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SEBI INSIDER TRADING REGULATIONS AND RECENT AMENDMENTS THERETO - OVERVIEW

4th February, 2019

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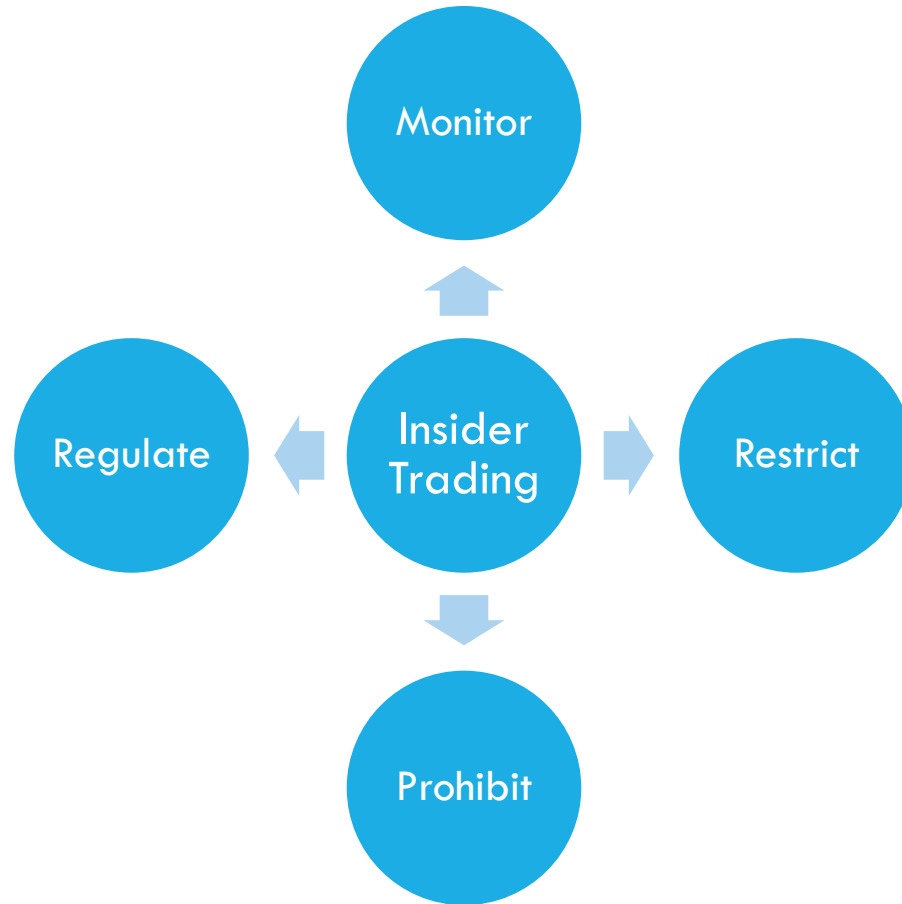
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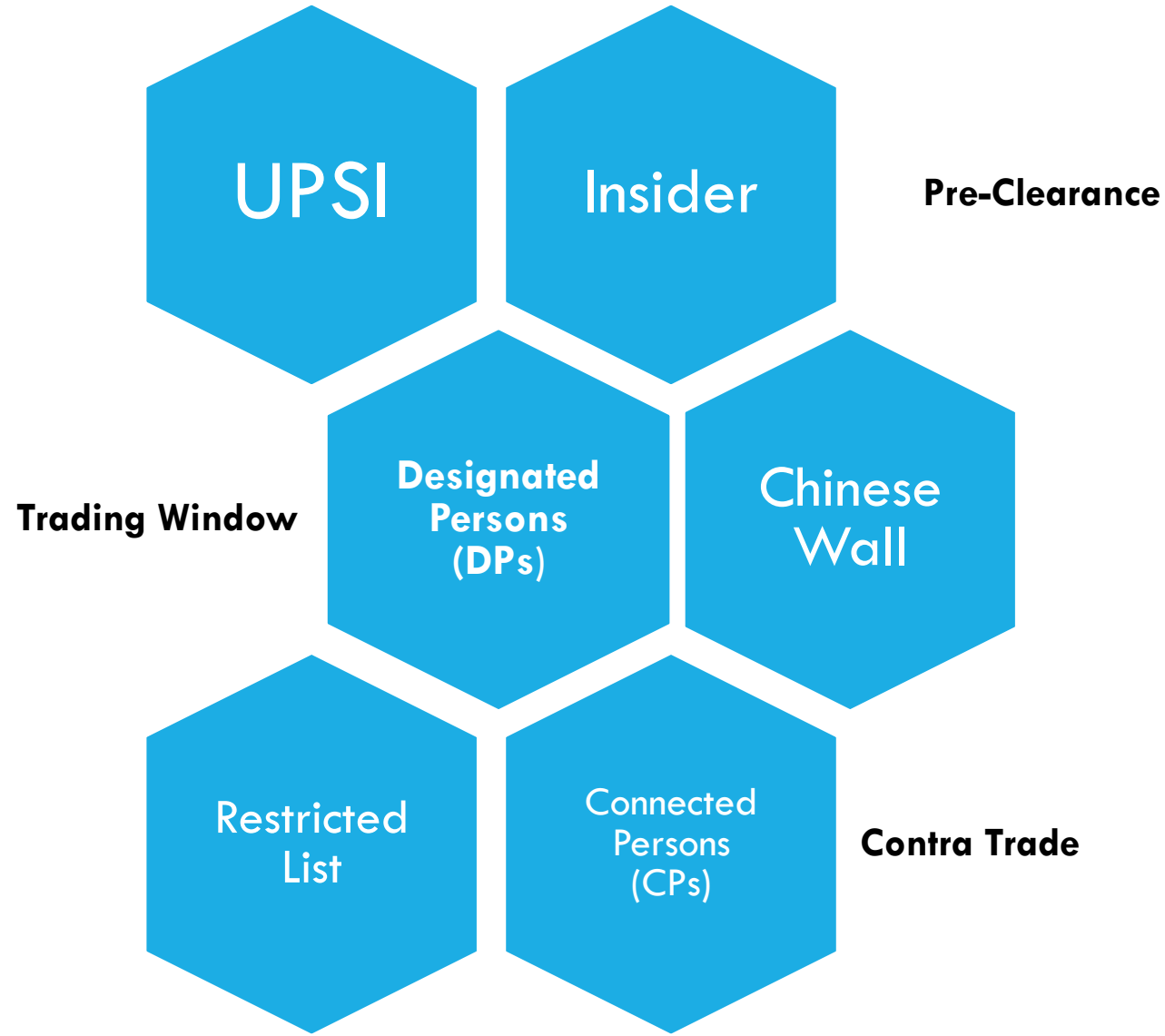
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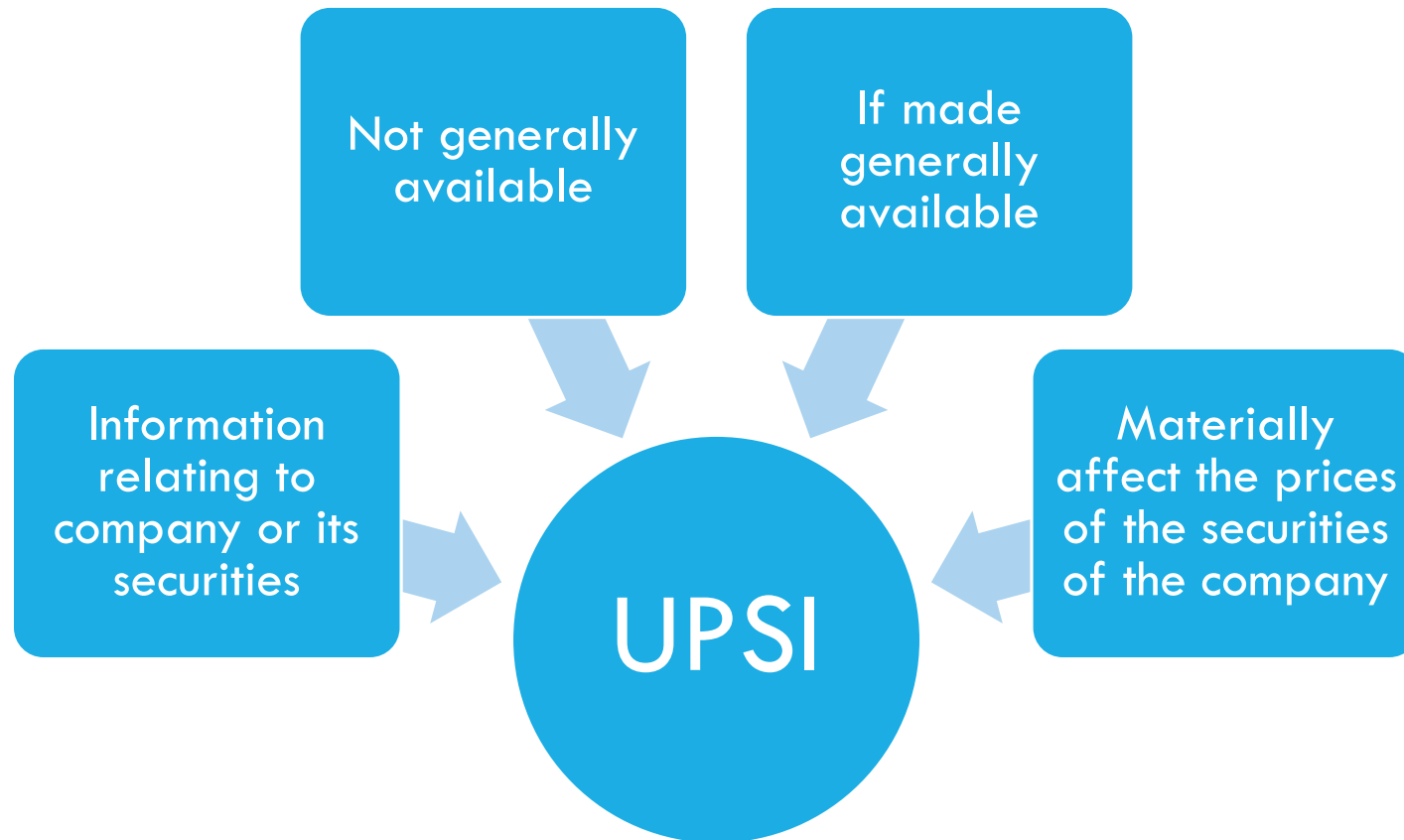
INTENT OF INSIDER TRADING REGULATIONS



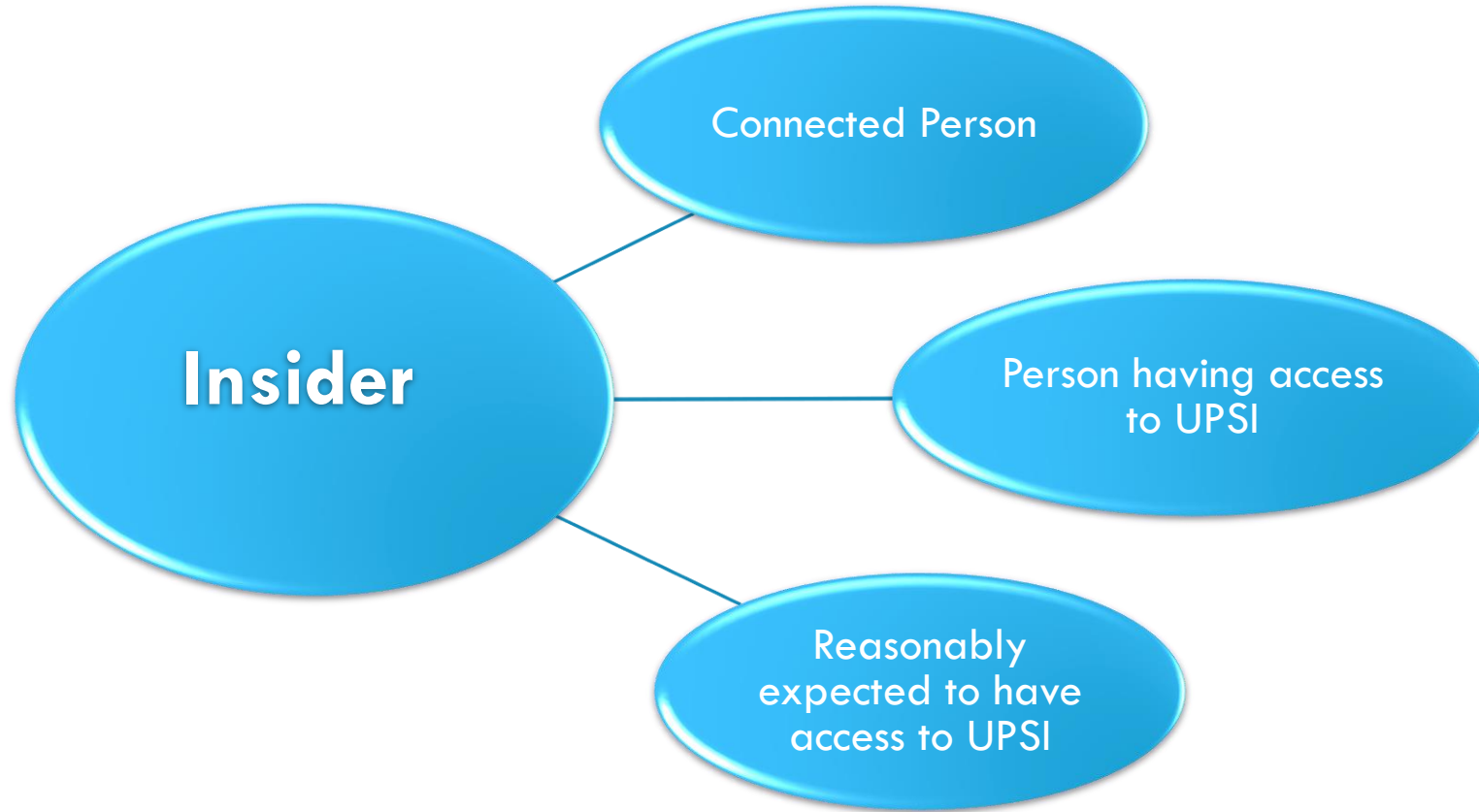
CRUCIAL TERMS UNDER PIT



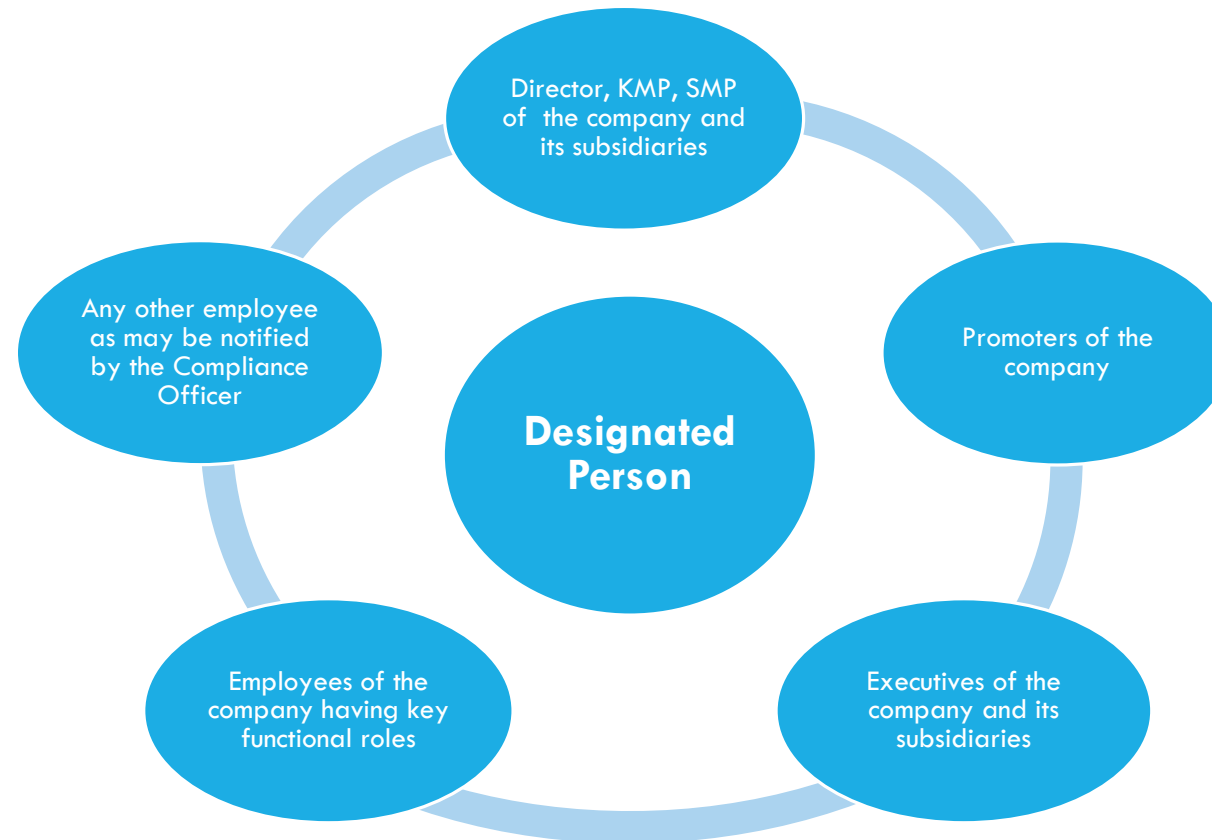
UNDERSTANDING THE CRUCIAL TERMS (1/7)



UNDERSTANDING THE CRUCIAL TERMS (2/7)



UNDERSTANDING THE CRUCIAL TERMS (3/7)

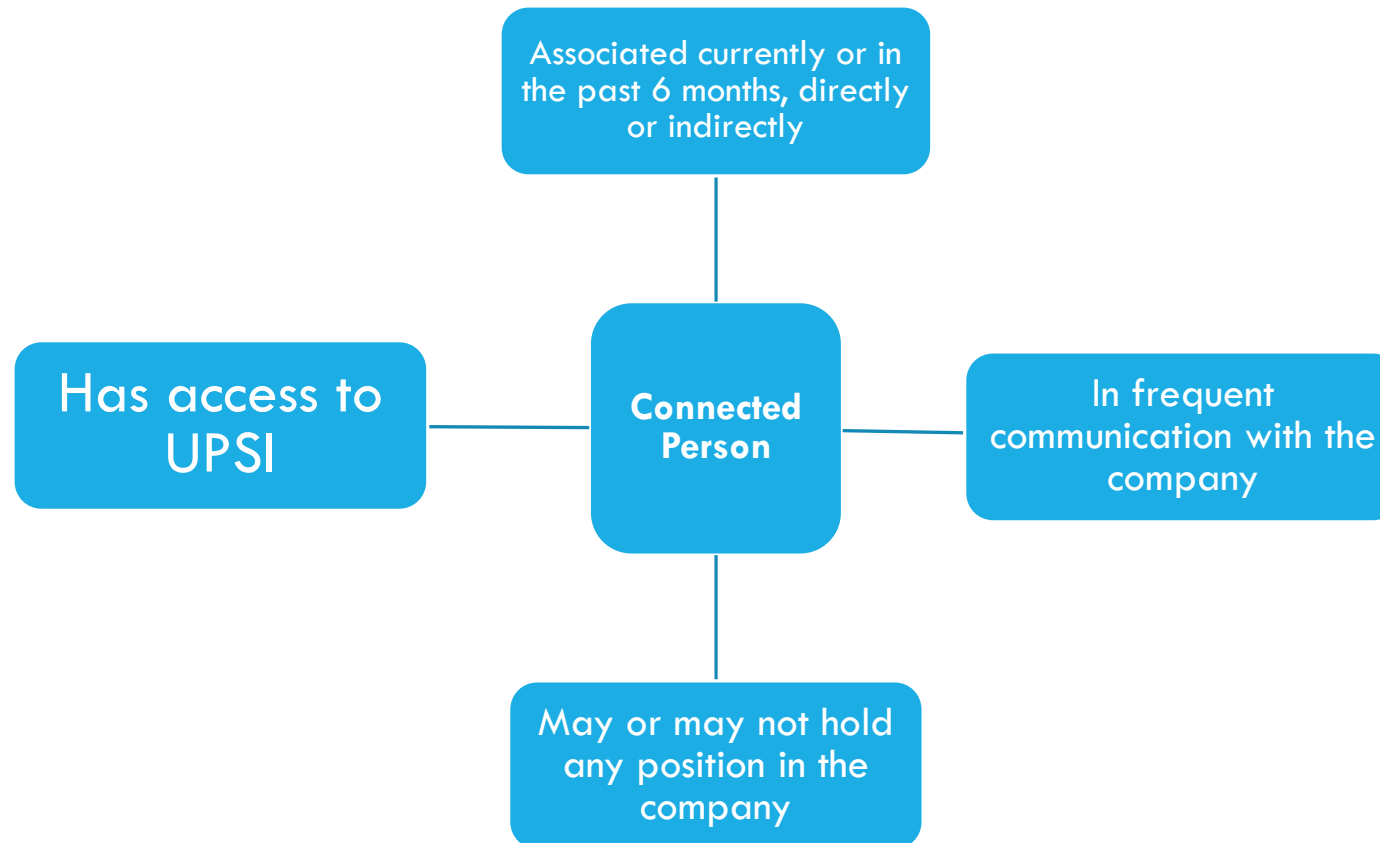


UNDERSTANDING THE CRUCIAL TERMS (4/7)

Chinese Wall

- Having such inter- departmental adequate safeguards
- To restrict the flow of UPSI from one dept. to another
- Except for legitimate business purpose

UNDERSTANDING THE CRUCIAL TERMS (5/7)



UNDERSTANDING THE CRUCIAL TERMS (6/7)

Restricted List

- List of the names of such other listed companies
- Whose UPSI is available with the DPs of the company
- In course of its regular business dealings

TRADING WINDOW, PRE-CLEARANCE AND CONTRA TRADE (7/7)

Trading Window

- Virtual window for regulating, monitoring and restricting trade by Insiders.
- DPs are not allowed to trade when trading window is closed.

Pre-clearance

- When trading window is open, DPs may trade in the securities of the company on obtaining pre-clearance from the Compliance officer
- Such pre-approved trade to be entered into within 7 trading days of such approval

Contra Trade

- Once a DP enters into trade in the securities of the company;
- No opposite transaction is allowed for a period of six months of the last trade done

SEBI (PIT) (AMENDMENT) REGULATIONS, 2018

- EFFECTIVE FROM 1ST APRIL, 2019

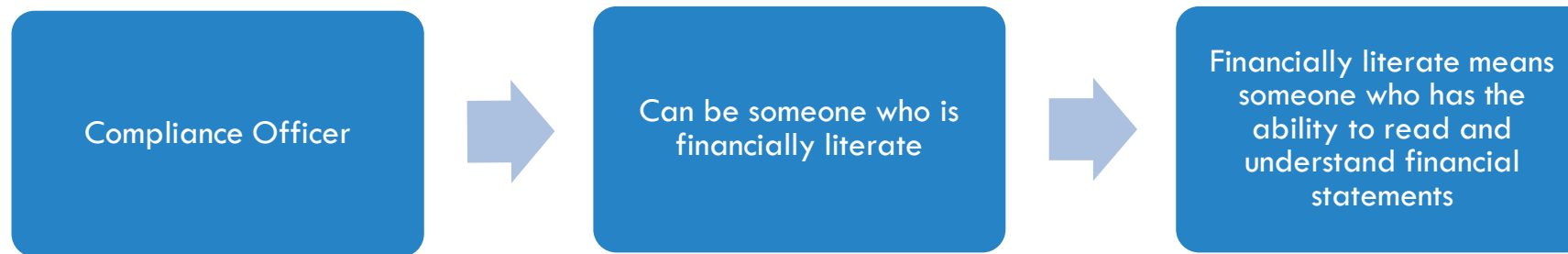
BACKGROUND

Committee on Fair Market Conduct

- SEBI constituted a Committee on Fair Market Conduct on August, 2017*
- Chaired by T.K.Vishwanathan*
- Constituted to review existing legal framework of dealing market abuse and enforcement mechanisms undertaken by SEBI in this regard.*
- The amendments introduced in SEBI (PIT) (Amendment) Regulations, 2018 was suggested by the Committee in their report dated August, 2018.*
- The amendments are effective from 1st April, 2019*

Amendments(1/9)

A) Insertion of new definition of financially literate



B) Deletion of material events from definition of UPSI

Material events as per SEBI (LODR) Regulations, 2015 were deemed to be considered UPSI. However, the same has specifically deleted considering testing of materiality should be based on price sensitivity as per PIT and should be limited as to whether the same is material as per LODR or not.

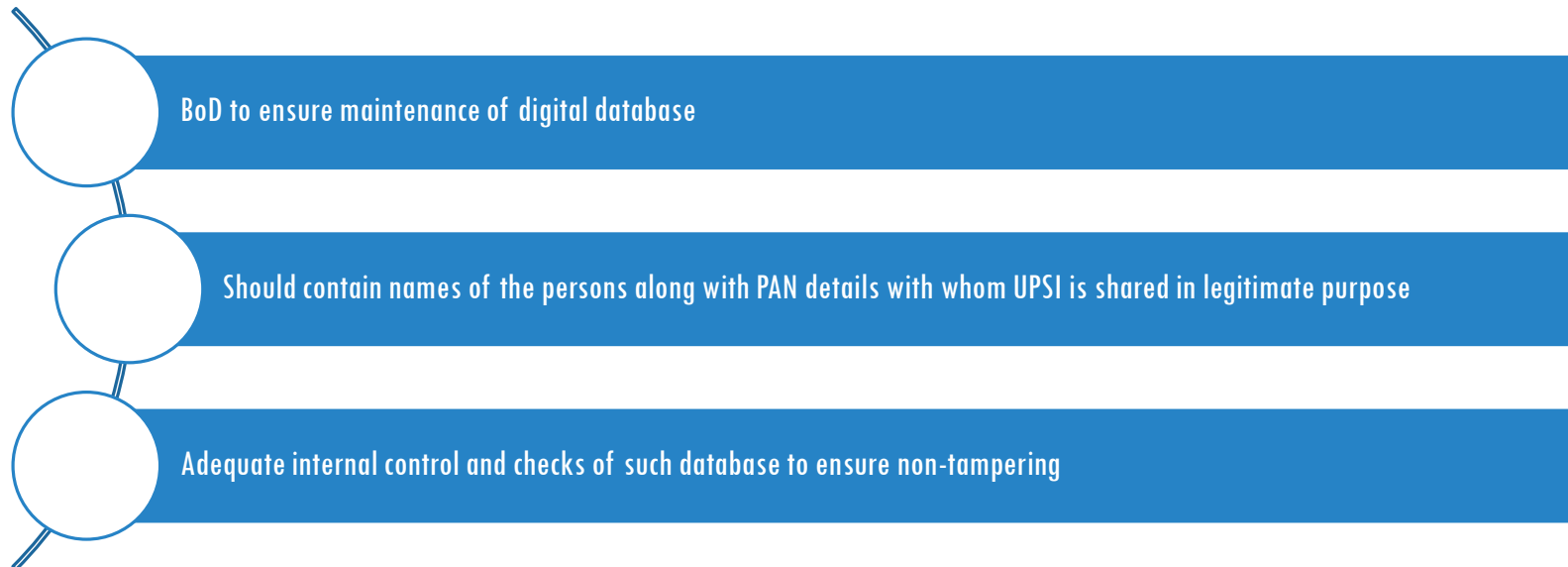
Hence, all material events as per LODR need not be UPSI.

AMENDMENTS(2/9)

c) Introduction of new policy on LEGITIMATE PURPOSE for the purpose of sharing of UPSI

- Shall form part of Codes of Fair Disclosures and Conduct
- The term legitimate purpose has been defined to include sharing of UPSI in ordinary course of business with partners, customers, suppliers, collaborators etc.
- Recipient of UPSI pursuant to legitimate purpose shall be considered INSIDER
- Due notice to be given for maintaining confidentiality to such insider

d) Structured Digital Database for sharing of UPSI for legitimate purpose



AMENDMENTS(3/9)

e) Exceptions to prohibition of sharing of UPSI

a) When open offer under takeover code is involved and Board decides sharing of info is in the best interest of the Company

b) Board decides sharing of info is in the best interest of the Company



Information is generally made available 2 trading days prior to proposed transaction

f) Continual Disclosure

Only Designated Persons will have to disclose their trading details. The erstwhile provisions required disclosure of details by all employees, however, it is now limited to only designated persons.

AMENDMENTS(4/9)

g) Trading Plan

Trade executed under trading plan shall require:

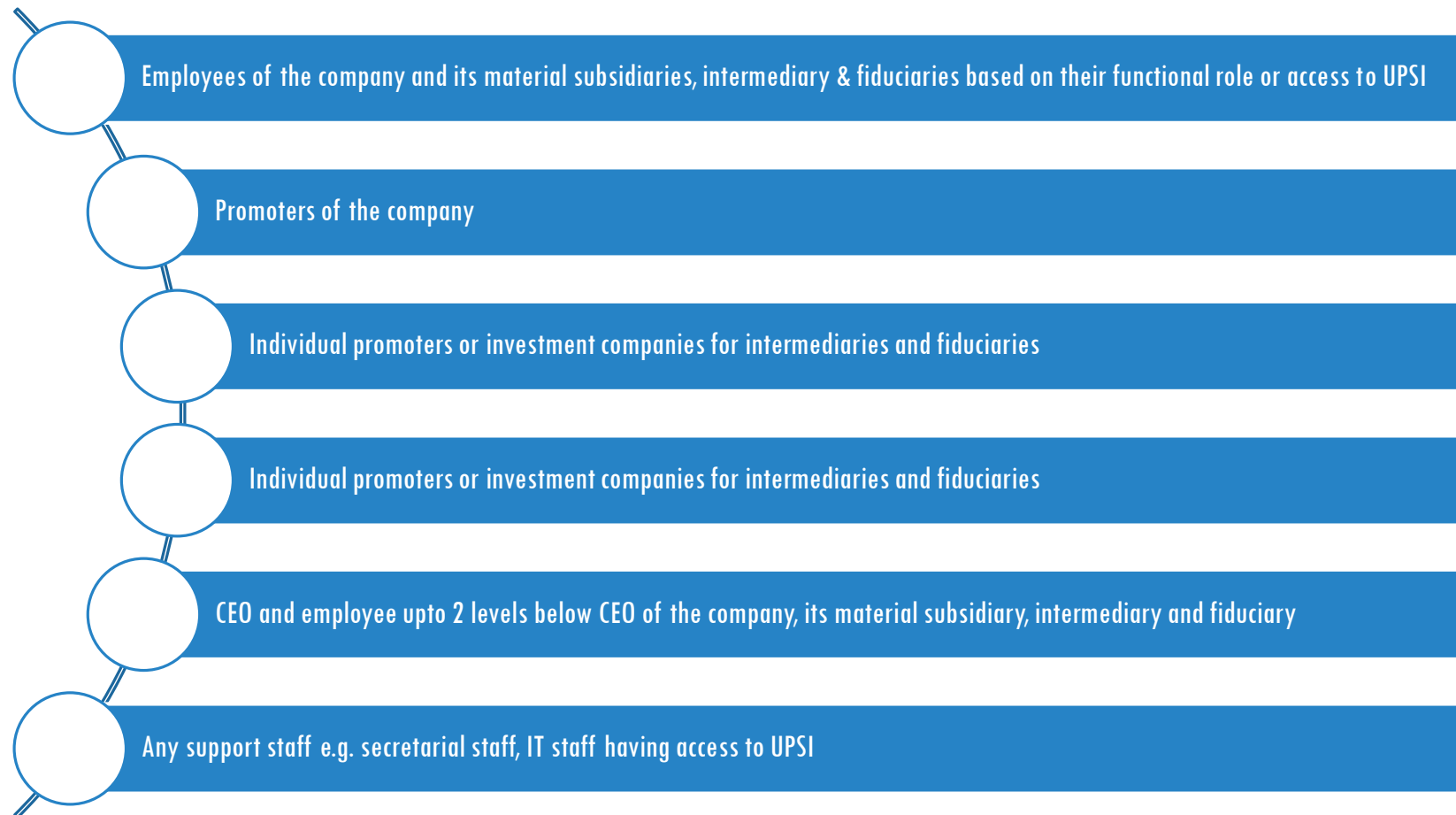
- No pre-clearance
- Trading window norms shall not apply
- Contra trade restrictions shall not apply

h) Code of Conduct

- Code to apply to DPs and their immediate relatives
 - Earlier applicable to employees and CPs
- Intermediaries & fiduciaries to frame the code
 - New schedule C introduced

AMENDMENTS(5/9)

i) Amended list of deemed DPs



AMENDMENTS-6/9

j) Trading while in possession of UPSI by insider

Trading while in possession of UPSI deemed to be motivated by UPSI always. The exception to the deeming fiction-

a)inter se off market transaction between insiders

Note: Company to notify such trading within 2 trading days from receipt of disclosure or becoming aware of the trading and such trading should not be related to any proposed takeover

b)transaction under block deal mechanism between persons having same UPSI

c)Where there is any statutory and regulatory obligation to carry out such transaction

d) Exercise of stock option where exercise price is pre determined

THE AMENDMENTS-7/9

Reg. 9A- Institutional Mechanism for Prevention of Insider trading- New insertion

- **CEO/ MD/ equivalent person to put in place a system of internal control and will include-**
 - Identification of employees having access to UPSI as DP
 - Identification of all UPSI and maintenance of confidentiality
 - Placing an adequate system for communication/ procurement of UPSI
 - Maintenance of list of recipients of UPSI, requiring signing of confidentiality agreements by them and notice
 - Compliance of all requirements of the Regulation
 - Periodic process review to evaluate effectiveness of such controls
- **Board to ensure that MD/ CEO ensures compliances related to the framing of the Code**
 - The manner is not provided
 - A certificate may be obtained
- **Audit committee to**
 - review compliance of the provisions atleast once in an FY
 - Verify internal control system as operating and effective
- **Board approved written policy and procedure for inquiry of leak/ suspected leak of UPSI**
 - Board to be intimated promptly of such leaks, inquiries and results
 - Framing of whistle blower policy to report instances of leak of UPSI by employees
 - Intermediaries and fiduciaries to assist in case of initiation of inquiry

THE AMENDMENTS-8/9

Schedule B & C- Minimum standard for Code of conduct

- Reporting by the compliance officer to chairman of audit committee/ board atleast once in a year
- Trading window period can be made applicable from the end of every quarter till 48 hours after the declaration of financial results
- The gap between audit committee and Board meeting held for approval of financials should as far as possible be narrow to avoid leakage of UPSI
- Omission of the maintenance of restricted list
 - Intermediaries and fiduciaries will require to have that list
- No contra trade restriction for exercise of esop
- DPs to disclose names and PAN/ equivalent identifier of the following-
 - Immediate relatives
 - Persons with whom he shares material financial relationship
 - Means a transaction of a loan or gift during imm. preceding 12 months equivalent to at least 25% of the payer's annual income
 - Shall exclude arms' length transaction
 - How will gift be determined as arms' length is not clear
 - Phone, mobile, cell numbers of the above
 - Names of the educational institutions of graduation and past employers of DPs on one time basis.
- Framing of process how and when people are brought inside on sensitive transactions

SEBI(PIT)(AMENDMENT)REGULATIONS, 2019 – 21ST JANUARY, 2019

- The amendment regulations introduced the term promoter group for the first time.
 - The reference of term promoter group shall be taken from SEBI (ICDR) Regulations.
 - Initial and continual disclosures about security holdings in the Company as per Regulation 7 shall be required by promoter group as well.
 - Clause (a) of Reg. 7(1) requires the disclosure to be made within 30 days of the coming into effect of the amendments i.e. on or before 20th February, 2019.

RESPONSIBILITIES OF BOARD AND COMMITTEES

- a) Frame a policy for determination of legitimate
- b) To maintain a structured digital database of recipient of UPSI on legitimate purpose
- c) Adequate internal controls and checks of database to be ensured
- d) To specify DPs in consultation with compliance officer
- e) To ensure adequate and effective internal control system in place
- f) To frame policies and procedures for inquiry of leak/ suspected leak of UPSI
- g) To ensure having the process for how and when people are brought 'inside' on sensitive transactions

BOARD OF DIRECTORS

- a) Review of compliance with the provisions of the regulations at least once in a financial year
- b) Verify that the systems for internal control are adequate and are operating effectively

AUDIT COMMITTEE

- a) Framing of code of conduct to regulate, monitor and report of trading by DPs
- b) Identify DPs and obtaining relevant disclosures from them
- c) Maintenance of restricted list
- d) Ensuring having the process for how and when people are brought 'inside' on sensitive transactions
- e) Board to ensure the institutional mechanism of internal control is in place

INTERMEDIARIES & FIDUCIARIES

ACTIONABLES FOR COMPANIES(1/2)

Sl. No.	To do list
1.	Disclosures: a)Initial Disclosure under Reg. 7(1)(a) within 30 days of January 21, 2019 i.e. within February 20, 2019 b)Initial Disclosure under Reg. 7(1)(b) within 7 days of becoming member of promoter group c) Continual Disclosure under Reg. 7(2)(a) within 2 trading days if trading in a quarter exceeds Rs. 10 lakhs.
2.	Frame a policy for determination of legitimate purposes for sharing of UPSI
3.	To amend the Code of Conduct by identifying the DPs
4.	To develop an institutional mechanism for prevention of insider trading for effective internal control
5.	To frame a policy for inquiry in case of leak of UPSI or suspected leak of UPSI

ACTIONABLES FOR COMPANIES (2/2)

Sl. No.	To do list
6.	To amend whistle blower policy to insert the scope of insider trading as well
7.	Framing and maintaining grey/restricted list for approving or rejecting applications for pre-clearance of trades

PENALTY IN CASE OF CONTRAVENTION

SEBI Act,
1992

- **Section 15G** lays down the **penal provisions for insider trading:**
- **Rs. 25 crores; or**
- **3 times the profits made out of insider trading;**
- **-whichever is higher.**

SEBI Act,
1992

- **Section 24** lays down penal provisions for **contravention of SEBI Act or any Rules and Regulations, thereof:**
- **Imprisonment upto 10 years or with fine upto Rs. 25 crores or both;**
- **Failure to pay penalty** will attract
- **Imprisonment upto 10 years or with fine upto Rs. 25 crores or both.**

READ OUR RELATED RESOURCES HERE

- SEBI rationalises Insider Trading Regulations- [click here](#)
- Actionables under SEBI(PIT) Amendment Regulations – [click here](#)
- FAQs on Prohibition of Insider Trading Regulations – [click here](#)
- SEBI's recent Informal Guidance under PIT Regulations – [click here](#)

ABOUT US



Vinod Kothari & Co.,

- Based in Kolkata, Mumbai, Delhi

We are a team of consultants, advisors & qualified professionals having over 30 years of practice.

Our Organization's Credo:

Focus on capabilities; opportunities shall follow



THANK YOU