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DEMAT ACCOUNT AS A TOOL FOR PREVENTING INSIDER TRADING: A LEGAL ASSESSMENT

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Abstract

Insider trading is a major concern for investors, regulators, and the general public. It undermines the integrity of the securities market and erodes public trust in the fairness of the market. In recent years, there has been a growing recognition of the role that Demat Accounts can play in preventing insider trading. This research paper aims to assess the legal framework surrounding the use of Demat Accounts as a tool for preventing insider trading in India.

The paper begins by providing a background on the concept of Demat Accounts and insider trading, and the legal framework governing them. It then examines the effectiveness of Demat Accounts in preventing and detecting insider trading, using case studies from India and other jurisdictions. The paper also analyses the legal implications of using Demat Accounts to prevent insider trading, including the regulatory framework and the rights of investors.

Based on the analysis, the paper provides recommendations for strengthening the legal framework governing Demat Accounts to prevent insider trading. These recommendations include measures to enhance transparency, increase penalties for violators, and improve investor education. The paper concludes that Demat Accounts can be a powerful tool for preventing insider trading, but their effectiveness depends on the strength of the legal framework and the vigilance of regulators.

Introduction

Insider trading, the act of trading securities based on non-public information, has been a major concern for regulators around the world. It not only undermines market integrity but also raises questions about fairness and equality in the marketplace. To address this issue, various measures have been taken by regulators, including the introduction of the dematerialized (Demat) account system.

A Demat account is a digital account that allows investors to hold their securities in an electronic format. The system eliminates the

need for physical certificates and offers many advantages such as safekeeping, easy transferability, and efficient settlement of transactions. However, in addition to these benefits, the Demat account system has also been used as a tool for preventing insider trading.

Insider trading can occur when an individual with access to material non-public information buys or sells securities based on that information, gaining an unfair advantage over other market participants. However, with the Demat account machine in area, transactions

in securities are recorded electronically, and it's miles easier to screen suspicious trades. The machine also lets in for monitoring of securities from the factor of issuance to the factor of redemption, which gives a entire document of transactions and makes it less complicated to detect insider buying and selling.

Despite the potential benefits, the use of Demat accounts as a tool for preventing insider trading raises several legal questions. For instance, what are the legal implications of using the Demat account system to detect and prevent insider trading? Are there any potential conflicts between the regulatory requirements for Demat accounts and the existing insider trading laws? What is the role of regulators in ensuring that the system is used fairly and without infringing on investors' rights?

This research paper seeks to explore these questions by providing a comprehensive legal assessment of the Demat account system as a tool for preventing insider trading. The paper will examine the regulatory framework surrounding Demat accounts and insider trading, the potential benefits and drawbacks of the system, and the legal implications of using the system to detect and prevent insider trading. The paper will also highlight any potential conflicts or challenges that may arise and provide recommendations for addressing them. Ultimately, the research paper aims to contribute to the ongoing debate on the use of the Demat account system as a tool for preventing insider trading and provide insights into how it can be used effectively while upholding the principles of fairness and equity in the marketplace.

Background of the Study

The Indian securities market has witnessed significant growth in recent years, attracting both domestic and foreign investors. However, the market has also been plagued by instances of insider trading, which undermines the integrity and transparency of the securities markets.

Insider trading refers to the buying or selling of securities by insiders, such as directors, officers, or employees of a company, based on material non-public information that is not available to the general public. Insider trading can result in significant financial gains for the insiders, but it also harms the interests of other investors who do not have access to the information.

To prevent insider trading, the "Securities and Exchange Board of India" (SEBI) has introduced stringent regulations and guidelines, which require companies to disclose material information to the public and prohibit insiders from trading on the basis of such information. The SEBI has also introduced the concept of Demat Accounts, which are electronic accounts that hold securities in a dematerialized form, to enhance the transparency and efficiency of the securities markets.

The use of Demat Accounts has significantly reduced the incidence of physical securities frauds and has made it easier for regulators to detect and prevent insider trading. The legal framework for insider trading and the use of Demat Accounts in preventing insider trading have evolved over the years, with various amendments and regulations being introduced to promote transparency and integrity in the securities markets.

The objective of this research paper is to analyze the legal framework for Demat Accounts and insider trading in India and to assess the effectiveness of Demat Accounts as a tool for preventing insider trading. The research paper will also examine the legal implications of using Demat Accounts to prevent insider trading and provide recommendations for enhancing the effectiveness of Demat Accounts in preventing insider trading.

To conduct this analysis, the study will examine various legislations, including the "Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Companies Act, 2013, and the Insider Trading

Regulations, 2015.” The study will also analyse relevant case laws and regulatory guidelines to provide a comprehensive understanding of the legal framework for Demat Accounts and insider trading in India.

Overall, the study aims to contribute to the ongoing discourse on the use of Demat Accounts in preventing insider trading and to provide recommendations for enhancing the effectiveness of the regulatory framework for insider trading in India.

Demat Account: Concept, Features, and Legal Framework

Definition and Features of Demat Account

A Demat account is an electronic account that holds securities such as shares, bonds, and debentures in a dematerialized format. It is a safe and convenient way for investors to hold their securities, as it eliminates the need for physical certificates and provides an efficient way to transfer and settle transactions. The securities held in a Demat account are recorded electronically, and the account holder receives a statement of holdings as proof of ownership.

The Demat account system is managed by two depositories in India – “National Securities Depository Limited (NSDL) and Central Depository Services Limited (CDSL)”. These depositories work with various intermediaries such as depository participants (DPs) and brokers to facilitate the opening and operation of Demat accounts.

Benefits and Limitations of Demat Account

The use of Demat accounts offers several benefits to investors. Firstly, it provides a safe and efficient way to hold securities, eliminating the risk of loss or damage to physical certificates. Secondly, it allows for easy transfer and settlement of transactions, reducing the time and cost associated with the transfer of physical certificates. Thirdly, it provides easy access to information and updates about

holdings, allowing investors to make informed decisions about their investments.

However, there are also limitations to the use of Demat accounts. For example, the system is dependent on technology and may be vulnerable to cyber threats such as hacking or malware attacks. Furthermore, the use of Demat accounts may not be accessible to all investors, particularly those who do not have access to technology or who are not familiar with the system.

Legal Framework for Demat Account

The operation of Demat accounts is governed by various laws and regulations in India. The Securities and Exchange Board of India (SEBI), the regulator for securities markets in India, has issued several regulations and guidelines related to the operation of Demat accounts.

For instance, the “SEBI (Depositories and Participants) Regulations, 2018”, provide for the registration and regulation of depositories and depository participants. The regulations set out the eligibility criteria for registration, the obligations of depositories and depository participants, and the requirements for the operation of Demat accounts.

Additionally, the SEBI has also issued guidelines for the operation of Demat accounts by foreign portfolio investors (FPIs) in India. The guidelines provide for the registration and operational requirements for FPIs holding securities in Demat accounts.

Furthermore, the Companies Act, 2013, also provides for the dematerialization of shares of public companies. Under the Act, every public company must issue securities only in dematerialized form and is required to enter into an agreement with a depository for this purpose.

The legal framework for Demat accounts in India is robust, and the system is subject to various regulations and guidelines issued by SEBI and other regulatory bodies. These regulations ensure that the operation of Demat

accounts is transparent, efficient, and safe for investors.

Process or procedure of opening a Demat account

The process of opening a demat account involves the following steps:

1. Choose a Depository Participant (DP): The first step is to choose a DP with whom you want to open your demat account. You can choose from any of the registered DPs in India, such as banks, brokers, or financial institutions.
2. Fill out the account opening form: Once you have chosen your DP, you need to fill out the account opening form with your personal and contact details, along with other necessary information such as bank details and signature.
3. Submit the required documents: Along with the account opening form, you need to submit a set of documents such as identity proof, address proof, and PAN card. The exact documents required may vary depending on the DP.
4. Verification of documents: The DP will verify the documents submitted by you, and may conduct an in-person verification or video KYC (Know Your Customer) as required by regulatory norms.
5. Agreement and other formalities: Once the documents are verified, you need to sign an agreement with the DP, which outlines the terms and conditions of the demat account. You may also be required to pay the account opening charges and other fees at this stage.
6. Issuance of demat account details: After completing the formalities and verification process, the DP will issue you a unique demat account number (DP ID), which you can use to access your

demat account and conduct transactions.

Once your demat account is opened, you can start using it to hold securities, trade in stocks and other securities, and participate in corporate actions such as dividends and bonus issues.

It is important to note that different DPs may have different procedures and requirements for opening a demat account, and it is advisable to check with the specific DP for details on their process.

Insider Trading: Concept, Nature, and Legal Framework

Definition and Nature of Insider Trading

Insider trading refers to the practice of buying or selling securities by a person who has access to material non-public information about the company or security. This practice is considered illegal as it creates an unfair advantage for the person trading based on information that is not available to the general public.

Insider trading can take various forms, including buying or selling securities, tipping off others to buy or sell securities, or providing material non-public information to others for the purpose of trading securities. The practice of insider trading is considered unethical as it undermines the integrity and fairness of the securities markets.

Legal Framework for Insider Trading

The Securities and Exchange Board of India (SEBI) is the regulator for securities markets in India and is responsible for the prevention of insider trading. The SEBI (Prohibition of Insider Trading) Regulations, 2015, provides a legal framework for the prevention of insider trading.

The regulations define insider trading and prohibit any person from buying, selling, or dealing in securities while in possession of unpublished price-sensitive information. The regulations also prohibit any person from communicating or providing unpublished

price-sensitive information to others, which may result in the trading of securities.

The regulations require listed companies to establish a code of conduct for prevention of insider trading, which sets out the norms and procedures to be followed by the company, its directors, officers, and employees for the prevention of insider trading. The code also requires the establishment of an insider trading committee, which is responsible for monitoring and enforcing compliance with the code.

Penalties for Insider Trading

The SEBI (Prohibition of Insider Trading) Regulations, 2015, provide for strict penalties for insider trading. Any person found guilty of insider trading may be subject to a fine of up to Rs. 25 crore, or three times the amount of profits made from insider trading, whichever is higher. In addition to the fine, the person may also face imprisonment for up to 10 years.

The regulations also provide for disgorgement of profits made from insider trading. Disgorgement refers to the return of profits made from illegal trading to the affected parties. The SEBI may also initiate civil proceedings for recovery of damages caused by insider trading.

In conclusion, the legal framework for insider trading in India is robust, and the practice is strictly prohibited under the SEBI (Prohibition of Insider Trading) Regulations, 2015. The penalties for insider trading are severe and aim to deter the practice and maintain the integrity and fairness of the securities markets.

Demat Account as a Tool for Preventing Insider Trading

Demat Account: Concept and Features

A Demat Account, short for dematerialized account, is an electronic account that holds an individual's securities such as shares, bonds, and other financial instruments. It allows investors to hold their securities in an electronic form, eliminating the need for physical

certificates. The Depositories Act, 1996, governs the operation and regulation of dematerialization of securities.

The key features of a Demat Account include safekeeping of securities, ease of transfer of securities, reduction in transaction costs, and prevention of forgery, theft, and loss of physical certificates.

Demat Account as a Tool for Preventing Insider Trading

The Securities and Exchange Board of India (SEBI) has recognized the importance of Demat Accounts in preventing insider trading. The SEBI (Prohibition of Insider Trading) Regulations, 2015, requires listed companies to monitor and maintain a record of all trading accounts, including Demat Accounts, that are held by their directors, officers, employees, and their immediate relatives.

This requirement helps in the prevention of insider trading by ensuring that all trades made by the company's insiders are monitored and recorded, making it easier to detect any illegal trades. The SEBI has also mandated the reporting of all insider trades by listed companies to the stock exchanges within two working days.

Moreover, Demat Accounts have also enabled the implementation of the concept of insider trading "blackout periods." Blackout periods refer to a specific period when insiders of a company are prohibited from trading in the company's securities. The SEBI (Prohibition of Insider Trading) Regulations, 2015, mandates that listed companies shall notify all persons who are subject to the code of conduct for prevention of insider trading of the trading window, which shall be closed from the end of the quarter until 48 hours after the declaration of financial results.

During this period, insiders are not permitted to trade in the securities of the company, and the Demat Accounts of the insiders can be frozen to prevent any illegal trades.

Advantages of Demat Accounts in Preventing Insider Trading

The use of Demat Accounts in preventing insider trading has several advantages. Firstly, Demat Accounts enable the monitoring of all trades made by the company's insiders, making it easier to detect any illegal trades. Secondly, the use of Demat Accounts has reduced the incidence of fraud, theft, and forgery of physical securities, thereby increasing the transparency and integrity of the securities markets. Lastly, Demat Accounts have also facilitated the implementation of insider trading "blackout periods," which has further strengthened the regulatory framework for preventing insider trading.

In conclusion, Demat Accounts have emerged as a powerful tool in preventing insider trading in India. The SEBI has recognized the importance of Demat Accounts in preventing insider trading and has mandated the monitoring and reporting of all trades made by the company's insiders. The use of Demat Accounts has several advantages, including increased transparency, reduced incidence of fraud and forgery, and the facilitation of insider trading "blackout periods."

Legal Implications of Using Demat Account to Prevent Insider Trading

SEBI Regulations and Demat Accounts

The SEBI (Prohibition of Insider Trading) Regulations, 2015, requires listed companies to maintain a record of all trading accounts, including Demat Accounts, that are held by their directors, officers, employees, and their immediate relatives. The regulations also mandate the reporting of all insider trades by listed companies to the stock exchanges within two working days. These regulations have enabled the use of Demat Accounts as a powerful tool in preventing insider trading.

Liability of Brokers and Depository Participants

Brokers and depository participants have a critical role to play in ensuring the integrity of the securities markets. The SEBI (Stock Brokers

and Sub-Brokers) Regulations, 1992, and the SEBI (Depositories and Participants) Regulations, 2018, govern the operation and regulation of brokers and depository participants.

Under these regulations, brokers and depository participants are required to adhere to strict compliance and due diligence standards to ensure the integrity of the securities markets. Any failure on the part of brokers or depository participants to comply with these regulations can result in severe penalties and legal liabilities.

Civil and Criminal Liabilities for Insider Trading

Insider trading is a serious offense that carries both civil and criminal liabilities. The Securities and Exchange Board of India Act, 1992, and the SEBI (Prohibition of Insider Trading) Regulations, 2015, provide for civil and criminal liabilities for insider trading.

Civil liabilities for insider trading can include disgorgement of profits, fines, and debarment from trading in the securities markets. Criminal liabilities can include imprisonment, fines, and penalties.

In conclusion, the use of Demat Accounts in preventing insider trading has significant legal implications. The SEBI regulations require listed companies to maintain a record of all trading accounts, including Demat Accounts, and report all insider trades to the stock exchanges. Brokers and depository participants are also required to adhere to strict compliance and due diligence standards to ensure the integrity of the securities markets.

Case Studies: Demat Account and Insider Trading

"Satyam Scandal"

The Satyam scandal, one of the biggest corporate frauds in India, highlighted the importance of Demat Accounts in preventing insider trading. In this case, the company's chairman and his associates colluded to inflate

the company's revenues and profits, leading to a massive accounting fraud.

The use of Demat Accounts played a crucial role in exposing the fraud. The Securities and Exchange Board of India (SEBI) conducted an investigation and found that the chairman and his associates had used multiple Demat Accounts to manipulate the company's share prices and engage in insider trading.

The SEBI subsequently debarred the chairman and his associates from trading in the securities markets and imposed significant fines and penalties on them. The case highlights the importance of Demat Accounts in preventing insider trading and the role of regulators in enforcing compliance with the regulations.

“Reliance Petroleum Insider Trading Case”

The Reliance Petroleum insider trading case involved the use of insider information by a group of individuals to make illegal profits. In this case, the individuals had acquired shares of Reliance Petroleum based on insider information, which they had received from a Reliance Industries employee.

The SEBI conducted an investigation and found that the individuals had used multiple Demat Accounts to execute their trades and conceal their identity. The SEBI subsequently debarred the individuals from trading in the securities markets and imposed significant fines and penalties on them.

The case highlights the importance of Demat Accounts in preventing insider trading and the need for strict enforcement of the regulations to ensure the integrity of the securities markets.

“The Ranbaxy Case”

In 2013, Ranbaxy Laboratories was fined \$500 million by the US Department of Justice for engaging in fraudulent practices, including insider trading. The company's executives had allegedly engaged in insider trading by selling shares ahead of negative news about the company's drug approvals. The use of Demat

Accounts helped in tracing the flow of funds and securities, and in identifying the beneficiaries of the insider trading. This case demonstrates the importance of using Demat Accounts to prevent and deter insider trading, not just in India, but also in other jurisdictions where Indian companies operate.

In conclusion, the Satyam scandal and the Reliance Petroleum insider trading case highlight the crucial role of Demat Accounts in preventing insider trading. The use of Demat Accounts played a crucial role in exposing the frauds and enabling regulators to take swift action against the violators.

The SEBI regulations require listed companies to maintain a record of all trading accounts, including Demat Accounts, and report all insider trades to the stock exchanges. Brokers and depository participants are also required to adhere to strict compliance and due diligence standards to ensure the integrity of the securities markets.

The cases demonstrate the need for strict enforcement of the regulations to prevent insider trading and protect the interests of investors. The use of Demat Accounts in preventing insider trading has increased the transparency and integrity of the securities markets, thereby promoting investor confidence and protecting the interests of investors.

Recommendations and Conclusion

Recommendations

Based on the analysis of the legal framework and case studies, the following recommendations are suggested for enhancing the effectiveness of Demat Accounts in preventing insider trading:

1. Strengthen the regulatory framework: The regulatory framework should be strengthened by imposing stricter penalties and fines for violations of insider trading regulations. The Securities and Exchange Board of India (SEBI) should also conduct regular inspections

and audits of listed companies, brokers, and depository participants to ensure compliance with the regulations.

2. Educate market participants: Market participants should be educated about the importance of compliance with insider trading regulations and the role of Demat Accounts in preventing insider trading. The SEBI should conduct awareness campaigns and training programs to educate investors, brokers, and depository participants about the regulations and their obligations.
3. Enhance surveillance and monitoring: The SEBI should enhance its surveillance and monitoring capabilities to detect and prevent insider trading. This can be achieved through the use of advanced technologies, such as artificial intelligence and machine learning, to identify suspicious trading patterns and anomalies.
4. Encourage voluntary disclosures: Listed companies should be encouraged to make voluntary disclosures of insider trading transactions to enhance transparency and investor confidence. The SEBI should also consider providing incentives for companies that make voluntary disclosures.

Conclusion

In conclusion, Demat Accounts have emerged as a crucial tool in preventing insider trading in India. The legal framework for insider trading has evolved over the years, with the SEBI introducing stringent regulations and guidelines to promote transparency and integrity in the securities markets.

The use of Demat Accounts has increased the transparency and efficiency of the securities markets, making it easier for regulators to detect and prevent insider trading. However, there are still challenges that need to be

addressed to enhance the effectiveness of Demat Accounts in preventing insider trading.

The recommendations suggested above can help in strengthening the regulatory framework and promoting compliance with insider trading regulations. This can enhance the integrity and transparency of the securities markets and promote investor confidence, thereby contributing to the overall development of the Indian economy.

Therefore, it is imperative that market participants, regulators, and policymakers work together to enhance the effectiveness of Demat Accounts in preventing insider trading and ensuring the integrity of the securities markets.

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