&T to be aware of the same in view of the nature of the transactions. In this connection, Committee also noted the argument of RIL that the alleged information was self-generated information of the noticees and arising out of their own decision-making and that the alleged information did not concern or belong to L&T.

(*c*) The Committee also considered as to whether the knowledge of directors of L&T (Ambanis) about the proposed sale of L&T's shares by RIL to GIL could be deemed as knowledge of the company (L&T) applying the principle to this effect laid down in the case of *Barium Chemicals Ltd* v *Company Law Board* (AIR 1967 SC 295). On careful analysis of the factual position Committee is of the view that Ambanis were not 'directing mind and will' of L&T as they were two ordinary directors out of 17 directors constituting Board of L&T and they were under no legal obligation to disclose the aforesaid information to L&T. In view of this, Committee does not hold the knowledge of Ambanis about the deal as knowledge of the company (L&T).

(*d*) The fact is that unpublished price sensitive information must come to insider by being an insider. Having held so the Committee finds that in the present facts and circumstances of the case there is nothing to suggest that L & T was even aware of the developments relating to the said transaction between RIL and GIL before 18.11.03 and that "unpublished price sensitive information" was received by RIL or Ambanis from L&T as an insider. The Committee further agrees with RIL's submission that the information is RIL's self generated information not emanating from L & T in terms of sub clauses (*i*) to (*viii*) of clause (*k*) of regulation 2 of the said Regulations and the noticees did not get the information by virtue of being insiders. Therefore, in the present case the testing ground that "unpublished price sensitive information" was received by insider as an insider is missing thereby taking the said transaction out of the purview of the said Regulations.

(16) RIL further contended that as shareholder of L & T, it was under no obligation or duty to L & T to disclose its probable dealings in the shares of L & T. The Committee is not inclined to accept this submission. The Show cause notice dated 18.02.03 clearly brings out the charge that RIL failed to file an intimation with L&T as required under regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997. Admittedly, no intimation was filed by L & T under Regulation 7(2) of the SEBI Takeover Regulations with the stock exchange regarding the enhanced shareholding of more than 5% subsequent to purchases from 5th to 12th November.

(17) The Takeover Regulations provides for transparency and dissemination of information to the investors and also to the management of the target company. In matters of substantial acquisition of shares or control, regulation 7 requires the acquirer to report to the target company his holding on exceeding 5 per cent of the company's share capital and the target company thereafter to report the position to the concerned stock exchange. The reporting of RIL's acquisition was crucial at that point of time in the given facts and circumstances of the case. However, failure on part of RIL to do so attracted penalty as prescribed in the SEBI Act. The Committee finds that SEBI *vide* order dated 13.02.2002 appointed an Adjudicating Officer. The Adjudicating Officer after conducting Enquiry as per the procedure imposed a penalty of Rs. 4, 75,000, which was paid by RIL.

(18) The Object of filing such information with target company and consequence of not filing of such information with target company was appropriately explained by Hon'ble Securities Appellate Tribunal in Appeal No. 49 of 2001 – Mega Resources Ltd. Vs. SEBI as under:

…… The purpose of making timely disclosure to the company is to inform it about the cornering/concentration of shares by others so as to enable it to take preventive measures, if it so desires, to ward off the entry of potential raiders and strengthen the managements position ….

10.3 Whether the noticees violated any Insider Trading Regulations

Regulation 3 of the applicable Regulations prevailing at the relevant time which prohibits, *inter alia*, dealing in securities on the basis of "unpublished price sensitive information" reads as follows:

"3. No insider shall—

(a) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange on the basis of any unpublished price sensitive information.

(b) ……

(c) Counsel or procure any other person to deal in securities of any company on the basis of unpublished price sensitive information."

In the light of the above, it is proved that unpublished price sensitive information was not received by RIL/Ambanis as insiders of L&T and as such they cannot be held liable for violation of regulation 3.

Appendix 1

SEBI (Prohibition of Insider Trading) Regulations, 1992

[Notification No. LE/6308/92 dated 19th November, 1992 as amended upto 29th November, 2002]

In exercise of the powers conferred by section 30 of The Securities and Exchange Board of India, Act 1992 (15 of 1992), the Board with the previous approval of the Central Government hereby makes the following regulations, namely:

CHAPTER I
PRELIMINARY

1. Short title and commencement

(1) These regulations may be called the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.

(2) These regulations shall come into force on the date of the publication in the Official Gazette.

2. Definitions

In these regulations, unless the context otherwise requires; —

(*a*) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*b*) "body corporate" means a body corporate as defined under section 2 of the Companies Act, 1956 (1 of 1956);

(*c*) "connected person" means any person who—

(*i*) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956) of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; 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 whether temporary of permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

Explanation.—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading.

(*d*) "dealing in securities" means an act of subscribing buying, selling or agreeing subscribe to buy, sell or deal in any securities by any person either as principal or agent;

(*e*) "insider" means any 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, connection, to unpublished price sensitive information in respect of securities of a company, or who has received or has had access to such unpublished price sensitive information;

(*f*) "investigating authority" means any officer of the Board or any other person, not being a firm, body corporate or an association of persons, having experience in dealing with the problems relating to the securities market and who is authorised by the Board under Chapter III;

(*g*) "officer of a company" means any person as defined in clause (30) of section 2 of the Companies Act, 1956 (1 of 1956) including an auditor of the company;

(*h*) "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 thereof within the meaning of section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (*g*) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or

(*ii*) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation.

(*iii*) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub- broker, Investment Company or an employee thereof, or, is a member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;

(*iv*) is a member of the Board of Directors, or an employee, of a public financial institution as defined in Section 4A of the Companies Act, 1956; or

(*v*) is an official or an employee of a Self Regulatory Organisation recognised or authorised by the Board of a regulatory body; or

(*vi*) is a relative of any of the aforementioned persons;

(*vii*) is a banker of the company;

(*viii*) relatives of the connected person;

(*ix*) is a concern, firm, trust, Hindu Undivided Family, company or association of persons wherein any of the connected persons mentioned in sub-clause (*i*) of clause (*c*), of this regulation or any of the persons mentioned in sub-clauses (*vi*), (*vii*) or (*viii*) of this clause have more than 10% of the holding or interest;

(*ha*) 'price sensitive information' means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company;

Explanation.—The following shall be deemed to be price sensitive information:—

(*i*) periodical financial results of the company;

(*ii*) intended declaration of dividends (both interim and final);

(*iii*) issue of securities or buy-back of securities;

(*iv*) any major expansion plans or execution of new projects;

(*v*) amalgamation, mergers or takeovers;

(*vi*) disposal of the whole or substantial part of the undertaking;

(*vii*) any significant changes in policies, plans or operations of the company.

(*i*) "relative" means a person, as defined in section 6 of the Companies Act, 1956 (1 of 1956) (*j*) "stock exchange" means a stock exchange which is recognised by the Central Government or Securities and Exchange Board of India under section 4 of Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*k*) Unpublished means information which is not published by the company or its agents and is not specific in nature.

Explanation.—Speculative reports in print or electronic media shall not be considered as published information.

CHAPTER II

PROHIBITION ON DEALING, COMMUNICATING OR COUNSELLING

3. Prohibition on dealing communication or counseling on matters relating to inside trading

No insider shall—

(*i*) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(*ii*) Communicate, counsel or procure, directly or indirectly, any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities.

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

3A. No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information

3B. Regulation 3A not to apply in certain cases

(1) **–** In a proceeding against a company in respect of regulation 3A, it shall be a defence to prove that it entered into a transaction in the securities of a listed company when the unpublished price sensitive information was in the possession of an officer or employee of the company, if;—

(*a*) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer or employee; and

(*b*) such company has put in place such systems and procedures which demarcate the activities of the company in such a way that the person who enters into transaction in securities on behalf of the company cannot have access to information which is in possession of other officer or employee of the company; and

(*c*) it had in operation at that time, arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transactions or agreement was given to that person or any of those persons by that officer or employee; and

(*d*) the information was not so communicated and no such advice was so given.

(2) In a proceeding against a company in respect of regulations 3A which is in possession of unpublished price sensitive information, it shall be defence to prove that acquisition of shares of a listed company was as per the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

4. Violation of provisions relating to insider trading

Any insider, who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of Insider Trading.

CHAPTER III

INVESTIGATION

4A. Power to make inquiries and inspection

(1) If the Board suspects that any person has violated any provision of these regulations, it may make inquiries with such persons or any other person as mentioned in clause (*i*) of sub-section (2) of section 11 as deemed fit, to form a prima facie opinion as to whether there is any violation of these regulations.

(2) The Board may appoint one or more officers to inspect the books and records of insider(s) or any other persons as mentioned in clause (*i*) of sub-section (2) of Section 11 for the purpose of sub-regulation (1).

5. Board's right to investigate

(1) Where the Board, is of prima facie opinion, that it is necessary to investigate and inspect the books of account, other records and documents of an insider or any other person mentioned in clause (*i*) of sub-section (1) of section 11 of the Act for any of the purposes specified in sub-regulation (2), it may appoint an investigating authority for the said purpose.

(2) The purposes referred to in sub-regulation (1) may be as follows:

(*a*) to investigate into the complaints received from investors, intermediaries or any other person on any matter having a bearing on the allegations of insider trading; and

(*b*) to investigate *suo moto* upon its own knowledge or information in its possession to protect the interest of investors in securities against breach of these regulations.

6. Procedure for investigation

(1) Before undertaking an investigation under regulation 5 the Board shall give a reasonable notice to insider for that purpose.

(2) Notwithstanding anything contained in sub-regulation (1), where the Board 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 Board, the investigating authority shall undertake the investigation and inspection of of books of accounts and insider an insider or any other person mentioned in clause (*i*) of sub-section (1) of section 11 of the Act against whom an investigation is being carried out shall be bound to discharge his obligations as provided in regulation 7.

7. Obligations of insider on investigation by the Board

(1) It shall be the duty of every insider, who is being investigated, or any other person mentioned in clause (*i*) of sub-section (1) of section 11 of the Act to produce to the investigating authority such books, accounts and other documents in his custody or control and furnish the authority with the statements and information relating to the transactions in securities market within such time as the said authority may require.

(2) The insider or any other person mentioned in clause (*i*) of sub-section (1) of section 11 of the Act shall allow the investigating authority 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 his possession of the stock- broker or any other person and also provide copies of documents or other materials which, in the opinion of the investigating authority are relevant.

(3) The investigating authority, in the course of investigation, shall be entitled to examine or record statements of any member, director, partner proprietor and employee of the insider or any other person mentioned in clause (*i*) of sub-section (1) of section 11 of the Act.

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the insider to give to the investigating authority all assistance in connection with the investigation, which the insider or any other person mentioned in clause (*i*) of sub-section (1) of section 11 of the Act may be reasonably expected to give.

8. Submission of Report to the Board

The investigating authority shall, within reasonable time of the conclusion of the investigation submit an investigation report to the Board.

9. Communication of Findings, etc.

(1) The Board shall, after consideration of the investigation report communicate the findings to the person suspected to be involved in insider trading or violation of these regulations;

(2) The person to whom such findings has been communicated shall reply to the same within 21 days; and

(3) On receipt of such a reply or explanation, if any, from such person, the Board may take such measures as it deems fit to protect the interests of the investors and in the interests of the securities market and for the due compliance of the provisions of the Act, the Regulations made thereunder including the issue of directions under regulation 11.

10. Appointment of Auditor

Notwithstanding anything contained in regulation 4A and regulation 5, the Board may appoint a qualified auditor to investigate into the books of account or the affairs of the insider or any other person mentioned in clause (I) of sub-section (1) of section 11 of the Act.

Provided that, the auditor so appointed shall have the same powers of the inspecting authority as stated in regulation 5 and the insider shall have the obligations specified in regulation 7.

11. Directions by the Board

The Board may without prejudice to its right to initiate criminal prosecution under section 24 or any action under Chapter VIA of the Act, to protect the interests of investors and in the interests of the securities market and for due compliance with the provisions of the Act, Regulations made thereunder issue any or all of the following order, namely:—

(*a*) directing the insider or such person as mentioned in clause (*i*) of sub-section (2) of section 11 of the Act not to deal in securities in any particular manner;

(*b*) prohibiting the insider or such person as mentioned in clause (*i*) of sub-section (2) of section 11 of the Act 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;

(*d*) declaring the transaction(s) in securities as null and void;

(*e*) directing the person who acquired the securities in violation of these regulations to deliver the securities back to the seller.

Provided that in case the buyer is not in a position to deliver such securities, the market price prevailing at the time of issuing of such directions or at the time of transactions whichever is higher, shall be paid to the seller.

(*f*) directing the person who has dealt in securities in violation of these regulations to transfer an amount or proceeds equivalent to the cost price or market price of securities, whichever is higher to the investor protection fund of a Recognised Stock Exchange.

CHAPTER IV

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING

12. Code of internal procedures and conduct for listed companies and other entities

(1) All listed companies and organisations associated with securities markets including:

(*a*) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds;

(*b*) the self regulatory organisations recognised or authorised by the Board;

(*c*) the recognised stock exchanges and clearing house or corporations;

(*d*) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(*e*) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near there to the Model Code specified in Schedule I of these Regulations.

(2) The entities mentioned in sub-regulation (1), shall abide by the Code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

13. Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies—

Initial Disclosure:

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of:—

(*a*) the receipt of intimation of allotment of shares; or

(*b*) the acquisition of shares or voting rights, as the case may be.

(2) Any person who is a director or officer of a listed company shall disclose to the company, the number of shares or voting rights held by such person, within 4 working days of becoming a director or officer of the company.

Continual Disclosure

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

(4) Any person who is a director or officer of a listed company, shall disclose to the company, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rupees 5 lacs in value or 25000 number of shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of;

(*a*) the receipt of intimation of allotment of shares, or

(*b*) the acquisition or sale of shares or voting rights, as the case may be.

Disclosure by company to stock exchanges

(6) Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2),(3) and (4).

14. Violation of provision relating to disclosure

(1) A person who violates provisions of regulation 12 shall be liable for action under Section 11 or 11 B and/or Section 24 of the Act.

(2) A person who violates provisions of regulation 13 shall be liable for action as specified in regulation 11 or Sections 11, 11B or action under Chapter VIA or section 24 of the Act.)

15. Appeal to the Securities Appellate Tribunal

Any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, (i.e., after 16th December 1999), under these regulations may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

SCHEDULE I

[Under regulation – 12(1)]

PART – A

Model Code of Conduct for Prevention of Insider Trading for Listed Companies

1.0 Compliance Officer

1.1 The listed company has appointed a compliance officer (senior level employee) who shall report to the Managing Director/Chief Executive Officer.

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation.—For the purpose of this schedule, the term 'designated employee' shall include:—

(*i*) officers comprising the top three tiers of the company management .

(*ii*) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

1.3 The compliance officer shall maintain a record of the designated employees and any changes made in the list of designated employees.

1.4 The compliance officer shall assist all the employees in addressing any clarifications regarding the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and the company's code of conduct.

2.0 Preservation of "Price Sensitive Information"

2.1 Employees/directors shall maintain the confidentiality of all Price Sensitive Information. Employees/directors shall not pass on such information to any person directly or indirectly by way of making a recommendation for the purchase or sale of securities.

2.2 Need to know

2.2.1 Price Sensitive Information is to be handled on a "need to know" basis, *i.e.*, Price Sensitive Information should be disclosed only to those within the company who need the information to discharge their duty.

2.3 Limited access to confidential information

2.3.1 Files containing confidential information shall be kept secure. Computer files must have adequate security of login and pass word etc.

3.0 Prevention of misuse of "Price Sensitive Information

3.1 All directors/officers and designated employees of the company shall be subject to trading restrictions as enumerated below:—

3.2 Trading window

3.2.1 The company shall specify a trading period, to be called "Trading Window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is un-published.

3.2.2 When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.

3.2.3 The trading window shall be, inter alia, closed at the time of:—

(*a*) Declaration of Financial results (quarterly, half-yearly and annual)

(*b*) Declaration of dividends (interim and final)

(*c*) Issue of securities by way of public/rights/bonus, etc.

(*d*) Any major expansion plans or execution of new projects

(*e*) Amalgamation, mergers, takeovers and buy-back

(*f*) Disposal of whole or substantially whole of the undertaking

(*g*) Any changes in policies, plans or operations of the company

3.2.3A The time for commencement of closing of trading window shall be decided by the company.

3.2.4 The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.

3.2.5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

3.2.6 In case of ESOPs, exercise of option may be allowed in the period when the trading window is closed. However, sale of shares allotted on exercise of ESOPs shall not be allowed when trading window is closed.

3.3 Pre clearance of trades

3.3.1 All directors/officers/designated employees of the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transactions as per the pre-dealing procedure as described hereunder.

3.3.2 An application may be made in such form as the company may notify in this regard, to the Compliance officer indicating the estimated number of securities that the designated employee/officer/ director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

3.3.3 An undertaking shall be executed in favour of the company by such designated employee/ director/officer incorporating, inter alia, the following clauses, as may be applicable:

(*a*) That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.

(*b*) That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.

(*c*) That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.

(*d*) That he/she has made a full and true disclosure in the matter.

4.0 Other restrictions

4.1 All directors/officers/designated employees shall execute their order in respect of securities of the company within one week after the approval of pre-clearance is given. If the order is not executed within one week after the approval is given the employee/director must pre clear the transaction again.

4.2 All directors/officers/designated employees shall hold their investments in securities for a minimum period of 30 days in order to be considered as being held for investment purposes. The holding period shall also apply to subscription in the primary market (IPOs). In the case of IPOs, the holding period would commence when the securities are actually allotted.

4.3 In case the sale of securities is necessitated by personal emergency, the holding period may be waived by the compliance officer after recording in writing his/her reasons in this regard.

5.0 Reporting Requirements for transactions in securities

5.1 All directors/officers/designated employees of the listed company shall be required to forward following details of their Securities transactions including the statement of dependent family members (as defined by the company) to the Compliance officer:

(*a*) all holdings in securities of that company by directors/officers/designated employees at the time of joining the company;

(*b*) periodic statement of any transactions in securities (the periodicity of reporting may be defined by the company. The company may also be free to decide whether reporting is required for trades where pre-clearance is also required); and

(*c*) annual statement of all holdings in securities.

5.2 The Compliance officer shall maintain records of all the declarations in the appropriate form given by the directors/officers/designated employees for a minimum period of three years.

5.3 The Compliance officer shall place before the Managing Director/Chief Executive Officer or a committee specified by the company, on a monthly basis all the details of the dealing in the securities by employees/director/officer of the company and the accompanying documents that such persons had executed under the pre-dealing procedure as envisaged in this code.

6.0 Penalty for contravention of code of conduct

6.1 Any employee/officer/director who trades in securities or communicates any information for trading in securities in contravention of the code of conduct may be penalised and appropriate action may be taken by the company.

6.2 Employees/officers/directors of the company who violate the code of conduct shall also be subject to disciplinary action by the company, which may include wage freeze, suspension, ineligibile for future participation in employee stock option plans, etc.

6.3 The action by the company shall not preclude SEBI from taking any action in case of violation of SEBI (Prohibition of Insider Trading), Regulations, 1992.

7.0 Information to SEBI in case of violation of SEBI (Prohibition of Insider Trading) Regulations, 1992

7.1 In case it is observed by the company/compliance officer that there has been a violation of SEBI (Prohibition of Insider Trading) Regulations, 1992, SEBI shall be informed by the company.

PART B

Model Code of Conduct for Prevention of Insider Trading for Other Entities

1.0 Compliance Officer

1.1 The organisation/firm has a compliance officer (senior level employee) reporting to the Managing Partner/Chief Executive Officer.

1.2 The compliance officer shall be responsible for setting forth policies and procedures and monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing of all designated employees and their dependents trades (directly or through respective department heads as decided by the organisation/firm), monitoring of trades and the implementation of the code of conduct under the overall supervision of the partners/proprietors.

1.3 The compliance officer shall also assist all the employees/directors/partners in addressing any clarifications regarding SEBI (Prohibition of Insider Trading) Regulations, 1992 and the organisation/firm's code of conduct.

1.4 The compliance officer shall maintain a record of the designated employees and any changes made in the list of designated employees.

2.0 Preservation of "Price Sensitive Information"

2.1 Employees/directors/partners shall maintain the confidentiality of all Price Sensitive Information. Employees/directors/partners must not pass on such information directly or indirectly by way of making a recommendation for the purchase or sale of securities.

2.2 Need to know

2.2.1 Price Sensitive Information is to be handled on a "need to know" basis, i.e. Price Sensitive Information should be disclosed only to those within the organisation/firm who need the information to discharge their duty and whose possession of such information will not give rise to a conflict of interest or appearance of misuse of the information.

2.3 Limited access to confidential information

2.3.1 Files containing confidential information shall be kept secure. Computer files must have adequate security of login and pass word, etc.

2.4 Chinese Wall

2.4.1 To prevent the misuse of confidential information the organisation/firm shall adopt a "Chinese Wall" policy which separates those areas of the organisation/firm which routinely have access to confidential information, considered "inside areas" from those areas which deal with sale/marketing/ investment advise or other departments providing support services, considered "public areas".

2.4.2 The employees in the inside area shall not communicate any Price Sensitive Information to anyone in public area.

2.4.3 The employees in inside area may be physically segregated from employees in public area.

2.4.4 Demarcation of the various departments as inside area may be implemented by the organisation/firm.

2.4.5 In exceptional circumstances employees from the public areas may be brought "over the wall" and given confidential information on the basis of "need to know" criteria, under intimation to the compliance officer.

3.0 Prevention of misuse of Price Sensitive Information

3.1 Employees/directors/partners shall not use Price Sensitive Information to buy or sell securities of any sort, whether for their own account, their relative's account, organisation/firm's account or a client's account. The following trading restrictions shall apply for trading in securities:

3.2 Pre clearance of trades

3.2.1 All directors/officers/designated employees of the organisation/firm who intend to deal in the securities of the client company (above a minimum threshold limit to be determined by the organisation/ firm) shall pre-clear the transactions as per the pre-dealing procedure as described hereunder.

3.2.2 An application may be made in such form as the organisation/firm may specify in this regard, to the Compliance officer indicating the name and estimated number of securities that the designated employee/director/partner intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the organisation/firm in this behalf.

3.2.3 An undertaking shall be executed in favour of the organisation/firm by such designated employee/partners/directors incorporating, inter alia, the following clauses, as may be applicable:

(*i*) That the designated employee/director/partner does not have any access or has not received any " Price Sensitive Information" upto the time of signing the undertaking.

(*ii*) That in case the designated employee/director/partner has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance officer of the change in his position and that he/she would completely refrain from dealing in the securities of the client company till the time such information becomes public

(*iii*) That he/she has not contravened the code of conduct for prevention of insider trading as specified by the organisation/firm from time to time.

(*iv*) That he/she has made a full and true disclosure in the matter

4.0 Restricted/Grey list

4.1 In order to monitor chinese wall procedures and trading in client securities based on inside information, the organisation/firm shall restrict trading in certain securities and designate such list as restricted/grey list.

4.2 Security of a listed company shall be put on the restricted/grey list if the organisation/firm is handling any assignment for the listed company or is preparing appraisal report or is handling credit rating assignments and is privy to Price Sensitive Information.

4.3 Any security, which is being purchased or sold or is being considered for purchase or sale by the organisation/firm on behalf of its clients/schemes of mutual funds, etc. shall be put on the restricted/grey list.

4.4 As the restricted list itself is highly confidential information it shall not be communicated directly, or indirectly to anyone outside the organisation/firm. The Restricted List shall be maintained by Compliance Officer.

4.5 When any securities are on the Restricted List, trading in these securities by designated employees/directors/partners may be blocked or may be dis-allowed at the time of pre-clearance.

5.0 Other restrictions

5.1 All directors/designated employees/partners shall execute their order within one week after the approval of pre-clearance is given. If the order is not executed within one week after approval is given, the employee/director/partners must pre clear the transaction again.

5.2 All directors/officers/designated employees/partners shall hold their investments for a minimum period of 30 days in order to be considered as being held for investment purposes.

5.3 The holding period shall also apply to purchases in the primary market (IPOs). In the case of IPOs, the holding period would commence when the securities are actually allotted.

5.4 In case the sale of securities is necessitated by personal emergency, the holding period may be waived by the compliance officer after recording in writing his/her reasons in this regard.

5.5 Analysts, if any, employed with the organisation/firm while preparing research reports of a client company(s) shall disclose their share holdings/interest in such company(s) to the compliance officer.

5.6 Analysts who prepare research report of a listed company shall not trade in securities of that company for thirty days from preparation of such report.

6.0 Reporting requirements for transactions in securities

6.1 All directors/designated employees/partners of the organisation/firm shall be required to forward following details of their Securities transactions including the statement of dependent family members (as defined by the organisation/firm) to the Compliance officer:—

(*a*) all holdings in securities by directors/officers/designated employees/partners at the time of joining the organisation.

(*b*) periodic statement of any transactions in securities (the periodicity of reporting may be defined by the firm or organisation. The organisation/firm may also be free to decide whether reporting is required for trades where pre-clearance is also required.

(*c*) annual statement of all holdings in securities.

6.2 The Compliance officer shall maintain records of all the declarations given by the directors/ designated employees/partners in the appropriate form for a minimum period of three years.

6.3 The Compliance officer shall place before the Chief Executive Officer/Partner or a committee notified by the organisation/firm, on a monthly basis all the details of the dealing in the securities by designated employees/directors/partners of the organisation/firm and the accompanying documents that such persons had executed under the pre-dealing procedure as envisaged in this code.

7.0 Penalty for contravention of code of conduct

7.1 Any employee/partner/director who trades in securities or communicates any information or counsels any person trading in securities, in contravention of the code of conduct may be penalised and appropriate action may be taken by the organisation/firm.

7.2 Employees/partners/directors of the organisation/firm who violate the code of conduct may also be subject to disciplinary action by the company, which may include wage freeze, suspension, etc.

7.3 The action by the organisation/firm shall not preclude SEBI from taking any action in case of violation of SEBI (Prohibition of Insider Trading) Regulations, 1992.

8.0 Information to SEBI in case of violation of SEBI (Prohibition of Insider Trading) Regulations

8.1 In case it is observed by the organisation/firm/compliance officer that there has been a violation of these Regulations, SEBI shall be informed by the organisation/firm.

9.0 Listed intermediaries to comply with both Part A and B of Schedule I.

9.1 The intermediaries such as credit rating agencies, Asset Management Companies, or broking companies etc. whose securities are listed in recognised stock exchange shall comply with both Part A and Part B of this Schedule in respect of its own securities and client's securities.

SCHEDULE II
(SEE UNDER REGULATION 12(2))
CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING

1.0 Corporate Disclosure Policy

1.1 To ensure timely and adequate disclosure of price sensitive information, the following norms shall be followed by listed companies:—

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

2.2 Listed companies may also consider ways of supplementing information released to stock exchanges by improving investor access to their public announcements.

3.0 Overseeing and co-ordinating disclosure

3.1 Listed companies shall designate a senior official (such as compliance officer) to oversee corporate disclosure.

3.2 This official shall be responsible for ensuring that the company complies with continuous disclosure requirements, overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media, and educating staff on disclosure policies and procedure.

3.3 Information disclosure/dissemination may normally be approved in advance by the official designated for the purpose.

3.4 If information is accidentally disclosed without prior approval, the person responsible may inform the designated officer immediately, even if the information is not considered price sensitive.

4. 0 Responding to market rumours

4.1 Listed companies shall have clearly laid down procedures for responding to any queries or requests for verification of market rumours by exchanges.

4.2 The official designated for corporate disclosure shall be responsible for deciding whether a public announcement is necessary for verifying or denying rumours and then making the disclosure.

5.0 Timely reporting of shareholdings/ownership and changes in ownership

5.1 Disclosure of shareholdings/ownership by major shareholders and disclosure of changes in ownership as provided under any Regulations made under the Act and the listing agreement shall be made in a timely and adequate manner.

6.0 Disclosure/dissemination of "Price Sensitive Information" with special reference to analysts, institutional investors

Listed companies should follow the guidelines given hereunder while dealing with analysts and institutional investors:—

(i) Only Public information to be provided

Listed companies shall provide only public information to the analyst/research persons/large investors like institutions. Alternatively, the information given to the analyst should be simultaneously made public at the earliest.

(ii) Recording of discussion

In order to avoid misquoting or misrepresentation, it is desirable that at least two-company representative be present at meetings with Analysts, brokers or Institutional Investors and discussion should preferably be recorded.

(iii) Handling of unanticipated questions

A listed company should be careful when dealing with analysts' questions that raise issues outside the intended scope of discussion. Unanticipated questions may be taken on notice and a considered response given later. If the answer includes price sensitive information, a public announcement should be made before responding.

(iv) Simultaneous release of Information

When a company organises meetings with analysts, the company shall make a press release or post-relevant information on its website after every such meet. The company may also consider live webcasting of analyst meets.

7.0 Medium of disclosure/dissemination

(*i*) Disclosure/dissemination of information may be done through various media so as to achieve maximum reach and quick dissemination.

(*ii*) Corporates shall ensure that disclosure to stock exchanges is made promptly.

(*iii*) Corporates may also facilitate disclosure through the use of their dedicated Internet website.

(*iv*) Company websites may provide a means of giving investors a direct access to analyst briefing material, significant background information and questions and answers.

(*v*) The information filed by corporates with exchanges under continuous disclosure requirement may be made available on the company website.

8.0 Dissemination by stock exchanges

(*i*) The disclosures made to stock exchanges may be disseminated by the exchanges to investors in a quick and efficient manner through the stock exchange network as well as through stock exchange websites.

(*ii*) Information furnished by the companies under continuous disclosure requirements, should be published on the web site of the exchange instantly.

(*iii*) Stock exchanges should make immediate arrangement for display of the information furnished by the companies instantly on the stock exchange web site.

Appendix 2

Model code of conduct for prevention of insider trading

1. This Code of Conduct may be known as "………….Code of Conduct for Prevention of Insider Trading", hereinafter referred to as the "Code of Conduct", which shall come into effect from 17.12.2005. (*i.e.*, from the date of approval by the Board of Directors).
2. This Code of Conduct has been made pursuant to regulation 12 of the SEBI (Prohibition of Insider Trading) Regulation, 1992 as amended and may be modified by the Board of Directors of the Bank from time to time.
3. **Definitions**.—For the purpose of this Code of Conduct:—

   (*a*) "**Act**" means the Securities and Exchange Board of India Act, 1992 (15 of 1992).

   (*b*) "**Stock Exchange**" means a stock exchange, which is recognised by the Central Government or SEBI under Section 4 of Securities Contracts (Regulations) Act, 1956 (42 of 1956).

   (*c*) "**Regulations**" means the SEBI (Prohibition of Insider trading) Regulations, 1992 as amended from time to time.

   (*d*) **"the Company"** means …………………. Ltd., having its Registered Office at ……..

   (*e*) "**Board**" means the Board of Directors of the Company.

   (*f*) "**Director**" means Directors on the Board of the Company including the Chairman & Managing Director and Executive Director.

   (*g*) "**Compliance Officer**" means – The Officer of the Company designated by the Board of Directors of the Company for the purpose of implementation and monitoring of the "Code of Conduct".

   (*h*) "**Designated Employee" means**—(*i*) All General Managers of the Company and (*ii*) All Executives and employees working in Financial & Risk Management Division, Chairman's Secretariat, Executive Director's Secretariat, Board Secretariat, GM (FRMD) Secretariat and Investor Services Department at the Corporate Office of the Company.

(*i*) "**Trading Window**" means a trading period for trading in Company's shares as specified by the Company from time to time.

(*j*) "**Insider**" means any person including the "Director", 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 to unpublished price sensitive information in respect of shares of the Company or who has received or has had access to such unpublished price sensitive information.

(*k*) "**Family**" means self and spouse, dependent children, dependent parents, dependent in-laws, dependent brothers & sisters.

(*l*) "**Dealing in securities**" means an act of subscribing, buying, selling or agreeing to subscribe, buy, sell or deal in the shares of the Company by any person either as principal or agent.

(*m*) "**Price Sensitive Information**" means any information, which relates directly or indirectly to the Company and which if published is likely to materially affect the price of the shares of the Company.

Explanation.—The following shall be deemed to be price sensitive information:

— Declaration of Financial Results (quarterly, half-yearly and annual)
— Declaration of dividends (interim and final)
— Issue of securities by way of public/rights/bonus etc
— Any major expansion plans
— Amalgamation, mergers, takeovers and buy-back
— Disposal of whole or substantially whole of the undertaking
— Any changes in policies, plans or operations of the Bank
— Any other related information

(*n*) "**Unpublished**" means information which is not published by the Company.

Explanation.—Speculative Reports in print or electronic media shall not be considered as published information and all other words and phrases will have the same meaning as defined under the "Regulations" as amended from time to time and also under the "Act".

4. The Company Secretary of the Company, who reports to the Chairman & Managing Director/Executive Director, is the Compliance Officer for setting forth the policies and procedures and to implement and monitor adherence to this 'Code of Conduct' and the applicable laws and regulations and policies and procedures. In the absence of the Compliance Officer, any other General Manager authorized by the Chairman & Managing Director shall be the Compliance Officer.
5. This Code of Conduct will be applicable to all the "Directors" and "Designated Employees" as defined under paras 3(*f*) and 3(*h*) respectively hereinabove.
6. No Designated Employee/Director shall pass on any price sensitive information to any person directly or indirectly by way of making a recommendation for the purchase or sale of shares of the Bank.
7. No Designated Employee/Director shall communicate any unpublished price sensitive information to any person except those within the Company who need the information to discharge their duty and whose possession of such information will not give rise to a conflict of interest or appearance of misuse of the information.
8. No Designated Employee/Director shall communicate or counsel any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in the shares of the Company.
9. All the Designated Employees/Directors will have to keep the files containing confidential material relating to price sensitive information fully secured. Computer files must be kept with adequate security of login and password, etc.

10. The Designated Employee/Director shall be subject to trading restrictions in the following manner:—

A. Trading Window

The Trading window will be closed before 15 days prior to the happening of the following events and shall remain closed upto 24 hours after the publication of the price sensitive information:—

(*i*) Declaration of Financial results (quarterly, half-yearly and annual)

(*ii*) Declaration of dividends (interim and final)

(*iii*) Issue of securities by way of public/rights/bonus etc.

(*iv*) Any major expansion plans

(*v*) Amalgamation, mergers, takeovers and buy-back

(*vi*) Disposal of whole or substantially whole of the undertaking

(*vii*) Any changes in policies, plans or operations of the Company.

B. Restriction on Trading

No Designated Employee/Director shall conduct any dealing in the shares of the Company during the closure of the Trading Window.

C. Pre-clearance of Trades

The Designated Employee/Director intending to deal in the shares of the Company exceeding the threshold limit of 1,000 shares per transaction and also for dealings by the Designated Employees/ Directors whose total holding exceeds 5000 shares (including that of the 'family') will have to make:

(*i*) An application to the Compliance Officer for pre-clearance of the transaction along with the following undertaking:

(*a*) that the Designated Employee/Director does not have any access or has not received "price sensitive information" upto the time of signing the undertaking.

(*b*) that in case the Designated Employee/Director has access to or receives "price sensitive information" after signing of the undertaking but before the execution of the transaction, he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the Company till the time such information becomes public.

(*c*) that he/she has not contravened the code of conduct for prevention of insider trading as notified by the Company from time to time.

(*d*) that he/she has made a full and true disclosure in the matter.

(*ii*) Only after receiving the clearance, the transaction should be carried out.

(*iii*) The execution of the order in respect of the shares of the Company will have to be completed within one week of approval of preclearance, failing which it will have to be cleared again.

(*iv*) The investment in shares will have to be held for a minimum period of 30 days from the date of purchase/actual allotment. In case of personal emergency, the 30 days holding period may be waived by the Compliance Officer after recording his reasons in this regard.

11. REPORTING REQUIREMENT:

(A) Initial Disclosure:

(*i*) Any person who is a Director of the "Company" shall disclose to the Board of Directors of the Company the number of shares or voting rights in the Company held by him and his dependent family members in the Company within 4 working days of his becoming a Director of the Company.

(*ii*) All "Designated Employees" shall be required to forward to the "Compliance Officer", the details of all holdings in securities of the Company held by him and his family at the time of coming under the purview of "Code of Conduct".

(B) Continual Disclosure:

(*i*) Any Director/Designated Employee of Company shall disclose to the Company, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holding since the last disclosure made to the Company and such change exceeds Rupees 5 lac in value or 25000 shares or 1% of the total shareholding or voting rights, whichever is lower.

(*ii*) The continual disclosure as stated in para B(*i*) above shall be made to the Company within 4 working days of

(*a*) the receipt of intimation of allotment of shares or

(*b*) the acquisition or sale of shares or voting rights, as the case may be.

(C) Quarterly Disclosure:

The Designated Employee/Director of the "Company" shall submit to the "Company", quarterly statement, indicating the details of the shares of the "Company" held by him and his family, as at the end of every quarter within one month from the date of completion of each quarter, in the format prescribed by SEBI.

12. Disclosure by the Bank to the Stock Exchanges:

Company shall disclose to all the Stock Exchanges where the shares of the Company are listed, the information received under sub-para (A)(i) and B(i) of Clause 11 hereinabove, within 5 days of receipt of the information.

13. Interpretation/clarification:

In case any difficulty or doubt arises in the interpretation of this 'Code of Conduct', the decision of the Chairman and Managing Director/Executive Director shall be final.

14. Penalty/Punishment:

Designated Employees who trade in shares or communicate any information for trading in shares in contravention of this Code of Conduct are liable for disciplinary action by the Company under the relevant Service Regulations of the Company, based on a report submitted by the 'Compliance Officer' to the Chairman & Managing Director/Executive Director of the Company.

In addition to the action that may be taken by the Company, the persons violating these Regulations will also be subject to action by SEBI as per SEBI Act. In case of any violation, the Company shall inform SEBI accordingly.

Appendix 3

Text of Forms under SEBI (Prohibition of Insider Trading) Regulations, 1992

Form A

Regulation 13(1) and 6 – Details of acquisition of 5% or more shares in a listed company

Name & address of shareholder with telephone number	Share holding prior to acquisition	No. and % of shares/ voting rights acquired	Date of receipt of allotment/ advice. Date of acquisition (specify)	Date of intimation to Company	Mode of acquisition (market purchase/ public/ rights/ preferential offer etc.)	Share holding subsequent to acquisition	Trading member through whom the trade was executed with SEBI Registration No. of the TM	Exchange on which the trade was executed	Buy quantity	Buy value
1	2	3	4	5	6	7	8	9	10	11

Form B

Regulation 13(2) and 6 – Details of shares held by director or officer of a Listed company

Name & Address of Director/ Officer	Date of assuming office of Director/ Officer	No. & % of shares/voting rights held at the time of becoming Director/Officer	Date of intimation to company	Mode of acquisition (market purchase/public/ rights/ preferential offer etc.)	Trading member through whom the trade was executed with SEBI Registration No. of the TM	Exchange on which the trade was executed	Buy quantity	Buy value
1	2	3	4	5	6	7	8	9

Form C

Regulation 13(3) and 6 - Details of change in shareholding in respect of persons holding more than 5% shares in a listed company

Name & address of share holders	Share holding prior to acquisition/ sale	No. & % of shares/ voting rights acquired/ sold	Receipt of allotment advice/ acquisition of shares/sale of shares or Receipt of allotment advice/ acquisition of shares/sale of shares – specify	Date of intimation to company	Mode of acquisition on (market purchase/ public/ rights/ preferential offer etc.)	No. & % of shares/ voting rights post-acquisi-tion/sale	Trading member through whom the trade was executed with SEBI Registration no. of the TM	Exchange on which the trade was executed	Buy quantity	Buy value	Sell quantity	Sell value
1	2	3	4	5	6	7	8	9	10	11	12	13

Form D

Regulation 13(4) and 6 – Details of change in shareholding of Director or Officer of a Listed Company

Name & Address of Director/ Officer	No. & % of shares/voting rights held by the Director/ Officer	Date of receipt of allotment advice/ acquisition/ sale of shares/ voting rights	Date of intimation to company	Mode of acquisition (market purchase/ public/ rights/ preferential offier etc.)	No. & % of shares/post acquisition/ voting rights sale	Trading member through whom the trade was executed with SEBI Registration no. of the TM	Exchange on which the trade was executed	Buy quantity	Buy value	Sell quantity	Sell value
1	2	3	4	5	6	7	8	9	10	11	12

Form E

STATEMENT OF HOLDINGS AT THE TIME OF PRE-CLEARANCE

I. Details of shareholdings of directors/officers/designated employees held in their own name

Name	Designation	Department	No. of Shares (with Folio/DP ID. Client ID)	Nature of transaction for which approval is sought	No. of Shares to be dealt
1	2	3	4	5	6

II. Details of shares held by dependent family members

Name	Relationship	No. of Shares held (with Folio/DP ID/Client ID)	Nature of transaction for which approval is sought	No. of Shares to be dealt
1	2	3	4	5

Appendix 4

Application for waiver of minimum holding period

Date .....…….

To

The Compliance Officer
Through Division/Department Head

Dear Sir,

I request you to grant me waiver of the minimum holding period of 30 days as required under the code for prohibition of insider trading with respect to ...……......... shares of the company held by me/............ (name of relative) singly/jointly acquired by me on .... (Date). I desire to deal in the said shares on account of .... (give reasons).

Thanking you,

Yours faithfully,
(Name)
(Designation)
(Department)

APPLICATION FOR PRE-CLEARANCE

To

The Compliance Officer
From: Name
Designation
Department

Through Division/Department Head

With reference to the Code for prohibition of Insider Trading of .... I seek your approval to subscribe to/agree to subscribe to/purchase/sell/deal as an agent/principal in .... (nos.) equity shares of the company.

The statement of shareholding in Form '....' as on .... and undertaking in the prescribed format are enclosed for your perusal in this connection.

Date: .... Signature: ……...........

UNDERTAKING TO BE SUBMITTED ALONGWITH THE APPLICATION FOR PRE-CLEARANCE

I .... (Name, designation and dept.) residing at ...., am desirous of dealing in ....* shares of the company as mentioned in my application dated .... for pre-clearance of the transaction.

As required by the Code for prohibition of Insider Trading of …... I hereby state that—

(*a*) I have no access to nor do I have any information that could be construed as "Price Sensitive Information" as defined in the code upto the time of signing of this undertaking;

(*b*) In the event that I have access to or received any information that could be construed as "Price Sensitive Information" as defined in the code, after the signing of this undertaking but before executing the transaction for which approval is sought, I shall inform the compliance officer of the same and shall completely refrain from dealing in the securities of the company until such information becomes public;

(*c*) I have not contravened the provisions of the code of conduct for prohibition of insider trading as notified by the company from time to time;

(*d*) I have made full and true disclosure in the matter.

Date: .... Signature: …..........

* Indicate number of shares.

PRE-CLEARANCE ORDER

This is to inform you that your request for dealing in .... (nos) shares of the company as mentioned in your above-mentioned application is approved. Please note that the said transaction must be completed on or before .... (date) that is within 7 days from today.

Date: For

Compliance Officer

CONFIRMATION OF DEAL

To

The Compliance Officer

I confirm that the share dealing for which approval was granted on .... was completed on ..... by purchasing/selling ...... (nos.) equity shares of the company.

Date: Signature: ……........

Chapter 2

Fraudulent and Unfair Trade Practice

Synopsis

1. Meaning of "Fraud"

Fraud includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include:—

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 behaviors 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.

However, if any general comments is made in good faith in regard to the following shall not be treated as offence:—

(*a*) the economic policy of the government;
(*b*) the economic situation of the country;
(*c*) trends in the securities market; or
(*d*) any other matter of a like nature whether such comments are made in public or in private.

2. Prohibition of certain dealings in securities [Regulation 3]

The following act of person whether directly or indirectly are prohibited under the Regulation—

(*a*) buying, selling or otherwise dealing in securities in a fraudulent manner;

(*b*) using or employing, 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*) employing 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*) engaging 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.

3. Act treated as fraudulent and unfair trade practices [Regulation 4]

Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(*a*) indulging in an act which creates false or misleading appearance of trading in the securities market;

(*b*) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(*c*) 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;

(*d*) 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;

(*e*) any act or omission amounting to manipulation of the price of a security;

(*f*) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(*g*) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

(*h*) selling, dealing or pledging of stolen or counterfeit security whether in physical or dematerialized form;

(*i*) 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;

(*j*) 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;

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

(*l*) 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;

(*m*) an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position;

(*n*) circular transactions in respect of a security entered into between intermediaries in order to increase commission to provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;

(*o*) encouraging the clients by an intermediary to deal in securities solely with the object of enhancing his brokerage or commission;

(*p*) an intermediary predating or otherwise falsifying records such as contract notes;

(*q*) 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;

(*r*) planting false or misleading news which may induce sale or purchase of securities.

4. Alleged presentation of misleading financial statements

In the case of *Rolta India Ltd.* [Order No.WTMN/70/IVD/7/04], it was held that the company had been following the practice of including the cost of self assembled capital equipment in the sales turnover, before its capitalisation, in the previous years as well. It resulted in misleading the investing public. Significant accounting policy and notes on accounts disclosed the practice followed and also stating the quantum of such assembled integrated equipment included in the sales turnover. The profit and loss of the company had not been affected by this practice.

The issue that arises for consideration is whether the company has violated the provisions of the said regulations and if so, what regulatory directions are called for.

In terms of Regulation 5 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, interalia, no person shall make or disseminate any information which is:—

(*a*) misleading in any material particular; and

(*b*) likely to induce the sale or purchase of securities by any person or is likely to have the effect of increasing or depressing the market price of securities, if when he makes the statement or disseminates the information:–

(*i*) he does not care whether the statement or information is true or false; or

(*ii*) he knows, or ought reasonably to have known that the statement or information is misleading in any material particular.

Although the above Regulations stand replaced by SEBI (Prohibition of Fraudulent and Unfair Trade practices relating to securities market) Regulations, 2003, effective July 17,2003, Regulation 13 of the new Regulations contain a savings provisions, whereby any violation of the Regulation 3, 4, 5 and 6 of the 1995 Regulations can be investigated and proceeded against in accordance with the new Regulations and any investigation pending at the commencement of the new Regulations can be continued and disposed of in accordance with the procedure laid down in the new Regulations.

Whether mere general reference to the Schedule of Significant Accounting Policies and Notes on Accounts without any qualifications as to the manner of accounting the self assembled capital equipment with particular reference to the relevant Note no. in the said schedule, while giving "true and fair" view certification of Accounts, year after year for seven consecutive years would absolve the Auditors of their professional responsibilities is a moot point, fit to be referred to the Institute of Chartered Accountants of India for such action as it may deem fit.

So far as company is concerned, by inclusion of the cost of self-assembled capital equipment in the sales, the company has adopted inappropriate accounting and though the practice did not apparently impact the profit or loss, it had distorted the sales turnover figures. Thus, the practice followed by company had the potential of misleading the investors and/or influencing the price of the scrip, as borne out by the behaviour of the share price subsequent to its improper accounting policy catching the public attention.

In the interest of investing public and so as to ensure confidence of the shareholding public in the reliability of standards of financial statements, it is necessary for the corporates to scrupulously adopt proper accounting practices. The corporates should not be let free to resort to any basically improper accounting, whatever be the related disclosure in the schedule or notes on accounts, particularly when it has the potential of influencing the price of the scrip.

In view of the above facts, the company was directed, by virtue of section 19 read with section 11 and section 11B of the SEBI Act, 1992 read with Regulation 5 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and also read with Regulation 11 and 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market)

Regulations, 2003, to discontinue its practice of including the cost of self assembled capital equipment or any capitalisable item in the sales/revenue, henceforth and not to adopt, in future, any accounting practice inconsistent with relevant Indian/International Accounting standards.

5. Transactions in securities and market manipulation

Regulation 4 of FUTP Regulations provide for prohibition against market manipulation. It states that no person shall effect, take part in, or enter into, either directly or indirectly, transactions in securities. Thus it is clear from the said provision that any person who enters into transactions in securities either directly or indirectly is prohibited to carry out such transactions which induce the sale or purchase of securities.

The meaning of "transactions in securities" is very wide to comprehend within itself sale or purchase of securities either directly or indirectly done during the transaction period. The word transaction is derived from the word 'transact' which means to do something.

Further, the term transaction can be applied to any particular act done in the carrying on of a business. It includes the carrying-on or completion of an action or a course of action. In *Inland Revenue Commissioners* v *Parkar* (1966) 1 ALL ER 399 Case, the House of Lords held "issue of debenture and also the redemption of debenture as transaction in securities.

(1) In the case of *DSQ BIOTECH LTD. vs. SEBI*, it was held that the company purchased large quantities of shares prior to the rights issue of the company and also subsequent to the rights issue of the company, a promoter group of the company had purchased large quantity of shares of the company and were responsible for about 63 to 65% of the total market activity in the scrip at the stock exchange during the above period, thereby pushing up the scrip price significantly. There was no other genuine investor interest or buying activity in the scrip during the above stated period and almost the entire trade done in the scrip were contributed by the group companies and also other entities who were employed as "front entities" to act on behalf of the company group, before and after rights issue.

    A study of the price movement in the scrip during the period June 1994 to December 1994 and again from relevant period clearly shows that genuine investor interest in the scrip during the above stated periods was absent and an artificial market was created in the scrip by the company group. During the above referred two periods, the scrip of the company was active at the stock exchanges and the company group companies, by enrolling as "common clients" to the brokers of, managed to corner substantial portion of the floating stock of the company along with three companies together purchased shares of the company through members of stock exchange which pushed up the scrip price significantly from Rs. 21 to Rs. 92 levels within a short span of 3 to 4 months. The records revealed that to continuous buying in the scrip, which squeezed the available floating stock in the market. This resulted in the steep price rise during the above period. There was also no commensurate corporate development that had taken place to justify the above price movement. The auction proceeds which ought to have been credited into the respective accounts of the above clients had been passed on to PPTL on a continuous basis, implying that company group had offered the shares against the auctions.

    The company had played a significant role in the price manipulation of the scrip prior to the rights issue and also immediately after the closure of the said issue. The Managing Director of the company had confirmed that the companies have only acquired the shares during the period and have not sold any shares in the market. The purchases by the group companies during the above stated two periods were made with a view to create artificial/false market in the scrip of the company and this also contributed to the steep price movement in the scrip during the two periods referred above.

    Most of the shares that were acquired from the market by PPTL and DHL during the above mentioned periods were seen pledged as either primary collateral security or secondary collateral for availing loan facility/line of credit etc. The shares allotted in the rights issue to the DSQ group were also seen pledged as collateral security with the banks/financial institutions. [Order No. WTM/GA/38/IVD/12/05 dt.15.12.2005]

(2) In one of the case, it was held that the violations committed by the company allegedly before the commencement of FUTP Regulations are covered under the FUTP Regulations in view of the continuity of the events of the transactions in securities.

6. SEBI has power to take measures in prohibiting fraudulent and unfair trade practices relating to securities market

In the case of Punjab & Haryana High Court in *PGF Ltd. & Others Vs Union of India* [C.W.P. No. 188/2003 dt. 26.07.2004] the regulation to the acts committed prior to the commencement of the CIS Scheme was challenged as violative of provisions of Constitution of India. Section 11AA was inserted in SEBI Act, 1992 w.e.f. 22.02.2000. In view of the above, PGFL argued before the High Court that section 11AA of SEBI Act which defines the term 'Collective Investment' cannot validate the scheme and make the acts of the petitioner as violative of provisions of this scheme. Further, PGFL has raised the issue as to whether the regulations can be made applicable to a business which was closed down much before the Regulations came into force, particularly in view of the fact that regulations made under the powers conferred by the enabling Acts *i.e*. SEBI Act, 1992 and SCR Act, 1956 which are prospective in nature.

The Hon'ble High Court of Punjab & Haryana, observed that: "Secondly, tracing the evolution of law leading upto the addition of section 11AA to the SEBI Act, we are satisfied that the subject of legislation under the SEBI Act relates to the promotion, development and regulation of the securities market as also to protect the interest of the investors in securities, whereas the object of adding section 11AA to the SEBI Act was pointedly aimed at "investor protection", and there is no legal infirmity in the impugned order of the Board dated 6.12.2002. In view of the above, the instant petition is liable to be dismissed. The same is accordingly dismissed."

The arguments of the company that SEBI has no power to issue directions under section 11B of SEBI Act, 1992 read with Regulations 11 and 12 of FUTP Regulations as the alleged violations falls prior to the coming into force of the said provisions cannot argue the case on a specious principle of "pick and choose" when there are series of transactions in securities which have taken place in a particular period of time attracting the provisions of FUTP Regulations. Such transactions have to be appraised in toto.

On careful examination of the above provisions, it was stated that SEBI has power to take such measures as it thinks fit in prohibiting fraudulent and unfair trade practices relating to securities market to protect the interests of the investors in securities market. Thus, power of the SEBI to take any action under section 11 of the SEBI Act is independent to any regulations in existence or not. "Power to issue direction" under section 11B of the Act is an extension of powers mentioned under section 11 of the Act. A cursory glance of the provisions of section 11B will clearly indicate that it is merely procedural and only a specific empowerment to issue directions in furtherance of the object stated in section 11 of the Act which were otherwise inherent in section 11as it stood then. The provisions of the sections 11 and 11B of the Act are clarificatory, remedial, preventive and regulatory measure. SEBI can take an action under section 11 and 11B which could be either emergent in nature, pending full-scale inquiry or could be a final one upon conclusion of inquiry or investigation.

7. Liability of the company for the acts of the promoters/group of companies and their conduct regarding the alleged manipulation of the price of the shares

In the case of *DSQ Securities Ltd*. [Appeal No.345/2004 decided by the SEBI dated 08.12.2005], it was held that the company cannot deny to be made liable for the acts of the promoters/group of companies and their conduct regarding the alleged manipulation of the price of the shares in the securities market.

The promoters and the company through its front entities had played a significant role in the price manipulation of the scrip prior to the rights issue and also immediately after the closure of the said issue. Being the beneficiary of the rights issue, the company cannot deny its role in manipulation of transactions in securities, though it had not participated directly in the securities market. The company has violated the provisions of FUTP Regulations. The company has altered its financial position by issuing rights issue. The company is a party to the transaction of manipulation alongwith promoters and its group of entities. It was made clear that not only the director was involved but the company itself was participating in market manipulation through its front entities. Any person or company is lawfully entitled to purchase shares in the open market, but if the transaction is done surreptitiously with a dubious motive or intention by making use of some group of entities as a conduit in a clandestine manner, such transaction would be contrary to public policy.

Promoters and its front entities are in market manipulation, violating the provisions of FUTP Regulations. They have purchased large quantities of shares of the company from the secondary market through the group companies prior to rights issue and after the close of the rights issue, these purchases were made with a view to increase the price of the share of the company, thereby public could be induced to invest in the rights issue of the company at a higher price.

Since there was nothing in the fundamentals of the company or there was no commensurate growth that could have justified such a price movement during the periods. Therefore, being beneficiary of the entire transactions is liable for its role in allowing indirectly manipulation in securities market and liable for abetting the promoters and its group entities to indulge in manipulation of the scrip of the company before and after the rights issue. The role played by the company in aiding and abetting its directors/group of entities directly or indirectly in manipulating the price of the company's scrip which ultimately shored up the financial strength of the company, enhancing the image of balance sheet. Such dealing of the scrip in the market directly or indirectly shall be prohibited under the provisions of Regulation 4 of FUTP Regulations. At no point of time DSQB was made liable for the acts of its directors/promoters. The company cannot distance itself from what was sought to be achieved in the orchestrated activities seeking to enhance its market profile.

8. Creating false or misleading appearance of trading in the market is an offence

In the case of *KSL and Industries Ltd* v *Deluxe Polymers Ltd.* Dated 17.02.2004, it was found that the company and buyer/seller were interconnected and no shares were purchased or sold by DPL from market. It was further seen that both company and other part are connected with the promoters of the company, were common addresses with the promoters of the company.

It was admitted that as all these entities were group companies, the said trades were entered into so as to get the name of the company in the market quotation list of BSE and there was no intention to manipulate the price and cause loss to the investors. It was found that the company and its broker had put in token trades in the scrip at artificial prices ranging from Rs. 120 to Rs. 195. While putting in these trades, the company was aware that its group company was the counter party and the trades were thus entered into the system with full knowledge of the entity on the other side.

The variation in prices for the shares of the company was not reflective of the fundamentals of the company nor did it indicate any genuine forces of demand and supply for the shares. These trades were executed with an intention to create false or misleading appearance of trading in the market. Therefore, DPL has committed violation of regulation 4(*a*), (*b*), and (*c*) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

9. Case study of manipulation during IPO process by the investors

In the case of *Yes Bank Ltd.* [Order No. WTM/GA/37/ISD/12/05 dated 15.12.2005], YBL came out with an IPO during June 2005. The retail portion of the issue was oversubscribed by 9.96 times and the non-institutional portion was oversubscribed by 43.68 times. The shares were credited to the allottees on 08.07.2005. The shares of YBL were listed on stock exchanges on July 12, 2005.

In the IPO of YBL, Roopalben Panchal had applied for 1050 shares paying the application money of Rs. 47,250 Apparently she did not receive any allotment in the IPO. On July 6, 2005, Roopalben Panchal received 150 shares each from 6315 allottees through off-market transactions. Thus she received 9,47,250 shares in aggregate.

Curiously, as per the dematerialized account data furnished by NSDL, out of the above 6315 entities as many as 6221 entities have their address as 402-403 Shashwat Opp. Gujarat College Ellisbridge Ahmedabad - 380006. The above address is the same as that of Devangi Dipakbhai Panchal (sister of Roopalben Panchal) with whom Roopalben Panchal holds joint dematerialized account. 50 entities out of the above 6315 entities have their addresses as 34 Khetan Tower, Camp Road, Shahibaug, Ahmedabad

380004. 44 entities out of 6315 entities have their addresses as 1201/68 Samast B Soc Pinakin Soc Paldi, Ahmedabad- 380007. Also, strangely, all the 6315 entities have their bank accounts with Bharat Overseas Bank Ltd. and demat accounts with Karvy-DP.

Copies of the application forms of 20 randomly selected entities out of the above 6315 entities, was examined. It was seen that all these 20 applicants had furnished their addresses as Bharat Overseas Bank Ltd., Century Staff Building, Pandurang Bhudkar Marg, Worli, Mumbai – 400030. The above address is the same as that furnished by Roopalben Panchal and Devangiben Panchal in their respective application forms.

The above facts cast doubts as to the genuineness of the 6315 applicants. It appears that Ms. Roopalben Panchal has made all the applications in fictitious names or she has used the other applicants as benamis for her application. The chain of events as enumerated above, involving a huge population of putative investors who prima facie appear to be mere name-lenders, mostly sharing a common address, having bank accounts with the same Bank and dematerialized accounts with the same Depository Participant and acting in unison demonstrates unity of control by Roopalben Panchal who herself appears to be a front for financiers. It would take extreme naiveté or suspension of disbelief to accept the intricacies of such convoluted transactions as a normal incidence of genuine dealings in securities.

The number of shares allotted to applicants in a particular category is determined by the total number of shares applied for in that category. For instance, the IPO of YBL received the highest number of share applications in the category of 1050 shares. 1,16,709 applicants had applied for 12,25,44,450 shares accounting for 70.34% of the IPO applications received. Hence, the highest proportion of allotment in the retail portion was made in the category of 1050 shares. Accordingly, 82,012 applicants in this category got allotment of 1,23,01,800 shares representing 70.30% of the 1,75,00,050 shares allotted in the retail portion of the issue.

In order to maximize the possibility of getting allotment, all these 6315 applicants acting together would necessarily need to apply in the same category. It is seen from the random sample of 20 applications that this was indeed the case. All these applicants and also Roopalben Panchal and Devangiben Panchal have applied for 1050 shares each paying application money of 47,250 each.

The rationale for why these entities chose to apply in the 1050 lot is not far to seek. The market lot for applying in the IPO of YBL was 150 shares. Since the issue price was Rs. 45, the total application money for 1050 shares works out to Rs. 47,250 and accordingly the applicants become entitled for allotment under the retail portion of the issue. Application for the next higher market lot of 1200 shares would have resulted in the application money being Rs. 54,000 and the applicant would no longer be entitled for allotment under the retail portion.

By applying for the maximum possible number of shares per applicant while being categorized as retail applicant and by putting in large number of applications in the lot of 1050 shares, Roopalben Panchal and her associates (real or fictitious) have attempted to corner the maximum possible number of shares in the IPO allotment. This tanamounts to an abuse of IPO allotment process.

Immediately upon receiving the IPO allotment on July 5, 2005, these 6315 IPO allottees made off-market transfer of these shares on July 6, 2005 to the dematerialized account of Roopalben Panchal held jointly with Devangiben Panchal and Dipakbhai Jashvantlal Panchal. This gives rise to the prima facie view that these entities were just lending names for Roopalben Panchal and her associates.

Though the various parties involved in the different stages of the entire chain of events might claim their part as genuine, the same cannot be countenanced at this juncture of the proceedings, where the materiality of circumstances and the manner in which the entire modus operandi was executed have the ingredients of a manipulative assemblage to scupper the process of IPO allotment.

Even presuming for a moment that the 6315 IPO applicants who had applied on behalf of Roopalben Panchal were genuine living persons it cannot be gainsaid that they were merely acting as tools for the implementation of Roopalben's plan to corner the YBL IPO shares. Also, these 6315 entities had no beneficial ownership over the IPO shares allotted to them as Roopalben had admittedly obtained blank debit instruction slips from these entities even prior to their getting allotment. This step was taken by Roopalben presumably to guard herself from being cheated by the 6315 entities, who are men of straw.

As Roopalben Panchal had provided the requisite funds to 6315 entities for making IPO application and immediately upon allotment, got the shares transferred in her dematerialized account, it appears to me that Roopalben Panchal was the beneficial owner of these shares all along and the use of 6315 entities is merely a ruse to manipulate the IPO allotment process and obtain allotment under the retail portion of the IPO which she was not otherwise entitled to.

Subsequent to receipt of shares as above on July 11, 2005 Roopalben Panchal transferred 7,61,600 shares to six entities namely Seer Finlease P. Ltd. (3,32,875 shares), Excell Multitech Ltd. (1,61,180 shares), Devangi Dipakbhai Panchal (2,20,000 shares), Zenet Software Ltd. (92,855 shares), Tauras Infosys Ltd. (80,590 shares) and Rajan Vasudev Dapki (44,100 shares) through off-market transactions.

On July 12, 2005 i.e. the date of listing on stock exchanges, Devangi Dipakbhai Panchal has sold 1,72,000 shares out of 2,20,000 shares received by her from Roopalben Panchal. On the same day, four out of the remaining five entities (other than Rajan Vasudev Dapki) sold all the shares received by them from Roopalben Panchal.

The above five entities have together sold 8,39,500 shares valuing Rs. 5.15 crores. The average sale price works out to Rs.61.40 per share. Reckoning the issue price of Rs. 45 per share, the total profit earned by the five entities on sale of 8,39,500 shares works out to Rs. 1,37,67,800.

The eight entities namely Devangi Dipakbhai Panchal, Rajan Vasudev Dapki, Zenet Software Ltd., Excell Multitech Ltd., Taurus Infosys Ltd., Seer Finlease P Ltd., Barghav Panchal (HUF) and Jayantilal Jitmal that reportedly provided funds to Roopalben Panchal to enable her to execute the plan of manipulating YBL IPO and cornering the retail portion of the issue are equally responsible for the above devious act of cornering the IPO allotment at the cost of genuine retail investors.

A similar modus operandi as above has been adopted by Sugandh who received 150 shares each from 1315 dematerialized accounts aggregating to 197250 shares in off market transactions. It in turn had, on July 08, 2005 transferred 196050 shares to the dematerialized account of 3 entities Sujal Leasing and Finance P. Ltd., Ritaben R Thakkar and Veenaben Y Thakkar.

The above three entities sold 1,94,250 shares at an average sale price of Rs. 61.61 per share on NSE for a total sale value of Rs. 1,19,68,708.45. The total profit earned by the three entities on sale of 1,94,250 shares works out to Rs. 32,26,492.50 reckoning the issue price of Rs. 45 as cost of acquisition of these shares.

It appears that the above profit has been earned by abusing the IPO allotment process and cornering the shares meant for the retail applicants. It appears that Roopalben Panchal, Sugandh and their respective associates have adopted the modus operandi of making applications in fictitious/benami names for cornering the retail of portion of IPO shares. The shares allotted in IPO to the benamis of Roopalben Panchal and Sugandh would have otherwise gone to genuine retail applicants. The entire game plan, craftily designed, masterminded and executed by a coterie of operators acting in concert, in a tout ensemble through the mechanism of front entities of name-lenders seeking to impart a veneer of acceptability to a deal which is otherwise sham in an agonistic aggression in the market through predatory cornering is a clear abuse of the very process of IPO, meant to shore up the participation of retail investors.

Also, the role of Karvy-DP *i.e.* Karvy Stockbroking Ltd. that opened the dematerialized accounts of 6315 entities being benamis of Roopalben Panchal and 1315 entities being benamis of Sugandh probably without taking adequate steps to ascertain the genuineness of these entities while acting as a facilitator in what appears to be an act of either gross negligence or active collusion ill behoves them as a SEBI registered market participant.

There is a likelihood that benamis and front entities as above, may end up acting as conduits for laundering of ill-gotten funds that may arise out of proceeds of crime, drug trafficking, terrorist financing and a host of other related activities.

It is matter of concern that NSDL, which is a self-regulatory organization and within whose regulatory domain Karvy-DP falls, could not detect in advance the apparently systemic deficiencies in Karvy-DP.

The findings of preliminary enquiry as detailed above bring out a prima facie case of violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003. SEBI is initiating formal investigations into the matter.

Therefore, in view of the grave emergency arising out of the conduct of parties with the added risk of recrudescence of such devious practice in future and, with a view to protect the interest of investors and securities market from further such acts, the entities involved were directed not to buy, sell or deal in the shares of Yes Bank Ltd. and in other ensuing IPOs, directly or indirectly, till further directions.

NSDL was directed to ensure that the 6315 dematerialized accounts, which served as conduit for Roopalben Panchal and the 1315 dematerialized accounts which served as conduit for Sugandh are not utilized for manipulation of IPO allotment in future.

It was directed to undertake a comprehensive inspection of Karvy-DP particularly focusing on the sytems and procedures, if any, put in place by Karvy-DP for implementing the 'know your client' norms that DPs are required to follow. NSDL was directed to submit a report to SEBI detailing the findings of its inspection in a time-bound programme

NSDL and CDSL were advised to enhance their surveillance and also devise and put in place systems and procedures for identifying multiple dematerialized accounts of suspicious nature and reporting the same to SEBI, as expeditiously as possible.

Further the entities/persons against whom this direction were issued may file their objections, if any, to this order within 15 days from the date of this order and, if they so desire, avail themselves of an opportunity of personal hearing at the SEBI.

10. Financing irregular applications resulting in irregular allotment which resulted in market manipulation

In the case of *Krishna Texport & Capital Market Ltd.* v *SEBI* [SAT Appeal No.9/2003], it was held that making multiple applications is not an offence. In fact the consequences of making fictitious applications have been indicated in the Prospectus itself by clearly stating that the multiple applications are liable to be rejected. In this context it is to be noted that submitting multiple applications are different from submitting applications in fictitious names for subscription. Section 68A of the Companies Act 1956 provides penalty by way of imprisonment upto 5 years to those persons who make applications in fictitious names. No penalty has been provided in the Companies Act for making multiple applications, as it is not an offence under the said Act.

Appendix 1

SEBI (Prohibition of Fraudulent and Unfair Trade practices relating to securities market) Regulations, 2003

[Notification No. S.O. 816 (E) dated 17th of July, 2003]

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, namely:—

CHAPTER I

PRELIMINARY

1. Short title and commencement

(1) These regulations may be called the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions

(1) In these regulations, unless the context otherwise requires,—

(*a*) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*b*) "dealing in securities" includes 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 person as principal, agent or intermediary referred to in section 12 of the Act.

(*c*) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include:—

(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 behaviors 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.

And "fraudulent" shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

(*a*) the economic policy of the government;

(*b*) the economic situation of the country;

(*c*) trends in the securities market; or

(*d*) any other matter of a like nature

whether such comments are made in public or in private.

(*d*) "Investigating Authority" means any officer of the Board not below the rank of Division Chief, authorized by the Board to undertake investigation under Section 11C of the Act;

(*e*) "securities" means securities as defined in section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

(2) Words and expressions used and not defined in these regulations, but defined in the Act or in the rules or regulations made thereunder, shall have the meanings respectively assigned to them in the Act or rules or regulations made thereunder, as the case may be.

CHAPTER II

PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO THE SECURITIES MARKET

3. Prohibition of certain dealings 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.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(*a*) indulging in an act which creates false or misleading appearance of trading in the securities market;

(*b*) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(*c*) 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;

(*d*) 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;

(*e*) any act or omission amounting to manipulation of the price of a security;

(*f*) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(*g*) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

(*h*) selling, dealing or pledging of stolen or counterfeit security whether in physical or dematerialized form;

(*i*) 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;

(*j*) 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;

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

(*l*) 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;

(*m*) an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position;

(*n*) circular transactions in respect of a security entered into between intermediaries in order to increase commission to provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;

(*o*) encouraging the clients by an intermediary to deal in securities solely with the object of enhancing his brokerage or commission;

(*p*) an intermediary predating or otherwise falsifying records such as contract notes.

(*q*) 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.

(*r*) planting false or misleading news which may induce sale or purchase of securities.

CHAPTER III

INVESTIGATION

5. Power of the Board to order investigation

Where the Board, the Chairman, the member or the Executive Director (hereinafter referred to as "appointing authority") has reasonable ground to believe that —

(*a*) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market in violation of these regulations;

(*b*) any intermediary or any person associated with the securities market has violated any of the provisions of the Act or the rules or the regulations, it may, at any time by order in writing, direct any officer not below the rank of Division Chief (hereinafter referred to as the "Investigating Authority") specified in the order to investigate the affairs of such intermediary or persons associated with the securities market or any other person and to report thereon to the Board in the manner provided in section 11C of the Act.

6. Powers of Investigating Authority

Without prejudice to the powers conferred under the Act, the Investigating Authority shall have the following powers for the conduct of investigation, namely:—

(1) to call for information or records from any person specified in section 11(2)(*i*) of the Act;

(2) to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12 of the Act) which intends to get its securities listed on any recognized stock exchange where the Investigating Authority has reasonable grounds to believe that such company has been conducting in violation of these regulations;

(3) to require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of the investigation;

(4) to keep in his custody any books, registers, other documents and record produced under this regulation for a maximum period of one month which may be extended upto a period of six months by the Board:

Provided that the Investigating Authority may call for any book, register, other document or record if the same is needed again:

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, he shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced;

(5) to examine orally and to record the statement of the person concerned or any director, partner, member or employee of such person and to take notes of such oral examination to be used as an evidence against such person:

Provided that the said notes shall be read over to, or by, and signed by, the person so examined;

(6) to examine on oath any manager, managing director, officer or other employee of any intermediary or any person associated with securities market in any manner in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

7. Power of the Investigating Authority to be exercised with prior approval

The Investigating Authority may, after obtaining specific approval from the Chairman or Member also exercise all or any of the following powers, namely:—

(*a*) to call for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation;

(*b*) to make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of any books, registers, other documents and record, if in the course of investigation, the Investigating Authority has reasonable ground to believe that such books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner may be destroyed, mutilated, altered, falsified or secreted;

(*c*) to keep in his custody the books, registers, other documents and record seized under these regulations for such period not later than the conclusion of the investigation as he considers necessary and thereafter to return the same to the person, the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof;

(*d*) Save as otherwise provided in this regulation, every search or seizure made under this regulation shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

8. Duty to co-operate, etc.

(1) It shall be the duty of every person in respect of whom an investigation has been ordered under regulation 7—

(*a*) to produce to the Investigating Authority or any person authorized by him such books, accounts and other documents and record in his custody or control and to furnish such statements and information as the Investigation Authority or the person so authorized by him may reasonably require for the purposes of the investigation;

(*b*) to appear before the Investigation Authority personally when required to do so by him under regulation 6 or regulation 7 to answer any question which is put to him by the Investigation Authority in pursuance of the powers under the said regulations.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 of the Act or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) Without prejudice to the generality of the provisions of sub-regulations (1) and (2), such person shall —

(*a*) allow the Investigating Authority to have access to the premises occupied by such person at all reasonable times for the purpose of investigation;

(*b*) extend to the Investigating Authority reasonable facilities for examining any books, accounts and other documents in his custody or control (whether kept manually or in computer or in any other form) reasonably required for the purposes of the investigation;

(*c*) provide to such Investigating Authority any such books, accounts and records which, in the opinion of the Investigating Authority, are relevant to the investigation or, as the case may be, allow him to take out computer out-prints thereof.

9. Submission of report to the Board

The Investigating Authority shall, on completion of investigation, after taking into account all relevant facts, submit a report to the appointing authority:

Provided that the Investigating Authority may submit an interim report pending completion of investigations if he considers necessary in the interest of investors and the securities market or as directed by the appointing authority.

10. Enforcement by the Board

The Board may, after consideration of the report referred to in regulation 9, if satisfied that there is a violation of these regulations and after giving a reasonable opportunity of hearing to the persons concerned, issue such directions or take such action as mentioned in regulation 11and regulation 12:

Provided that the Board may, in the interest of investors and the securities market, pending the receipt of the report of the investigating authority referred to in regulation 9, issue directions under regulation 11:

Provided further that the Board may, in the interest of investors and securities market, dispense with the opportunity of pre-decisional hearing by recording reasons in writing and shall give an opportunity of post-decisional hearing to the persons concerned as expeditiously as possible.

11. (1) The Board may, without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) of section 11 and section 11B of the Act, by an order, for reasons to be recorded in writing, in the interests of investors and securities market, issue or take any of the following actions or directions, either pending investigation or enquiry or on completion of such investigation or enquiry, namely:—

(*a*) suspend the trading of the security found to be or *prima-facie* found to be involved in fraudulent and unfair trade practice in a recognized stock exchange;

(*b*) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(*c*) suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;

(*d*) impound and retain the proceeds or securities in respect of any transaction which is in violation or *prima facie* in violation of these regulations;

(*e*) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction;

(*f*) require the person concerned to call upon any of its officers, other employees or representatives to refrain from dealing in securities in any particular manner;

(*g*) prohibit the person concerned from disposing of any of the securities acquired in contravention of these regulations;

(*h*) direct the person concerned to dispose of any such securities acquired in contravention of these regulations, in such manner as the Board may deem fit, for restoring the *status-quo ante*;

(2) The Board shall issue a press release in respect of any final order passed under sub-regulation (1) in atleast two newspapers of which one shall have nationwide circulation and shall also put the order on the website of the Board.

12. Suspension or cancellation of registration

(1) The Board may, without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) of section 11 and section 11B of the Act, by an order, for reasons to be recorded in writing, in the interests of investors and securities market take the following action against an intermediary:

(*a*) issue a warning or censure;

(*b*) suspend the registration of the intermediary; or

(*c*) cancel of the registration of the intermediary.

Provided that no final order of suspension or cancellation of an intermediary for violation of these regulations shall be passed unless the procedure specified in the regulations applicable to such intermediary under the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 is complied with.

13. Repeal and savings

(1) The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.

(2) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

(3) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations.