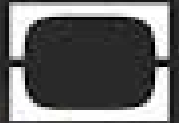


# INSIDER TRADING



# Coverage

- ✓ Overview
  - ✓ Relevant terminologies
  - ✓ Handling Information with care-
    - Rules and Exceptions
    - Common Exceptions
    - Legitimate Purpose
    - Structured Digital Database
  - ✓ Inclusive set of Defences
  - ✓ Code of fair disclosure and code of conduct
  - ✓ Code of practices and procedures for
- fair disclosure
  - ✓ Internal Control Mechanism
  - ✓ Disclosure norms
  - ✓ Case Study

# Overview

- Insiders of listed entities cannot trade based on privileged information
- The mandate of SEBI is to protect the interest of investors and to regulate the securities market in a fair and transparent manner.
- To prevent trades by those who have access to insider and privileged information
- To promote fair market conduct in the securities market
- To protect market integrity and interest of investors
- **To discourage Insider Trading – A WHITE COLLAR CRIME**

# RELEVANT TERMINOLOGIES (1/4)

Unpublished

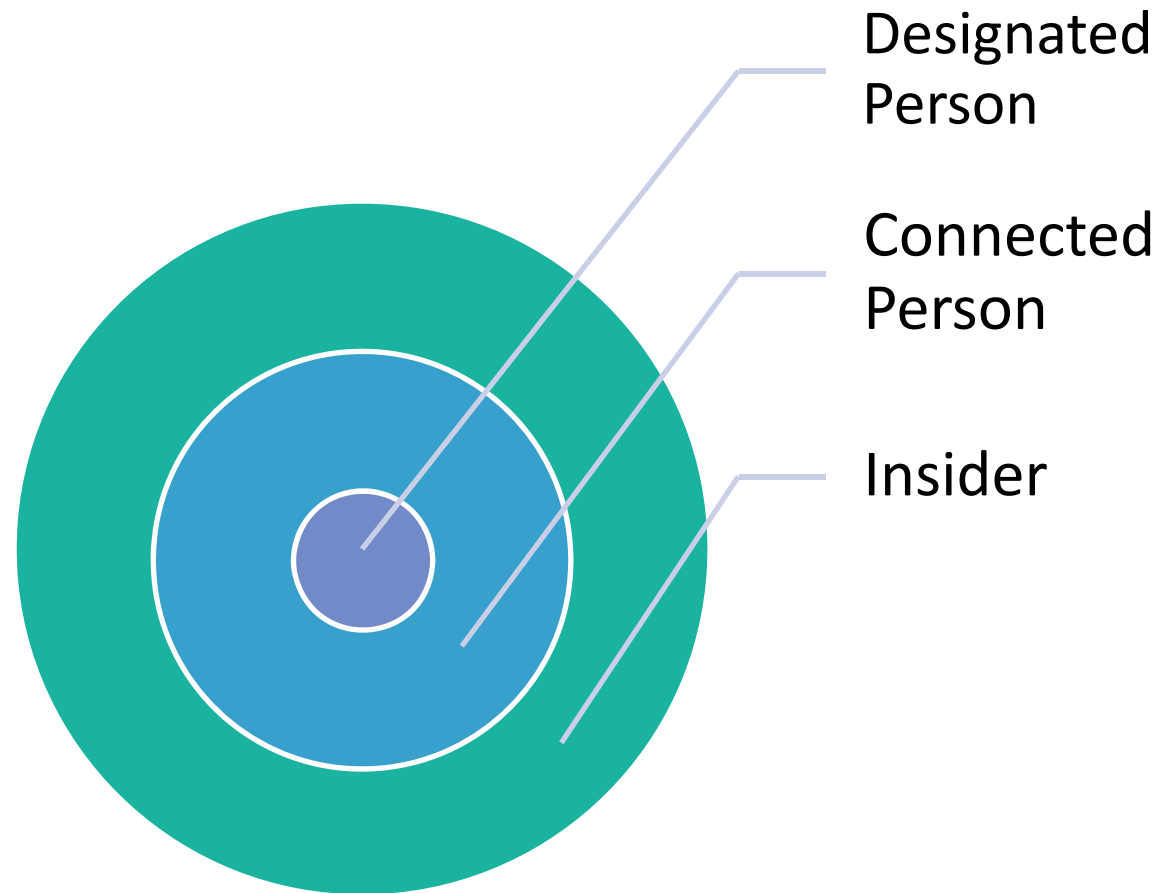
price sensitive

information

- Not generally available i.e. accessible to the public on a non-discriminatory basis
- Becomes when comes on website of stock exchange
- If made generally available will materially affects the price of the securities
- Related to company or its securities
- Financial results, change in capital structure, mergers, de-mergers, any other transaction

*What is material under LODR may not be UPSI under PIT*

## RELEVANT TERMINOLOGIES (2/4)



- Even outsider can be an insider.
- Method of possessing UPSI is not relevant

# RELEVANT TERMINOLOGIES (3/4)

## Trading Window

- Virtual window used for allowing or restricting trading by insiders to trade in securities of the company
- DPs and their immediate relatives shall not trade in securities when the trading window is closed.
- When is trading window closed?
  - DPs or class of DPs expected to have possession of UPSI.
  - From the end of every quarter till 48 hours after the declaration of financial results
  - The gap between clearance of accounts by audit committee and board meeting should be as narrow as possible to avoid leakage of UPSI.

# No restriction of trading window

- Off market inter-se transactions between insiders in possession of same UPSI
- Transaction through Block deal mechanism
- Transaction pursuant to statutory / regulatory obligation
- Transaction pursuant to ESOP – exercise price pre-determined
- Transaction pursuant to trading plans
- Pledge of shares for bonafide purpose such as raising funds
- Other transactions Acquisition by conversion of warrants or debentures
  - Subscribing to rights issue
  - FPO
  - Preferential allotment
  - Tendering of shares in a buy back offer, open offer, delisting offer

# RELEVANT TERMINOLOGIES (4/4)

## Chinese Wall

- A barrier for passage of information
- Confidential information/ Insider information is prevented to be leaked into public which could otherwise be used for illegal benefits
- The term 'public' for an organization includes the departments and the employees of those departments who DO NOT 'need to know' an information and if known it might be price-sensitive for the organization.



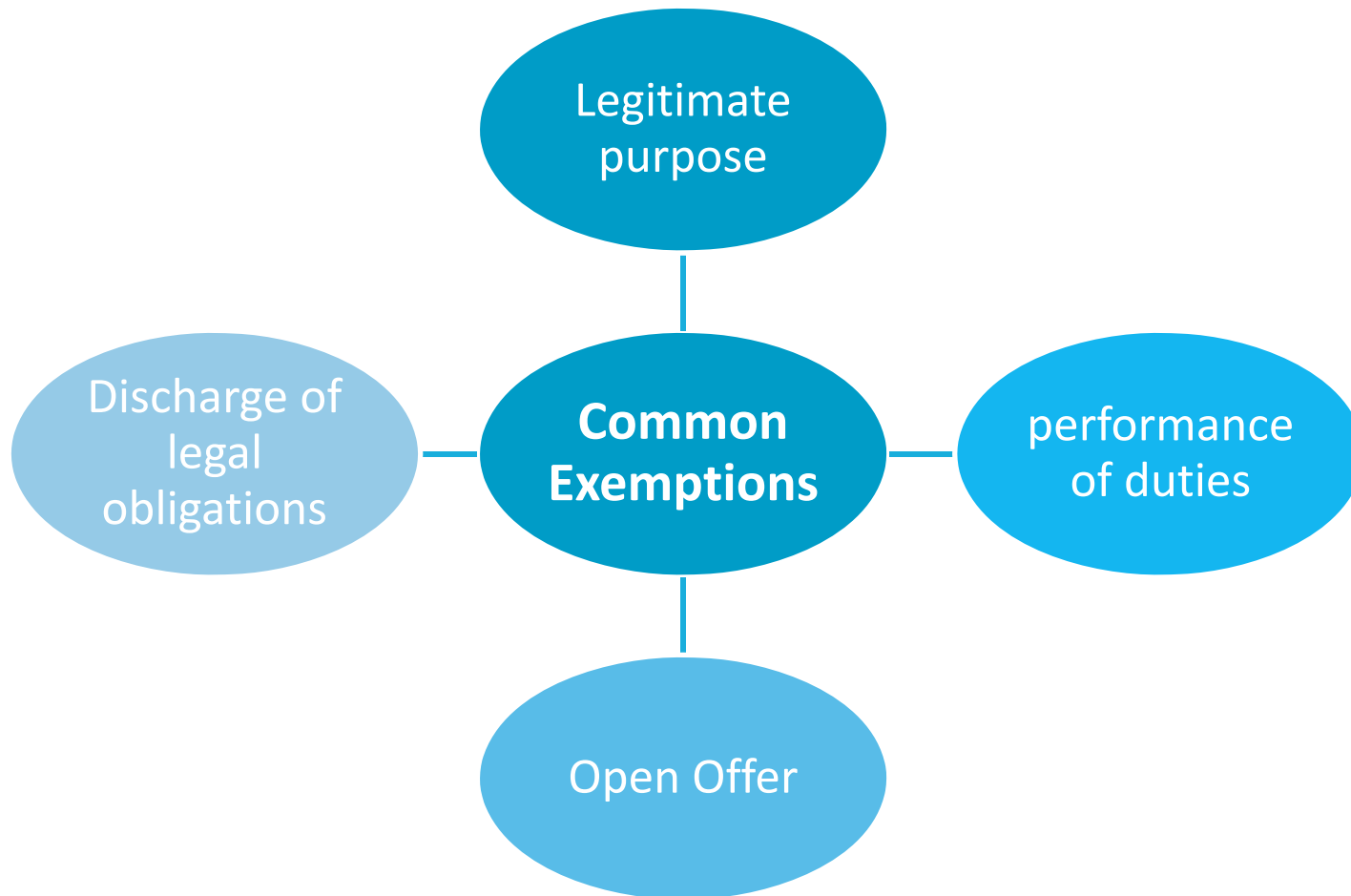
# Handling Information with care

- No insider shall communicate, provide, or allow access to any UPSI
- To any person including other insiders
- Prohibition on unlawfully procuring possession of UPSI
- No person shall procure from or cause the communication by any insider

Rule for **Insiders**

Rule for **any person**

# Common Exemptions



# LEGITIMATE PURPOSE

- 'Legitimate purpose' means sharing information sharing UPSI in ordinary course of business with lenders, customers, advisors, insolvency professionals etc.
- Persons in receipt of UPSI pursuant to legitimate purpose considered an INSIDER
- Every listed entity should have a policy for determining legitimate purposes for which UPSI of the Company can be shared.
- Policy to be made in conformity of Regulations and must not evade or circumvent the prohibitions of these regulations

# STRUCTURED DIGITAL DATABASE

- Creation of a database of persons with whom UPSI is shared
- Board's responsibility to ensure a Digital Database is properly maintained with adequate internal controls and checks like audit trails, non-tampering etc.
- Database to include details like Name, PAN or any other identification proof of such persons / entities with whom UPSI is shared.
- Intermediaries and fiduciaries who handle UPSI of a listed company in the course of business operations. (Amendment in Guidance Note)

# Inclusive set of Defences

Off-market inter se transfer between insiders

- Insider to report the company within 2 working days
- Company to report the Stock exchange within 2 working days

Block deal window mechanism

Statutory or regulatory obligation

Individual in possession of UPSI different from the individuals taking trading decisions

Stock option plans

Pursuant trading plan

## **Code of Fair Disclosure**

- Formulated by BODs of listed entity
- Framed in accordance with Schedule A
- Published on website of the Company

## **Code of Conduct**

- Formulated by BODs of listed entity + Market Intermediaries +Fiduciaries
- Applicable on DPs and their relative
- Erstwhile there was a common Code for all
- Now framed in accordance with Schedule B and C

# Code of practices and procedures for fair disclosure

- The idea is to make the UPSI generally available.
  - Prompt disclosure of UPSI
  - Uniform and universal dissemination
  - Making selective disclosed information generally available
  - Handling information on need to know basis
- Designate Chief Investor Relation Officer for ensuring compliance.
- Amendment in the policy informed to stock exchange and amended code to be uploaded on website.

# Code of Conduct

- To regulate and monitor and report trading by designated persons and immediate relatives of designated persons
- Board to specify the DPs to be covered by this Code
- Reports to the BOD and/or Chairman of Audit Committee – Periodicity set to at least once in a year;
- Compliance Officer will administer the code.
- Threshold for seeking pre-clearance
- Restriction in relation to contra trade, period of closure of trading window, maintenance of restricted list;
- Process for how and when people are brought 'inside' on sensitive transactions



# Internal Control Mechanism

Responsibility of CEO, MD or analogous person of listed company, intermediary, fiduciary. To put in place adequate system of ICs to ensure compliance with Regs

It shall include:

- a. All employees having access to UPSI to be identified as designated persons;
- b. All UPSI to be identified and its confidentiality to be maintained;
- c. Adequate restrictions to be placed on communication or procurement of UPSI;
- d. List of all employees and persons with whom UPSI is shared to be maintained & Confidentiality agreements signed or notice served to all such employees and persons;
- e. Timely disclosures, monitoring of trades, Chinese walls, inquiry process in case of leak, training etc.
- f. Periodic process review to evaluate effectiveness of such internal controls

## DICLOSURE NORMS

S.No.	Regulation	Purpose of Disclosure	Type of Disclosure
1.	7(1)(a)	Disclosure of shareholding was to be made within 30 days from the date of effect of PIT regulations. Disclosure was to be made by : Every promoter, member of promoter group, KMP, Director	Initial Disclosure
2.	7(1)(b)	Disclosure of shareholding as on the date of appointment as KMP, Director or becoming promoter or member of promoter group	Event based Disclosure (Disclosure to be done within 7 days from the date of appointment)

S.No.	Regulation	Purpose of Disclosure	Type of Disclosure
3.	7(2)(a)	<p>Acquisition of disposal of securities ,where the value of securities traded (whether in 1 transaction or series of transaction in 1 calendar quarter) aggregates to a traded value of more than Rs. 10 Lakhs or such value as may be specified.</p> <p>Disclosure to be made by: promoter, Member of promoter group, designated persons, Director</p>	Continual Disclosure
4.	7(2)(b)	<p>Disclosure received under Regulation 7(2)(a) by Company is disseminated to Stock Exchange within 2 working days from the date of receipt</p>	Continuous Disclosure
5.	7(3)	<p>Disclosures by other connected persons of holdings and trading in securities.</p>	Form and frequency determined by the Company

# Case Study

## Gammon Infrastructure Projects Ltd

- UPSI – Termination of shareholders Agreement
- The agreement terminated on **26.04.2012**
- Remained unpublished till **03.09.2013**
- CMD (Insider) of the Company and Consolidated Infrastructure Ltd (connected to CMD) with sold and avoided combined loss of 1.10 crore
- SEBI passed order and imposed penalty

Thank You

By Shaifali Sharma