



## SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

**FCS Vinita Nair**  
Senior Partner  
Vinod Kothari & Company

Kolkata:

1006-1009, Krishna  
224 AJC Bose Road  
Kolkata – 700 017  
Phone: 033 2281 3742/7715  
Email: [info@vinodkothari.com](mailto:info@vinodkothari.com)

New Delhi:

A-467, First Floor,  
Defence Colony,  
New Delhi-110024  
Phone: 011 41315340  
Email: [delhi@vinodkothari.com](mailto:delhi@vinodkothari.com)

Mumbai:

403-406, Shreyas Chambers  
175, D N Road, Fort  
Mumbai  
Phone: 022 2261 4021/ 62370959  
Email: [mumbai@vinodkothari.com](mailto:mumbai@vinodkothari.com)

Website: [www.vinodkothari.com](http://www.vinodkothari.com)

# COPYRIGHT & Disclaimer

- This presentation is only for academic purposes; this is not intended to be a professional advice or opinion. Anyone relying on this does so at one's own discretion. Please do consult your professional consultant for any matter covered by this presentation.
- The contents of the presentation are intended solely for the use of the client to whom the same is marked by us.
- No circulation, publication, or unauthorised use of the presentation in any form is allowed, except with our prior written permission.
- No part of this presentation is intended to be solicitation of professional assignment.

# About Us



- Vinod Kothari and Company, company secretaries, is a firm with over 30 years of vintage
  - Based out of Kolkata, New Delhi & Mumbai
- We are a team of qualified company secretaries, chartered accountants and lawyers.

***Our Organization's Credo:***

***Focus on capabilities; opportunities follow***

# Outline of presentation

- Intent of regulating insider trading
- Insider Trading Regulations – Global scenario and evaluation of regulations in India
- Applicability of the Regulations
- Key terminologies under the Regulations
- Basic Requirements under the Regulations
- Disclosure Requirements under the Regulations - Disclosure by DPs about trades and Disclosure by Company about violations
- Important concepts under the Regulations
- Obligations of Insiders
- Obligations of DPs
- Obligations of Compliance Officer
- Obligations of Board of Directors
- Obligations of Audit Committee
- Powers of SEBI and Penalties for violations of the Regulations
- PIT Amendments and FAQs, Comparison between PIT Regulations, 1992 and PIT Regulations, 2015

## Intent of regulating insider trading

- SEBI is the watchdog of securities market and keeps a check on malpractices by investors in trading of securities
- Intent of PIT Regulations is to maintain stock market at a level playing field, where investors trade.
- No one should be able to beat the market by edge of information
- Basic investor temptation to outperform the market by getting 'extra' piece of information
- In this regard, Chapter VA of SEBI Act, 1992 prohibits person from engaging in insider trading

# Insider Trading- global scenario

Countries	Enforcement Body	Specific Laws	Maximum Fines & Fees	Maximum Prison Time
<b>United States</b>	Securities and Exchange Commission	Securities Exchange Act of 1934	Civil: Greater of \$1 million or 3 times amount of profit Criminal -maximum \$5 million	20 years
<b>United Kingdom</b>	Financial Services Authority	Criminal Justice Act	Unlimited	7 years
<b>Canada</b>	Different governing body for different provinces	Securities Act & Criminal Act	\$ 5 million	10 years
<b>Brazil</b>	Brazilian Security Commission	Brazilian Legislation Act	\$ 19 million	5 years
<b>Australia</b>	Australian Securities and Investment Commission	Corporations Act	Greater of AUD\$ 495,000 or 3 times amount of profit	10 years
<b>France</b>	AMF or Autorité des Marchés Financiers	Monetary and Financial Code of 2000, Banking and Financial Regulation Act of 2010	EUY 100 million	2 years

# Evolution of Insider Trading Regulations in India

PIT Regulation, 1992

Effective from November 19, 1992

PIT Regulations, 2015

- Effective from May 15, 2015
- Based on recommendation of NK Sodhi committee report

Amendments in 2019

- Based on recommendations of TK Vishwanathan committee report

## RECENT AMENDMENTS IN PIT REGULATIONS

**SEBI (PIT)  
(Amendment)  
Regulation,  
2018**

**31<sup>st</sup> December,  
2018**

**Effective from  
1<sup>st</sup> April, 2019**

**SEBI (PIT)  
(Second  
Amendment)  
Regulations, 2019**

**25<sup>th</sup> July, 2019  
Effective from the  
date of  
publication i.e.  
25<sup>th</sup> July, 2019**

**SEBI (PIT)  
(Amendment)  
Regulations,  
2020**

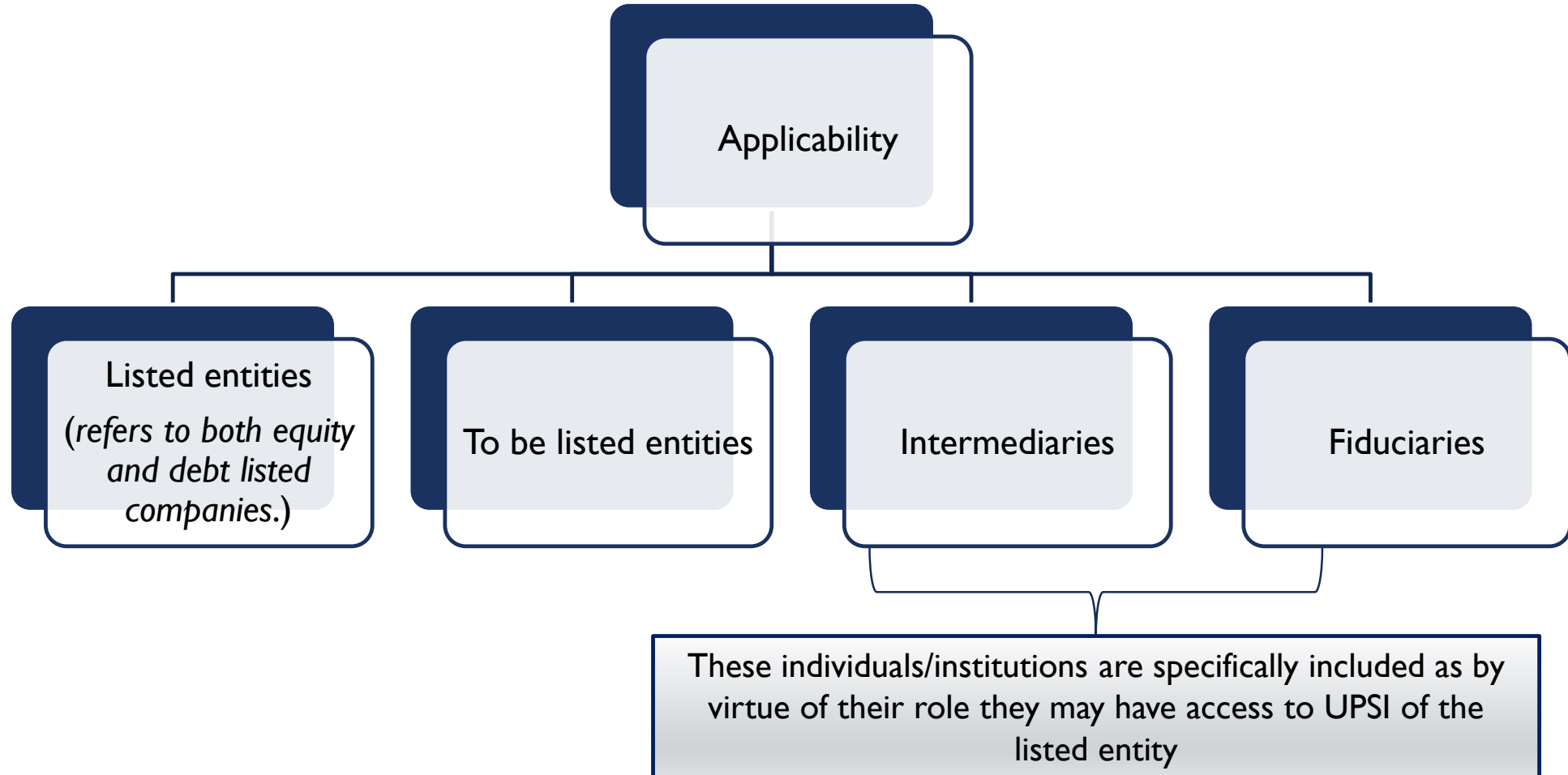
**17<sup>th</sup> July, 2020  
Effective from  
the date of  
publication i.e.  
17<sup>th</sup> July, 2020**

**SEBI (PIT)  
(Amendment)  
Regulations, 2019  
21<sup>st</sup> January, 2019  
Effective from the  
date of publication  
i.e. 21<sup>st</sup> January,  
2019**

**SEBI (PIT) (Third  
Amendment)  
Regulations, 2019  
17<sup>th</sup> September, 2019  
Effective from the  
100<sup>th</sup> day of  
publication i.e. 26<sup>th</sup>  
December, 2019**

**SEBI (PIT) (Second  
Amendment)  
Regulations, 2020  
29<sup>th</sup> October, 2020  
Effective from the  
date of publication  
i.e. 29<sup>th</sup> October,  
2020**

# Applicability of the Regulations



# Who are market intermediaries and fiduciaries?

## Market Intermediaries

(SEBI regulated market intermediaries such as brokers, merchant bankers, investment advisors etc. )

## Fiduciaries

(includes auditors, accountancy firms, consultants, professional entities)

# Key terminologies under the Regulations

## Insider

- a) Connected person
- b) Any person in possession of or having access to UPSI (rightly or wrongly)

## UPSI

- ✓ Information relating to company or its securities,
  - ✓ directly or indirectly
  - ✓ not generally available, but if available shall materially affect price of securities
- ✓ Ordinarily includes:
  - a. Financial results;
  - b. Dividends;
  - c. Change in capital structure;
  - d. Changes in KMP;
  - e. Mergers, de-mergers, acquisition;
  - f. delisting, expansion etc.

## Trading

- Includes:
- a) Subscribing;
  - b) Buying;
  - c) Selling;
  - d) Dealing;
  - e) Agreeing to subscribe, buy, sell or deal in any securities.

# Key terminologies under the Regulations

## Generally available information

Information that is accessible to public on a non-discriminatory basis or is ordinarily or generally available

## Material Financial Relationship

- Relationship in which one person is recipient of any kind of payment such as by way of gift or loan
- At least of 25% of annual income of DP
- During immediately preceding 12 months
- Does not include arm's length transactions

## Immediate Relative

- Includes - spouse, parent, sibling and child of such person or the spouse,
- who is financially dependent on such person or consults such persons in taking decisions relating to trading in securities
- Eg: Mr. A son of Mr. B is involved in the business of his father, however, also works as consultant for corporate houses during part time. Mr, A is not financially dependent

## Trading Day

Day on which the recognized stock exchanges are open for trading



# BASIC REQUIREMENTS UNDER THE REGULATIONS



# Identification of Designated Persons

Persons regulated under erstwhile provisions	Persons regulated under current provisions
Regulates following: <ul style="list-style-type: none"><li>- Promoters</li><li>- Directors</li><li>- Designated Employees</li></ul>	Regulates following <ul style="list-style-type: none"><li>- Promoters</li><li>- Directors</li><li>- <b>Designated Persons (includes employees)</b></li></ul>

## Who is a Designated Person?

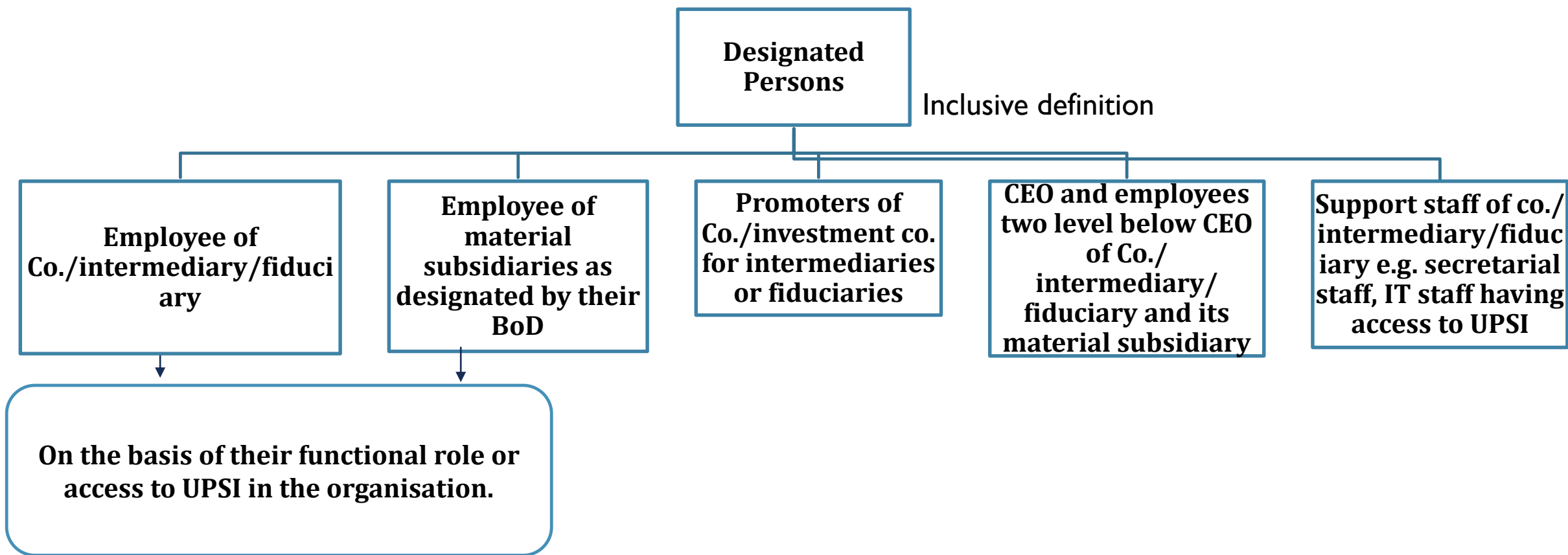
- Persons who have been designated by the Company as to having **access to UPSI** in the Company; and
- Designated persons are determined on the basis of:

FUNCTION

Eg- Accounts department by virtue of their function shall have access to financial statements even before approval  
Secretarial department by virtue of their function shall have access to Board agenda even before circulation to Board.

SENIORITY

Ex- first two layers of organisational ladder, irrespective of their functional role in the Company or ability to have access to UPSI.



# Informal guidance in the matter of Apollo Tricoat Tubes Limited

## **Facts:**

*Mr. X is currently holding 13.34% shares of PQR Ltd. He was earlier one of the promoters of the Company*

*Since 2018, he is not acting as a promoter of the company and has no role in any decision making of the company or have access to any information pertaining to the business of the Company*

*However, he cannot be classified as a public shareholder due to provisions of the LODR Regulations*

- SEBI answered the following query:
  - *Whether a person named as promoter pursuant to LODR but not acting as promoter will be identified as non-designated promoter for Regulation 9(4) of PIT Regulations*
  - *If this non-designated persons executes trade during trading window closure, whether it will amount to violation of clause 4 of Schedule B of PIT Regulations*

- **The PIT Regulations identify promoters as designated persons. Hence, a person identified as a Promoter is required to comply with the code of conduct requirements as required by other designated persons.**
- Mr. X, by virtue of being named as a Promoter and on account of continuing to hold greater than 10% of the total voting rights in the Company shall be identified as a designated person for the purpose of compliance with Company's code of conduct.

# Appointment of Compliance Officer

## Senior officer

- Designated and reporting to BoD
- Head of organisation in case there is no BoD

## Financially literate

- Has ability to read and understand financial statements

Capable of appreciating requirements for legal and regulatory compliance

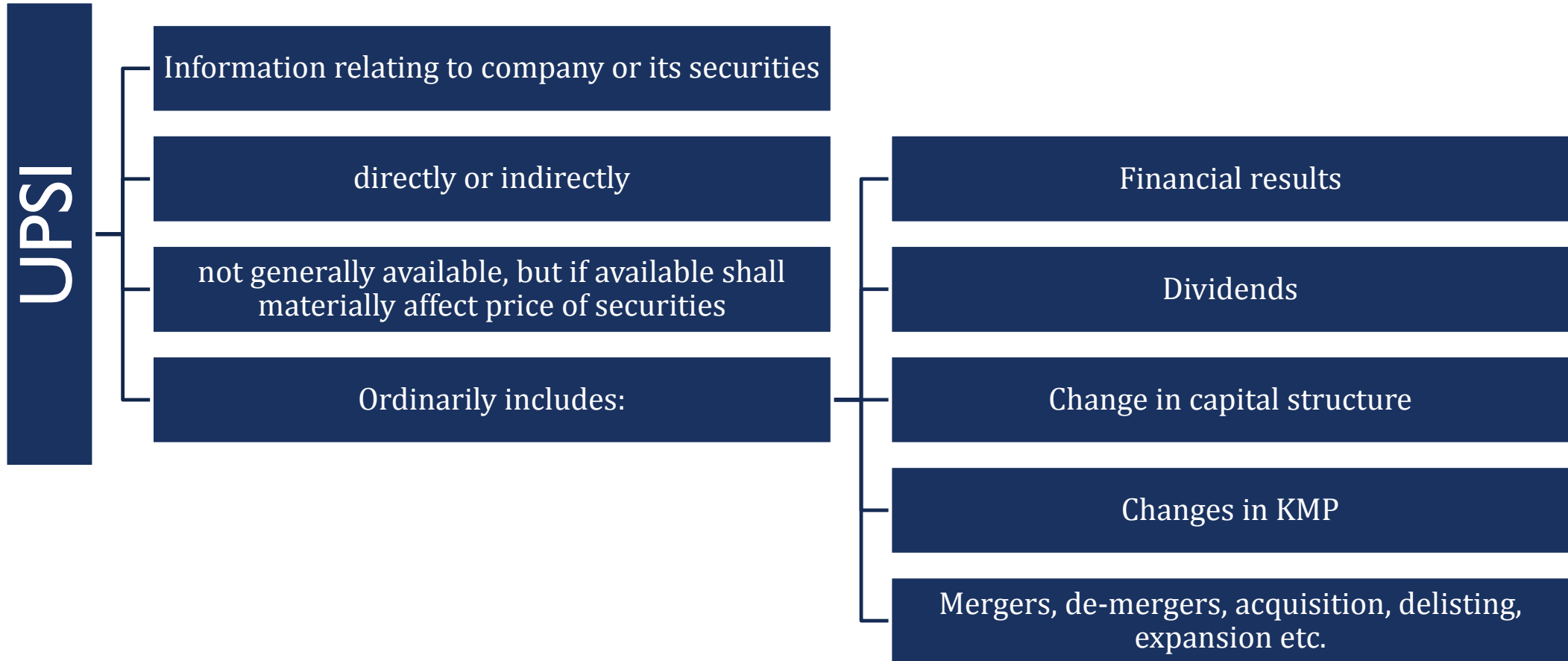
## Is it necessary to designate CS as compliance officer?

- Regulation 2(1)(c) of PIT Regulations require compliance officer to have following:
  - Be a senior officer
  - Should be financial literate
  - Capable of appreciating legal and regulatory requirements
- Anyone who possess above may be compliance officer and not specifically Company Secretary as required in SEBI (LODR) Regulations
- Clarified by SEBI in the informal guidance of Mindtree Limited
  - Compliance officer can be any senior officer fulfilling the criteria

## Informal guidance by SEBI

[https://www.sebi.gov.in/enforcement/informal-guidance/oct-2015/informal-guidance-in-the-matter-of-mindtree-ltd-regarding-sebi-prohibition-of-insider-trading-regulations-2015\\_31580.html](https://www.sebi.gov.in/enforcement/informal-guidance/oct-2015/informal-guidance-in-the-matter-of-mindtree-ltd-regarding-sebi-prohibition-of-insider-trading-regulations-2015_31580.html)

# Identification of UPSI



# In the matter of scrip of United Spirits Limited

- **Whether an information that an open offer is to be made would per se be considered as UPSI? Or the information regarding the details of the offer i.e. the offer price, the quantity and the date of announcement of the offer is to be considered as PSI?**
- The AO noted that the act of announcement of open offer and the details mentioned therein cannot be treated separately, rather, it is the whole process vide which the intention / decision of the acquirer with relevant details is made known to the public at large. Thus, the open offer announcement along with the details of Acquirer and PAC, size of the offer, timing and the offer price is the price sensitive information.
- **Whether an information available in public domain by way of media reports will be considered as unpublished?**
- The AO in the same case further noted that any report published in media which has not been published by the Company cannot be treated as published. Even if the media report is published by the Company, it would still be deemed as “not published” if the information was not specific in nature.

- Total penalty of Rs. 80,76,375 was levied on the Noticees for violation of the PIT Regulations under Section 15G.

## **Order of AO:**

[https://www.sebi.gov.in/enforcement/orders/jun-2020/adjudication-order-in-respect-of-varun-haresh-jashnani-in-the-matter-of-investigation-in-the-matter-of-insider-trading-activity-of-certain-entities-in-the-scrip-of-united-spirits-limited\\_46971.html](https://www.sebi.gov.in/enforcement/orders/jun-2020/adjudication-order-in-respect-of-varun-haresh-jashnani-in-the-matter-of-investigation-in-the-matter-of-insider-trading-activity-of-certain-entities-in-the-scrip-of-united-spirits-limited_46971.html)

# In the matter of Man Industries (India) Limited

- The Company delayed the disclosure of UPSI on a prompt and immediate basis.
- Also, the Company did not amend its Model Code of Conduct as specified in Schedule I after amendments in the PIT Regulations.
- It was contended by SEBI that the definition of “Price sensitive information” is broad enough to cover within its ambit any information which if published is likely to materially affect the price of the securities of a company.
  - In this regard, what is relevant to be seen is that –
    - Whether information directly or indirectly related to company, and
    - Whether information, if published, is likely to materially affect price of securities of a company
  - **If the answers to these questions are in the affirmative, then the information has to be construed as price sensitive information irrespective of actual price witnessed post disclosure of information.**

- Penalty of Rs. 25 lakh was imposed on the Noticees
- The Order of the AO was upheld by SAT in an appeal

## Order of the AO

[https://www.sebi.gov.in/enforcement/orders/mar-2014/adjudication-order-in-respect-of-man-industries-i-limited-r-c-mansukhani-j-c-mansukhani-j-l-mansukhani-r-c-jindal-and-sujal-sharma-in-the-matter-of-man-industries-i-limited\\_26603.html](https://www.sebi.gov.in/enforcement/orders/mar-2014/adjudication-order-in-respect-of-man-industries-i-limited-r-c-mansukhani-j-c-mansukhani-j-l-mansukhani-r-c-jindal-and-sujal-sharma-in-the-matter-of-man-industries-i-limited_26603.html)

## Order of SAT

[http://sat.gov.in/ENGLISH/PDF/E2016\\_JO2014185.PDF](http://sat.gov.in/ENGLISH/PDF/E2016_JO2014185.PDF)

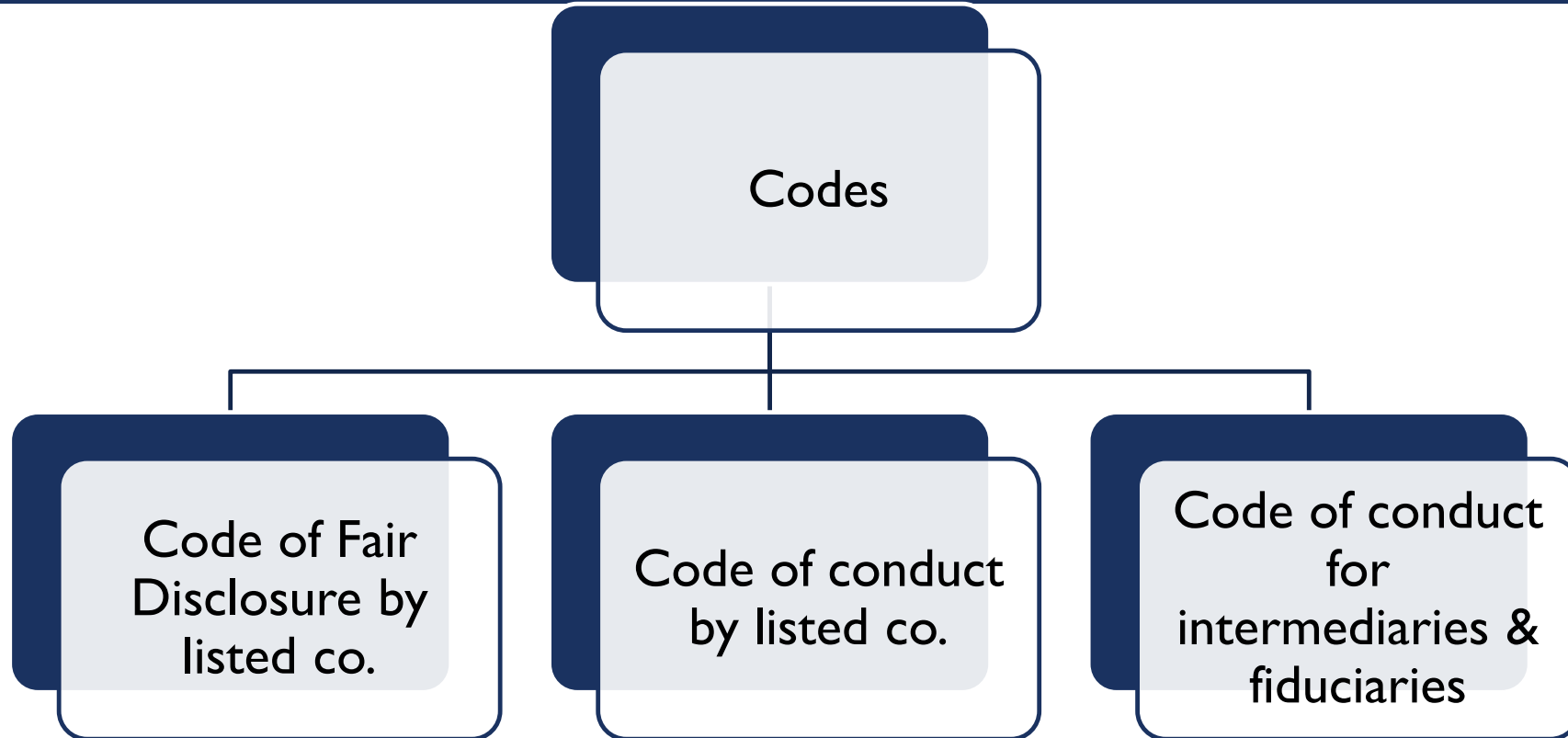


# CODES UNDER PIT REGULATIONS

DISCUSSION ON CONTENTS OF CODES



# Codes under PIT Regulations



# Code of Conduct v/s Code of Fair Disclosure

Parameters	Code of Conduct	Code of Fair Disclosure
<b>Applicability of the Code</b>	DPs and their immediate relatives	Board of Directors and Chief Investor Relations Officer
<b>Intent</b>	to regulate, monitor and report trading by its Ds and immediate relatives of DPs	To ensure prompt and uniform disclosure of UPSI and avoid its selective disclosure
<b>Minimum standards</b>	Minimum standards as per Schedule B	Minimum standards as per Schedule A
<b>Intimation to stock exchange</b>	Formulated Code of Conduct to be <u>confirmed</u> to the stock exchange	Formulated Code of fair disclosure and amendments thereto to be <u>intimated</u> to the stock exchange
<b>Disclosure on website of the Company</b>	No disclosure required	Need to be disclosed

# Code of conduct of listed company v/s that of intermediaries and fiduciaries

Parameters	Code of conduct of listed entity	Code of conduct of intermediaries and fiduciaries
<b>Person responsible for formulation</b>	CEO & MD formulates with the approval of Board of Directors	Head of organisation
<b>Minimum Standards</b>	Minimum standards as per Schedule B	Minimum standards as per Schedule C
<b>Restricted list</b>	No express requirement of maintaining restricted list	Requires maintenance of restricted list for approving or rejecting applications for pre-clearance of trades
<b>Trading window closure</b>	Trading window is required to be closed by listed entity.	Trading window is closed by client listed entity.

# Code of Conduct for listed company

- Applicable on DPs and immediate relatives
- Onus of formulation of code on CEO and MD
- To regulate, monitor and report trading by DP and their immediate relatives
- Compliance officer to administer the Code.

○ Identification of DPs on the basis of role and function apart from seniority

○ Policy in relation to access to UPSI on need-to-know basis, Chinese wall procedures, how to bring people inside;

○ Functions of the Compliance Officer

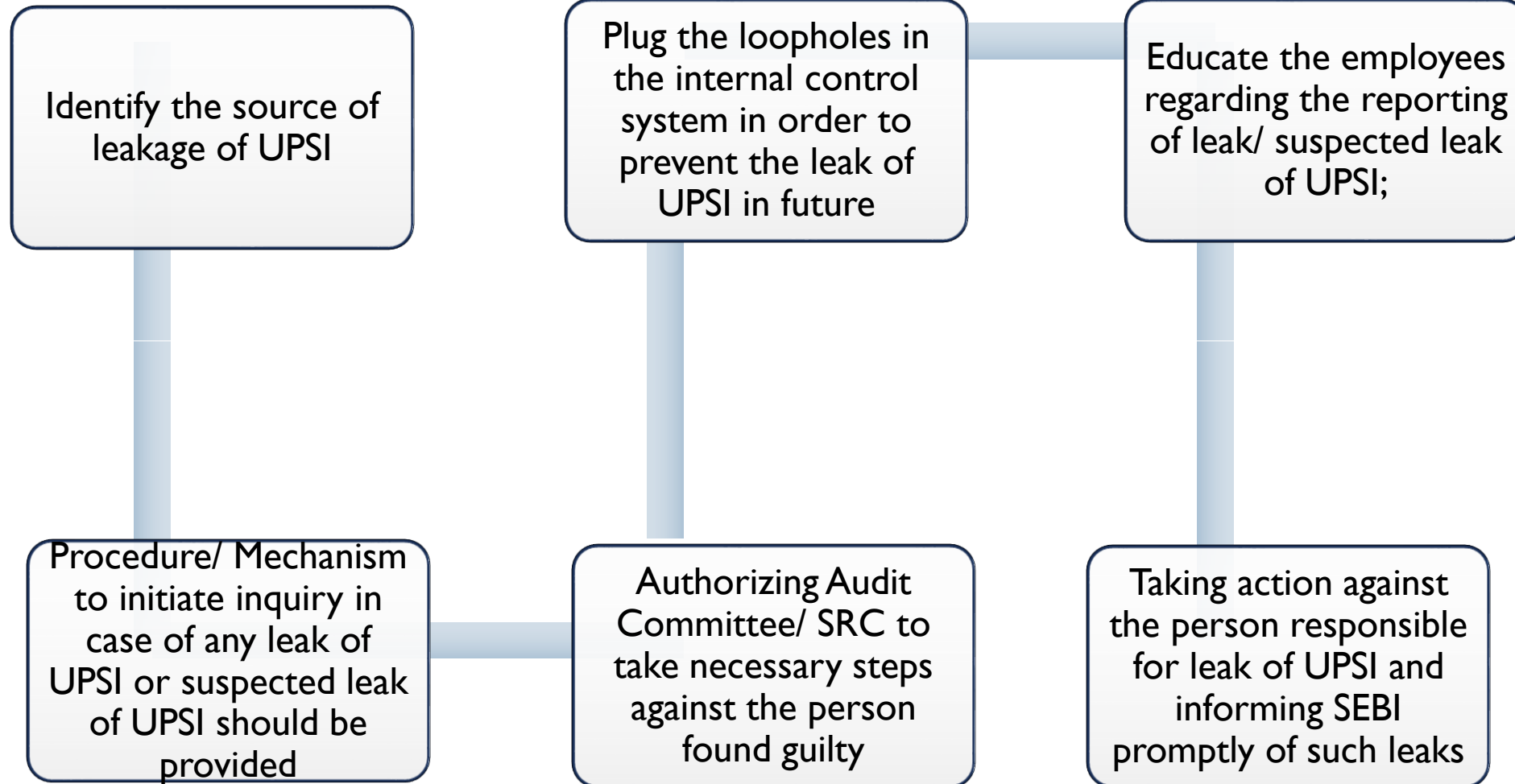
○ Dealing with leak of UPSI, protection against victimization of informants

○ Threshold and formats for seeking pre-clearance, reporting of trade, initial disclosure, annual disclosure and continual disclosure, personal information

○ Restriction in relation to contra trade, period of closure of trading window, maintenance of restricted list;

○ Penalty and reporting in case of contravention of the Code.

# Policy for leak of UPSI



# Code of conduct for intermediaries and fiduciaries

- Why is this Code required?
  - UPSI flows from companies to fiduciaries and intermediaries
  - Need to protect such information
- The head of organisation shall be responsible for formulating the Code
- To regulate, monitor and report trading by its DPs and immediate relatives of DPs
- Similar norms of Code of Conduct for listed companies applicable on intermediaries and fiduciaries
- Compliance officer has to maintain 'restricted list' with widespread control for restricting use of UPSI
- Identification of DPs
  - Functional- Staff which get access to information. Ex- in case of consultant, point of contact of the listed co.
  - Seniority- Based on designation such as senior partners, associates etc.

The listed company shall ensure that it 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

# Code of Fair Disclosure

- BoD of listed company has to formulate code of fair disclosure and publish on its website
- Framework and policy for fair disclosure of events and occurrence that could impact price discovery

1

• Principle of avoidance of selective disclosure and universal dissemination of information

2

• Designation of senior officer as Chief Investors Relations Officer to deal with dissemination of info & disclosure of UPSI

3

• Process of handling and verification of market rumours

4

• Information shared with analysts and research personnel is not UPSI

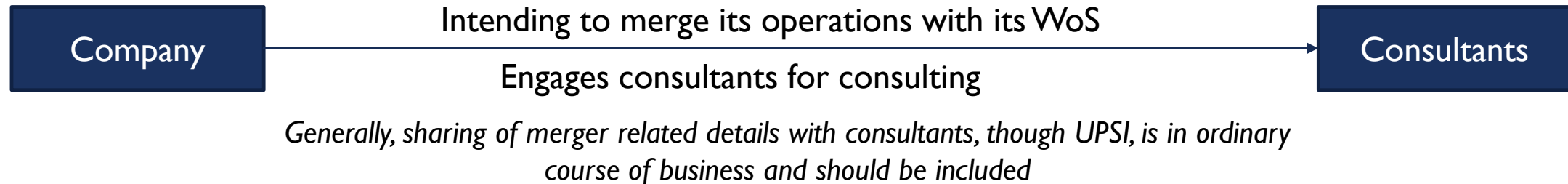
5

• Handling of UPSI on need to know basis, policy for determination of “legitimate purposes”.

# Sharing of UPSI for legitimate purpose

- **What is legitimate purpose?**

Sharing of UPSI in ordinary course of business by an insider with outsiders for business purpose, without circumventing the prohibitions of PIT Regulations.



## Whether this is legitimate purpose?

The BoD of every company has to formulate a **policy for determination of 'legitimate purpose'** as a part of Code of Fair Disclosure and Conduct. Such policy may include:

- Determination as to what information can be shared by company in the ordinary course of business
- Information has to be shared only with the person authorised to do so
- Where company is sharing UPSI related matter, NDA needs to be executed
- Person whom the information is provided must be sensitized about the policy and confidentiality so as to avoid leakage

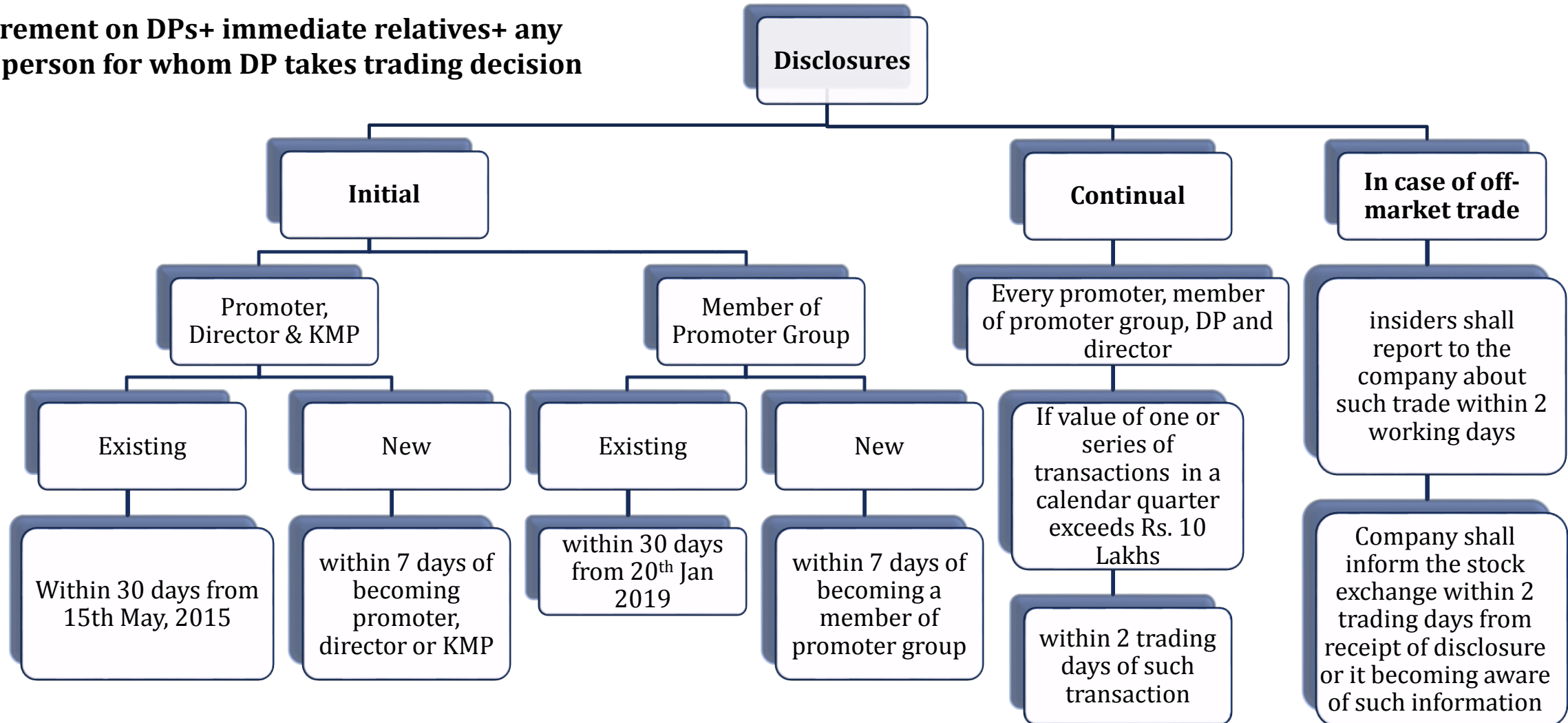


# DISCLOSURE REQUIREMENTS UNDER THE REGULATIONS



# Disclosure Requirements on the DPs

**Requirement on DPs+ immediate relatives+ any other person for whom DP takes trading decision**



# System driven disclosures

- SEBI circular dated 28<sup>th</sup> May, 2018 provided that format for disclosure under PIT and SAST shall be standardised (PAN details submitted)
- SEBI intends to propose automated process of filing disclosure under Regulation 7(2) to capture delay in filing more effectively
- Enabling provision inserted as Reg 7(2)(c) for permitting such automated submission
- Format prescribed by SEBI vide Circular dated September 9, 2020.
  - system driven disclosures shall pertain to trading in equity shares and equity derivative instruments i.e. Futures and Options of the listed company;
  - Effective from Oct 1, 2020 – system to run parallel with physical disclosures till March 31, 2021;
    - the disclosures generated through the system shall be displayed separately from the regular disclosures filed with the exchanges.
  - Listed company shall provide the information including PAN number of Promoter(s) including member(s) of the promoter group, designated person(s) and director(s) (hereinafter collectively referred to as entities) as per PIT Regulations to the designated depository (selected in terms of SEBI circular ref. no. SEBI/HO/CFD/DCR I/CIR/P/2018/85 dated May 28, 2018) in the format and manner prescribed by the Depositories.
    - For PAN exempt entities, the Investor's Demat account number(s) shall be specified by the listed company.
    - The information was required to be provided within 10 days from the date of this circular.
    - any subsequent update in the details of the entities, the listed company shall update the information with the designated depository on the same day;
    - The transaction(s) carried out on T day shall be disseminated on T+2 day basis.
    - In case of any discrepancy, the issue shall be resolved by listed company, stock exchanges and depositories in coordination with one another.

# In the matter of Zee Media Corporation Limited

- AO observed that IFCI Ltd had invoked pledge in respect of certain equity shares of the company pledged by 25FPS Media Pvt Ltd.
- During the period IFCI has invoked pledge which resulted in a decrease in the shareholding of 25FPS in ZMCL.
- AO further observed that ZMCL was required to notify the exchanges regarding the particulars of trades within 2 trading days **of becoming aware of the same.**
- **By not making the relevant disclosures on time, both the noticees have conveniently kept the general investors in dark regarding the change in the shareholding of one of the promoters**

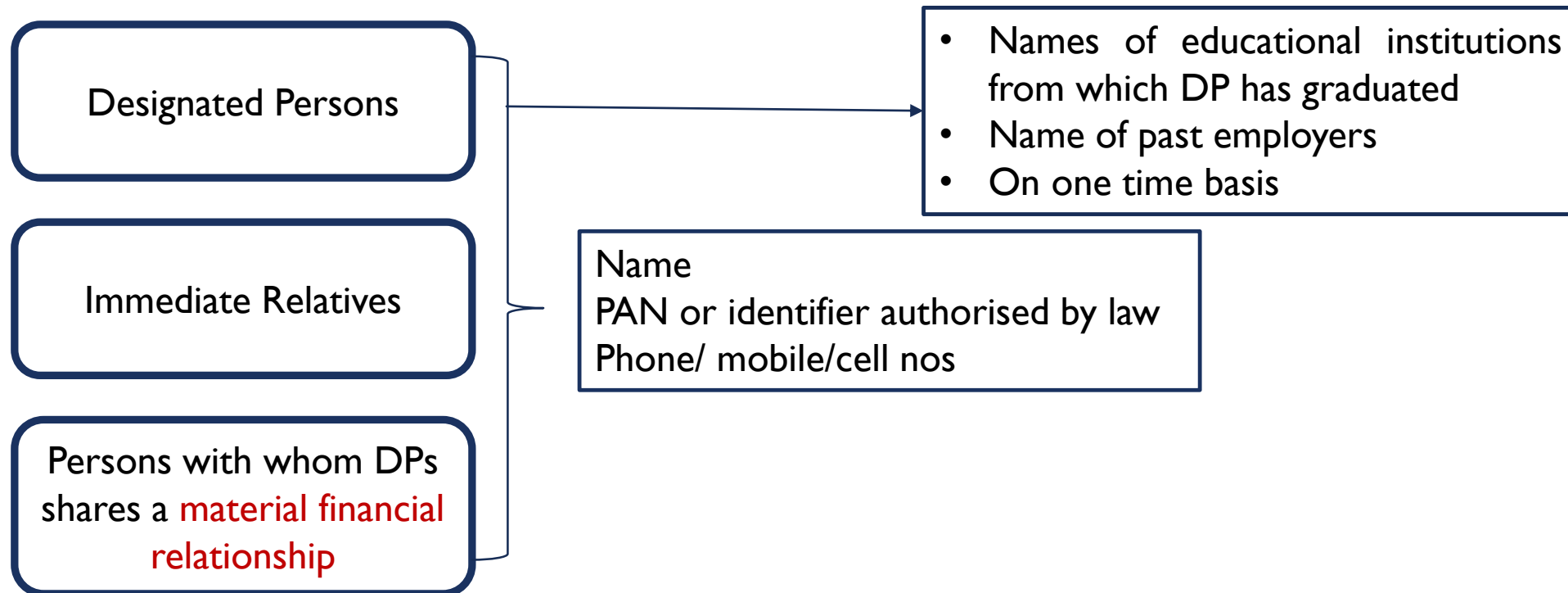
- Penalty of Rs. 9 lakhs was levied on both the DP as well as the ZMCL

## Order of the AO:

[https://www.sebi.gov.in/enforcement/orders/jan-2020/adjudication-order-in-respect-of-two-entities-in-the-matter-of-zee-media-corporation-ltd-\\_45699.html](https://www.sebi.gov.in/enforcement/orders/jan-2020/adjudication-order-in-respect-of-two-entities-in-the-matter-of-zee-media-corporation-ltd-_45699.html)

# Annual Disclosure by DPs

- On annual basis and as and when the information changes:



- Material financial transaction means transaction of a loan or gift during imm. preceding 12 months equivalent to at least 25% of the DP's annual income
- Shall exclude arms' length transaction

# Maintenance of database of DPs

Sr. No	Name and designation of Designated Person (DP) along with PAN and mobile/ phone number	Employee Code	Department	Name of Immediate relative of DP along with PAN and mobile/ phone number	Name of persons with whom the DP shares a material financial relationship along with PAN and mobile/ phone number	Address of DP	Educational institution from where the DP has graduated	Name of past employer(s) of DP	Person making the entry along with date of entry	Remarks ,if any

- The database shall be maintained under the supervision of the Compliance Officer of the Company;
- The database shall be reviewed by the Compliance Officer on a periodic basis.

# Disclosure requirements on the Company

## Off market trades

Off market trades executed by insiders have to be reported within 2 trading days to SE

## Trading by promoter/member of promoter group/DP

If any promoter/member of promoter group/DP executes a trade which exceeds Rs. 10 lakhs over the quarter the same has to be reported within 2 trading days of receipt of information or becoming aware about the trade.

## Trading plan

Trading plan once approved has to be intimated to the SE

## Code of Fair disclosure

Approval as well as any amendment to the code of fair disclosure has to be intimated to the SE

# Standardised reporting format for CoC violations

- SEBI came out with a circular on 19<sup>th</sup> July, 2019;
- It requires companies to record lapse or violations under PIT Regulations in digital database;
- Provides a standard format for reporting insider trading lapses. Earlier companies followed diverse practices and reporting in many cases was informal and self-generated (modified format provided on 23<sup>rd</sup> July, 2020).

# Standardised reporting format for CoC violations

- Format of disclosure

<b>Information about the entity</b>	<b>Information about the DP/ immediate relative</b>	<b>Transaction details</b>	<b>Disbursement of amount collected for violation of Code of Conduct</b>
<ul style="list-style-type: none"> <li>Name and capacity of the entity.</li> <li>Action taken by the entity.</li> <li>Reasons for the action taken.</li> </ul>	<ul style="list-style-type: none"> <li>Name and PAN.</li> <li>Designation and functional role of DP.</li> <li>Whether a promoter or belongs to promoter group</li> </ul>	<ul style="list-style-type: none"> <li>Name of the scrip</li> <li>No. and value of shares traded (including pledge)</li> <li>In case trading value exceeds Rs. 10 lakhs: date of disclosure made under regulation 7 of the PIT Regulations by both the entity as well as the concerned person.</li> <li>Details of violation observed under Code of Conduct</li> <li>Instances of any violation in the previous financial year.</li> </ul>	<ul style="list-style-type: none"> <li>Mode of transfer to SEBI - IPEF (Online/Demand Draft)</li> <li>Details of transfer/payment</li> <li>Any other relevant information</li> </ul>



# IMPORTANT CONCEPTS UNDER THE REGULATIONS



# Designated Person (DP) vs. Connected Person (CP) vs. Insider

## DP

Who have been designated by the Company as to have access to UPSI

Determined on the basis of function and seniority

Onus is on DP to prove that trade was not motivated on account of UPSI

## CP

Who has been, associated with the Company during the 6 months prior to the concerned act

directly or indirectly, in any capacity, allowing access to UPSI

Onus is on CP to prove that he was not having access to UPSI

## Insider

Connected person

Any person in possession of or having access to UPSI (rightly or wrongly)

Onus is on the person levelling charge to prove that the insider was having access to UPSI

# In the matter of Deep Industries Limited

- Question arose as to whether certain persons were “**Connected persons**” as per PIT Regulations, since they “Liked” certain photos of insiders on Facebook.
- SEBI held that the perusal of Regulation 2(1)(d)(i) shows that the association of the person can be direct or indirect and the association can be in **any capacity** which can include **frequent communication** with its officers by virtue of which such associated person can be reasonably expected to have access to UPSI.
- It was contended that frequent communication would also include communication in their **social capacity**.

- Penalty of Rs. 2.41 crores was levied.
- However, the case was settled through a settlement order.

Order of the AO

[https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi\\_data/attachdocs/apr-2018/1523966098348.pdf#page=14&zoom=auto,-15,464](https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/apr-2018/1523966098348.pdf#page=14&zoom=auto,-15,464)

# Restriction on communication/ procurement of UPSI

INSIDER

Shall not

Communicate  
UPSI

Provide UPSI

Allow access  
to UPSI

✗

✗

Relating to company or its securities

✗

- a) Any person
- b) Other insiders

Exception: Procurement or communication for legitimate business purposes, performance of duties or discharge of legal obligations.

✓

ANY PERSON

✗

Shall not procure  
UPSI from any  
insider

Relating to  
company or its  
securities

✗

Shall not cause  
communication by  
any insider of UPSI

Exception- Procurement or communication for legitimate business purposes, performance of duties or discharge of legal obligations.

✓

# Case law of Ambuja Cements Limited (ACL) vs SEBI

- The UPSI relating to financials of ACL was circulated on WhatsApp.
- It was held that information circulated by insiders of the company to others through closed groups and only people belonging to such group became aware of such information.
- The AO contended that for information to not be UPSI it should be generally available in a non-discriminatory manner.
- Circulation of such messages to selected few by its very nature giving rise to discriminatory access of information to selected few.

- Penalty of Rs. 15 lakhs was levied on each of the Noticees.

Order of the AO

[https://www.sebi.gov.in/enforcement/orders/apr-2020/adjudication-order-in-respect-of-neeraj-kumar-agarwal-and-shruti-vishal-vora-in-the-matter-of-circulation-of-upsi-through-whatsapp-messages-in-the-scrip-of-ambuja-cements-ltd-\\_46613.html](https://www.sebi.gov.in/enforcement/orders/apr-2020/adjudication-order-in-respect-of-neeraj-kumar-agarwal-and-shruti-vishal-vora-in-the-matter-of-circulation-of-upsi-through-whatsapp-messages-in-the-scrip-of-ambuja-cements-ltd-_46613.html)

# Handling of UPSI on 'need to know' basis

Need to know basis

UPSI should be disclosed only to those within the Company who need the information to discharge their duties

Company should develop practice on need-to know principles. This shall include:

- a) UPSI that can be shared on need to know basis;
- b) Information shall be used by only person so authorised;
- c) Confidentiality of information;
- d) Execution of NDA;
- e) There should not be conflict of interest;
- f) Compliance officer should be reported about sharing;

# In the matter of Piramal Enterprises Limited (PEL)

- PEL entered into a transaction with another company for sale of its domestic healthcare formulation business .
- The information of sale of business was an UPSI. However, the said information was disclosed to a person who was neither an employee nor director of PEL.
- The said disclosure violated the rule of sharing of UPSI strictly on a need to know basis.
- AO held that **UPSI should not be shared to a person who are not involved** in the transaction **irrespective of their position** in the company or **relationship with promoters** and senior management.

- Total penalty of Rs. 6 lakh was levied on the Noticees for violation of the PIT Regulations and the Model Code of Conduct for Listed Companies.

The said AO order was appealed before SAT, that converted the penalty into a warning citing that there was no misuse of UPSI and there was no evidence of lack of integrity on part of PEL.

Order of the AO

[https://www.sebi.gov.in/enforcement/orders/oct-2016/adjudication-order-in-respect-of-piramal-enterprises-ltd-shri-ajay-g-piramal-ms-swati-a-piramal-ms-nandini-piramal-shri-n-santhanam-and-shri-harinder-sikka-in-the-matter-of-piramal-enterprises-\\_33405.html](https://www.sebi.gov.in/enforcement/orders/oct-2016/adjudication-order-in-respect-of-piramal-enterprises-ltd-shri-ajay-g-piramal-ms-swati-a-piramal-ms-nandini-piramal-shri-n-santhanam-and-shri-harinder-sikka-in-the-matter-of-piramal-enterprises-_33405.html)

Order of SAT

[http://sat.gov.in/english/pdf/E2019\\_JO2016467.PDF](http://sat.gov.in/english/pdf/E2019_JO2016467.PDF)



# CHINESE WALL

CONCEPT & SIGNIFICANCE



# Chinese Walls procedure

- Departments/employees which routinely have access to UPSI
- Shall not communicate any UPSI

- Departments/employees which do not have access to UPSI
- Shall not procure any UPSI

## What is the use of Chinese wall?

- Physical separation of departments
- Restrict flow of information
- Security of sensitive documents
- Information barriers for restricting flow of material non-public information

## Bringing employees over the Chinese wall

Depending upon the significance of any information, if required to be shared with any other employee, he/she shall be included in the Chinese wall procedure.

# Process and policy on how and when people are brought “inside”

To be included in the Code of Conduct of listed entities and intermediaries and fiduciaries

- There should be a system to track where the information emerges upto the time information is disclosed to the public
- Who is authorized to share the information;
- With whom the information is shared along with executing confidentiality agreements
- 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;

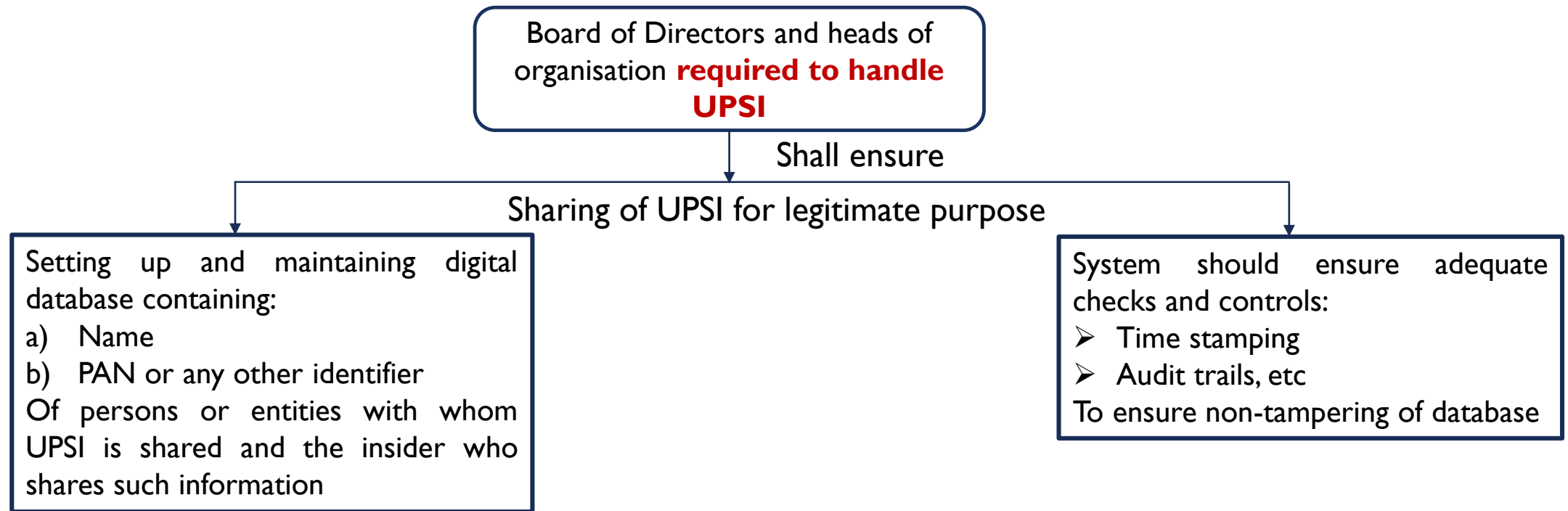


# STRUCTURED DIGITAL DATABASE

MAINTENANCE & CONTENTS



# Maintenance of Structured Digital Database



- Information should be preserved for 8 years after completion of relevant transaction
- Should be maintained internally and not outsourced
- Pursuant to SEBI circular dated 19<sup>th</sup> July, 2019, lapses or violations under PIT Regulations by the Company has to be maintained in the database to enable initiation of appropriate action.

# Contents of digital database

The contents include:

Supplier of Information			Recipient of information		
Name	PAN	Any other information	Name	PAN	Any other information
<b>Details of UPSI and reason of sharing UPSI</b>					
<b>Source of Information</b>					
<b>NDA or confidentiality agreement executed in this regard</b>					
<b>Date and Time of sharing</b>					
<b>Date of entry</b>					
<b>Date when UPSI became publicly available</b>					
<b>Remarks, if any:</b>					

## **Note 1:**

The categories of recipients shall include:

Employees of the Company who are not Designated Persons (DPs);

Persons who are neither employees nor DPs but may come into contact with the DPs and other insiders of the Company;

## **Note 2:**

The database shall be maintained under the supervision of the Compliance Officer of the Company;

The database shall be reviewed by the Compliance Officer on a periodic basis.



# TRADING WINDOW & TRADING PLAN

CONCEPT AND PURPOSE



# Closure of Trading Window

## ■ Trading Window

### ■ In case of Financial Results

- Trading window shall be closed:

48 hours after declaration of Results

31<sup>st</sup> March, 2020 (quarter end)

Declaration of financial Results

### ■ In case of other UPSI

- Trading window shall be closed from the point of time the information is expected to be available with DPs.

## EXCEPTIONS: Trades permitted during window closure

Off market inter se transfer between insiders in possession of same UPSI

Transaction executed through block deal mechanism between insiders

Carried out pursuant to statutory or regulatory obligation

Pursuant to exercise of ESOP where exercise price was pre-determined

Pledge of shares for raising of funds, subject to pre-clearance by compliance officer

Transactions such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment, buyback, or delisting

**Transactions which are undertaken through any other mechanism as may be specified by Board**

# In the matter of Falcon Tyres Limited

- It was observed by SEBI that the company had not formulated the Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices and trading window closure system in accordance with the PIT Regulations, 1992
- The company claimed that there was **no trading window system** as the directors/ employees of the Company did not trade in the securities of the Company
- The AO held that **lackadaisical and uninvolved manner in which the officers of the company have contended themselves provided an ample scope for misuse of UPSI.**

- Penalty of Rs. 1 crore was imposed on the Noticees

Order of the AO

[https://www.sebi.gov.in/enforcement/orders/feb-2014/adjudication-order-ak-ao-18-22-2014-in-respect-offalcon-tyres-limited-mr-pawan-kumar-ruia-mr-s-ravi-mr-sunil-bhansali-and-mr-mc-bhansali-in-the-matter-of-falcon-tyres-limited\\_27294.html](https://www.sebi.gov.in/enforcement/orders/feb-2014/adjudication-order-ak-ao-18-22-2014-in-respect-offalcon-tyres-limited-mr-pawan-kumar-ruia-mr-s-ravi-mr-sunil-bhansali-and-mr-mc-bhansali-in-the-matter-of-falcon-tyres-limited_27294.html)

# In the matter of Edelweiss Financial Services Limited

- **Default in closure of trading window** for material information mentioned in Regulation 30 of LODR
- As per the then existing provisions of law every “material information” as per the LODR Regulations was a “price sensitive information” as per the PIT Regulations, 2015 also, consequently warranting a closure of trading window.
- The practice of merely making the relevant employees cognizant of their responsibilities does not tantamount to closure of trading window as has been expected in the law.

- Penalty of Rs. 5 lakhs was levied on the compliance officer

## Order of AO

[https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-respect-of-b-renganathan-in-the-matter-of-edelweiss-financial-services-ltd-\\_47075.html](https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-respect-of-b-renganathan-in-the-matter-of-edelweiss-financial-services-ltd-_47075.html)

# Concept of Trading Plan

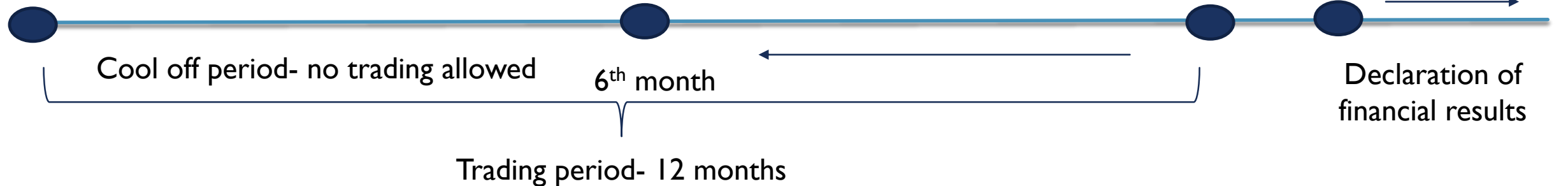
- **Intent of trading plan**

- Ensure persons who may perpetually have possession of UPSI, to trade in securities.
- No market violation, as trading plan was pre-decided even before the insider got access to UPSI.

- **Trading plans remain unpopular**

- Why?- The trading restriction makes its unrealistic
- Once entered have to be traded.
- Either the value of trade or number of securities to be traded, along with nature/ intervals/ dates to be set out. No trading

Disclosure of  
Trading plan



No overlap with other trading plan.

## Relaxations provided to trades executed through trading plan

**Pre-clearance of trades not required**

**Trading window norms shall not apply**

**Restrictions on contra trade shall not apply**



# PRE-CLEARANCE AND CONTRA-TRADE

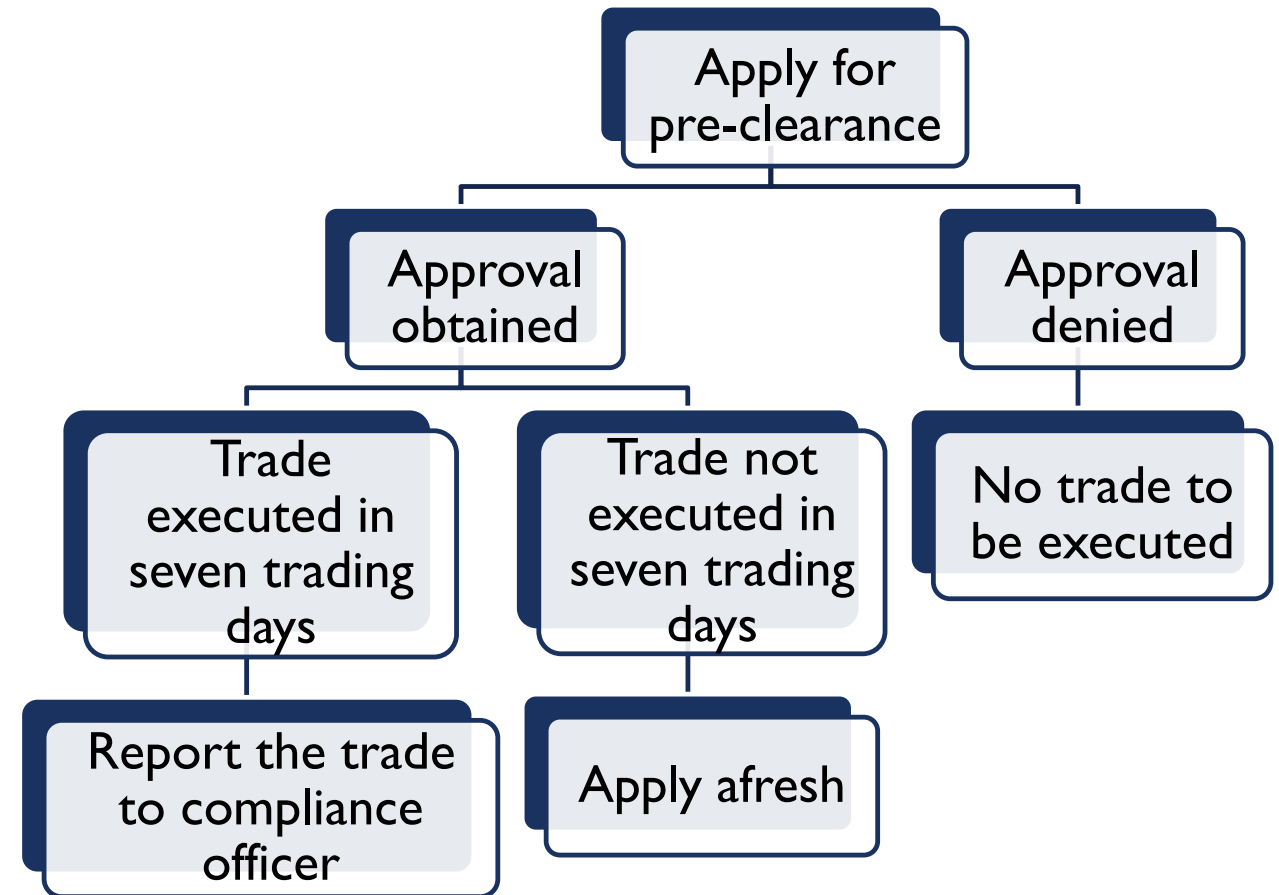
CONCEPT



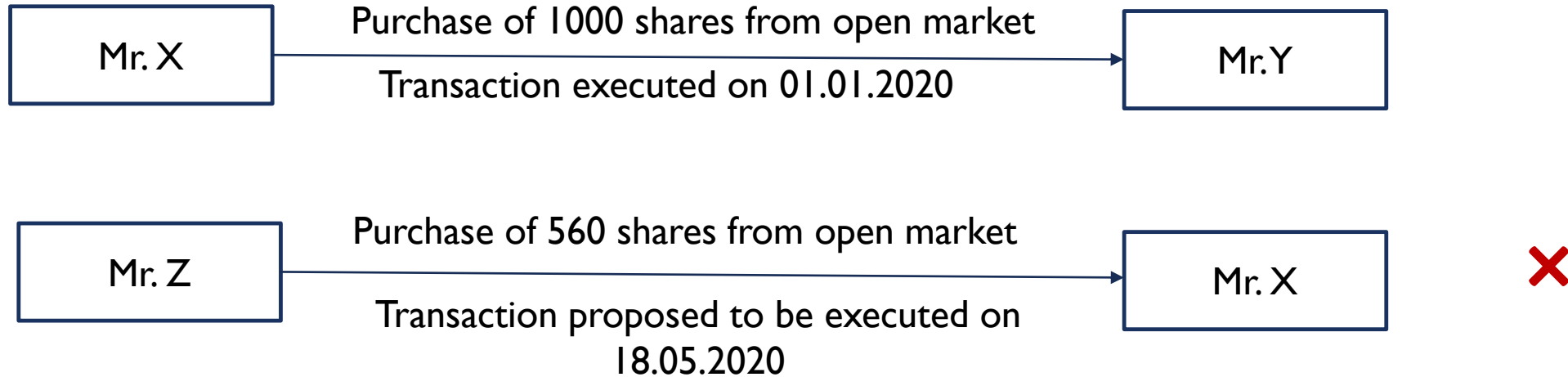
# Pre-clearance of trade

## Pre-clearance

- DPs and their immediate relatives cannot trade when the trading window is closed.
- When trading window is open, trade by DPs shall be subject to pre-clearance by compliance officer.
- Company may develop its own threshold for pre-clearance (ex- if trade of 1000 equity shares or trade of Rs. 50,000 or more shall require pre-clearance)
- Compliance officer has to seek declarations, before granting pre-clearance that person is not in possession of UPSI
- Also has to analyse whether such declaration can be capable of being rendered inaccurate



# Concept of contra-trade



- DPs cannot execute contra trade or opposite transaction for next 6 months.
- Compliance officer may grant relaxation from strict application of contra trade restriction (subject to the condition that it is not against the provisions of the Regulations).

Exception: trades pursuant to exercise of stock options

## Informal guidance in the matter of Arvind Limited

- If any DP has sold shares in the capacity of an executor of a will to distribute assets to the legal heirs of the will, will he be debarred from buying shares of the company in his personal capacity?
- **Restriction on contra trade is applicable as per the PAN held by the DP, irrespective of the capacities held by such person.**

- SEBI answered the following queries:
  - Contra trade restrictions are applicable PAN wise
  - Buying and selling cannot take place from the same PAN

### Informal guidance:

[https://www.sebi.gov.in/sebi\\_data/commondocs/nov-2019/Inf%20Gui%20letter%20by%20SEBI%20Arvind\\_p.pdf](https://www.sebi.gov.in/sebi_data/commondocs/nov-2019/Inf%20Gui%20letter%20by%20SEBI%20Arvind_p.pdf)

# Essence of disclosure of information

Information: Can be both internal and external. Restriction is on communication.

PIT Regulations	LODR Regulations
Provision: “No person shall procure from or cause the communication by any insider of unpublished price sensitive information”	Provision: “Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material”
Prohibition in flow of information which is unpublished	Continuous flow of information
Mandatory restriction on sharing information	Mandatory release of information
Creation of artificial Chinese wall for disallowing flow of information	Ensure transparency of information

**Provisions are complementary and not conflicting**

# In the matter of Aurobindo Pharma Limited (APL)

- APL entered into various licensing and supply agreements on different dates in the year 2008
- However, the information on such agreement was made public in the year 2009
- There was a lapse on part of APL to immediately and continuously disclose UPSI and it also failed to close its trading window.
- 6 insiders of APL traded into securities of APL during the period while information of the agreement was not made public

- Penalty of Rs. 20.70 crores was levied on all the Noticees together.
- Penalty of Rs. 2 crores was levied on APL
- The said order was challenged before the Securities Appellate Tribunal. However, before the order of SAT, the Noticees entered into a settlement order with SEBI which was settled upon payment of Rs. 22.02 crore

## Positions of law clarified

1. Neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws.
2. Trading pattern provided circumstantial evidence in support of reasonable expectation of access to UPSI.
3. A promoter group company is deemed to be a connected person as a company in the same management group.
4. If an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary (Rajiv B. Gandhi and Others v. SEBI.)
5. The PIT Regulations read with the SEBI Act do not require proof of intent to commit insider trading or *mens rea* as a prerequisite for establishing the offence of insider trading.

# In the matter of Bank of Rajasthan Limited

- Delay on part of ICICI Bank to make timely disclosure to stock exchange
- Suspected fraudulent activities w.r.t. amalgamation of Bank of Rajasthan Ltd (BoR) and the ICICI Bank Limited (ICICI Bank).
- Information pertaining to amalgamation, mergers or takeovers are deemed to be price sensitive information.
- The “Binding Implementation Agreement” was entered at 4:30 AM but disclosure to stock exchange was made at 8:18 PM (BSE) and 8:10 PM (NSE) while several DPs traded in the securities during this period.

- Rs. 5 lakh each penalty levied on the ICICI Bank for non-compliance with the PIT and Listing agreement
- Rs. 2 lakh penalty imposed on the compliance officer

SAT converted the penalty into a warning citing that there was delay in issue of SCN by SEBI

Order of the AO

[https://www.sebi.gov.in/enforcement/orders/sep-2019/adjudication-order-in-the-matter-of-bank-of-rajasthan\\_44212.html](https://www.sebi.gov.in/enforcement/orders/sep-2019/adjudication-order-in-the-matter-of-bank-of-rajasthan_44212.html)

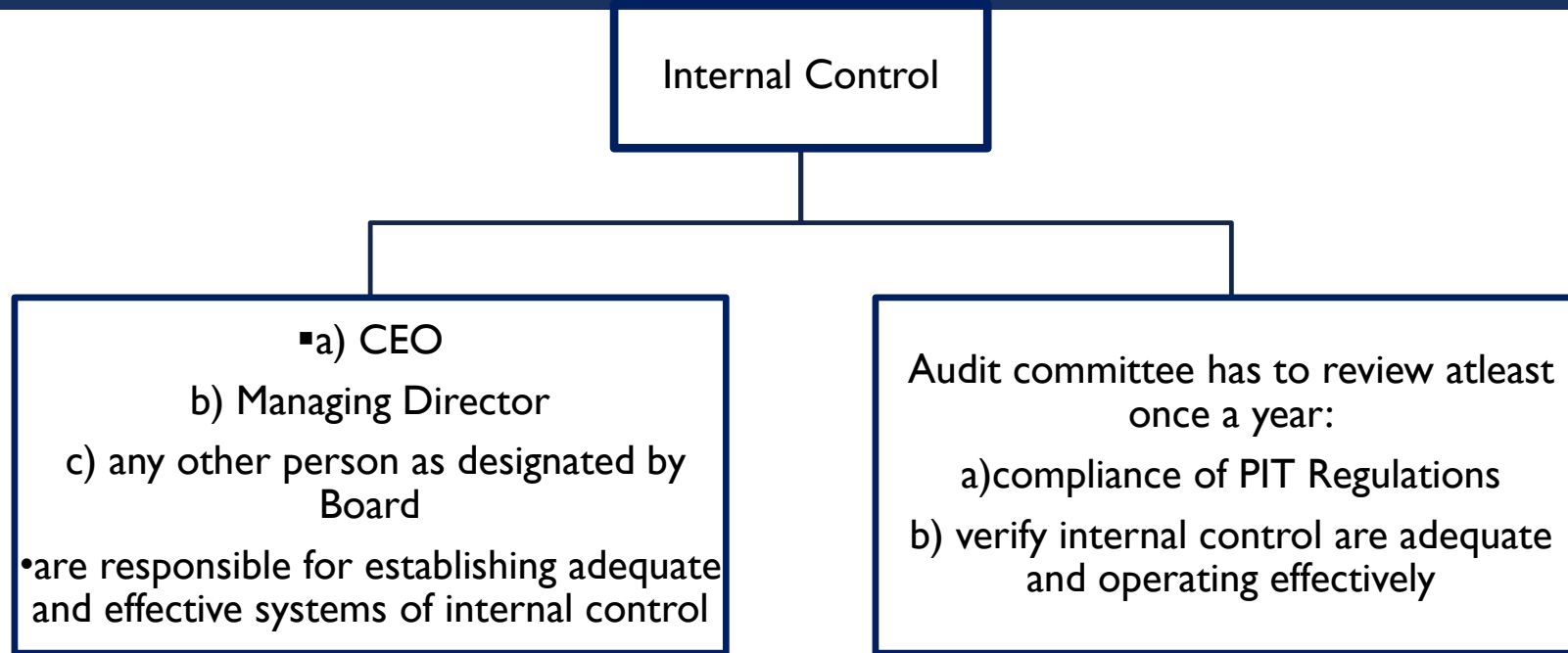


# INTERNAL CONTROL MECHANISM

HOW TO ENSURE?



# Who are responsible for internal control as per the Regulations?

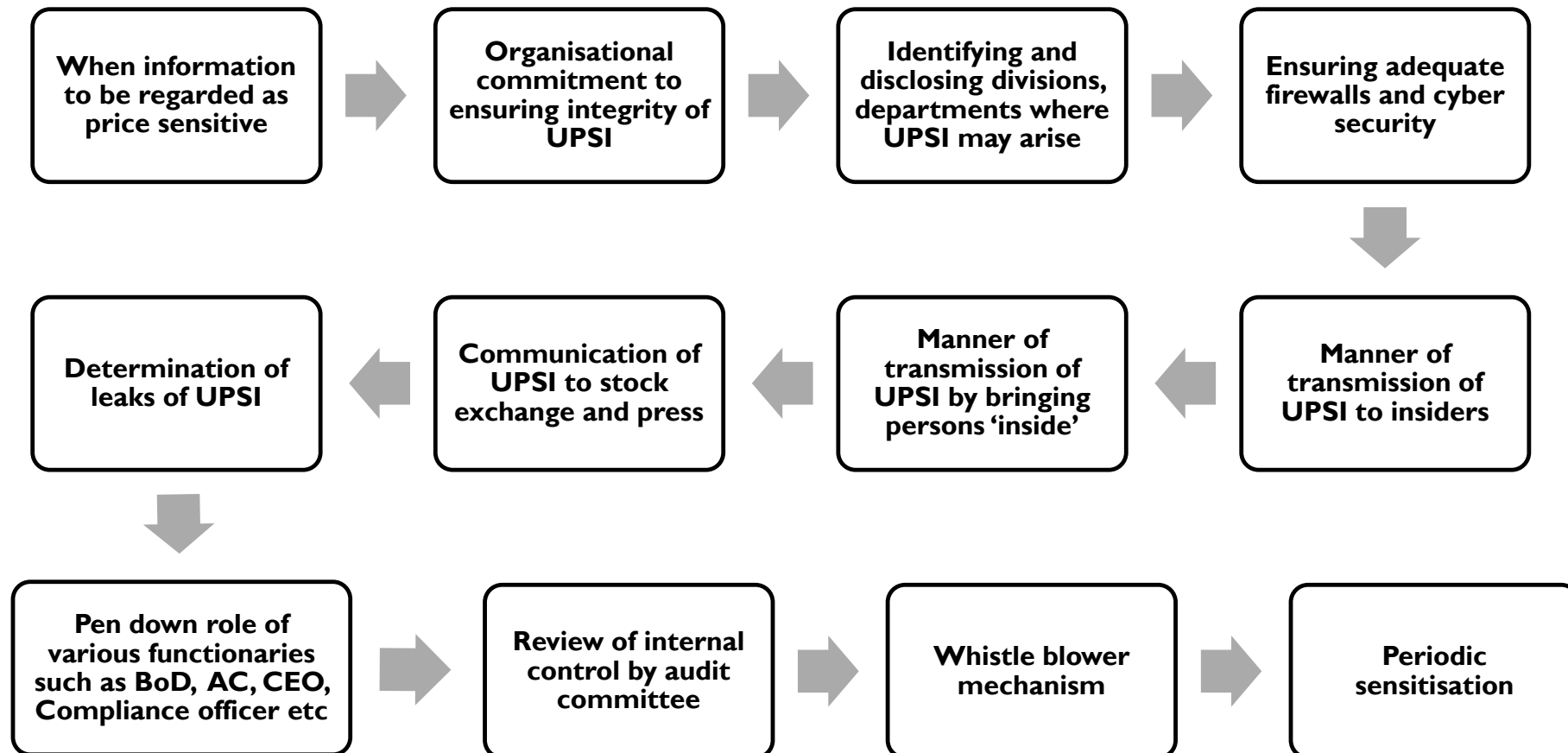


## Concept of whistle blower mechanism

- The whistle blower mechanism of the Company should also sensitize employees to report instances of leak of UPSI
- The mechanism should mention that employees can directly report to audit committee in case of any leak
- Process of obtaining information of leak of UPSI
- Disciplinary actions to be taken by the Company

# Internal Control Manual

- It is a non-public document for BoD, Audit Committee, CEO/MD and compliance officer to ensure internal control under PIT Regulations.
- The manual should provide following:



# Institutional mechanism for prevention of Insider Trading

CEO, MD and such other person of listed entity/intermediary/fiduciary are responsible for ensuring effective system of internal control

## Internal Check Points

All employees who have access to UPSI are identified as DP

UPSI is identified and kept confidential by the Company

Adequate restrictions on communication or procurement of UPSI

List of all employees or other person with whom UPSI is shared shall be maintained and confidentiality agreements shall be signed

Periodic process of review of effectiveness of internal control

# Informant mechanism under the Regulations

- A dedicated reporting window for any person who observes an unethical behaviour; actual or suspected violation of insider trading cases;
- Processes in place that encourage:
  - timely, safe and open reporting of alleged violation; and
  - consistent and timely institutional response;
- Policies in place that:
  - incentivize informant protection;
  - encourage ethical and lawful conduct; and
  - provide adequate safeguards against victimization of informant
- **Obligation on the Company:** The Code of Conduct should provide provisions to ensure the safeguards against victimization of informant



**OBLIGATIONS OF INSIDER, DESIGNATED PERSONS,  
COMPLIANCE OFFICER, BOARD AND AUDIT COMMITTEE**



## Obligations of Insider

Insider shall not communicate, provide, allow as to USPI

No person shall procure or cause communication by any insider

Insider shall handle USPI on 'need to know basis'

Share USPI only for legitimate purpose

Insider shall not trade in securities of the Company while in possession of USPI

# Obligations of Designated Persons

## Timely Disclosures

- Initial, annual, continual (trades) disclosures including off-market trades

## Comply with the Codes

- Adhere to the company's code of fair disclosure and code of conduct.

## Before sharing UPSI

- Ascertain whether sharing of UPSI is for Legitimate purposes.
- Enter into confidentiality agreement/ give confidentiality notice.

## After sharing UPSI

- Enter the details of persons with whom UPSI is shared in SDD.

# Obligations of Compliance Officer – 1/2

- Maintenance of following records:
  - Database of Designated Persons and immediate relatives, along with other details as prescribed in the Regulations, in the format prescribed in the Code.
  - Structured digital database containing the names of such persons or entities as the case may be with whom information is shared under the Regulations in the format provided by Link Intime India Private Limited;
  - Trading plans approved;
  - Trades pre-cleared;
  - Details of Trades executed pursuant to pre-clearance;
  - Details of instances where the requirement of holding the listed securities of the Company during the holding period was waived for emergency reasons;
  - Holdings of Designated Persons in the securities of the Company;
  - Initial and Continual Disclosures received under the Regulations;
  - Disclosure in relation to off-market trades by Insiders received under the Regulations;
  - Disclosure of trades received from other connected person under the Regulations;
  - Details of programmes undertaken by the Company for sensitizing the Designated Persons about their responsibilities under the Regulations;
  - Details of violations under the Code and Regulations by Designated Persons;
  - List of directors and employees comprising of the MD/CEO and upto two levels below CEO of the Company and furnishing details to the depositories of any change in the list, on an immediate basis and not later than 2 (two) working days.
  - Record of proceedings of the Inquiry Committee.

## Obligations of Compliance Officer – 2/2

- Grant of pre-trading clearance to the Designated Persons for dealings in Company's Securities and monitoring such trade;
- Approving Trading Plan as may be formulated by any Insider in terms of the Regulations;
- Determination of the period for closure of Trading Window for all/ selected Designated Persons and intimating to the Designated Persons and others and the timing for re-opening of Trading Window;
- Placing status reports before the Chairman of the Audit Committee, detailing any trading in the listed securities by the Designated Persons, violations of the Code of Conduct, if any at regular intervals but not less than once in a year;
- Monitoring adherence to the Regulations and the Insider Trading Code by the Designated Persons;
- Implementation of this Code of Conduct under the general supervision of the Board of Directors;
- Assisting all the Employees in addressing any clarifications regarding the Regulations and the Code;
- Grant relaxation from strict application of contra trade restrictions.
- Confidentially maintaining a list of such securities as a “restricted list” which shall be used as the basis for approving or rejecting applications for pre-clearance of trades;
- Informing promptly about any violation of the Codes and Regulations by any Designated Persons to SE.
- Sensitizing the employees of the manner and circumstances in which people may be brought “inside” on sensitive transactions, duties and responsibilities attached to the receipt of inside information, and the liability that attaches to misuse or unwarranted use of such information.

# Case law on determination of role of compliance officer

- Role and responsibilities of compliance officer was challenged in the case of Satyam Computer Services Limited vs SEBI
- Compliance officer failed to close trading window prior to BM called for approval of acquisition of shares by the Company
- SEBI dealt with **the question as to whether compliance officer should act on the directions of the Board or should act independently?**

✓ SEBI decided that **no non-compliance on the part of compliance officer as he/she did not received info from Board to close trading window**

*SEBI Order*

*[https://www.sebi.gov.in/sebi\\_data/attachdocs/1404444773405.pdf](https://www.sebi.gov.in/sebi_data/attachdocs/1404444773405.pdf)*

## Informal guidance on maintenance of restricted list

- Given to KP Capital Advisors Private Limited
- Whether keeping the trades in unrestricted list outside the purview of compliance of PIT Regulations?
  - SEBI explained that in case of intermediaries, trading in all securities shall be subject to pre-clearance. The restricted list maintained shall be used as basis for approving or rejecting application.
- Whether restricted list can be shared with DPs so that the latter knows about the same?
  - The list is required to be maintained on confidential basis and cannot be shared with the DP.

# Maintenance of Compliance Manual

This manual is for check of compliances of compliance officer, also a tool of internal control:

Check points	Status
Check to ensure that determination and transmission of UPSI was done in accordance with Internal Control Manual	√
Maintaining digital database for sharing of UPSI with insider and outsiders. Ensuring that platform is secured, tamper-proof, searchable and date stamped	√
Coordinating with determination committee on applying tests of materiality whether an information is UPSI or not	√
Disclosure of UPSI to stock exchange	√
Defining, identifying and obtaining data about DPs as a continuous practice	√
Continuous monitoring of trading pattern of DPs to detect any trades that may have breach the provisions of PIT Regulations	√
Periodic reporting to chairman and Audit committee	√
Granting pre-clearances (a) whether declarations were received (b) reviewing transactions approved through pre-clearance	√

Check points in case of:

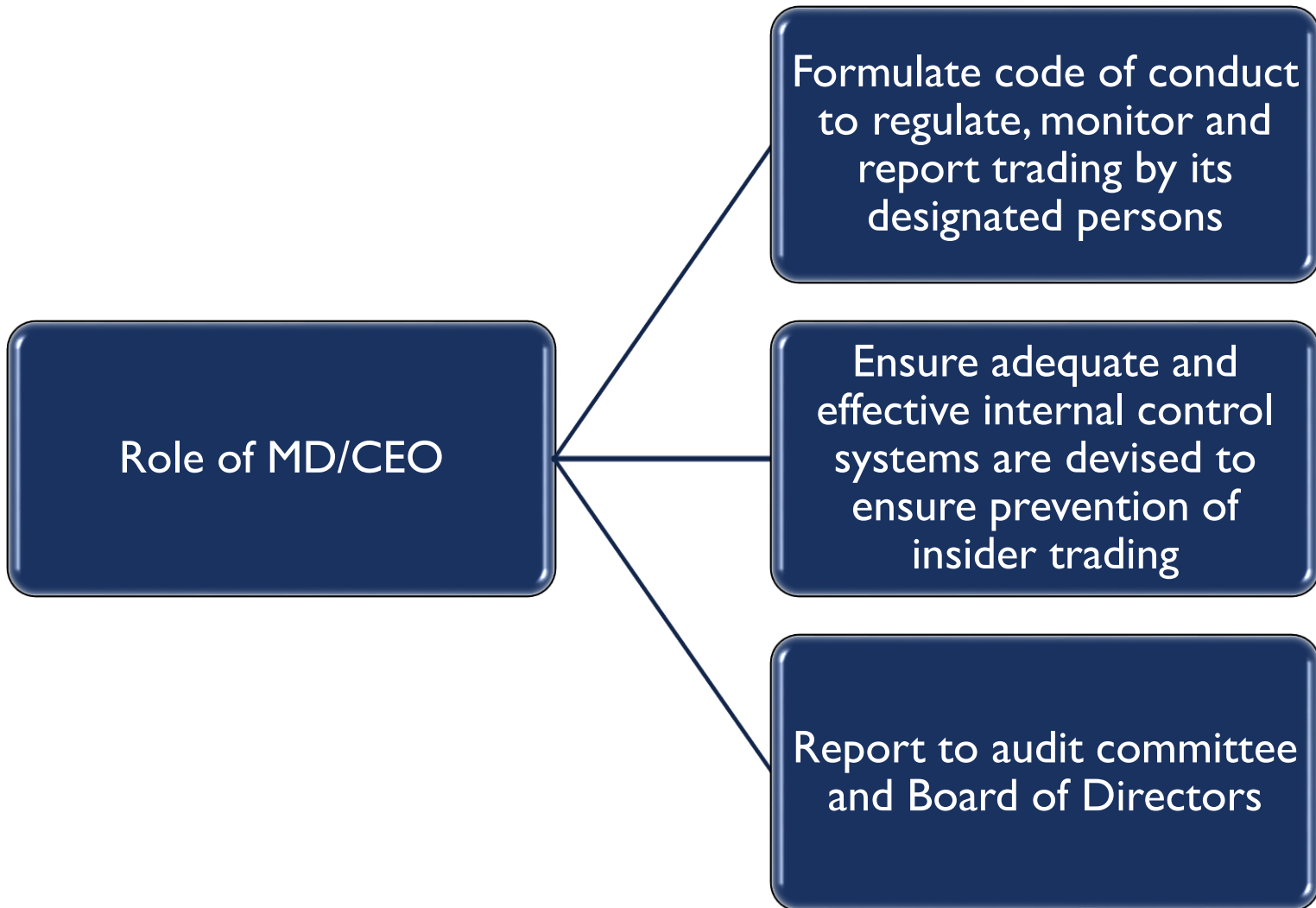
a) **Employee sensitization program**

Check points	Status
Sensitize senior management about: silence period, roles and responsibilities in disclosure of information during investor meets, analyst meets etc	√
Sensitize employees about Regulations and Codes	√

b) **Leak of UPSI**

Check points	Status
Detection of leak	√
Identifying manner of leak	√
Escalation of information and producing before Audit Committee	√
Action against guilty	√
Inform SEBI about breach	√

# Role of MD/CEO



# Role of Board of Directors

- Designate compliance officer and specify the designated persons for the purpose of this regulations
- Formulate the Code of fair disclosure of UPSI including policy for determining legitimate purpose.
- Ensure that code of conduct to regulate, monitor, and report trading by DPs and their immediate relatives is formulated by the CEO/MD
- Approve policy and procedure for inquiry in case of leak of UPSI and policy for determination of legitimate purpose
- Ensure that UPSI is shared only for legitimate purpose and is in the best interest of the company
- Ensure structured digital database is maintained
- Direct parties to execute agreements for maintaining confidentiality and non-disclosure obligations
- Specify the DPs in consultation with the compliance officer
- Stipulate thresholds and formats for pre-clearance.

# Role of Audit Committee

- Review compliance with the provisions of the Regulations atleast once in a financial year;
- Verify adequacy and effectiveness of the systems for internal control and suggest measures to strengthen the same;
- Chairman of Audit Committee to receive reports from the Compliance Officer atleast once in a year;
- Ensuring that the gap between clearance of accounts by Audit Committee and Board Meeting is as narrow as possible and preferably on the same day to avoid leakage of material information;

# Powers of SEBI

- **Regulation 11 of PIT Regulation, 2015: Issue directions** through guidance notes and circulars for interpretation and application of the regulations
- **Section 11 of SEBI Act, 1992:**
  - **Provide measures** for prohibiting insider trading in securities [Section 11(2)(g)]
- Where SEBI has reasonable grounds to believe that any listed company or a company intending to get listed has been indulging in insider trading, it may -
  - Undertake inspection of any book, register, document, record of such company. [Section 11(2A)]
  - Impound and retain the proceeds or securities which is under investigation [Section 11(4)(d)]
  - Attach bank accounts or other property of any person involved in violation of the Regulations [Section 11(4)(e)]
  - Direct any person not to dispose of or alienate an asset forming part of investigation [Section 11(4)(e)]

# Penalties under SEBI Act, 1992 for violation of the PIT Regulations

Section	Violation	Penalty amount
Section 15A(b)	Failure to file return or furnish the information, books or other documents within the time specified in the regulations or furnishing or filing false, incorrect or incomplete information, return, report, books or other documents	Minimum Rs. 1 lakh, maximum Rs. 1 lakh for each day during which default continues subject to a maximum of Rs. 1 crore.
Section 15G	Dealing in securities of the company while in possession of UPSI	Minimum Rs. 10 lakhs, maximum Rs. 5 crores or 3 times the amount of profits made out of insider trading, whichever is higher
	Communication of UPSI	
	Counselling or procuring of UPSI	
Section 15HB	Non-compliance of any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided.	Minimum Rs. 1 lakh, maximum Rs. 1 crore.

# Revised SEBI FAQs on PIT Regulations dated 8<sup>th</sup> October, 2020

## Clarifications relating to pre-clearance

1. Pre-clearance not required in case of exercise of ESOPs
2. Sale of shares by employees will continue to require pre-clearance
  - a) Sale usually happens on the same day as of the exercise of options
  - b) Employee's motive is to earn profit

## Structured digital database of intermediary or fiduciary

1. Details of UPSI shared
2. Details of persons with whom UPSI is shared
3. Details of persons sharing the UPSI

## ADRs and GDRs covered under PIT

1. Trading in ADRs and GDRs of listed entities covered under PIT
2. Unique identifier of the foreign national (DPs) to be used for making disclosure

## Details of DP resigning at company/fiduciary/intermediary level

1. Collect all information required till date of service of employee.
2. Maintain updated address and contact of such DP for 1 year after resignation.
3. Preserve the data for 5 yrs.

# SEBI's Guidance note on PIT Regulations

## Pledge

1. In case of creation of pledge while in possession of UPSI, the pledgor or pledgee may demonstrate that the creation of pledge or invocation of pledge was bona fide and prove their innocence
2. 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

## Investment company

1. 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

## Miscellaneous

1. BoD to approve trades of Compliance officer;
2. In case of a group, separate code may be adopted for listed company and each of intermediaries, as applicable to the concerned entity;
3. It is company's discretion to designate two separate persons as CIRO and Compliance Officer, 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.
4. A spouse is presumed to be an 'immediate relative', unless rebutted so.
5. SDD to be maintained by listed companies, and intermediaries and fiduciaries who handle UPSI of a listed company in the course of business operations.



# GIST OF PAST AMENDMENTS IN PIT REGULATIONS



# SEBI (PIT) (Amendment) Regulations, 2018 (1/2)

## ■ **Definitional changes**

- UPSI
  - Materiality of events as per Listing Regulations omitted
- Compliance Officer
  - Should have the ability to read and understand financial statements
- Proposed to be listed
  - Shall include securities of unlisted co. applied for listing

## ■ **Identification of Designated Persons**

- BoD and Compliance officer to determine persons who have access to UPSI
- Determination shall be based on function and seniority

## ■ **Concept of sharing UPSI for legitimate purpose**

- Sharing of UPSI by insider on ordinary course of business
- Without circumventing prohibitions of PIT Reg
- Policy for determination of legitimate purpose to be part of Code of Conduct

## ■ **Maintenance of structured digital database**

- For the purpose of recording sharing of information for legitimate purpose
- Details of third party with whom UPSI is shared to be recorded
  - Includes Name, PAN and other identification details
- System should have adequate checks and controls with time stamping facility

## ■ **Institutional mechanism for prevention of Insider Trading**

- CEO, MD and other persons shall be responsible for ensuring effective system of internal control
- Companies to develop internal control check points

## ■ **Sensitization in whistle blower mechanism**

- Mechanism should sensitize employees to report instances of leak of UPSI

## ■ **Policy on how and when people are brought “inside”**

- Forms part of the Code
- Sensitize people as to when any person can be said to be in possession of UPSI

# SEBI (PIT) (Amendment) Regulations, 2018 (2/2)

## ■ **Trading Window**

- In case of financial results-from the end of quarter till 48 hrs after declaration of results
- In case of other UPSI- from the point the information is available to insider

## ■ **Policy for leak of UPSI**

- Mechanism for handling leak of UPSI

## ■ **Annual declaration by DPs**

- DPs, immediate relatives who are financially dependent and persons who have material financial relationship
- Material financial relationship refers to loan or gift during preceding 12 months of atleast 25% of payer's annual income
- Disclose name, PAN, phone no. of aforementioned persons
- DP shall provide name of educational institution from which DP has graduated along with name of past employer

## ■ **Code of conduct for intermediaries and fiduciaries**

- UPSI flows from companies to fiduciaries and intermediaries. Accordingly, needs to be protected
- To regulate, monitor and report trading by its DPs and immediate relatives of DP
- Identification of DPs as per function and seniority
- Similar code of conduct norms as in Schedule B
- If intermediary is listed co.- has to follow both Schedule B and Schedule C

## ■ **Trading while in possession of UPSI shall be deemed to be motivated by UPSI always**

- Exception to deeming fiction are:
  - Inter se transfer between insiders or through trading plan
  - Transaction through block deal mechanism between persons in possession of UPSI
  - Transaction carried out in pursuance to statutory or regulatory obligation to carry bonafide transaction
  - Transaction pursuant to exercise of stock options in respect of which exercise price was pre-determined

# SEBI (PIT) (Amendment) Regulations, 2019

## ■ SEBI (PIT) (Amendment) Regulations, 2019

- Members of promoter group as defined under ICDR Regulations have to make initial and continual disclosure under Reg 7 of PIT Regs

## ■ SEBI (PIT) (Second Amendment) Regulations, 2019

- Mandatory closure of trading window from end of quarter till 48 hrs after declaration of financial results
- Permitted transactions by DPs while trading window is closed shall also include:
  - Pledge of shares for bonafide purpose like raising of funds subject to pre-clearance by compliance officer
  - Acquisition by conversion of warrants or debentures, subscribing to rights issue, preferential allotment or tendering of shares in buyback offer, open offer, delisting offer.

## ■ SEBI (PIT) (Third Amendment) Regulations, 2019

- Introduction of concept of 'Informants'
- Refers to voluntary disclosure of information about an alleged violation
- Submission of information to Office of Informant Protection (OIP)
- OIP communicates information with evidence to Board

# SEBI (PIT) (Amendment) Regulations, 2020

## ▪ SEBI (PIT) (Amendment) Regulations, 2020

### Structured Digital Database

- Is required to be maintained by BoD and head of organisation **required to handle UPSI**
- Two way recording of name and PAN of person sharing UPSI and recipient of UPSI
- Database maintenance **cannot be outsourced**
- Information to be preserved for 8 years

### System Driven Disclosure

- SEBI circular dated 28<sup>th</sup> May, 2018 provided that format for disclosure under PIT and SAST shall be standardised (PAN details submitted)
- SEBI intends to propose automated process of filing disclosure under Regulation 7(2)
- To capture delay in filing more effectively
- Enabling provision inserted as Reg 7(2)(c) for permitting such automated submission
- Format to be prescribed by SEBI

# SEBI (PIT) (Amendment) Regulations, 2020

## Trading Window Restrictions

- SEBI permitted trading through acquisitions by conversion of warrants or debentures, subscription to rights issue, public issue, etc. during trading window restriction
- Only few corporate actions were listed in the amendment
- Enabling clause for including any other corporate actions

## Violation of Regulation

### a) Violation of code of conduct

- Listed entity/intermediaries can impose disciplinary actions, including wage freeze, suspension, recovery.
- Amount collected shall be remitted to the Board for credit to IPEF

### b) Violation of insider trading norms

- An enabling provision for reporting violation has been inserted in Schedule B and C of PIT Reg.
- Format for reporting violations under PIT has been introduced by SEBI

## ▪ SEBI (PIT) (Second Amendment) Regulations, 2020

- Time limit to submit Original Information: The information to be submitted by the Informant shall not be older than 3 years on the date of receipt of duly completed Voluntary Information Disclosure Form by SEBI
- Amendments made in Informant's Voluntary Information Disclosure Form

# Regulation 2015 v/s 1992

Particulars	2015	1992
<b>Unpublished price sensitive information</b>	Refers to information relating to: <ul style="list-style-type: none"> <li>a) Financial results</li> <li>b) Dividends</li> <li>c) Change in capital structure</li> <li>d) Mergers, demergers, acquisitions, expansion of business etc</li> <li>e) Change in key managerial personnel</li> </ul>	Means information which is not published by the company or its agents and is not specific in nature
<b>Concept of trading plan</b>	New	Nothing as such provided
<b>Who can be a compliance officer</b>	Is defined in the Regulations	Nothing as such provided
<b>Designated person</b>	Includes all persons who may have access to UPSI by virtue of their functions or seniority in the company	Only designated employee has been defined
<b>Definition of relative</b>	“immediate relative” means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either <b>dependent financially on such person</b> , or consults such person in taking decisions relating to trading in securities	Refers to definition as provided in CA, 1956

# Regulation 2015 v/s 1992

Particulars	2015	1992
<b>Formulation of Code of Conduct by intermediaries/fiduciaries</b>	Has to be formulated by both	No concept of fiduciary
<b>Connected person</b>	Seemingly includes person who may not occupy any position in the company but are in regular touch with the company. Hence, much expanded definition	Narrower definition
<b>Legitimate purpose</b>	Allowance to share information for legitimate purpose on a need to know basis.	No such concept
<b>Disclosure requirements</b>	Wider	Narrower
<b>Maintenance of database</b>	The concept of sharing information for legitimate purpose and recording the same in a database has been introduced for the first time	No such concept
<b>Reporting</b>	Violation has to be reported to Stock Exchange in a standardized format	Reporting required only after investigation

## Our Resources on the subject

- Amendments made in July, 2020: <http://vinodkothari.com/2020/07/sebi-prescribes-norms-for-structured-digital-database-system-driven-disclosures-coc-violations/>
- Highlights of second amendment to PIT Regulations- <http://vinodkothari.com/2019/07/highlights-of-2nd-amendment-to-pit-regulations/>
- Actionables to implement amendments brought under SEBI Insider Trading Regulations- <http://vinodkothari.com/2019/01/actionables-under-sebipit-amendment-regulations-2018/>
- System driven disclosures in securities market- now extended to non-promoters- <http://vinodkothari.com/2018/06/system-driven-disclosures-in-securities-market-now-extended-to-non-promoters/>
- Guide to PIT documentation- <http://vinodkothari.com/2019/02/guide-to-pit-documentation/>
- SEBI proposed amendments in PIT Regulation to incentivize informants- <http://vinodkothari.com/2019/06/sebi-proposed-amendments-in-pit-regulation-to-incentivize-informants/>
- FAQs on PIT Regulations- [http://vinodkothari.com/wp-content/uploads/2019/11/FAQs-on-SEBI-Prohibition-of-Insider-Trading-Regulations\\_2015.pdf](http://vinodkothari.com/wp-content/uploads/2019/11/FAQs-on-SEBI-Prohibition-of-Insider-Trading-Regulations_2015.pdf)
- Presentation on PIT Regulations - <http://vinodkothari.com/2019/02/presentation-on-pit-regulations/>

---

# CONTACT US

Vinod Kothari & Company  
Vinod Kothari Consultants P. Ltd

Kolkata:

1006-1009, Krishna  
224 AJC Bose Road  
Kolkata – 700 017  
Phone: 033 2281 3742/7715  
Email: [info@vinodkothari.com](mailto:info@vinodkothari.com)

New Delhi:

A-467, First Floor,  
Defence Colony,  
New Delhi-110024  
Phone: 011 41315340  
Email: [delhi@vinodkothari.com](mailto:delhi@vinodkothari.com)

Mumbai:

403-406, Shreyas Chambers  
175, D N Road, Fort  
Mumbai  
Phone: 022 2261 4021/ 62370959  
Email: [mumbai@vinodkothari.com](mailto:mumbai@vinodkothari.com)

Website: [www.vinodkothari.com](http://www.vinodkothari.com)