

FAQs on Insider Trading Framework for Mutual Funds

Team Corplaw | corplaw@vinodkothari.com

November 27, 2022

Table of Contents

Brief Introduction	5
The new regulatory framework	5
1. Exemption to MF units removed from the definition of ‘securities’	5
2. What is the difference between front-running and insider trading in MF units, which is the subject matter of MF PIT Framework?	6
Scope and applicability	6
3. Who all does the MF PIT Framework apply to? Does the framework restrict itself to Designated Persons (‘DPs’)/ Connected Persons (‘CPs’) or does it extend to all insiders?	6
4. Does it apply even where the units of MF are not listed?	6
5. From what date does the MF PIT Framework become applicable?	7
6. Does the MF PIT Framework only incorporate the existing SEBI Circular dated October 28, 2021 (‘SEBI Circular’), or provide for additional provisions? Whether the SEBI Circular shall be deemed to be repealed pursuant to the notification of these amendments?	7
7. While Chapter IIA has been specifically inserted with respect to MFs, do other chapters of PIT Regulations apply to MF units? If yes, to what extent?	7
8. Which schedules of PIT Regulations would apply to MF units?	7
Purport of the MF PIT Framework	7
9. What is the broad purport of the MF PIT Framework?	7
10. Typically a structure of MF entails AMC and then various schemes. There are “fund managers” for separate schemes. Are the MF PIT controls to be ensured at the fund, that is, the scheme level, or are they to be enforced at the AMC level?	8
Important definitions	8
Meaning of Insider, CP, deemed CP	8
11. The MF PIT Framework applies to an “insider”. What is the meaning of “insider”?	8
12. The definition of “insider” includes a “CP”. Who all are CPs?	8
13. Who are deemed to be CPs?	8
14. Can an “outsider”, who has UPSI, also be regarded as an “insider”?	9
Meaning of Designated persons (DPs)	9

15. Who all would be DPs in the context of MFs?	9
16. Whether the list of DPs is different from “Access Persons” defined under the SEBI Circular? ...	9
17. Does the MF PIT Framework also govern the immediate relatives of DPs?	10
18. What are the specific obligations cast on DPs? Are there any exemptions available?	10
Meaning of UPSI and generally available information	11
19. What constitutes or may constitute UPSI in the context of MF PIT framework? Is the list same as that under SEBI Circular?	11
20. Is UPSI required to be determined at the level of each MF scheme or at the level of the mutual fund as a whole?	11
21. How is ‘generally available information’ defined in contradistinction to UPSI in case of MFs? ..	11
22. Which information will be considered ‘generally available information’?	11
Communication/procurement of UPSI	12
23. Is there a blanket ban on communication/ procurement of UPSI? Are there any exemptions? ..	12
24. What is ‘legitimate purpose’?	12
25. What points should be taken care of while sharing and procuring UPSI for allowed purposes? ..	12
Structured Digital Database.....	12
26. What are the requirements w.r.t. SDD?	12
Bar on trading when in possession of UPSI.....	13
27. Is there a blanket ban on trading in MF units when in possession of UPSI?	13
28. Whether an insider can take a defence that he was not in possession of UPSI at the time of trading? Who shall have the onus of proving the same? Is it the same with connected persons?	13
29. What are the exonerating circumstances on which innocence can be claimed?	13
30. What is the mandatory requirement specified by SEBI for “Alignment of interest of Designated Employees of asset management companies with the Unit holders of the mutual fund schemes”?	
14	
Trading Plan.....	14
31. What are the provisions in relation to a trading plan?	14
32. Is there any difference between the trading plan under PIT MF Framework and the trading plan applicable under PIT Regulations?	14
Code of Conduct.....	14
33. What is the objective of Code of Conduct? Who all would be governed by Code of Conduct? ..	14
34. Who shall formulate the Code of Conduct? Whose is ultimately responsible?	14
35. What are the broad contents of the Code of Conduct?	14
36. Who shall oversee compliance with the Code of Conduct?	15
Compliance officer	15

37. Who shall appoint the Compliance Officer?	15
38. Who does the Compliance Officer report to?	15
39. Are there any qualifying criteria to be appointed as a Compliance Officer?	15
40. What are the roles and responsibilities of the Compliance Officer in terms of MF PIT Framework? 15	
41. Who will monitor the trades done by the Compliance Officer?	16
Closure period	16
42. What is 'closure period'? Who determined the closure period, and on what basis?	16
43. What are the exemptions available even during the closure period?	16
44. Can the closure period be specified with respect to selected schemes of a MF?	17
Pre-clearance	17
45. What is pre-clearance needed for? By whom?	17
46. Who shall give the pre-clearance? Whether any factors are to be considered while approving? 17	
Contra-trade restrictions.....	17
47. What are the contra-trade restrictions under the PIT MF Framework?	17
48. If a DP redeems the units of Schedule X and buys the units of Schedule Y in the next week, will this amount to contra trade?	17
49. Upon whom does contra-trade restrictions apply?	17
50. Is there any exemption from contra-trade restrictions?	17
51. What are the repercussion of violation of contra trade restrictions?	18
52. Whether the contra-trade restrictions can be relaxed?	18
Disclosure requirements	18
53. What are the disclosure requirements for DPs? Are there any exemptions from disclosure requirements?	18
54. What does the term 'material financial relationship' mean?	19
55. Is there any disclosure requirement on the part of AMC under PIT MF Framework?	20
Internal Control Mechanism.....	20
56. How would the AMC ensure compliance with the requirement of having an internal control system?	20
57. What should be the contents of internal control manual?	20
Roles and responsibilities	21
58. What are the responsibilities cast on the board of directors of the AMC?	21
59. What are the functions required to be performed by the CEO/MD of AMC?	21
60. What is the role of the audit committee of the AMC?	21

61. What are the roles and responsibilities of trustees with respect to insider trading controls?	21
Actionables for the Mutual Funds.....	22
62. What are the actionables for the AMC of MFs?.....	22
Responsibilities of intermediaries/fiduciaries.....	23
63. Who all can be possible intermediaries/ fiduciaries in the context of MFs? Do the intermediaries/ fiduciaries include those working for trustees of the MF?	23
64. What are immediate actionables for the fiduciaries and intermediaries who are required to handle UPSI in relation to MF schemes?	23
65. What are the changes introduced in Schedule C with respect to the PIT MF framework? What would be the impact of such changes?	23

Brief Introduction

SEBI had issued various circulars for investment/ trading by the employees of Asset Management Companies ('AMC') and Trustees of Mutual Funds ('MFs'), the last compiled circular was issued on [October 21, 2021](#), to ensure that such employees do not take undue advantage of any sensitive information that they may have about any company or its securities or about the AMC's schemes or its units.

SEBI has now amended the SEBI (Prohibition of Insider Trading) Regulations ('**PIT Regulations**') to introduce a separate framework for MFs through SEBI (PIT) (Amendment) Regulations, 2022 which will be effective from the date yet to be notified by SEBI. Pursuant to this, the "insiders" having price sensitive information about MF schemes are prohibited from doing trades in the units of own MF schemes, while in possession of any Unpublished Price Sensitive Information ('**UPSI**'). To carry the intent of these regulations, which have all this while been applied to listed securities, there will be elaborate insider trading control frameworks to be put in place by the AMCs, including but not limited to formulating the Code of Conduct to regulate, monitor and report trading by Designated Persons ('**DPs**') in own mutual fund schemes, Policy to determine legitimate purpose, Policy and procedure for inquiry in case of leak of UPSI, maintenance of Structural Digital Database ('**SDD**'), entering into confidentiality and non-disclosure agreements, etc.

The new regulatory framework ('**MF PIT Framework**') is contained in Chapter IIA of the PIT Regulations. In addition, Chapter IIIA (dealing with Informant Mechanism) and Chapter V (dealing with miscellaneous provisions) of the PIT Regulations will also apply to MF units.

We have prepared detailed FAQs covering the scope and applicability of MF PIT Framework, the regulatory requirements, responsibilities and the actionables on the part of AMC, trustees pursuant to such framework.

These FAQs can be read with our article:

[Mutual Fund units now under the net of insider trading regulations](#)

Our FAQs on PIT Regulations can be read [here](#).

Our Resource Centre on PIT can be accessed [here](#).

The new regulatory framework

1. Exemption to MF units removed from the definition of 'securities'

- a. The [N. K. Sodhi Committee Report](#) recommended adopting the definition of securities as assigned to it under the Securities Contract (Regulation) Act, 1956, without any exclusion. The rationale explained was - if the security is amendable to price discovery on the market platform, it would be amenable to insider trading.
- b. However, the final PIT Regulations excluded MF units from the definition of securities. The [comments](#) received on the N. K. Sodhi Committee Report stated that even if a person has inside information

regarding one company, he cannot possibly take advantage on that information by investing in a scheme, which is a diversified pool of securities of various companies and that there existed strict and transparent norms of NAV (net asset value) calculations and offence of front-running was already covered under SEBI (Fraudulent and Unfair Trade Practices) Regulations, 2003.

- c. SEBI, now felt the need to revisit its decision after some past instances of redemption of MF units by RTAs and KMP of a MF based on inside information and has amended the PIT Regulations to include the MF units in the definition of securities.

2. What is the difference between front-running and insider trading in MF units, which is the subject matter of MF PIT Framework?

Front-running is trading ahead of the client. Typically, it happens when a fiduciary, aware of a sizeable order which may have an impact on prices of securities, goes and does a personal trade ahead of the trade that he/she will do in a fiduciary capacity.

For instance, if an MF scheme is making an investment in an entity's equity, on account of which there will be a surge in the prices, the person may use buy-buy-sell technique wherein the person will first punch a buy order, then punch a buy order for client and then punch a sell order for itself to square off the gain made due to the surge in price pursuant to the MF scheme trade, by selling to the client. Alternatively, if the prices are expected to fall on account of client's trade, it could be a sell-sell-buy technique, where the person first punches a sell order, then sells on behalf of the client and then buys the scrip, as a counterparty to the client, and square off to take benefit of the fall in the prices. The trading accounts may be different but intent is to achieve the benefit from the rise or fall in prices.

Whereas, insider trading means trading in the securities by an insider when in possession of UPSI relating to such securities or the entity to which the securities belong.

Scope and applicability

3. Who all does the MF PIT Framework apply to? Does the framework restrict itself to Designated Persons ('DPs')/ Connected Persons ('CPs') or does it extend to all insiders?

The MF PIT Framework applies to all the insiders having access to UPSI of MF units. The insider has been defined under reg. 5B(1)(d) to include a (separately defined for MFs) and any person having access to UPSI relating to MF scheme. Therefore, the MF PIT Framework applies to all insiders including DP and CP. However, there is a separate Code of Conduct (Schedule B1) which is applicable only to the DPs and their immediate relatives.

4. Does it apply even where the units of MF are not listed?

Going by the language of the amendments, it appears that the MF PIT Framework will be applicable to both listed MF units as well as those that are unlisted. Unlisted units are typically redeemed by the fund, while listed units are typically sold in the open market. The intent of extending the MF PIT Framework to unlisted MF units is clear from the language of the Regulations, in particular, the amendment made in Reg 2(1)(I), defining "trading" by insertion of the words "redeeming" etc. That is, redemption of a unit is also considered as a trade.

Further the language of reg. 5C, does not use the words “listed or to be listed”. It is pertinent to note that the corresponding language of Reg 3(1) very explicitly refers to securities which are listed or proposed to be listed. It has been deleted while replicating in reg. 5C.

5. From what date does the MF PIT Framework become applicable?

It is not effective immediately. SEBI will separately notify the effective date of the framework.

6. Does the MF PIT Framework only incorporate the existing [SEBI Circular dated October 28, 2021](#) (‘SEBI Circular’), or provide for additional provisions? Whether the SEBI Circular shall be deemed to be repealed pursuant to the notification of these amendments?

The coverage of SEBI Circular is broader compared to the MF PIT Framework. It provides the regulatory framework for the employees (and not just DPs/ Access Persons) for dealing in the securities such as shares, debentures, bonds, warrants, derivatives and MF units. For dealing in MF units, the employees are only required to disclose the trades and other restrictions such as pre-clearance, contra trade, etc. do not apply.

While the MF PIT Framework is applicable only for dealing in own MF units. It has been aligned with the PIT provisions as applicable to listed companies. The SEBI Circular cannot be deemed to be repealed as it also contained the provisions for dealing with securities, other than MF units, in which investment is made under the MF Scheme.

7. While Chapter IIA has been specifically inserted with respect to MFs, do other chapters of PIT Regulations apply to MF units? If yes, to what extent?

Chapter IIIA (dealing with Informant Mechanism) and Chapter V (dealing with miscellaneous provisions) of the PIT Regulations apply to MF units.

8. Which schedules of PIT Regulations would apply to MF units?

Following schedules will apply to MF units:

- a. Newly inserted Schedule B1 - ‘Minimum Standards of Code of Conduct for Mutual Funds to regulate, monitor and report trading by the Designated Persons in the units of own mutual fund schemes’,
- b. Schedule D - ‘Form for Informant’s Voluntary Information Disclosure to be submitted to the Board’,
- c. Schedule E - ‘Form for Informant’s Reward Claim to be submitted to the Board within the time specified in the intimation of prima facie eligibility to receive an Informant Reward’.

Purport of the MF PIT Framework

9. What is the broad purport of the MF PIT Framework?

Broadly speaking, the MF PIT Framework replicates the existing framework applicable to listed securities to MF units. It prohibits communication/ procurement of UPSI relating to MF units, prohibits trading, that is to say, purchase, sale, redemption, subscription, switching, etc., of MF units, by any “insider”, while in possession of UPSI.

In order to ensure controls on such communication/ trades by insiders, it lays down several protective requirements:

- a. Sharing of UPSI on a ‘need-to-know; basis for legitimate purpose,

- b. Sending notice of confidentiality or Non-Disclosure Agreements with the person receiving UPSI,
- c. Maintaining Structured Digital Database containing the details of persons who shared and received UPSI,
- d. Formulating various Codes and Policies
- e. Monitoring the trades of DPs, etc.

10. Typically a structure of MF entails AMC and then various schemes. There are “fund managers” for separate schemes. Are the MF PIT controls to be ensured at the fund, that is, the scheme level, or are they to be enforced at the AMC level?

In our view, the PIT controls are to be ensured at AMC level. The AMC will be required to designate a compliance officer, formulate the codes and policies, identify DPs, monitor and report their trades. However, such compliances shall be applicable at scheme level. That is, the determination of UPSI, closure period, pre-clearance, contra trade restrictions, etc. will be at scheme level.

Important definitions

Meaning of Insider, CP, deemed CP

11. The MF PIT Framework applies to an “insider”. What is the meaning of “insider”?

As per reg. 5B(1)(d), “insider” means a person who is:

- a. CP; or
- b. In possession of or having access to UPSI pertaining to MF scheme.

12. The definition of “insider” includes a “CP”. Who all are CPs?

As defined under Reg. 5B(1)(b), any person who is or has been associated with the MF, AMC or Trustee, directly or indirectly, in any capacity, during the 2 months prior to the concerned act, 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 AMC or Trustee; or
- holding any position including a professional or business relationship between himself and the MF, AMC or trustee whether temporary or permanent

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

13. Who are deemed to be CPs?

Following persons are deemed to be CPs, unless contrary is established:

- Immediate relative of CPs;
- Sponsor, holding company or associate company or subsidiary company of the Sponsor or AMC and Trustees;
- Board and KMP of sponsor of MF;
- Directors or employees of RTA, custodians or valuation agencies of MF who have access or are reasonably expected to have access to UPSI relating to a MF scheme or its units in the course of business operations;

- Official or an employee of fund accountant providing services to a MF who have access or are reasonably expected to have access to UPSI relating to a MF scheme or its units in the course of business operations;
- Official or an employee of a self-regulatory organization;
- Official of a stock exchange for dissemination of information;
- Directors or employees of auditor, legal advisor or consultants of the MF or AMC who have access or are reasonably expected to have access to UPSI relating to MF scheme or its units in the course of business operation;
- Intermediary as specified in section 12 of the Act or an employee or director thereof who have access or are reasonably expected to have access to UPSI relating to MF scheme or its units in the course of business operations;
- Banker of MF or AMC;
- A concern, firm, trust, HUF, company or association of persons wherein a director of an AMC and Trustees or his immediate relative or banker of the company, has more than 10% of the holding or interest.

14. Can an “outsider”, who has UPSI, also be regarded as an “insider”?

The term ‘insider’ is a very broad term. It includes any person who has access to UPSI. For eg., an audit firm doing the audit of AMC is an outsider for AMC, but since it will have access to UPSI of MF scheme, it will be considered as insider. Similarly, person gets UPSI illegally, such person will also be covered under the definition of insider.

Meaning of Designated persons (DPs)

15. Who all would be DPs in the context of MFs?

As per reg. 5G(1), DPs would be those employees specified by the Board of Director of AMC and trustees in consultation with the Compliance Officer, 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. The DPs would include the following:

- Head of AMC (designated as CEO/MD/ President/ any other name);
- Directors of the AMC or the trustee company (NEDs of AMC. trustee company or trustees having access to UPSI will also be classified as DPs);
- Chief Investment Officer, Chief Risk Officer, Chief Operation Officer, Chief Information Security Officer;
- Fund Managers, Dealers, Research Analysts;
- all employees in the Fund Operations Department,
- Compliance Officer and
- Heads of all divisions and/or departments or any other employee as designated by the AMC and/or trustees.

16. Whether the list of DPs is different from “Access Persons” defined under the SEBI Circular?

The list of DPs is same as Access Persons defined under SEBI Circular.

17. Does the MF PIT Framework also govern the immediate relatives of DPs?

Yes, the MF PIT Framework is applicable to all insiders which includes CPs. Immediate relatives are deemed to be CPs, therefore, the framework would be applicable to them as well.

18. What are the specific obligations cast on DPs? Are there any exemptions available?

The following obligations are cast specifically on the DPs:

- 1. Communication, sharing and procuring of UPSI only for legitimate purposes, as per the policy framed by the AMC {Reg. 5C(1)}**
- 2. Disclosure of holdings** - DPs to disclose on such date (to be prescribed by SEBI) and on quarterly basis, the details of aggregate holdings held by himself and immediate relatives in the units of MF scheme, to the AMC. {Reg. 5E(1)}
- 3. Event based disclosure** - DPs to disclose the details of all transactions executed by himself and immediate relatives in the units of MF scheme, above such thresholds (to be prescribed by SEBI) to the Compliance Officer within 2 business days of such transaction. In case of systematic transactions, DPs disclose only at the time of making first instalment and upon any modification thereof.
 - **Exemption from continual disclosure** - Disclosure not required for subscription/ investment pursuant to SEBI circular "[Alignment of interest of Key Employees \("Designated Employees"\) of Asset Management Companies with the Unitholders of the mutual fund Schemes](#)" and trading in overnight schemes, Index funds and Exchange Traded Funds. {second proviso to Reg. 5E(2)}
- 4. Annual disclosure** - DPs to give annual disclosure as prescribed in the code of conduct framed by the AMC. {para 13 of Sch. B1}
- 5. DPs and immediate relatives to refrain from trading during closure period**
 - **Exemption from closure period** -
 - Off-market inter-se transfer among insiders subject to certain conditions;
 - Transaction carried pursuant to statutory obligation including subscription/ investment pursuant to SEBI circular "[Alignment of interest of Key Employees \("Designated Employees"\) of Asset Management Companies with the Unitholders of the mutual fund Schemes](#)";
 - Transaction in question is triggered by systematic transactions registered at-least 2 months prior to such transaction. {para 6 to Sch. B1}
- 6. Pre-clearance** - Where closure period is not applicable, DP to obtain pre-clearance from the Compliance Officer before trading (whether by himself or by immediate relative) above the prescribed thresholds (which will be prescribed in the Code of Conduct) and at the time of initiation of systematic transactions,
 - **Exemption from pre-clearance** - Pre-clearance not required in case of trading in Overnight Schemes, Index funds and Exchange Traded Funds. {para 6 to Sch. B1}
- 7. Contra-trade restrictions** - DPs and their immediate to not enter into opposite transactions within 2 months of previous transactions.
 - **Exemption from contra-trade restrictions** - trading in overnight schemes.

Meaning of UPSI and generally available information

19. What constitutes or may constitute UPSI in the context of MF PIT framework? Is the list same as that under SEBI Circular?

USPI as its general meaning means any price sensitive information that is not generally available on public domain. In the context of MF PIT Regulations, as per Reg. 5B(1)(f), UPSI means information, which upon becoming available is likely to materially impact the NAV or interest of unit holders and include instances where there is likelihood of the following *viz.*

- a. a change in the accounting policy;
- b. a material change in the valuation of any asset or class of assets;
- c. restrictions on redemptions, winding up of scheme(s);
- d. creation of segregated portfolio;
- e. the triggering of the swing pricing framework and the applicability of the swing factor;
- f. material change in the liquidity position of the concerned MF scheme(s);
- g. default in the underlying securities which is material to the concerned MF scheme(s).

The SEBI circular includes the following 2 events as UPSI which is not covered in the MF PIT Framework:

- a. Change in the investment objective of concerned MF scheme, and
- b. Conversion of close ended scheme to an open ended scheme or an open-ended scheme to close-ended.

Further, the triggering of the swing pricing framework and the applicability of the swing factor is not covered in the definition of UPSI in the SEBI Circular.

20. Is UPSI required to be determined at the level of each MF scheme or at the level of the mutual fund as a whole?

As per the definition of insider provided in Reg. 5B(1)(d);

(d) "insider" means any person who is:

XXX

ii. in possession of or having access to unpublished price sensitive information pertaining to a scheme;

As clear from the definition, UPSI would be determined at scheme level.

21. How is 'generally available information' defined in contradistinction to UPSI in case of MFs?

As per reg. 5B(1)(c),

"generally available information" means information that is made available to the unitholders or made accessible to the public on a non-discriminatory basis.

22. Which information will be considered 'generally available information'?

Where the units of MF which are listed on the stock exchange, the information disseminated by the AMC on the stock exchange will be considered as 'generally available information'. In case of unlisted units, the information disseminated by AMC on the platform (yet to be prescribed by SEBI) will be 'generally available information'.

Communication/procurement of UPSI

23. Is there a blanket ban on communication/ procurement of UPSI? Are there any exemptions?

No, there is no blanket ban on communication/ procurement of UPSI. UPSI can be shared or procured in furtherance of legitimate purpose, performance of duties or discharge of legal obligations ('allowed purposes'). The exemptions are the same as that available with listed companies.

24. What is 'legitimate purpose'?

The definition for legitimate purpose is again the same as what has been given in the context of listed companies. As per the explanation to reg. 5C(3), the term "legitimate purpose" shall include sharing of UPSI in the ordinary course of business with the Trustees, RTAs, Custodians, Valuation Agencies, Fund Accountants, Association of Mutual funds of India, Credit Rating Agencies, legal advisors, auditors or other advisors or consultants, except where such sharing has been carried out to evade or circumvent the prohibitions of PIT Regulations.

Who is required to formulate a 'Policy for determination of 'legitimate purpose'? What should the Policy cover?

The Board of Directors of AMC with the approval of Trustees are required to formulate a Policy for determination of legitimate purpose. It 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 by the person who is authorized to do so;
- where there is any sharing of UPSI, 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 AMC, in order to track whether the information was exploited by the person or not.

25. What points should be taken care of while sharing and procuring UPSI for allowed purposes?

Below mentioned are indicative points that should be taken care of while sharing and procuring UPSI:

- a. Procedure framed by the AMC for bringing people inside to be followed;
- b. confidentiality agreement / NDAs to be executed with the recipient of UPSI;
- c. notice of confidentiality to be given to the recipient of UPSI to maintain confidentiality of information shared;
- d. details of the person who shared the UPSI and who received the UPSI along with the nature of UPSI to be entered into SDD.

Structured Digital Database

26. What are the requirements w.r.t. SDD?

Following are the broad requirements w.r.t. maintenance of SDD:

- a. The Board of Directors are required to maintain the SDD,
- b. Contents of SDD:

- i. Nature of UPSI;
 - ii. Name and PAN (or other identifier where there is no PAN) of the person who shared UPSI;
 - iii. Name and PAN (or other identifier where there is no PAN) of the person who received UPSI;
- c. SDD should not be outsourced and should be maintained internally;
 - d. It should have adequate internal controls and checks such as time stamping and audit trails to ensuring non-tampering of database;
 - e. Should be preserved for atleast 8 years after completion of the relevant transactions. In the event of receipt of any information from SEBI regarding any investigation or enforcement proceedings, the relevant information in the SDD should be preserved till the completion of such proceedings.

We have detailed [FAQs on SDD](#) which serves as a guide on the concept of SDD, what needs to go into it, how to maintain SDD, etc. While the basis of determination of UPSI may be different in the context of MF units, however, once identified, the protocol for sharing and entry in SDD will be the same.

Bar on trading when in possession of UPSI

27. Is there a blanket ban on trading in MF units when in possession of UPSI?

Yes, there is a blanket ban on trading in MF units when in possession of UPSI or during the closure period. However, there are certain exceptional situations where a person can trade while in possession of UPSI or during the closure period.

28. Whether an insider can take a defence that he was not in possession of UPSI at the time of trading? Who shall have the onus of proving the same? Is it the same with connected persons?

Yes, the insider can take the defence that he was not in possession of UPSI at the time of trading. The onus of proving that the insider was, in fact, possession of UPSI lies with SEBI.

However, in case of CPs including DPs, the onus of proving that the CP was not in possession of UPSI lies with the CP as he is presumed to be always in possession of UPSI unless otherwise proved.

29. What are the exonerating circumstances on which innocence can be claimed?

Proviso to Reg. 5D(1) provides for circumstances where an insider may prove his innocence. They are as follows:

- a. the transaction is an off-market inter-se transfer between insiders who were in possession of the same UPSI and both parties had made a conscious and informed trade decision. The insiders will be required to report such trades to the AMC within 2 working days. The AMC will notify the same to the stock exchange or other platform (to be prescribed by SEBI) within 2 trading days of receipt of disclosure from insiders or from becoming aware of such information.
- b. such transaction in question was carried out pursuant to a statutory or regulatory obligation including subscription or investment in mutual fund units pursuant to the mandatory requirement specified by the Board for "[Alignment of interest of Designated Employees of AMCs with the Unit holders of the mutual fund schemes](#)";
- c. such transaction is triggered by systematic transactions, where such systematic transactions are registered at least two months prior to such transaction;
- d. such transaction in question is triggered by irrevocable trading plans.

30. What is the mandatory requirement specified by SEBI for “Alignment of interest of Designated Employees of asset management companies with the Unit holders of the mutual fund schemes”?

The SEBI circular intends to align the interest of the key members with that of the unitholders. To align their interest, the key employees are required to be paid 20% of their CTC in the form of units which they have a role/oversight, The compensation i.e. the 20% amount is to be paid proportionately over a period of 12 months. The lock in period is of 3 years or tenure of the scheme, wherever is less.

Trading Plan

31. What are the provisions in relation to a trading plan?

As specified in proviso to reg. 5D(1), the trading plan -

- Should be approved by the Compliance Officer;
- Disclosed on the stock exchange or other platform (to be prescribed by SEBI);
- The period of trading plan should be of atleast 6 months with no overlapping of different trading plan;
- The trading pursuant to the trading plan should be commenced after sixty days of approval of such plan;
- The requirement of closure period, pre-clearance, contra trade restrictions will not apply to trades carried out pursuant to trading plan.

32. Is there any difference between the trading plan under PIT MF Framework and the trading plan applicable under PIT Regulations?

Under PIT MF Framework the tenure of trading plan is of 6 months whereas under PIT Regulations it is of 12 months. The trading plan shall be intimated to stock exchange or any in any other manner as prescribed, atleast 60 days before commencement of trading whereas under PIT Regulations, the trading plan shall be intimated at least 6 months before commencement of trading.

Code of Conduct

33. What is the objective of Code of Conduct? Who all would be governed by Code of Conduct?

The objective of the code of conduct is to regulate, monitor and report the trading by DPs and their immediate relatives. The DPs and their immediate relatives are governed by the Code of Conduct.

34. Who shall formulate the Code of Conduct? Whose is ultimately responsible?

The Chief Executive Officer (CEO) or Managing Director (MD) of the AMC is responsible for framing the Code of Conduct and the same shall be approved by the Board of AMC. Therefore, the ultimate responsibility is of the Board of AMC.

35. What are the broad contents of the Code of Conduct?

The AMC is required to frame a Code of Conduct which should be in line with the minimum standards set out in Schedule B1. The Code of Conduct should broadly contain the following;

- category of persons who would be identified as DPs;
- Responsibilities of the Compliance Officer;
- manner of handling UPSI, Chinese walls procedures;

- process of bringing people inside the walls;
- Prohibition on DPs w.r.t. communication/ procurement of UPSI and trading while in possession of UPSI;
- Closure period and exemption from closure period restrictions;
- Manner of obtaining pre-clearance, cases where pre-clearance requirement will not apply;
- Contra-trade restrictions, relaxation and exemptions from contra-trade restrictions;
- Disclosure requirements by DPs and their immediate relatives;
- Safeguarding the informants;
- The manner of reporting by Compliance Officer to Board of AMC and providing reports to Chairman of audit committee of AMC and to trustees and the frequency of reporting.
- Manner of sensitising the DPs of their responsibility of handling UPSI.
- Internal sanctions, disciplinary action on contravention of Code of Conduct;
- Reporting of violation of the PIT Regulations.

36. Who shall oversee compliance with the Code of Conduct?

The Compliance Officer is responsible for ensuring compliance with the Code of Conduct. However, it is the overall responsibility of the Board of Directors to oversee compliance with the Code of Conduct.

Compliance officer

37. Who shall appoint the Compliance Officer?

The Board of the AMC shall appoint the Compliance Officer.

38. Who does the Compliance Officer report to?

Compliance officer shall report to the Board of AMC.

39. Are there any qualifying criteria to be appointed as a Compliance Officer?

As per reg. 2(1)(c) of the PIT Regulations, a Compliance Officer should be

- a. a senior officer, designated so and reporting to the board of directors;
- 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 UPSI on price discovery for securities so that he is able to administer the PIT Regulations in an informed manner.

The term ‘financially literate’ means 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. There is no prescribed qualification of a compliance officer unlike Reg. 6 of the Listing Regulations which prescribes only a qualified company secretary to act as a Compliance Officer.

40. What are the roles and responsibilities of the Compliance Officer in terms of MF PIT Framework?

The following are the broad roles and responsibilities of the Compliance Officer”

- Compliance with the Code of Conduct and policies, i.e. policy for determination of legitimate purposes, policies and procedures for inquiry in case of leak or suspected leak of UPSI, whistle blower policy;
- Implementing the Code of Conduct under the general supervision of the Board of Directors;
- Assisting the Board of Directors in determination of DPs;

- Determining closure period;
- granting of pre-trading clearance to the DPs
- monitoring of trade of DPs and their immediate relatives);
- Granting relaxation from strict application of contra trade restrictions;
- maintaining of records as required under the MF PIT Framework;
- Placing status reports before the Chairman of the Audit Committee, detailing any trading in the listed securities by the DPs, violations of the Code of Conduct, if any at regular intervals but not less than once in a year;
- approving and assisting in implementation of trading plan as and when presented by the insiders;
- Sensitizing 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.

41. Who will monitor the trades done by the Compliance Officer?

The Code of Conduct should specify who will monitor the trade done by the Compliance Officer. Ideally, the Board, CEO or MD can be granted the authority to monitor the trades done by the Compliance Officer.

Closure period

42. What is ‘closure period’? Who determined the closure period, and on what basis?

The concept of closure period is similar to trading window closure. It is determined by the Compliance Officer, when a DP or a class of DPs have or are expected to have access to UPSI of a scheme. During such period, the DPs and their immediate relatives are prohibited from trading in the units of MF scheme to which the UPSI relates.

43. What are the exemptions available even during the closure period?

Following are the exemptions where the DP and their immediate relatives can trade during closure period, subject to pre-clearance by the Compliance Officer:

- a. the transaction is an off-market inter-se transfer between insiders who were in possession of the same UPSI and both parties had made a conscious and informed trade decision. The DPs will be required to report such trades to the AMC within 2 working days. The AMC will notify the same to the stock exchange or other platform (to be prescribed by SEBI) within 2 trading days of receipt of disclosure from insiders or from becoming aware of such information.
- b. such transaction in question was carried out pursuant to a statutory or regulatory obligation including subscription or investment in mutual fund units pursuant to the mandatory requirement specified by the Board for “[Alignment of interest of Designated Employees of AMCs with the Unit holders of the mutual fund schemes](#)”;
- c. such transaction is triggered by systematic transactions, where such systematic transactions are registered at least two months prior to such transaction;
- d. in respect to the pledge of MF units for a bonafide purpose.

44. Can the closure period be specified with respect to selected schemes of a MF?

Yes. Para 4(1) of Schedule B1 states that, '.... Such closure period shall be imposed in relation to such schemes to which such unpublished price sensitive information relates. XXX'. Therefore, the closure period can be specified w.r.t. selected schemes of MF.

Pre-clearance

45. What is preclearance needed for? By whom?

The DPs and their immediate relatives cannot trade in the units of MF during the closure period. When the closure period is not applicable, the DPs and their immediate relatives can trade in the units of MF, subject to pre-clearance by the Compliance Officer, if the value of the proposed trade exceeds the threshold stipulated in the Code of Conduct.

Further, pre-clearance will also be required at the time of initiation of systematic transactions. The Board of AMCs will be required to specify separate thresholds for systematic transactions and lumpsum payments.

46. Who shall give the pre-clearance? Whether any factors are to be considered while approving?

As mentioned above, pre-clearance shall be given by the Compliance Officer. While granting pre-clearance, the Compliance Officer shall seek a declaration from the person who has applied for pre-clearance, to the effect that he / she is not in possession of any UPSI. {Ref. para 7 of Sch. B1}

Contra-trade restrictions

47. What are the contra-trade restrictions under the PIT MF Framework?

Contra trade means entering into an opposite transaction within a span of the prescribed timeline. Under the MF PIT Framework, a DP is restricted from entering into opposite transaction within 2 months of previous transaction. For e.g., if a DP purchases the unit of MF scheme, he cannot sell the units of that MF scheme for the next 2 months.

48. If a DP redeems the units of Schedule X and buys the units of Schedule Y in the next week, will this amount to contra trade?

The PIT restrictions are at scheme level. The contra trade restrictions are also applicable at scheme level. Therefore, redemption of units from Scheme X and purchase of units of Scheme Y will not be a contra trade. Instead, if a redeems and purchases the units of same scheme, it will amount to contra trade.

49. Upon whom does contra-trade restrictions apply?

The contra-trade restrictions are applicable to DPs and their immediate relatives.

50. Is there any exemption from contra-trade restrictions?

The contra-trade restrictions will not apply in case of overnight funds as the tenure of the fund is of one day only.

51. What are the repercussion of violation of contra trade restrictions?

If a DP enters into contra trade, whether knowingly or unknowingly, the profits gained or the loss avoided will shall be disgorged by the AMC and credited to the SEBI to the Investor Protection and Education Fund.

52. Whether the contra-trade restrictions can be relaxed?

Yes, the Compliance Officer (through the Code of Conduct) can have the power to relax the restrictions of contra trade. The Compliance Officer will have to obtain the valid reasons in writing from the DP and take the confirmation that the DP is not in possession of UPSI.

Disclosure requirements

53. What are the disclosure requirements for DPs? Are there any exemptions from disclosure requirements?

The DP is required to give initial disclosure, quarterly disclosure, event-based disclosure and annual disclosure to the AMC.

Type of disclosure	Reg. No.	Timeline	Format	Remarks	Exemptions
Initial	5E(1)	<i>Date yet to be prescribed by SEBI</i>	<i>Yet to be prescribed by SEBI</i>	Should cover holdings by DPs and their immediate relatives	Nil
Initial	Clause 13 of Schedule B1	To be prescribed in the Code of Conduct	As prescribed by the AMC	Name, PAN and contact details of DP, his/her immediate relatives and persons with whom such DP shares a material financial relationship. Details of names of educational institutions from which DPs have graduated and names of their past employers	Nil
Quarterly	5E(1)	<i>Yet to be prescribed by SEBI</i>	<i>Yet to be prescribed by SEBI</i>	Should cover holdings by DPs and their immediate relatives	Nil

Type of disclosure	Reg. No.	Timeline	Format	Remarks	Exemptions
Event Based	Proviso to Reg. 5D(1)	2 working days	<i>Yet to be prescribed by SEBI</i>	Off-market inter se transfer	
Event based	5E(2)	Within 2 business days	<i>Yet to be prescribed by SEBI</i>	<ul style="list-style-type: none"> Should cover trades by DPs and their immediate relatives if the trade value exceeds the threshold prescribed by SEBI One time disclosure at the time of making the first installment. 	<ul style="list-style-type: none"> Trade pursuant to SEBI Circular Alignment of interest of Key Employees (“Designated Employees”) of Asset Management Companies with the Unitholders of the mutual fund Schemes Overnight schemes, Index funds and ETFs.
Annual	Clause 13 of Schedule B1	To be prescribed in the Code of Conduct	As prescribed by the AMC	To disclose changes, if any, in the name, PAN and contact details of himself, his immediate relatives and persons with whom such DP shares a material financial relationship.	Nil

54. What does the term ‘material financial relationship’ mean?

As provided in the explanation under clause 13 of Schedule B1 of PIT MF Framework, 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 12 months;
- equivalent to at least 25% of the annual income of the DP;
- excluding relationships in which the payment is based on arm’s length transaction

55. Is there any disclosure requirement on the part of AMC under PIT MF Framework?

AMC is required to disclose the holdings of DPs and their immediate relatives in its MF schemes to the stock exchange or any other platform (yet to be prescribed by SEBI) as on date as yet to specified by SEBI and thereafter on a quarterly basis.

Disclosure received from DPs regarding trading in its own MFs exceeding the threshold limit pursuant to reg. 5E(2) will also be disclosed to the stock exchange or any other platform (yet to be prescribed by SEBI) within 2 business days of the receipt of the same or on becoming aware of such trade.

Further, off-,market trades by the insiders pursuant to proviso to reg. 5D(1) are also required to be reported to the stock exchange or any other platform (yet to be prescribed by SEBI) within 2 trading days of the receipt of the same or on becoming aware of such trade.

Internal Control Mechanism

56. How would the AMC ensure compliance with the requirement of having an internal control system?

In terms of Reg. 5H(1), the AMC should ensure that its internal control system includes the following:

- all employees who have access to UPSI are identified as DP;
- 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.

57. What should be the contents of internal control manual?

The broad contents of the internal control 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 the public at large;
- Determination of leaks of UPSI;
- Role of various functionaries such as, the BoD, 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 whistleblowers;
- Periodic sensitization of employees of the organization in terms of requirement under the Regulations and the Code.

Roles and responsibilities

58. What are the responsibilities cast on the board of directors of the AMC?

Compliance with the entire MF PIT Framework is the ultimate responsibility of the Board of Directors.

Some of the responsibilities are as follows:

- Designate compliance officer and DPs for the purpose of this framework;
- Formulate Policy for determining legitimate purpose;
- Ensure that Code of Conduct is formulated by the CEO/ MD;
- Approving the internal control mechanism framed by the CEO/ MD of the AMC;
- Approve policy and procedure for inquiry in case of leak of UPSI framed by AMC;
- Ensure that UPSI is shared only for legitimate purpose and is in the best interest of AMC;
- Ensure SDD is maintained;
- Direct parties to execute agreements for maintaining confidentiality and non-disclosure obligations;
- Stipulate thresholds for pre-clearance including for systematic transactions and lump sum payments and the formats.

59. What are the functions required to be performed by the CEO/MD of AMC?

The CEO/ MD of AMC is required to

- Formulate code of conduct to regulate, monitor and report trading by its DPs;
- Ensure adequate and effective internal control systems are devised to ensure prevention of insider trading;
- Report to the audit committee and Board of Directors.

60. What is the role of the audit committee of the AMC?

The role of the audit committee is to:

- Review compliance with the provisions of the Framework 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.

61. What are the roles and responsibilities of trustees with respect to insider trading controls?

The trustees are entrusted with the responsibility of:

- Dissemination of material information to the stock exchange or any other platform (yet to be prescribed by SEBI);
- Approving the policy for determination of legitimate purposes framed by Board of AMC,
- Approving the internal control mechanisms;
- Identification of DPs in consultation with the Compliance Officer;
- Approving of policies and procedures for inquiry in case of leak/suspected leak of UPSI;
- Approving the whistleblower policy of the AMC.

Actionables for the Mutual Funds

62. What are the actionables for the AMC of MFs?

S. No.	Reg. No.	Requirement
Immediate actionables		
1.	-	Formulate the following Codes and Policies with the approval of Trustees: <ol style="list-style-type: none"> Code of Conduct in line with Schedule B1 including process of bringing people inside [reg. 5F(1)]. Policy for determination of legitimate purposes [reg. 5C(3)] Policies and procedures for inquiry in case of leak/suspected leak of UPSI [reg. 5H(4)] Whistle blower policy 5H(5)
2.	5F(3)	Identify and designate a Compliance Officer to administer the Code of Conduct and other requirements.
3.	5G(1)	While AMCs must have identified the Access Persons in terms of SEBI Circular, it should determine the DPs in consultation with the Compliance Officer.
4.	5H(1)	Set up internal control mechanism to ensure adequate and effective compliance with the Framework.
Actionables upon sharing of UPSI		
5.	5C(4) & (5)	Ensure that parties execute NDAs and the recipient of UPSI is explained about the obligations, including abstaining from dealing in the MF units when in possession of UPSI.
6.	5C(6) & (7)	Maintain SDD and making entry each time there is an instance of sharing of UPSI, relating to every scheme, internally or externally. This would demand framing of SOPs for ensuring controls on manner of determination of UPSI, information flow for sharing of UPSI, manner and timelines for making entry in SDD, back-up requirement, other controls to be ensured etc.
7.	Schedule B1	Determine closure period during which the DP is expected to be in possession of UPSI.
Other actionables		
8.	Schedule B1	Determine pre-clearance threshold limits, separate for systematic transactions and

S. No.	Reg. No.	Requirement
	e B1	lumpsum payments; Monitor the trades to track contra trade violations; Stipulate formats for pre-clearance, reporting trades etc. Obtain disclosures from the DPs. Inform SEBI about any cases of violations;
9.	5E(1) & (2)	Make one-time, quarterly and threshold specific disclosures in the manner specified by SEBI.
10.	5H(3)	Place details of compliance with PIT Regulations before AC, atleast once in a year. AC to verify that the systems for internal control are adequate and are operating effectively.

Responsibilities of intermediaries/fiduciaries

63. Who all can be possible intermediaries/ fiduciaries in the context of MFs? Do the intermediaries/ fiduciaries include those working for trustees of the MF?

Intermediaries would be those registered with SEBI. Whereas fiduciaries would be professional firms such as auditors, accountancy firms, law firms, analysts, consultants, banks, valuation agencies, fund accountants, assisting or advising AMCs, Trustees, RTAs, Custodians and Credit Rating Agencies are referred to as “fiduciaries”. The engagement is not just limited to the AMCs. Accordingly, intermediaries/ fiduciaries include those working for trustees of the MF would also get covered.

64. What are immediate actionables for the fiduciaries and intermediaries who are required to handle UPSI in relation to MF schemes?

The intermediaries and fiduciaries having access to UPSI of MF schemes would be required to:

- Frame a Code of Conduct as per Schedule C [Reg. 5F (2)]
- Identify DPs [Reg. 5G (2)]
- Maintain SDD [Reg. 5C (6) & (7)]
- Set up institutional mechanism for internal controls [Reg. 5H(1)]
- Set up systems for pre-clearance, maintenance of restricted list, contra trade restrictions, stipulate formats for pre-clearance, reporting trades etc, obtaining disclosures from the DPs (Schedule C)

65. What are the changes introduced in Schedule C with respect to the PIT MF framework? What would be the impact of such changes?

Schedule C is the code of conduct for intermediaries and fiduciaries. It has been is amended to include the

- contra-trade restrictions for dealing in units of MFs.
- Reporting to the stock exchange about violation in case of dealing in MF units.

Impact on intermediaries and fiduciaries:

- Framing Code of Conduct as per Schedule C [Reg. 5F (2)]

- Identifying DPs [Reg. 5G (2)]
- Setting up institutional mechanism for internal controls [Reg. 5H(1)]
- Maintenance of SDD [Reg. 5C (6) & (7)]
- Annual affirmation before the AC or analogous body [Reg. 5H(3)]
- Setting up systems for pre-clearance, maintenance of restricted list, contra trade restrictions, stipulate formats for pre-clearance, reporting trades etc, obtaining disclosures from the DPs, Informing SEBI about any cases of violations [Schedule C].