FAQs on
SEBI (Prohibition of Insider Trading)
Regulations, 2015
Updated as on: 30-11-2019

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International Scenario

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Annexure – I
Insider trading is nothing but a ‘white collar’ crime, which also results in conflict of interests. Concerns with insider trading arises as there is a likely damage to public confidence since there is clear intention to defraud the public when those with inside knowledge use that knowledge to make profit in their dealings of securities. This is nothing but unfair use of the insider information for making private gains.

Insider trading is a crime prevalent across the globe and it exists almost dating back from 19th Century. Various events led to promulgation of various securities law in all parts of the world. Reaping of unlawful gains by insiders further led to changes in securities law and also introduction of laws or provisions on prohibition of insider trading.

In India, the first legislation to regulate stock exchange was Bombay Securities Contract Act, 1925. Thereafter various committees were formed to amend the legislation so as to assess the shortcomings. The present Securities (Contract) Regulation Act, 1934 is a result of recommendations of Goral Committee. However, the said Regulations did not contain any provision for curbing insider trading. Once the instances of insider trading was felt, it was then that the erstwhile regulations i.e. SEBI (Prohibition of Insider Trading) Regulations, 1992 (1992 Regulations) were recommended after taking into consideration the provisions as contained in the US and UK laws. Who will be an insider and what information should be regarded as price sensitive amongst other provisions was laid down by way of the said regulations.

The 1992 Regulations had been replaced by SEBI (Prohibition of Insider Trading) Regulations, 2015 (the “Regulations”). The Regulations contained several new features, the scope of the Regulations was widened and the net of the provisions was casted too wider to get within its ambit almost every person who can be deemed to be an insider so as to curb this unfair trade practice. The Regulations have been further amended in the year 2018 and 2019 vide the following:

a. SEBI (PIT) (Amendment) Regulations, 2018 (w.e.f 1st April, 2019);  
b. SEBI (PIT) (Amendment) Regulations, 2019 (w.e.f 21st January, 2019);  
c. SEBI (PIT) (Second Amendment) Regulations, 2019 (w.e.f 25th July, 2019);  
d. SEBI (PIT) (Third Amendment) Regulations, 2019 (w.e.f 26th December, 2019).

Since the existing set of FAQs was based on the initial set of Regulations and as mentioned above, the same has been amended on various occasions now, a review of the same was needed. Keeping this in mind, below we discuss and delve into some important issues connected with the Regulations so amended by way of the FAQs.
### Glossary

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Scope of applicability

1. **What is meant by insider trading?**

   Insider Trading means trading\(^1\) by an Insider at the time of having asymmetrical access of unpublished information which once generally available, will impact the price of securities.

   By indulging in insider trading, the insider is able to reap profits or take position in securities before the information is uniformly disseminated.

2. **What are the elements of insider trading?**

   In order to determine any transaction to be insider trading, there must exist the following elements:
   a. the possession of information (a price sensitive information) by an insider;
   b. before everybody else has the same (i.e. before becoming generally available);
   c. regarding the changes in the economic condition of companies and more particularly with respect to dividends, financial results, issue of bonus shares, or other impending conclusion of a favorable contract;
   d. making a gain by trading in securities pursuant to having the above unpublished information.

3. **Who regulates insider trading?**

   SEBI regulates the same. Section 11 (2) (g) of SEBI Act, 1992 specifies prohibiting insider trading in securities as a function of SEBI. Further, SEBI has been empowered under Section 12A read with Section 30 of SEBI Act, 1992 to make regulations for prohibition of insider trading.

   By virtue of the aforesaid power, SEBI issued the Regulations repealing the 1992 Regulations.

4. **What is the effective date of the Regulations?**

   The Regulations had come into force on the one hundred and twentieth day from the date of its publication in the Official Gazette. The Regulations were published on 15\(^{th}\) January, 2015 in the Official Gazette and therefore, became effective on and from 15\(^{th}\) May, 2015.

\(^{1}\)means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly
Thereafter, SEBI has notified certain amendments in the Regulations vide the following:

a. SEBI (PIT) (Amendment) Regulations, 2018 (w.e.f 1st April, 2019)²;
b. SEBI (PIT) (Amendment) Regulations, 2019 (w.e.f 21st January, 2019)³;
c. SEBI (PIT) (Second Amendment) Regulations, 2019 (w.e.f 25th July, 2019)⁴;
d. SEBI (PIT) (Third Amendment) Regulations, 2019 (w.e.f 26th December, 2019)⁵.

The updated text of the Regulations (till September 17, 2019) can be viewed here.

### Meaning of certain terms used in the Regulations

#### UPSI & Generally available information

5. **What is the meaning of Unpublished Price Sensitive Information or UPSI?**

The definition provided in the Regulations is an inclusive definition and includes certain information as below:

- financial results;
- dividends;
- change in capital structure;
- mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- changes in key managerial personnel.

UPSI is such kind of information relating to the company or its securities which are yet to be disclosed in public or yet to be made generally available and which has the likelihood to affect the price of the securities materially, if it is made generally available. Therefore, UPSI is a broad concept to cover various information apart from the above, based on their capability to fluctuate the price of securities materially.

6. **What is the meaning of the phrase ‘generally available information’?**

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The term “generally available information” has been introduced for the first time under the Regulations which refers to such information which is available to anyone and everyone on a non-discriminatory basis. Therefore, information which is available on the website of the company or in the newspaper or disclosed to the stock exchanges shall be treated as generally available information.

Section 58 of the Chief Justice Act, 1993 of the United Kingdom defines “made public” with similar provisions.

**Connected Person**

7. **Who are regarded as CPs? What is the key thread/element of a “connected person”?**

Any person who is or has during the six months prior to the concerned act been associated with the company, directly or indirectly, in any capacity including by reason of:

- frequent communication with its officers; or
- by being in any contractual, fiduciary or employment relationship; or
- by being a director, officer or an employee of the company; or
- holding any position including a professional or business relationship between himself and the company whether temporary or permanent

that allows such person, directly or indirectly, access to UPSI or is reasonably expected to allow such access.

8. **Who are deemed to be CPs?**

The Regulations provide a list of persons who are deemed to be CPs to include immediate relatives\(^6\) of persons covered above in Query no 7 and others as mentioned hereunder:

- holding company or associate company or subsidiary company; or
- an intermediary as specified in section 12 of the Act or an employee or director thereof; or
- an investment company, trustee company, asset management company or an employee or director thereof; or
  - Trustee company means mutual fund
- an official of a stock exchange or of clearing house or corporation; or

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\(^6\)means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities
• a member of 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; or
• a member of the board of directors or an employee, of a public financial institution as defined in section 2 of the Companies Act, 2013; or
• an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
• a banker of the Company; or
• a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent of the holding or interest.

Further, connected person will also include observers, i.e. persons who are authorised to attend BoD meeting such as the invitees who may be present at the time of such meetings. Observers are not the directors of the company.

9. What is the key element of a person to be considered as CP?

The key element of a CP is who has connection with the company that is expected to put him in possession of UPSI.

10. How can the company identify the following for the purpose of identification of CPs?

   a. an official of a stock exchange or of clearing house or corporation;
   b. a member of 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;
   c. an official or an employee of a self-regulatory organization recognised or authorized by the Board;
   d. a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent of the holding or interest;
   e. a banker of the company.

The compliance officer on behalf of the company may write to the stock exchange to identify who should be the connected persons. Otherwise, it is impractical for a company to identify an official of the stock exchanges specifically.
Likewise, the compliance officer needs to identify mutual funds that are the members of the company and accordingly, identify the connected persons.

Further, the company needs to include only such Self-Regulatory Organisation (SRO) which governs the company based on its activities. E.g. Asset financing NBFCs will identify Finance Industry Development Council (FIDC).

As regards identification of other concern such as firm, HUF etc., the compliance officer should seek the relevant disclosures from the directors and the bankers of the company. Further, the directors’ declaration shall also include details of concern of their immediate relatives.

The word banker in our view cannot mean the bank itself. For example, if the company is dealing with bank ABC, it will be impractical to deem the bank ABC as the connected person. Instead, the relationship manager/ loan sanctioning officer dealing with the company and its affairs may be identified as connected person. However, the company can take a list from the bank to identify such CP in relation to the company.

11. **What would be the meaning of holding and interest by/ of directors, immediate relatives thereof and the banker of the company for determining the CP?**

Holding should mean the direct shareholding of the director of the company or of his immediate relatives or banker of the company. Interest on the other hand would mean direct or indirect interest whether or not by way of direct shareholding.

12. **Who can be an officer for the purpose of being a CP?**

The word “officer” is a debatable phrase used under the Regulations. The term “officer” is a term of wide connotation. Officer was also defined in the 1992 Regulations as "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".

Section 2 (30) of the Companies Act, 1956 defined an officer to include any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act”.

The word “officer” is not defined under the Regulations. Therefore, the meaning can be taken from the Companies Act, 2013 as per Regulation 2 (2).
Section 2 (59) of the Companies Act, 2013 defines an officer to include any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

An officer is one who can direct or influence the affairs of the company as distinguished from a mere compliance officer- the view was observed by the Hon'ble Securities Appellate Tribunal (SAT) in Appeal No. 178 of 2011-Shri Mahendra Pandey Vs Securities and Exchange Board of India (SEBI).

13. Whether a person being an administrative head, such as head of human resource department or a general manager or a chief sales manager said to be within the meaning of an “officer”?

SEBI vide Order dated July 7, 2014 in the matter of ITC Limited held the head of the human resource department as an “officer” and penalised with an amount of Rs. 5 lacs for non-disclosure under Regulation 13 (4) and 13 (5) of the 1992 Regulations for sale of 10000 shares worth Rs. 35,37,078 lacs. SEBI has in the Order defined “officer” to mean every person having an authority. The SEBI Adjudicating Officer also found that, the Divisional Manager - HR Operations, Divisional Manager - Competency Development, District human resources managers (N/S/E/W), the Assistant HR Managers - Operations, Manager - HR Systems and Processes, Manager Skilling & Employability, Asst Manager Training, Asst Manager Training, Asst. HR Managers (N/S/E/W), HR Officer - Frontline Performance are the personnel subordinate to the “officer”, which led to the conclusion that the defendant is clearly holding a higher position capable of giving directions to her subordinates and thus, an officer.

SAT had quashed and set aside the order on October 9, 2015 and remanded the matter back to Ld. Adjudicating Authority for a fresh order.

The Adjudicating Officer later on had concluded that Head-Operations”- Education and Stationery Products Strategic Business Unit of ITC Limited cannot be held as an “officer” of the company under the provisions of the Companies Act and the PIT Regulations as the position held by him in the company was very low in the chain of the management and hence, it was concluded by the Adjudicating Officer that he would not be a person on whose instructions or directions the Board of Directors or any Directors of the company would be accustomed to act.

14. Who can be an intermediary for the purpose of CP?

In terms of the definition, an intermediary as specified in Section 12 of SEBI Act is to be treated as CP. As per Section 12 of the SEBI Act, stock brokers, sub-brokers,
share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers, depositories, depository participant, custodian of securities, foreign institutional investors, credit rating agencies etc. are intermediaries requiring registration with SEBI.

The definition further considers an employee as well as a director of such intermediary as CP.

Section 59 of the Chief Justice Act, 1993 of the United Kingdom also defines a “professional intermediary”.

15. How can a compliance officer identify CPs?

SEBI circular dated May 11, 2015 mandates companies to ensure that a company deals with only such market intermediary/ every other person, who is required to handle UPSI, who have formulated a code of conduct as per the requirements of the Regulations. The compliance officer should ensure the following:

- Identifying such intermediary and every other person who is required to handle UPSI of the company;
- Sending a mail to each of such identified person enclosing a suggested format of confirmation that such identified person have formulated the code of conduct as per the PIT Regulation, 2015;
- Allow such identified person time frame of 14 days from the date of mail to confirm that they have the said code of conduct in place;
- Send a reminder mail after the expiry of 7 days from the date of original mail (in case no mail is received as such date);
- If no confirmation is received after the expiry of 21 days from the date of original mail, the company to stop sharing UPSI with such identified person.

16. Who is an insider?

There are two limbs to this definition so as to fall within the meaning of an insider:

a. A connected person (already defined under the Regulations)

b. Any person who is in receipt of or has access to UPSI.

This will mean that any person who may be having access to UPSI or is in receipt of UPSI will be considered as an insider, whether or not he is a CP.
Designated Employee (DE) and Designated Person (DP)

17. Who is a Designated Employee?

As per the Regulations, all employees who have access to UPSI are identified as Designated Employee.

18. Who is a Designated Person (DP)?

The newly inserted sub-regulation (4) under Regulation 9 provides for an inclusive definition of ‘Designated Person’. The DPs are identified on the basis of their role and function in the organisation and the access that such role and function would provide to UPSI in addition to seniority and professional designation. Hence, DPs are not necessarily required to be employees of the company.

As per the Regulations, following are determined as DPs:

- Employees designated on the basis of their functional role or access to unpublished price sensitive information in the organization by the BoD or by analogous body in case of fiduciaries and intermediaries;
- Employees of material subsidiaries designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their BoD;
- All promoters of the company and in case of intermediaries or fiduciaries, promoters who are individuals or investment companies thereof;
- Chief executive officer and employees upto two levels below chief executive officer of the company, intermediary, fiduciary and material subsidiaries irrespective of their functional role in the company or ability to have access to unpublished price sensitive information;
- Any support staff of the company, intermediary or fiduciary such as IT staff or secretarial staff who have access to unpublished price sensitive information.
19. **What are the additional disclosures required to be made by the DPs?**

DPs are required to disclose names and PAN or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes:

- immediate relatives;
- persons with whom such designated person(s) shares a material financial relationship;
- phone, and mobile/ cell numbers which are used by them;
- one-time information:
  - the names of educational institutions from which designated persons have graduated;
  - names of the past employers of the designated person shall also be disclosed.

**Material Financial Relationship**

20. **What is the meaning of the term ‘material financial relationship’?**

As provided in the Explanation under Clause 12 of Schedule B and Schedule C of the Regulations, the term material financial relationship shall mean:

- a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift;
- from a DP;
- during the immediately preceding twelve months;
- equivalent to at least 25% of the annual income of the DP.
The aforesaid however shall exclude relationships in which the payment is based on arm’s length transactions.

21. **What is the scope of the terms ‘investment company’ as mentioned in Regulation 9(4)(iii)? SEBI’s Guidance Note dated August 24, 2015**

The regulation 9 (4) (iii) intends to include only those non-individual corporate promoters of intermediaries or fiduciaries as designated person, whose main object or principal activity, is investing in securities of other companies. For e.g. if the promoter of a broking entity is a Bank, then such promoter shall not be specified as designated person to be covered by the code of conduct of the intermediary. However, if the promoter of a broking entity is an investment company which holds investments in various companies, then such an entity shall be specified as designated person to be covered by the code of conduct of the intermediary.

**Compliance Officer and Chief Investor Relations Officer**

22. **Who can be a Compliance Officer (CO)?**

Pursuant to the Regulations, a compliance officer *should be*

a. a senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there;

b. one who is capable of appreciating regulatory and legal requirements; and

c. one who is financially literate so as to understand the impact of unpublished price sensitive information on price discovery for securities so that he is able to administer the regulations in an informed manner.

The term ‘financially literate’ has been explained vide SEBI to mean a person who has the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Therefore, there is no prescribed qualification of a compliance officer unlike Regulation 6 of the Listing Regulations which prescribes only a qualified company secretary to act as compliance officer.

In the informal guidance issued by SEBI in the matter of Mindtree Limited\(^7\), SEBI has provided that, the company may at its discretion appoint any senior officer as the compliance officer. Such senior officer must be necessarily reporting to the board of directors or head of the organization. In case the company appoints more

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than one person as compliance officer, they shall be jointly and severally responsible for monitoring compliance with the Regulations.

23. What are the roles and responsibilities of a Compliance Officer?

The compliance officer is made responsible for:

- compliance with the policies, i.e. the policy for fair disclosure of UPSI as per Schedule A pursuant to Regulation 8 (1) and the code of conduct for regulating and monitoring insider trading as per Schedule B or Schedule C under Regulation 9(1);
- setting forth the codes/policies in consultation with the BoD;
- prescribing procedures for various activities referred to in the code of conduct;
- granting of pre-trading clearance to the designated persons for dealings in the company's securities and monitoring of such trade of insiders’ (incl. of their immediate relatives);
- maintaining of records as required under the Regulations;
- administering and implementation of the code and monitor other requirements of the Regulations;
- adherence to the code specified for preservation of UPSI;
- monitoring of trades and the implementation of code of conduct under the overall supervision of the BoD;
- assisting the board of directors in determination of designated person;
- reporting to BoD and the chairman of the audit committee of trading by insiders;
- closure and opening of trading window as and when required;
- approving and assisting in implementation of the trading plan as and when presented by the insiders, in accordance with the Regulations and review thereof to assess any potential violation of the Regulations;
- notifying the trading plan to stock exchanges.

However, he is supposed to do all the above either under the supervision of the BoD or the head of an organization. This means that though compliance officer will be responsible for the above areas but the ultimate responsibility and accountability is that of the board or the head of the organization under whom or accordingly to whose instructions the compliance officer will work.

24. Who can be a Chief Investor Relations Officer (CIRO)?

In terms of Clause 3 of the Schedule A of the Regulations, a senior officer of the company is required to be designated as chief investor relations officer to deal
with dissemination of information and disclosure of unpublished price sensitive information.

25. **What are the functions of Chief Investor Relation Officer?**

The broad functions of the chief investor relation officer:
- Dealing with universal dissemination and disclosure of UPSI.
- Determination of questions as to whether any particular information amounts to UPSI.
- Determination of response, if any, of the Company to any market rumour in accordance with Code of Fair Disclosure of the Company.
- Dealing with any query received by any Insider about any UPSI.
- Providing advice to any Insider as to whether any particular information may be treated as UPSI.

26. **Who will be approving authority for trades done by the Compliance Officer or his immediate relatives, as Insiders? (SEBI’s Guidance Note dated August 24, 2015)**

The board of directors of the company shall be the approving authority in such cases and may stipulate such procedures as are deemed necessary to ensure compliance with these regulations.

27. **Whether Chief Investor Relations Officer will also be responsible along with Compliance Officer for not disseminating information or non-disclosure of UPSI? (SEBI’s Guidance Note dated August 24, 2015)**

Regulation 2(c) clearly provides the functions and responsibilities of the compliance officer. Specific responsibilities to deal with dissemination of information and disclosure of unpublished price sensitive information are given to Chief Investor Relations Officer (CIRO) under clause 3 of Schedule A.

It is company’s discretion to designate two separate persons as CIRO and CO, respectively for fulfilling specified responsibilities. In cases where both CIRO and CO have been designated for overlapping functions, they shall be jointly and severally responsible.

**Dealing with UPSI**

28. **What does the term ‘dealing in securities’ mean?**

The definition of ‘trading’ as provided in the Regulations includes dealing in securities. The intent of the Regulation is to include such other activities which
29. What are the restrictions imposed on Insiders under the Regulations?

As per Regulation 3(1), insiders are prohibited to communicate, provide or allow access to any UPSI relating to the company or listed securities or securities proposed to be listed to,
- other insiders or
- any person.

Further, as per Regulation 4, insiders are prohibited to trade in listed securities as well as securities proposed to be listed when they are in possession of UPSI.

30. Are there any exceptions to the restriction on communication of UPSI by an insider?

The Regulations provide a carve out on communication, provision or allowing access to UPSI to any other insider/any person, if the same takes place for legitimate purposes, performance of duties or discharge of legal obligations.

31. Are there any exceptions to the restriction on trading in securities while in possession of UPSI by an insider?

As per Regulation 4, trading by an insider who is in possession of UPSI, shall always be presumed to have been motivated by the knowledge and awareness of UPSI. However, in certain circumstances as below, such trading may be allowed,
- Off-market transactions between insiders having same UPSI in possession subject to the condition that such transaction shall be reported to the company within 2 working days which in turn shall report to the stock exchange within 2 working days of receipt;
- Transactions carried out through block deal window mechanism between persons who are in possession of UPSI;
- Transactions pursuant to statutory and regulatory obligation;
- Exercise of stock options where exercise price is pre-determined;
- Trades pursuant to trading plan;
- In case of non-individual insider,

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8 The phrase ‘proposed to be listed’ shall include securities of an unlisted company:
   i. if such unlisted company has filed offer documents or other documents, as the case may be, with the Board, stock exchange(s) or registrar of companies in connection with the listing; or
   ii. if such unlisted company is getting listed pursuant to any merger or amalgamation and has filed a copy of such scheme of merger or amalgamation under the Companies Act, 2013.
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- The individuals taking trading decisions are different from the individuals who are in possession of UPSI and such individuals are not having UPSI in possession;
- Appropriate and adequate arrangements were in place to ensure the Regulations are not violated;
- No UPSI was communicated by the individuals having UPSI in possession to the persons who are taking trading decisions; and
- No evidence of the aforesaid arrangements having been breached.

Further, an insider may after doing the needful compliances under the regulations trade in securities, such as under the trading plan or after obtaining pre-clearance from the compliance officer. Further, an insider may demonstrate that there were exonerating circumstances under which the trading might have taken place and hence, he has not indulged in insider trading.

32. **What are the restrictions imposed on any other person under the Regulations?**

As per regulation 3(2), any person,
- shall not obtain any UPSI from any Insider of such UPSI;
- shall not induce any person to communicate UPSI.

33. **When can an UPSI be communicated, provided by an insider or procured by a person without violation of Regulation 3?**

Regulation 3 will not get violated if the communication of UPSI is for following purpose:
- Where the board of the Company is of the informed decision that sharing of UPSI is in the best interest of the Company, such as, in case of mergers/takeovers and acquisitions involving change of control to assess a potential investment. This will entail making of an open offer under the takeover regulations which would not only make available the same price to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.
- Where a transaction would not entail an open offer under the takeover regulation but where the board of directors of the company is of informed opinion that sharing of UPSI is in the best interests of the company and UPSI is disseminated to be made generally available atleast two trading days prior to the proposed transaction being effected.
Further, the BoD shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential. Further, the parties shall not trade in securities while in possession of such UPSI.

Trading

34. What is trading?

As per regulation 2(1)(l) of the Regulations, trading means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities.

The term ‘dealing in securities’ is used to widely define the term ‘trading’ to include other aspects of trading such as pledge which is not strictly buying, selling or subscribing.

In the informal guidance issued by SEBI in the matter of HDFC Securities Limited\(^9\), SEBI has specifically provided that, transactions in the nature of Securities Lending and Borrowing (SLB) will constitute trade for the purpose of the Regulations.

35. Whether the requirement of compliance with the code of conduct would be applicable to the employees of a fund manager who wish to invest in the schemes of AIFs or mutual funds?

In the informal guidance issued by SEBI in the matter of SBI Funds Management Private Limited\(^10\), SEBI has provided that the provisions of regulation 9 of the Regulations w.r.t. the code of conduct is applicable to trading or investment by employees in the units of AIF schemes that invest in securities listed or proposed to be listed.

SEBI has vide circular dated November 17, 2016\(^11\) prescribed the monitoring the trading/ investment by the employees of AMCs and trustees of mutual funds. As per the circular, trustees, AMCs and their employees and directors are required to follow the Regulations.

Hence, the compliance w.r.t. code of conduct is required to be ensured.

36. Whether a person not having control over management but classified as a promoter pursuant to the provisions of Listing Regulations will be considered as a designated person and is required to adhere to the requirements of the code of conduct?

In the informal guidance issued by SEBI in the matter of Apollo Tricoat Tubes Limited\textsuperscript{12}, it has been provided that, regulation 31A(3)(b) of the Listing Regulations prescribes that in order to be classified as a public shareholder the person shall not be holding more than ten percent of total voting rights in the listed entity.

Therefore a person not having control over the management but having voting rights more than ten percent will be classified as a promoter of the listed entity.

Regulation 9(4) of the PIT Regulations prescribes that the board of directors shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function which shall include all promoters of the listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries.

The PIT Regulations identify promoters as designated persons. Hence, a person identified as a promoter needs to comply with the requirements of the code of conduct.

Trading based on UPSI

37. When will a trade by a person regarded as Insider Trading? Who has the onus to prove the same?

When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

In the case of CPs, the onus of establishing, that they were not in possession of UPSI, shall be on such CP and in other cases, the onus would be on SEBI.

The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession UPSI is what would need to be demonstrated at the outset to bring a charge. Once this is

established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

38. Whether trading in ADRs and GDRs by employees of Indian companies who are foreign nationals is covered under provisions of PIT Regulations on code of conduct? (SEBI’s FAQ dated November 04, 2019\textsuperscript{13})

Yes, trading in ADRs and GDRs of listed companies is covered under relevant provisions of PIT Regulations. Employees of such companies, including foreign nationals, who are designated persons, shall be required to follow the code of conduct for trading in ADRs and GDRs. For such disclosures by such designated persons, a unique identifier analogous to PAN may be used.

39. What are exonerating circumstances?

When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

The insider may prove his innocence by demonstrating that the trade was undertaken under following circumstances:

When the trade has been done under the following circumstances by a person while in possession of UPSI, the same may be treated to be exonerating circumstances under Regulation 4 i.e., trading while in possession of UPSI shall be accepted in the circumstances as mentioned in FAQ 31 above.

Trading Plan

40. What is the essential philosophy of a trading plan? Who is required to frame the same?

Insiders who are perpetually in possession of UPSI such persons cannot be rendered incapable of trading in securities throughout the year. In such a situation, an Insider will be permitted to formulate in advance to effect trade at a subsequent date. By that time such insider would be in possession of new UPSI and the one they possessed at the time of formulating the plan would then be generally available.

\textsuperscript{13} https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/nov-2019/faqs-on-sebi-pit-regulations_44861.html
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A trading plan is to accommodate firm plans to acquire/ dispose off securities typically by strategic shareholders. For example, a holding company may have plan to do disposal of its subsidiary at a pre-specific time. Also, promoters of the company may have a firm plan to do a creeping acquisition of securities in their controlled company. These plans are pre announced, and are firm plans irrespective of the prevailing price. Hence, they are insensitive to prices, and hence, are presumably immune from allegations of insider trading.

Trading plan are required to be framed by such insiders who are at all times in possession of UPSI and the plan is required to be reviewed and approve and monitor implementation of the trading plan.

41. What are the prerequisites for Trading Plan?

- Trading only after 6 months from the public disclosure of the plan
  - Such a period is considered reasonably long for UPSI that is in possession of the insider when formulating the trading plan, to become generally available.
- If the financial period ends on X and financial results are disclosed to the stock exchange on Y, then not to trade in the period between (X-20 trading days) to (Y+2 trading days)
  - UPSI exists around declaration of financial results.
- Trading plan shall entail trading for a minimum period of 12 months
  - To avoid frequent announcements of trading plan.
- Trading plan should not lead to overlap of any period for which another trading plan is in existence.
- Trading plan shall set out either value of trades to be effected or the number of securities to be traded along with the nature of the trade (acquisition or disposal) and the intervals at, or dates on which such trades shall be effected;
- Trading plan shall not entail trading for market abuse.

42. Is there any relaxation provided to the trades done pursuant to the Trading Plan?

As per the amended provisions of the Regulations, following are the relaxations provided:

- pre-clearance of trades is not required for a trade executed as per an approved trading plan;
- trading window norms are not applicable for trades carried out in accordance with an approved trading plan.
- restrictions on contra trade are not applicable for trades carried out in accordance with an approved trading plan.
43. Can a Trading Plan be revoked?

The Trading Plan once approved cannot be revoked. Therefore, the insider has to mandatorily implement the plan without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan. Considering these facts, Trading Plan is quite impractical.

Codes/ SoPs / Mechanism under the Regulations

44. What all steps are companies required to ensure under the Regulations?

Companies having their securities listed or whose securities are proposed to be listed on a stock exchange have to ensure following:

- Identify and designate a compliance officer to administer the Code of Conduct and another requirements under these Regulations;
  - Compliance officer to determine the Connected Persons.

- Formulate and publish on its official website, a Code of Practices and Procedures for Fair Disclosure (Code of Fair Disclosure) of UPSI that the Board will follow to ensure uniform dissemination of UPSI;

- Having a policy for determination of legitimate purpose\(^{14}\), which should be an approach driven policy and shall be a part of the Code of Fair Disclosure.

- Formulate a Code of Conduct to regulate, monitor and report trading by the Designated Persons and their immediate relatives as prescribed in Schedule B and or Schedule C, as the case may be. This Code shall, inter alia, specify the following requirements:
  - Identification of DPs;
  - Maintaining list of DPs and their immediate relatives;
  - Intimating the DPs regarding the disclosure requirements of the persons with whom the DPs have material financial relationship;
  - Provisions related to pre-clearance;
  - Trading window restrictions;
  - Setting up of a process to know ‘how’ and ‘when’ people are brought ‘inside’ on sensitive transactions;
    - There should be a system to track where the information emerges;
    - With whom the information is shared;

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\(^{14}\) the term “legitimate purpose” includes sharing of UPSI in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.
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- The protocol of sharing the information;
- Sensitizing the person with whom the information is to be shared;
- Assuring that the person understands that the information is confidential;
- Disclosing the information to the Stock Exchange(s);
- Tracking the information until the same is disclosed to the public.

- Maintaining a Structural Digital Database of persons with whom UPSI is shared;

- Putting in place adequate and effective system of internal controls to ensure compliance of the provisions of the Regulations in order to avoid insider trading:

- Review of the system of internal control by the Audit Committee at least once a year, verifying whether the systems for internal control are adequate and are operating effectively.

- Policy / mechanism to prevent any leak of UPSI and to set up the procedure for inquiry in case of leak of UPSI or suspected leak of UPSI.

- Ensuring compliance with initial and continuous disclosure requirements from the promoters, KMPs, directors, designated persons respectively and intimate the same to the stock exchange(s);

45. What would be the contents of the policy for determining legitimate purpose?

As mentioned above, this policy shall be an approach driven policy which should broadly specify the following:

- sharing of information only in the ordinary course of business;
- the information has to be shared only the person who is authorized to do so;
- where there is any sharing of price sensitive information, non-disclosure agreements should be executed;
- the person receiving such information should be sensitized or informed about the confidentiality of the matter in order to avoid any leakage;
- details of the person receiving such information should be maintained by the company, in order to track whether the information was exploited by the person or not.
46. What does the “process for how and when people are brought ‘inside’ on sensitive transactions” mean?

This should be a process which can be ensured by the taking the following steps-
- There should be a system to track where the information emerges;
- Who is authorized to share the information;
- With whom the information is shared;
- Analyzing the reason of sharing such information;
- The protocol of sharing the information;
- Sensitizing the person with whom the information is to be shared;
- Assuring that the person understands that the information is confidential;
- Executing confidentiality agreements;
- Disclosing the information to the Stock Exchange(s);
- Tracking the information until the same is disclosed to the public.

47. What would be the contents of Structured Digital Database?

The digital database shall contain the name and PAN/any other identifier authorized by law where PAN is not available, of such persons or entities with whom UPSI is shared. The structured digital database may be maintained in an illustrative format specified in Annexure – I.

48. What would be the manner of maintaining Structured Digital Database?

The structured digital database shall be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

For maintaining audit trails, company may take the print out of any new entry/modification made and get it signed by the compliance officer or the company may keep digitally signed copy of the record of any new entry/modification made.

49. Who are required to maintain Structured Digital Database?

The Board of Directors of the company is required to ensure that a Structured Digital Database is maintained containing the information as prescribed in Query No 41. The Compliance Officer may be designated to maintain the database and he shall enter the names of all the designated persons and persons bought inside in the structured digital database.
50. **What information should a listed Company maintain in its structured digital database under Regulation 3(5), in case the designated person is a fiduciary or intermediary? (SEBI’s FAQ dated November 04, 2019)**

The listed company should maintain the names of the fiduciary or intermediary with whom they have shared information along with the Permanent Account Number (PAN) or other unique identifier authorised by law, in case PAN is not available. The fiduciary / intermediary, shall at their end, be required to maintain details as required under the Schedule C in respect of persons having access to UPSI.

For example: If the listed company has appointed a law firm or Merchant Banker in respect of fund raising activity, it should obtain the name of the entity, so appointed, along with the PAN or other identifier, in case PAN is not available. The law firm or the Merchant Banker would in turn maintain its list of persons along with PAN or other unique identifier (in case PAN is not available), in accordance with Regulation 9A(2)(d) and as required under Schedule C, with whom they have shared the unpublished price sensitive information.

51. **Whether the requirement to maintain Structured Digital Database under regulation 3(5) is applicable on intermediaries and fiduciaries (SEBI’s Guidance Note dated August 24, 2015)**

The requirement to maintain structured digital database under regulation 3(5), containing the names of such persons or entities with whom UPSI is shared, is applicable to listed companies, and intermediaries and fiduciaries who handle UPSI of a listed company in the course of business operations.

52. **How would the company ensure compliance with the requirement of having an internal control system?**

In terms of Regulation 9A(2), the company should ensure that its internal control system includes the following:

- all employees who have access to UPSI are identified as designated person;
- all the UPSIs are identified and its confidentiality is maintained;
- adequate restrictions are placed on communication or procurement of UPSI;
- lists of all employees and other persons with whom UPSI is shared is maintained and either confidentiality agreements are signed or notice of confidentiality is served to all such employees and persons;
- all other requirements of the Regulations are complied with;
- evaluation effectiveness of the system considering the aforesaid.

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The broad contents of the internal controls manual may be on the following lines:

- Meaning of UPSI, when is an information to be regarded as price-sensitive, determination of whether the information is price-sensitive;
- Organisational commitment to ensuring integrity of UPSI and building compliant culture;
- Identification of typical places/divisions where UPSI may arise, with illustrative situations;
- Ensuring adequate firewalls, Cyber Security for safeguarding UPSI;
- Manner of transmission of UPSI to insiders;
- Manner of transmission of UPSI by bringing persons “inside”;
- Communication of UPSI to stock exchanges and press;
- Determination of leaks of UPSI;
- Role of various functionaries such as, the Board of Directors, Audit Committee, CEO, Compliance Officer;
- Review of efficiency of internal controls by audit committee including the frequency and manner of review along with the ways to strengthen internal controls;
- Whistle blower mechanism, dissemination of the same, nodal officer and point of contact for whistle blowers;
- Periodic sensitization of employees of the organisation in terms of requirement under the Regulations and the Code.

53. Whether the policy for inquiry of leak of UPSI is required to be framed separately?

In terms of Regulation 9A(5), formulation of such a written policy is required with the approval of the BoD. Further, in terms of Regulation 9A(6), the whistle blower policy shall mention the procedures for reporting of instances of leak of UPSI. On a combined reading of the aforesaid provisions, it may be construed that the policy for inquiry of leak of UPSI may form part of the whistle blower policy also as the later contains the provisions for inquiry in case of complaint received from a whistle blower which may include a complaint related to leak of UPSI.

The contents of the Policy may be as under:

- Mechanism to prevent any leak of UPSI;
- Identify the source of leakage of UPSI;
- Procedure for inquiry in case of any leak of UPSI or suspected leak of UPSI should be provided;
- Mechanism to handle the leak of any UPSI;
- Mechanism to initiate appropriate inquiries on becoming aware of leak of UPSI or suspected leak of UPSI;
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- Authorizing Audit Committee/ Shareholders’ Relationship Committee to take necessary steps against the person found guilty;
- Plug the loopholes in the internal control system in order to prevent the leak of UPSI in future;
- Educate the employees regarding the reporting of leak/ suspected leak of UPSI;
- Taking action against the person responsible for leak of UPSI;
- Informing SEBI promptly of such leaks, inquiries and results of such inquiries.

54. **What is the difference between Code of Conduct & Code of Fair Disclosure? Is there a format specified for the same?**

The **Code of Conduct** is required to be framed in in order to regulate, monitor and report of trading by its designated persons and immediate relatives of designated persons (which was earlier for employees and connected persons). The said Code is not required to be disclosed on the website of the Company though an intimation by the company stating the fact that it had formulated the said Code is required to be disclosed to the stock exchange as per Circular dated 11th May, 2015. Further, any amendment made to the Code need not be disclosed to the stock exchange.

The **Code of Fair Disclosure** is required to be framed by the company and to be followed by the Board of Directors for fair disclosure of UPSI. Code of Fair Disclosure is required to be disclosed on the website of the Company. Any amendment made to the Code of Fair Disclosure needs to be promptly intimated to Stock Exchange. Code of Fair Disclosure should adhere to the principles specified under Schedule A of the Regulations.

55. **A management trainee at a firm of practicing company secretaries comes into possession of UPSI while handling an assignment, will he be required to adhere to the code of conduct of the company whose UPSI is being handled?**

The explanation provided in Regulation 9(2) states that the professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies should be collectively referred to as fiduciaries and are required to formulate the Code of Conduct (‘Code’) as per the minimum standards provided in Schedule C of the Regulations.

Therefore, the employees/ trainees/ other officials of the firm shall be guided by the Code framed by such firm if they are so identified under the Code. Therefore, the management trainee or any other official of the fiduciary is not required to follow the code of conduct framed by the company whose UPSI is in consideration but the code of conduct framed by the fiduciary.

Disclosure requirements

56. The Regulations provide for various disclosure requirements. What are they?

**Figure 2: Disclosure requirements**

**Initial Disclosures:**

Initial disclosure of holding of securities of the Company as on 15th May, 2015 was required to be provided by promoter, director and key managerial personnel. The disclosure shall include the holding of immediate relatives. The first Initial Disclosure was required to be given within 30 days from 15th May, 2015. Further, pursuant to the amendment brought in by SEBI, the member of the Promoter group should also provide the initial disclosure within 30 days from 20th Jan, 2019.
Further, initial disclosure is also required to be given by person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter or a member of the promoter group thereby disclosing his holding of securities of the company as on the date of appointment or becoming a promoter or a member of the promoter group, to the company within seven days of such appointment or becoming a promoter.

**Continual Disclosures:**

Every promoter, members of the promoter group, designated person, and director of every company are required to disclose the number of such securities acquired or disposed to the Company if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of **ten lakh rupees**. This is required to be disclosed within two trading days of such transaction.

The company may at its discretion require other connected persons or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company.

Every disclosure will include the disclosure of the immediate relatives of the person disclosing as mandated under Regulation 6 (2).

**Disclosure requirement w.r.t. off-market trades:**

In case of off-market inter-se transfer between insiders who were in possession of the same UPSI while making an informed trading decision, the following disclosure requirement shall apply:

- Such off-market trade shall be reported by the insiders to the company within two working days;
- Company shall notify the particulars of such off-market trades to the stock exchanges on which its securities are listed within two trading days from receipt of disclosure or from becoming aware of such information.

57. In which format, the disclosures have to be made?

SEBI vide CIR/ISD/01/2015 dated May 11, 2015 prescribed formats for disclosure as under:

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- **Form A** - Details of Securities held by Promoter, Key Managerial Personnel (KMP), Director and other such persons as mentioned in Regulation 6(2);

- **Form B** - Details of Securities held on appointment of Key Managerial Personnel (KMP) or Director or upon becoming a Promoter of a listed company and other such persons as mentioned in Regulation 6(2);

- **Form C** - Details of change in holding of Securities of Promoter, Employee or Director of a listed company and other such persons as mentioned in Regulation 6(2);

- **Form D (Indicative format)** - Regulation 7(3) – Transactions by Other connected persons as identified by the Company.

58. **Whether the disclosures received by the company needs to be preserved?**

   Yes. The compliance officer is required to maintain the disclosures in physical or electronic form for a minimum period of 5 years.

   Further, the continual disclosures received by the company are required to be notified to the stock exchange within two trading days of receipt of disclosure. Disclosure of the incremental transactions after any disclosure under this Regulation 7 (2) shall be made when the transactions effected after the prior disclosure crosses the threshold specified above.

   The company is also obligated to notify the stock exchange within two trading days of the incremental transaction after it becomes aware of such information, irrespective whether a disclosure has been received or not.

59. **Is the above disclosure required for a promoter company (not individual promoter)?**

   As per definition under SEBI (ICDR) Regulations, 2009 – promoter includes both individual and body corporate that fulfill the requirements stated in the definition. In case the promoter is a company, the company needs to disclose. Therefore, the disclosure is required from both individual promoters as well as body corporate promoters. Further, the disclosure is required from the members of the promoter group.

60. **Disclosures from connected persons cannot be insisted upon by the Company. While it can request the connected persons to disclose, it cannot be mandatory – is the statement true?**
Company can request the connected person to disclose who can be regarded as Insiders. E.g. In case of bank – the entire bank cannot be connected person. The officials who sanction limits for the Company and seemingly have access to UPSI will be regarded as connected person.

Once they are identified, the Company may take a call on whether disclosure is required to be obtained from them. If the Company intends to, the same should be as per SEBI prescribed indicative format (Form D).

**Closure of trading window**

61. **What is meant by Trading Window? When is the same required to be closed and opened? What are the consequences of closing a trading window?**

It is a notional trading window used as an instrument of monitoring trading by the designated persons.

The trading window is required to be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of UPSI. Such closure may be imposed in relation to such securities to which such UPSI relates. The timing of re-opening shall be determined by compliance officer. However, in all cases trading window shall be opened atleast 48 hours after the information becomes generally available.

Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

62. **What is the expression used in other countries for closure of trading window?**

Trading window closure is known by various names such as “blackout period”, “closed trade window”, “trading closure period” etc. However, the most common expression seems to be “blackout period”.

63. **When should the trading window be closed and opened?**

The period for closing of trading window may be kept as per the discretion of the company. However, the same is dependent on the origination of the price sensitive information not yet made generally available. Therefore, there are two limbs to it:

a. When should be the start of the closure of the trading window, i.e., which event should trigger the requirement of closure of trading window?

b. When should the same close?
FAQs

As soon as there is an origination of UPSI with an insider, the trading window must be closed at that point of time. As regards how long should it last, the Regulations provide a minimum of 48 hours’ time until the UPSI is made generally available.

UPSI may not arise only in the event of board meeting but may arise even otherwise in relation to any material event.

In respect of declaration of financial results, the trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results.

In case of other material events, the trading window should be closed as soon as there is an origination of UPSI with an insider. The Company may by way of its Code frame the same.

64. Are there any exceptional situations wherein trading window restrictions are not applicable?

The trading window restrictions shall not apply in respect of –

(a) transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4:

- Off- market transactions between insiders having same UPSI in possession subject to the condition that such transaction shall be reported to the company within 2 working days which in turn shall report to the stock exchange within 2 working days of receipt;
- Transactions carried out through block deal window mechanism between persons who are in possession of UPSI;
- Transactions pursuant to statutory and regulatory obligation;
- Exercise of stock options where exercise price is pre-determined;
- Trades pursuant to trading plan.

(b) transactions in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to pre clearance by the compliance officer and compliance with the respective regulations made by the Board;

(c) transactions which are undertaken in accordance with respective regulations made by the Board such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer.
Pre-clearance of Trades

65. **What procedure needs to be ensured when an insider intends to trade?**

An insider cannot trade when in possession of UPSI. Further, designated persons and their immediate relatives cannot trade when the Trading window is closed. When the trading window is open, trade by designated persons shall be subject to pre-clearance by the compliance officer if the value of proposed trade exceeds a particular threshold (e.g. 10 equity shares or of Rs. 10,000 or more) as the Board may stipulate.

66. **What will be the basis of pre-clearance of trades by the compliance officer? What are the guiding factors for him?**
The basis will be evaluating whether the applicant is in possession of UPSI. The Compliance officer may obtain declaration/ undertaking to the above effect.

Pledge

67. Is pledge a case of trading?

While the statutory notes below regulation 2 (l) of the Regulations lists pledge as an example, a pledge is mostly associated with a financial transaction. A pledge may be regarded as a “trading” in a wide sense, but it is difficult to envisage how a pledge could be regarded as “insider trading”. It cannot be said that the invocation of a pledge can be said to be in response to insider information. Hence, the compliance with the code in case of a pledge may merely be for technical reasons.

If the creation of pledge is regarded as disposal, then release of a pledge may be regarded as acquisition. Applying the principles of counter trade (see later), does that mean that a pledge cannot be released before 6 months of creation?

As an answer to earlier query, it may be too hyper technical an interpretation to take to regard a pledge as a case of disposal of securities and hence trading. Hence, if release of a pledge is at all regarded as acquisition, the compliance officer should use his powers to grant an approval and grant approval for a counter trade, viz., release of a pledge before the expiry of 6 months.

68. (a) Whether SEBI's intent is to prohibit creation of pledge or invocation of pledge for enforcement of security while in possession of UPSI?

(b) Whether creation of pledge or invocation of pledge is allowed when trading window is closed? (SEBI’s Guidance Note dated August 24, 2015)

Yes. However, the pledge or pledgee may demonstrate that the creation of pledge or invocation of pledge was bona fide and prove their innocence under proviso to sub-regulation (1) of regulation 4 of the Regulations.

69. What should be the value of the pledge / revoke transaction for the purpose of disclosure? Is it the market value on date of the pledge / revoke transaction or is it the value at which the transaction has been carried out between the pledge and pledgee? For instance, if the pledgor has availed a loan of Rs 10 Lacs against which he has pledged shares worth Rs 15 Lacs, would the transaction value be Rs 10 Lacs or Rs 15 Lacs. (SEBI’s Guidance Note dated August 24, 2015)
For the purpose of calculation of threshold for disclosures relating to pledge under Chapter III of the Regulations, the market value on the date of pledge/revoke transaction should be considered. In the above illustration, the value of transaction would be considered as fifteen lakh rupees.

**Contra Trade**

70. **What are the restrictions on the designated person after he/she has traded?**

Designated person shall not execute contra trade in next 6 months.

The compliance officer can be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing. However, such relaxation should not violate the regulations.

71. **A designated employee has purchased shares of the Company on 31st December 2014. Within what time period he can sell the shares?**

A designated person is restricted to execute a contra trade within six months from the prior transaction. Therefore, in this case, the sale of shares shall have to take place on and after June 2, 2015 provided that the trading window is not closed on such date.

72. **In case an employee or a director enters into Future & Option contract of Near/Mid/Far month contract, on expiry will it tantamount to contra trade? If the scrip of the company is part of any Index, does the exposure to that index of the employee or director also needs to be reported? (SEBI’s Guidance Note dated August 24, 2015)**

Any derivative contract that is cash settled on expiry shall be considered to be a contra trade. Trading in index futures or such other derivatives where the scrip is part of such derivatives need not be reported.

73. **Whether contra trade is allowed within the duration of the trading plan? (SEBI’s Guidance Note dated August 24, 2015)**

Any trading opted by a person under Trading Plan can be done only to the extent and in the manner disclosed in the plan, save and except for pledging of securities.

74. **Whether the restriction on execution of contra trade in securities is applicable in case of buy back offers, open offers, rights issues FPOs etc. by listed companies? (SEBI’s Guidance Note dated August 24, 2015)**
Buy back offers, open offers, rights issues, FPOs, bonus, exit offers etc. of a listed company are available to designated persons also, and restriction of ‘contra-trade’ shall not apply in respect of such matters.

**75. Whether restriction on execution of contra trade is applicable only to designated persons of a listed company or whether it would also apply to the designated employees of market intermediaries and other persons who are required to handle UPSI in the course of business operations? (SEBI’s Guidance Note dated August 24, 2015)**

The code prescribed by the Regulations is same for listed companies, market intermediaries and other persons who are required to handle UPSI in the course of business operations. Therefore, restrictions with regard to contra trade forming part of clause 10 of code of conduct shall apply to all according to the Regulations.

**Employee stock option plans**

**76. Will exercise of ESOP get covered under the Regulations?**

The Model Code of Conduct under erstwhile regulations – Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 provided the following in case of ESOP:

*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.*

However, there was no such specific provision stated in the PIT Regulations. Thereafter, SEBI, vide its amendment dated December 31, 2018 provided that where the transaction in question is undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations, the same shall be treated as a trade under exonerating circumstances.

**77. Whether requirement of pre-clearance is applicable for exercise of employee stock options? (SEBI’s FAQ dated November 04, 2019)**

Employee stock options being issued under SEBI (Share Based Employee Benefits) Regulations, 2014, the exercise of such stock options is covered under clause 4(3)(b) of Schedule B of the Regulations. However, sale of shares by employees obtained after exercise of options shall not be covered under the aforesaid Clause. Thus, no pre-clearance is required for exercise of stock options.
78. Does the contra trade restriction (for a period not less than six months) under clause 10 of Schedule B of the Regulations also apply to the exercise of ESOPs and the sale of shares so acquired? (SEBI’s Guidance note dated August 24, 2015)

Exercise of ESOPs shall not be considered to be “trading” except for the purposes of Chapter III of the Regulations. However, other provisions of the Regulations shall apply to the sale of shares so acquired.

**For Example:**

i. If a designated person has sold/purchased shares, he can subscribe and exercise ESOPs at any time after such sale/purchase, without attracting contra trade restrictions.

ii. Where a designated person acquires shares under an ESOP and subsequently sells/pledges those shares, such sale shall not be considered as contra trade, with respect to exercise of ESOPs.

iii. Where a designate person purchases some shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) and subsequently sells/pledges (say on October 01, 2015) shares so acquired under ESOP, the sale will not be a contra trade but will be subject other provisions of the Regulations, however, he will not be able to sell the shares purchased on August 01, 2015 during the period of six months from August 01, 2015.

iv. Where a designated person sells shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) the acquisition under ESOP shall not be a contra trade. Further, he can sell/pledge shares so acquired at any time thereafter without attracting contra trade restrictions. He, however, will not be able to purchase further shares during the period of six months from August 01, 2015 when he had sold shares.

**Penalty**

79. What is the penalty imposed for contravention of provisions of the Regulations?

Any contravention of the provisions of regulations shall be dealt with by the Board in accordance with the SEBI Act. Section 15G of the Act prescribes that an insider who is found guilty of insider trading shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.
Pursuant to section 195 (2) of the Companies Act, 1956 if any person deals in insider trading and contravenes the provisions of section 195, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

In a very recent case, as an interim measure, SEBI vide its interim order dated May 21, 2015, in the matter of Sabero Organics Gujarat Limited took an urgent preventive step of impounding and retaining the proceeds along with interest at 12% p.a. lying in the bank accounts of the alleged insiders and further ordered that, if the funds lying their bank accounts are insufficient to meet the unlawful gains, then the securities lying in the demat account of these persons shall be frozen to the extent of the remaining value.

80. **In the event of penalty charged by a company for contravention of the provisions or non-adherence of code of conduct, what should the Company do with the penalty?**

The penalty charged by the Company should be transferred by the Company to Investors Education Protection Fund. The penalty has been charged by the Company for a misdeed of someone else and therefore, such amount cannot be surely retained by the Company as the Company cannot become wealthier and richer by someone else’ money made out of unlawful means.

**Informant, Voluntary Information Disclosure etc.**

81. **Who is an Informant?**

Regulation 7A of the Regulations defines informant as individual(s), who voluntarily submit to the Board a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur, in the manner provided under the Regulations, regardless of whether such individual(s) satisfies the requirements, procedures and conditions to qualify for a reward from the Board.

Seeing the definition, any individual can be an informant whether he/ she is an employee of the entity or an outsider. Therefore, even an outsider not associated with the company in any capacity may also be considered as informant for the purpose of the Regulations.

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82. Whether each and every employee can be an informant?

As per the Explanation 1 to regulation 7I of the Regulations, an employee means any individual who during employment may become privy to information relating to violation of insider trading laws and files a Voluntary Information Disclosure Form under the Regulations and is a director, partner, regular or contractual employee, but does not include an advocate. Evidently, the definition provides for twin conditions i.e. the individual being privy to the information as well as holding of a certain nature of positions such as a director/ partner/ regular or contractual employee of the entity.

83. What kind of information can be disclosed?

As provided in the definition of Informant, any alleged violation of insider trading laws that has occurred, is occurring or informant has a reasonable belief that it is about to occur shall be disclosed.

Insider trading laws have been defined to mean:

- Section 15G of SEBI Act, 1992;
- Regulations 3, 4, 5, 9/ 9A of these Regulations

Section 15G of the SEBI Act provides for the penal provisions for the following defaults by an insider:

- Dealing in securities, whether on his own behalf or on behalf of any other person, on the basis of UPSI;
- Communicates any UPSI, with or without request of the recipient of such UPSI except in the ordinary course of business or under any law;
- Counsels, or procures for any other person to deal in securities on the basis of UPSI.

Regulation 3 of the Regulations provides for the following:

- Restriction on communication or procurement of UPSI except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations;
- Farming of policy for determination of legitimate purpose for sharing of UPSI as a part of the code of fair disclosure and conduct;
- Maintaining confidentiality by the recipient of UPSI for legitimate purpose who shall be deemed to be an insider;
- Responsibility of the BoD to execute confidentiality and non-disclosure agreements in case of take-over offers and restriction on such parties to trade in securities;
FAQs

- Maintenance of structured digital database of recipient of UPSI by the BoD and internal controls and checks thereof

Regulation 4 of the Regulations provides for the following:
- Restriction of trading when in possession of UPSI unless such trading falls under the exceptional circumstances mentioned in the Regulations such as:
  - *inter se* transfer between the insiders who are in possession of same UPSI,
  - transaction through block deal mechanism between persons having UPSI in possession,
  - bonafide transaction pursuant to statutory and regulatory obligation,
  - transaction pursuant to exercise of stock options when the exercise price is pre-determined,
  - in case of non-individual insiders, trading decisions are taken by the individuals who does not possess UPSI,
  - trade in accordance with trading plan.

Regulation 5 of the Regulations provides for the compliance requirements regarding formulation, approval and implementation of a trading plan.

Regulation 9 of the Regulations requires the following:
- Framing of the code of conduct to regulate, monitor and report trading by its designated persons and immediate relatives thereof;
- Identification and designation of a compliance officer for administering the aforesaid code and other requirements of the Regulations;
- Identification of designated persons.

Regulation 9A of the Regulations further requires the following:
- Putting in place adequate and effective internal control system;
- Review of the compliance of the Regulations and effectiveness of the internal control systems by the audit committee on an annual basis;
- Formulation of written policy and procedure for inquiry of leak of UPSI;
- Initiation of appropriate inquiries of leak/ suspected leak of UPSI;
- Framing of whistle blower policy through which any leak/ suspected leak of UPSI can be reported.

As per Regulation 7A (h) of the Regulations, the information shall be original i.e.
- derived from the independent knowledge and analysis of the Informant
- not known to the Board from any other source, except where the Informant is the original source of the information;
- is sufficiently specific, credible and timely to –
FAQs

- commence an examination or inquiry or audit,
- assist in an ongoing examination or investigation or inquiry or audit,
- open or re-open an investigation or inquiry,
- inquire into a different conduct as part of an ongoing examination or investigation or inquiry or audit directed by the Board;
- not exclusively derived from an allegation made in a judicial or administrative hearing, in a Governmental report, hearing, audit, or investigation, or from the news media, except where the Informant is the original source of the information; and
- not irrelevant or frivolous or vexatious as defined in Regulation 7A(e).

84. How can an Informant submit details of alleged violation of insider trading laws?

As per Regulation 7B, an Informant shall submit Original Information by furnishing the Voluntary Information Disclosure Form to the Office of Informant Protection of the Board in the format prescribed in Schedule D of the Regulations.

Informant has the option to submit the form either on his own or through his legal representative. However, in case the Informant does not submit the said form through a legal representative, the Board may require such Informant to appear in person to ascertain his/her identity and the veracity of the information so provided. The Informant shall remove such information which may disclose his identity from the information being filed in the Form and in case such part cannot be removed he may identify such part so that the Board will take necessary steps to maintain confidentiality of such information.

85. In case informant is an employee of the company, is it necessary to report the matter to his organization first?

Regulation 7E(3) clearly states that an Informant may be eligible for a Reward whether or not he reported the matter to his organization as per its internal legal and compliance procedures and irrespective of such organization’s compliance officer subsequently providing the same Information to the Board. Therefore, reporting to the organization is not a prerequisite for filing a Voluntary Information Disclosure Form.

86. How much confidential is Informant’s identity?

The Informant is not required to disclose his identity while submitting the Original Information to Board but the Informant may disclose it if the same cannot be expunged/ removed from the declaration form.
Regulation 7H provides for confidentiality of Informant in the following manner:

The Original Information and identity provided by an Informant shall be held in confidence and exempted from disclosure under the Right to Information Act, 2005.

A prohibition is also prescribed against the act of any person compelling disclosure of the identity, existence of an Informant or of the information provided by an Informant.

The confidentiality in respect of the identity and existence of the Informant shall be maintained throughout the process of investigation, inquiry and examination as well as during any proceedings before the Board and save where the evidence of the Informant is required during such proceedings, advance notice of such evidence may be provided to the noticee at least 7 working days prior to the date of the scheduled hearing for evidence.

In proceedings before any authority other than the Board, the Board may request maintenance of confidentiality of the identity and existence of an Informant in such proceeding.

As per Regulation 7B, legal representative shall maintain confidentiality of the identity and existence of the Informant.

Regulation 7M also provides for non-disclosure of such information that could identify the Informant.

Disclosure of identity: As per Regulation 7F (2), prior to the payment of a reward, an Informant shall directly or through his or her legal representative, disclose his or her identity and provide such other information as the Board may require.

In nutshell, Board has provided significant measures to protect the identity of the Informant to increase the number of reporting against such allegations.

87. What is monetary reward? How the quantum of monetary reward will be decided? Is it mandatory in nature?

It is a reward given to the Informant in case he discloses any alleged violation of insider trading laws through which monetary sanction of atleast 1 crore has been collected by the Board. It is given out of Investor Protection and Education Fund.
Quantum of Reward is provided in Regulation 7D. Reward shall be 10% of the monetary sanctions collected or recovered and shall not exceed Rupees 1 crore or such higher amount as the Board may specify from time to time.

The Board may if deemed fit, out of the total Reward payable, grant an interim reward not exceeding Rupees 10 lacs or such higher amount as the Board may specify from time to time, on the issue of final order by the Board against the person directed to disgorgement.

In case of more than 1 informant, reward shall be equally divided.

As per Regulation 7D, the reward is not mandatory in nature, the Board may at its sole discretion, declare an informant eligible for reward.

88. **What is the eligibility for obtaining monetary reward?**

An informant who submits original information to the Board through which monetary sanction of at least 1 crore has been collected by the Board is eligible for reward. Further, Regulation 7G also provides for rejection of claim for reward.

89. **What are the duties of Legal Representative of an Informant?**

Regulation 7B provides for following duties of Legal Representative:

i. verify the identity and contact details of the Informant;
ii. maintain confidentiality of the identity and existence of the Informant, including the original Voluntary Information Disclosure Form;
iii. give an undertaking as prescribed in the Form;
iv. submit to the Board, the copy of the Form in the manner provided in Schedule D of these regulations along with a signed certificate as required under clause (iii) of this sub-regulation (2).

90. **Can an Informant who disclosed violations done by him be eligible to monetary reward?**

As per Regulation 7K, the Informant may, after payment of any monetary amounts be eligible for a Reward. The amount of monetary sanctions that the Informant is ordered to pay Board shall not be included in the value of monetary sanctions.

Therefore, the reward to which informant is entitled to does not comes from the monetary sanction paid by him but from any other person involved in the violation independent of Informant’s act.
91. Will the company be liable to disclose the violations in case the informant informs the Company instead of Board?

SEBI issued a circular\(^{19}\) dated July 19, 2019 with an objective to standardize the process related to dealing with violations of the Code of Conduct. As per the circular, for any violation by Designated Persons and their immediate relatives, all listed companies, and intermediaries and fiduciaries who handle UPSI of a listed company in the course of business operations shall:

- Report violations to the Board in the standardized format prescribed by the Board in the said circular;
- Maintain database of violation of code of conduct that would initiate appropriate action against them.

92. What steps Company need to take to protect Informant?

Company shall provide in its Code of Conduct provisions related to protection of employee from any discharge, termination, demotion, suspension, threats, harassment, directly or indirectly or discrimination.

Miscellaneous

93. If a spouse is financially independent and does not consult an insider while taking trading decisions, is that spouse exempted from the definition of ‘immediate relative’? (SEBI’s Guidance Note dated August 24, 2015)

A spouse is presumed to be an ‘immediate relative’, unless rebutted so.

94. What kind of violation is required to be reported to SEBI?

All violations including violations of the code of conduct is required to be reported to SEBI.

95. Whether amendment to the code of fair disclosure and conduct is required to be intimated to the stock exchange?

As per regulation 8(2) of the Regulations, code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

96. In case a designated person resigns, what information should be collected by the company/ intermediary/ fiduciary under PIT Regulations? (SEBI’s FAQs dated November 4, 2019)

All information which is required to be collected from designated persons, should be collected till date of service of such employees with the company. Upon resignation from service of designated person, a company/ intermediary/ fiduciary should maintain the updated address and contact details of such designated person. The company/ intermediary/ fiduciary should make efforts to maintain updated address and contact details of such persons for one year after resignation from service. Such data should be preserved by the company/ intermediary/fiduciary for a period of 5 years.

International Scenario

97. Laws and regulations of various countries to prohibit insider trading:

<table>
<thead>
<tr>
<th>Countries</th>
<th>Enforcement Body</th>
<th>Specific Laws</th>
<th>Maximum Fines &amp; Fees</th>
<th>Maximum Prison Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>Securities and Exchange Commission</td>
<td>Securities Exchange Act of 1934</td>
<td>Civil: Greater of $1 million or 3 times amount of profit</td>
<td>20 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Criminal - maximum $5 million</td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Financial Services Authority</td>
<td>Criminal Justice Act</td>
<td>Unlimited</td>
<td>7 years</td>
</tr>
<tr>
<td>Canada</td>
<td>Different governing body for different provinces</td>
<td>Securities Act &amp; Criminal Act</td>
<td>$ 5 million</td>
<td>10 years</td>
</tr>
<tr>
<td>Brazil</td>
<td>Brazilian Security Commission</td>
<td>Brazilian Legislation Act</td>
<td>$ 19 million</td>
<td>5 years</td>
</tr>
<tr>
<td>Australia</td>
<td>Australian Securities and Investment Commission</td>
<td>Corporations Act</td>
<td>Greater of AUD$ 495,000 or 3 times amount of profit</td>
<td>10 years</td>
</tr>
<tr>
<td>France</td>
<td>AMF or Autorité des</td>
<td>Monetary and Financial Code of</td>
<td>EUY 100 million</td>
<td>2 years</td>
</tr>
</tbody>
</table>
98. The insider trading laws have been enforced by various countries in different decades.

![Figure 3: Insider Trading laws enforced in different decades by various countries](http://www.macrothink.org/journal/index.php/ijafr/article/viewFile/3269/2976)
**Annexure – I**

Contents of Digital Database of recipients of UPSI  
[See Regulation 3(4) and 3(5) of the SEBI (Prohibition of Insider Trading) Regulations, 2015]

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name and category of the recipient</th>
<th>PAN</th>
<th>Address</th>
<th>Details of UPSI along with their PAN or of Affiliates, in case the recipient is an entity or company</th>
<th>Name of the person who shared such UPSI</th>
<th>Date and Time of Sharing</th>
<th>Whether NDA has been signed and Notice of confidentiality has been given?</th>
<th>Date of entry when UPSI became publicly available</th>
<th>Remarks, if any</th>
</tr>
</thead>
</table>

**Note 1:**  
The categories of recipients shall include:  
- a. Employees of the Company who are not Designated Persons (DPs);  
- b. Persons who are neither employees nor DPs but may come into contact with the DPs and other insiders of the Company;  
- c. Affiliates shall mean the promoter and promoter group, associates and JVs of the entity/ company.

**Note 2:**  
- a. The database shall be maintained under the supervision of the Compliance Officer of the Company;  
- b. The database shall be reviewed by the Compliance Officer on a periodic basis.
FAQs on SEBI (PIT) Regulations, 2015 issued by SEBI on November 04, 2019
Guidance Note on SEBI (PIT) Regulations, 2015 issued by SEBI on August 24, 2015 and amended.
Also see our other related write-ups:
- Click here to view the article: SEBI rationalizes Insider Trading Regulations;
- Click here to view the article: Actionables to implement amendments brought under SEBI PIT;
- Click here to view presentation on SEBI (PIT) Regulations, 2015.

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