

FAQs on Structured Digital Database

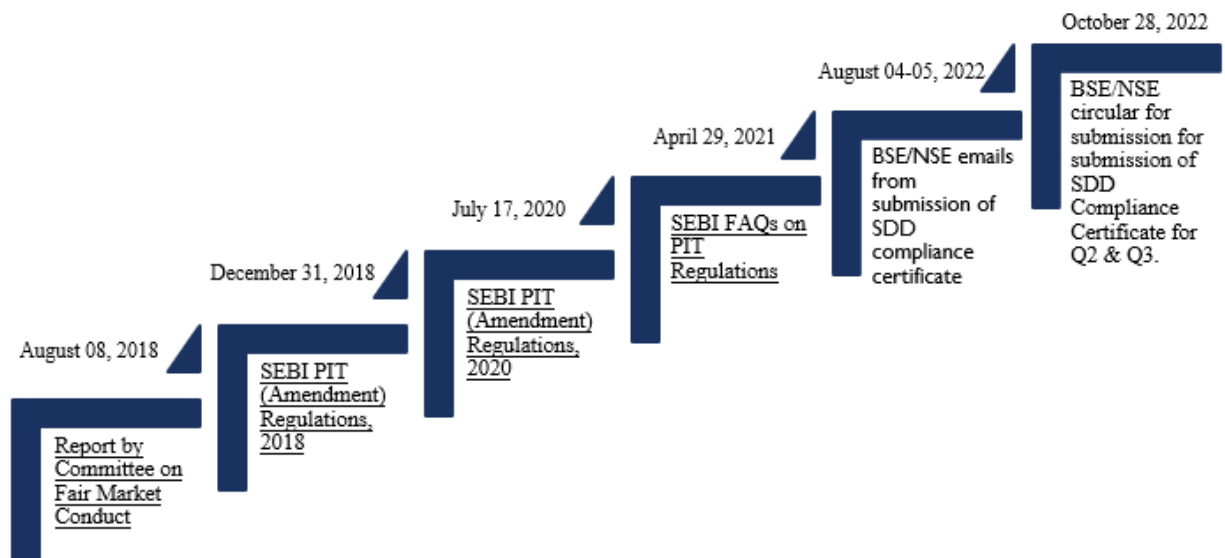
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Structured Digital Database (‘SDD’) is the database of unpublished price sensitive information (UPSI), shared internally or externally, with the intent of keeping track as to who all were in the know of an UPSI before it became public. The concept emanates from Reg. 3 (5) and 3 (6) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (‘Regulations’), first introduced *vide* the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018, effective the 1st April, 2019.

Further, considering the requirement to bring more clarity on the maintenance of the SDD, SEBI brought further [amendments](#) in the year 2020 and brought [FAQs](#) on the same. The requirement of SDD remained a benign, good-to-have part of PIT controls, but no one really took it quite seriously, until, almost after three years of applicability, the stock exchanges, with the intent to ensure compliance with the same sent emails around 4th - 5th August, 2022, asking listed entities to submit quarterly compliance certificates pertaining to maintenance of SDD for the quarter ended June 30, 2022 on or before August 9, 2022 in the prescribed format. As the said format had some limitations and did not provide for external certification, BSE issued a [circular](#) on October 28, 2022 providing detailed FAQs for ensuring compliance with SDD along with the revised format of SDD Compliance Certificate (Annexure I).

Since the requirement of the compliance certificate was sudden, and quite well understood, it obviously evoked both dismay and stress. We have tried to put together what may serve as a guide on the concept of SDD, what needs to go into it, how to maintain SDD, etc. . Selected queries raised during our workshops have also been added below.



These FAQs may be read with our other resources on the same;

- [PPT on Structured Digital Database under PIT Regulations: Preparing for the Compliance Certificate](#)
- [Guide to Compliance Certificate for Structured Digital Database under PIT Regulations](#)
- [BSE & NSE simplify the compliance certificate format for Structured Digital Database \(SDD\), allows PCS certification](#)
- [Structured Digital Database: some emerging concerns](#)
- [SEBI prescribed norms for structured digital database, system driven disclosures & CoC violations.](#)
- [Workshop recording on Structured Digital Database](#)

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Concept, applicability, instances of information to be entered into the SDD

1. What is the concept of SDD?

Insider trading is all about trades done based on “information” which is not generally available, that is, preserve of a few “insiders”. Thus, UPSI is the focal point of insider trading controls. UPSI, after having been originated at some stage within the organisation, may be shared with either insiders, or fiduciaries or intermediaries. Until the information matures into a public notice, it may be result into insider trading. Hence, the intent of the SDD is to keep track of who all were the recipients of UPSI.

Thus, SDD is not a perfunctory compliance requirement since the intent is to record the flow of sharing of UPSI by any person “with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants etc [Explanation to Reg. 3(2A)] for “legitimate purpose”, subject to such sharing not being carried out to evade or circumvent the prohibitions of the Regulations. The intent of the SDD is that the regulator or stock exchanges, in case of any enquiry or investigation into insider trading, may trace the trail of sharing of UPSI.

Thus, the following elements are critical to SDD:

- It is only the sharing of UPSI that is required to be entered.
- What is “UPSI” is a subject matter of determination, and may involve subjectivity.
- Once an information is determined to be UPSI, its sharing, internally or externally, until it becomes public by way of public notification, needs to be captured in the SDD.
- The word “sharing” implies that the genesis of the information provides the information to someone who was not otherwise privy to it. Going by this, the sharing of information to such persons who are legitimately expected to be aware of information within the organisation on a continuous basis may be perfunctory. For example, the CEO or wholtime directors are presumably in the know of the information. See below our comments on capturing internal flow of information.

2. Are there global equivalents of such a requirement?

Insider trading law consists of a bunch of regulatory practices that evolve, with continuous interface and experience of local regulators. Hence, insider trading regulations across jurisdictions are highly different. When it comes to the concept of SDD, while it is difficult to find exact equivalents, there is a concept of “insider list” which needs to be maintained under Market Abuse Regulations of the [UK](#) and [EU](#).

3. One may understand the relevance of recording information shared externally, but in case of information shared internally, what purpose does it serve?

A listed company / market participant should be required to maintain an electronic record containing the name of the person with whom UPSI is shared and the nature of UPSI. Further, while sharing UPSI for “legitimate purpose”, the listed company / market participant should serve a notice on, or sign a confidentiality/ non-disclosure agreement with, the person with whom UPSI is shared, informing him/her that he has to ensure the compliance of the Regulations while in possession of UPSI shared with him/her.

Hence, the SDD pertains to a record containing the information shared with outsiders, such as partners, collaborators, lenders, major customers, major suppliers, investment bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants for legitimate purpose. The rationale for such a digital database is clearly explained by Dr. T.K. Viswanathan Committee – “that once the information is shared with these outsiders, the company has no control over it. Therefore, the company must keep track of the first level of recipients, such that, if investigation so needs it, the company can establish a trail. Each of the fiduciaries, likewise, are supposed to be answerable for the integrity and protection of the confidentiality of the information received by them.”

From the above, it might have been inferred that the Regulations require recording the sharing of information externally only. While the external sharing of information is critical, one cannot, however, ensure control over the sharing of information by multiple insiders, unless the insiders who were in the know are also recorded. Further, such internal sharing of information, if captured in the SDD, also creates sensitisation for the recipient.

It may also be contended that such natural and necessary exchange of information, for example, board notes and agenda papers to the directors, and financial statements to the auditors, are presumable, and therefore, no effective purpose may be served by recording such exchange of information. It may be contended that the entry into SDD is for cases involving sporadic and infrequent sharing of information. Entering each and every flow of UPSI in the company into the SDD where the same is necessarily a part of normal flow of such information in the course of the recipient's functions and rights will make the maintenance perfunctory.

However, it appears that the regulator has intended the requirement of SDD to be unexceptional, with a view to trace the whole trajectory of the information.

Hence, SEBI in its [Comprehensive FAQs](#) provides that SDD is required to be maintained irrespective of the fact that information is shared within or outside the Company, requisite records are required to be updated in SDD as and when the information gets transmitted.

Similarly, BSE in its [FAQs on SDD](#) explained that the intent of maintaining SDD is that the flow of sharing of UPSI is recorded. SDD needs to contain the names of the person(s) with whom UPSI has been shared. This means that entry should be made upon sharing the information so as to ensure that the same is not missed subsequently and captures the event. For e.g.: while finalizing financial results for say quarter ended September 2022, one entry can be made for the persons in the accounts department at the start of the finalization process. Additionally, if UPSI is shared with Auditors, then the details of the audit firm, the senior partner and other entities of the audit firm with whom UPSI is shared, needs to be recorded. The audit firm, in turn, must maintain SDD accordingly.

4. What is to be recorded - the information about an event which is shared through a chain of recipients, or every sharing of the said information?

SDDs are expected to be maintained by technology platforms - so much will have to depend on the structure of the input accepted and the output in form of SDD entries. For example, if A gives an UPSI to B, and B gives it to C, and C gives it to O1, an outsider, each of these flows of information need to be captured in the SDD.

If O1 then gives it to O2, another outsider, that is not within the domain of the company, but within the domain of the recipient of the information. O1 and O2 are fiduciaries, or market intermediaries, they need to likewise maintain SDD entries.

Further, if A gave the information in the first place to B, C and D simultaneously, are there 3 different entries or one single entry? This will be essentially the format of the SDD in the platform.

- 5. Can we have some more understanding of the internal sharing of information, captured in the SDD? Very often, a piece of information is marked to several departments/officers. Some may be aware of not the whole story, but just a part of the story. Is it proper to say that anyone who has anything to do with the information is a part of the information trail?**

Let us take an example:

- i. A DP who is working in the operations department has a UPSI. He needs to communicate this to another DP working in the legal department. Will it need to be recorded in SDD?**

Here, one may argue that there is a difference between sharing a UPSI versus having a permanent access to UPSI considering the roles and functions of the said DPs in the company. For e.g., people in the finance department are the ones who prepare the financials and for the purpose of allowing the secretarial department to send out the agenda (which will anyway contain the agenda for approval of the results), the said financials will be shared with them as well. While the sharing happens selectively with some of the concerned persons in any department and not with all from the department, the entering of the details regarding the said flow will again may defy the intent of maintaining an SDD. On the contrary, if a DP has shared any UPSI with any non-DP and that too outside the normal course of sharing such data, one may still stand for entering the said unstructured sharing of UPSI in the SDD.

However, SEBI and BSE FAQs mandates for entering sharing of UPSI internally or externally. Therefore, in the instant case, where the sharing of information is among DPs on a need-to-know basis too, will be required to be recorded in SDD.

Now, in the same example, if the view of the Legal Department was sought only on some aspect of the UPSI, and the full picture was not shared, one may contend that the UPSI has not been shared with the Legal Department. In fact, with internal sharing of UPSI, it is only people at very senior level who are aware of the full picture. While such contentions are possible, the intent is to still capture internal flow of information, to be able to track any unauthorised use of the information.

- ii. Now, say the finance department is working on financial statements (yet to be adopted). Going by the SEBI circular, does each passage of information, say, by the CEO to a Level 1 employee and subsequently to, say, a Level 2 employee (or vice versa) needs to be recorded in SDD? Will the SDD record each subsequent discussion these people might have in relation to this UPSI?**

Information about financial statements originates within the finance department. Therefore, any mutual sharing of the information within the finance department is, in our view, not “sharing”. Sharing implies the recipient did not have or was otherwise not expected to have the information. Further, the CEO is, what has been termed in UK and EU regulations as “permanent insider”. Since the CEO, given his

position, is expected to be aware of all the information, it cannot be contended that the information about financial statements was “shared” with him.

iii. Say a major accident occurs in one of the factories of the company. The same is brought to the notice of the HR department, legal department, public relations department, and CEO office. CEO calls for an urgent meeting of the senior management which calls upon several employees (including non-DPs) from various departments. Will the above flow of information be covered in the SDD before it becomes generally available?

Note that the event of the accident in the factory will have to be intimated to the exchange as a material event within 24 hours of the happening of the said event. Until the information is publicly disclosed, if it is material, it is an UPSI. If some people know it and not others, the selective availability of such information may be a basis for trades.

As SEBI and BSE FAQs mandate entering the sharing of UPSI internally or externally, hence, in the instant case, entry in SDD will be required to be made in each case.

Usually, internal and external sharing of information will be by way of emails or similar electronic communications. However, in a case like the above, it may be a phone call. On an ASAP basis, the sharing of the information by phone calls should be captured in the SDD.

6. Which all entities are required to maintain SDD?

Every listed entity and organizations required to handle UPSI as fiduciaries or intermediaries are required to maintain SDD.

It may be noted that debt listed entities are also listed entities, and they have listed securities. It is not the frequency of trading or the width and depth of the market which is the basis of compliance with the requirements with PIT Regulations. Therefore, debt listed entities are as much required to adhere to all the PIT controls, including SDD.

7. Within the Company, whose responsibility is it to ensure maintenance of SDD?

As per the Regulations [Reg 3 (5)], the responsibility has been cast upon the board of directors. However, the board may assign the task to one or more persons - say the compliance officer. So, the responsibility is with the person(s) who have been tasked for the same by the board.

8. Is the entry in the SDD synchronous with the sharing of the information, or is it to be entered subsequently? If it is a subsequent entry, within how much time is the entry to be made?

Ideally, if the technology application that maintains the SDD is capable of picking up information from emails which are tagged as “sensitive”, then the entry in the SDD should be realtime. However, if realtime entries are not done, there will necessarily be some gap between the sharing of the information, and the entry in the SDD. The gap should be as less as feasible, and these controls have to be part of the PIT/SDD controls which are laid by the board of directors/CEO.

Assuming that an information was shared some time ago, but it comes to the knowledge of the compliance officer later. Can it or should it still be entered? Undoubtedly, yes. Just because there has been a gap does not become a reason for not entering an information share in the SDD.

9. What is the difference between the two forms of database - database of DPs, and database of UPSI sharing, required to be maintained by the company?

Reg 9A(2) (a) requires identifying all employees having access to UPSI as a DP. Accordingly, the listed entity is required to maintain a database of such employees. The other database i.e. SDD is required to be maintained by the listed entity in terms of Reg 3 (5) containing details of each instance of sharing of UPSI, internally or externally. In terms of Reg 9A (2) (d), there needs to be internal control in terms of maintenance of lists of all employees and other persons with whom UPSI is shared and signing of confidentiality agreements or service of notice to all such employees and persons;

The requirement for keeping the register of DPs, and that of SDD, are clearly different. DP database is a static database of persons identified as DPs; entries into it will be made only when new DPs are identified. It is a register of entities.

On the other hand, SDD is a dynamic and continuing repository of all information shares, whether to DPs or otherwise. It is a database of information sharing, and not that of entities. Particulars of entities are entered, but the focus is on the sharing of the information.

Content and controls for maintenance of and access to SDD

10. What would be the contents of an SDD?

As mentioned under Reg. 3(5), the digital database shall contain the name and PAN/ any other identifier authorized by law where PAN is not available, of persons who have shared UPSI, the nature of UPSI and persons or entities with whom UPSI is shared. The SDD, whether maintained in a software developed by the listed entity or procured from outside, may be maintained in an illustrative format or with the contents specified in [Annexure – II](#).

11. What is that “information”, the sharing of which is required to be recorded in an SDD?

The entries in the SDD related to sharing of UPSI. UPSI has been defined under the Regulations under Reg 2(1)(n) as below -

"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities..."

There are two important elements of UPSI - first, it should be “information” and secondly, such information should have the likelihood of materially affecting the prices of listed securities.

The expression “information” refers to a degree of precision, a level of concretisation, at which it is not merely a thought, a project, a plan, a wish or a design, but has become information. [EU Regulations](#) refer to information of “precise nature”. The information is said to be of precise nature “if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which

has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments”. That is to say, there are two factors on which one has to take a call when tagging something as UPSI - first, the information is either already existing, or is *reasonably expected* to exist. That is to say, the information is progressing on a path to become real or realised, and while one doesn’t wait for the information to become a certainty, but one weighs it on the likelihood of occurrence versus non-occurrence. The second factor is to take a view on the potential impact of such information on prices of listed securities. In an often-cited US ruling in the matter of [Basic v. Levinson, 485 U.S. 224](#), it was held that “materiality with respect to contingent or speculative events will depend on a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of company activity”

Both the determinations, that is, probability of occurrence, and the likely impact on prices, are probabilistic, and require determination. In our view, such determination, including the responsibility center, and the manner of keeping record of such determinations, should be a part of the insider trading controls approved by the Board, and may be integrated with the materiality testing for the purpose of Reg 30 (4) of LODR Regulations.

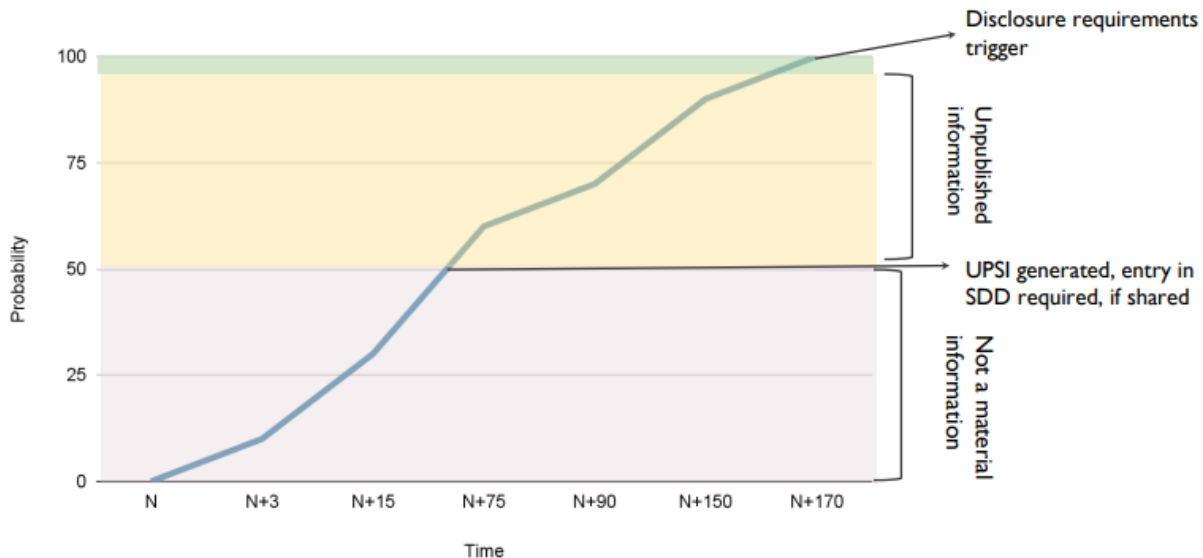
This is, of course, in addition to the illustrative list provided in the definition of UPSI in Reg 2 (1) (n) of the PIT Regulations, that is to say

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

12. What are the various stages of dealing with an “information” under the Regulations? At what stage will information be required to be entered in the SDD?

There are broadly three stages with respect to sharing of an information -

1. “Sharing” of the information selectively to those persons who are otherwise not privy to such information and recording of the same in SDD - This should ideally be done when the “information” starts taking the shape of a price-sensitive information i.e. where the probability of going ahead with the information is higher than not going ahead and is likely to “materially” affect the prices of the securities of the company.(This is also clarified by BSE in FAQ No. 5 of its [FAQs on SDD](#));
2. Closure of trading window for all or selected DPs privy to such information; and
3. Disclosure of the said information by way of disclosure to the stock exchange in terms of Reg 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with the SEBI Circular dated 9th September, 2015.



For example, a company keeps looking for opportunities to acquire companies in the same line of business to expand inorganically. For the said purpose, various alternatives are being evaluated. At this point of time, the information is at a very nascent stage and cannot be said to be a UPSI.

However, when the company has identified a company for acquisition, entered into some sort of binding MoU and discussions are in process for the due diligence, finalization of deal etc., then the said information should be considered as “UPSI”, trading window should be closed for the relevant DPs, and any instance of sharing such information with insiders, outsiders or persons who are not DPs should be recorded in the SDD.

Once such a deal is concretised, that is to say, terms are finalized or MoU etc is entered between the parties or approval of the Board has been obtained, the said information needs to be made “generally available” by way of disclosures to the stock exchanges.

13. What are the guiding points to devise an internal SOP for capturing information in the SDD in case of a listed entity or intermediaries?

Appropriately, SDD is a part of the larger PIT controls, and should be integrated with PIT controls and the SOPs for the same. However, if we currently focus on the SDD (and accordingly, we are not covering the larger aspects of PIT controls, such as sharing of information to outsiders, NDAs, etc.)SOP, the company/intermediary should ensure that the following points are addressed:

- **SOP Owners**
 - Who shall be the owner of SOP?
 - Who shall have the right to modify the SOP?
- **Purpose of SOP**
 - A summary of what issue is the SOP addressing, so as to make it user friendly.
- **Technological requirements of SDD**
 - Whether it will be purchased from a vendor or inbuilt?
 - Storage of SDD whether physical storage or cloud storage?

- **Format and manner of maintaining of SDD**
 - What should be the format of SDD
 - When the entry should be made
 - Who will be make the entry
 - Timeline for making entry in SDD, deviations from timeline - how the same are tackled. Procedure for delayed entry and any specific authorisation for the same
 - How will the entry be modified, if need be.
- **Manner of determining UPSI**
 - Who shall determine whether there is an “information” and such information is UPSI?
 - How will such determination, whether positive or negative, be be documented?
 - Identification of sources from which UPSI may usually emanate
 - Sensitisation of employees organisation-wide, but specifically of the UPSI-emanating ones, on the sensitivity of information, relevance of determination of price sensitivity, and sharing controls.
- **Accessibility and controls**
 - Who shall have the access rights
 - Who shall be eligible to make entries
 - Where will the back-up of the SDD be saved
 - Timeline for taking back-up, and if automated, then the date upto which the backups are made
- **Sharing of SDD**
 - With whom will the SDD be shared
 - For what purpose will it be shared?
- **Audit trails**
- **Consequence of deviation from the norms stated in the SOP**
 - Whom to report the deviation?
 - What would be the consequences?
 - Review of SDD controls - who does the review, how frequently etc.
- **Manner of sensitization on the obligations**
 - How will the DPs be sensitized regarding their obligations?
 - How frequent will the sensitization be undertaken?

14. Is the pre-entrance of information in SDD mandatory under the Regulations or the company may make entry in SDD as per its control mechanism?

Looking at the language as well as the intent of provisions under Reg. 3 (5) of the Regulations, SDD needs to contain the names of the persons or entities with whom UPSI **has been shared**. This means that entry should be made parallelly while sharing the information so as to ensure that the same is not missed subsequently and captures the event on a real-time basis.

This is also evident from BSE’s FAQ no. 10 which provides that irrespective of the fact that information is shared within or outside the Company, requisite records shall be updated in SDD **as and when the information gets transmitted**.

If the maintenance of SDD is synchronized with sharing of UPSI, then the entry in SDD is done

simultaneously and if it is not synchronized, then the entry in SDD should be made promptly without defeating the purpose of maintaining of SDD. The Board should, in its internal control manual, specify the timeline for making entry. In our view, the timeline available for disclosing the material events to the stock exchange may be likewise considered for making entry in SDD i.e. an entry should be made as soon as possible but within 24 hours of sharing of information.

15. Will SDD be updated even in case of sharing of financial results, annual report, etc. with vendors for publication, designing, etc.?

As long as any information while sharing these documents does not contain UPSI, we do not see any reason for making an entry in the SDD. Once the financial results are approved by the board, they are put in public domain. It is no more an UPSI.

16. Sharing of information related to dividend/GST return etc be recorded in under one entry of financial results?

The entry in SDD has to be event specific. If the event is different then a separate entry should be made. Dividend and Financial results are two different UPSI and therefore, two different events. Similarly, sharing of turnover details for GST return may happen before the board receives and approves financial results - hence, this is an example of UPSI sharing, and is an event that ought to be captured in the SDD.

17. Is sharing of data for GST return every month a legitimate purpose? Should it also be recorded in SDD?

Yes, sharing of data for filing GST returns is a legitimate purpose. The GST team will, understandably, get the data of turnover for each GST registration. If there are multiple GST registrations, it is not conceivable that the GST team has enough of a picture to get an idea of the performance of the company as a whole. However, depending on the significance, if the Company is classifying the said information as UPSI, then the same shall be recorded in the SDD.

18. If UPSI is shared with the officials of the other listed company who is one of the parties to the transaction, then, whether this sharing of information with the officials of the opposite listed company also required to be inserted in SDD?

Whenever UPSI is being shared with any person, whether internal or external, entry is always required to be made in SDD. The above example is of situations such as a major order, acquisition proposal, etc. The event may be material for both entities. However, one has to place the above question in context of how much is revealed to the counterparty? For example, while bidding for a project or placing or gaining a major order, the counterparty need not know what is the relevance of the information to the first-mentioned entity.

19. In many cases, due diligence is done to decide whether to undertake the project or not. Whether the information will be considered as UPSI? If yes, from when will the information will be UPSI and upto when if the project is not undertaken?

Please see discussion above about information being precise or concrete, that is, having the likelihood of materialising, under circumstances which indicate a material impact on prices. A mere due diligence is simply assessing the viability of a proposition. However, due diligence may be done after signing a non-binding term sheet, etc. There may be indications that the proposal is likely to move ahead. If yes, then it is an UPSI.

20. If the company shares the UPSI with the external person and such external person further shares the UPSI, then will the 2nd leg of sharing be recorded?

Whenever there is any sharing of UPSI within or outside the company, it is the responsibility of the company to inform the recipient by entering into NDA with the external persons and by sending notice of confidentiality to the internal person. Simultaneously, the company has to make an entry in SDD. Thereafter, it is the responsibility of the recipient to protect the UPSI through the latter's Code of Conduct. If the external person further shares the UPSI for legitimate purpose, it will be the responsibility of the latter, and if the latter is a fiduciary, the fiduciary will make an entry in its SDD.

As for the company, the company is concerned only with the first layer of information shares.

21. While sharing a presentation including financial information, whether the names of Board of Directors/ invitees will be required to be entered in the SDD?

Yes, presently there is no carveout for making entries w.r.t. internal sharing of UPSI. As per FAQ no. 6 of [BSE FAQs on SDD](#) even internal sharing of UPSI will require an entry in the SDD.

22. Can UPSI be shared through email after making the requisite entry of the information in the SDD?

Yes, in our view UPSI should be shared through emails only. The same will also help maintain a trail of sharing the said UPSI and corresponding entry in SDD.

23. Should a DP inform in advance that he will be sharing the information? If yes, how?

DP should inform promptly upon sharing the UPSI. How and when to inform sharing of UPSI will be dependent upon the SOP framed by the Company. In case it is informed in advance, we do not see any concern.

UPSI sharing to outsiders, non-disclosure agreements, etc

24. Whether non-execution of NDA is a non-compliance? Is it sufficient if a notice of sharing information for legitimate purposes is given to such recipient?

When an external party is engaged, it is recommended to execute NDA. If not NDA, the company can include a non-disclosure clause in the engagement agreement.

25. As per Reg. 3(2B) of the Regulations, notice of confidentiality is to be given to persons with whom UPSI is shared. How can that be ensured?

It may be given in the manner indicated in Reg. 3 (4) of the Regulations wherein such parties are informed about their obligation to maintain confidentiality and abstain from dealing in the securities while in possession of UPSI. While the same may be incorporated in the NDA, it may be additionally informed by way of an email from the Company to the persons with whom UPSI is shared.

26. Can the notice of sharing information for legitimate purposes be given commonly on the website of the Company?

In case the same is given on the website, each time UPSI is shared, a weblink of the same should be provided

in order to enable the recipient to become aware about his/her obligation.

Role of holding and subsidiary companies in UPSI and SDD

27. When employees of a holding company receive UPSI, will it make the holding company fiduciary?

Will it require entry in SDD of the holding company?

Regulations have clearly defined fiduciaries as professional firms who advise or assist listed companies. The holding company will not be termed as a fiduciary on the basis of sharing of information; on the contrary, the employees of the holding company may be DPs for the subsidiary. Thus, when employees of a holding company are receiving UPSI, the subsidiary company will make an entry in its SDD; the holding company will not be required to make an entry for receipt of information.

28. Is UPSI only related to my company or also of my listed/unlisted subsidiaries?

As per the Regulations, UPSI means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities. Therefore, if the listed company shares any UPSI relating to the subsidiary company, which can materially impact the price of its own securities on becoming public, an entry should be made by the listed company in its SDD. We reiterate that in testing an information as UPSI, the critical piece is the magnitude of the information in relation to the company as a whole, and the likely impact on prices

29. Are unlisted subsidiaries also required to maintain SDD?

The onus of maintaining SDD is on the listed entity or every entity required to handle UPSI, in the ordinary course of business. As stated above, in case the listed entity is in possession of any information relating to its unlisted subsidiary which may potentially materially impact the price of the securities of the listed entity, it will be required to make an entry in the SDD of the listed entity. However, the subsidiary need not maintain an SDD merely because the UPSI, being shared by the listed entity, relates to it.

30. In case of multiple group companies, whether the SDD should be maintained separately? ([BSE FAQs on SDD](#))

As per Reg. 3(5) of the Regulations, the company shall maintain the SDD internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database. It is understood that every company shall maintain an independent SDD to comply with these prerequisites as prescribed by the Regulations.

Technology requirements, cloud hosting, access controls, etc

31. What would be the manner of maintaining an SDD?

The SDD shall not be outsourced and be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

BSE in its [FAQs on SDD](#) clarified that entries once made in SDD, cannot be altered or modified and should be non-tampered. Any modification/ alteration of entries once made is not permitted. If any entry made

needs to be altered, then a separate entry can be made citing reference to the earlier one with full corrected details and the reasons for correction.

32. Who should have the access to enter information in SDD? In case the compliance officer is not aware of data being shared, how can the compliance officer only be responsible for entering the data in SDD?

Here, having access to SDD would mean that the person will have the access for making entries in SDD, editing/modifying the entry made in SDD and retrieval of information from SDD.

In terms of Reg. 3 (5), the responsibility on maintenance of SDD is on the Board. Further, the compliance officer, as defined under Reg. 2(1)(c) of the Regulations, is responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors.

BSE in its [FAQs on SDD](#) also clarified that putting a system in place to capture and record the SDD is to be implemented by the Board of Directors. The Board is required to determine who is to be given access to the same. One important aspect of the SDD is that knowledge of UPSI should be available to a person only on a 'need-to-know' basis. Further, the identity of the person accessing the database is required to be established for the purpose of an audit trail.

Therefore, the Board is required to lay down internal policies on access controls which is required to be monitored by the compliance officer. While the access to SDD for entering the details may be given to more than one, however, the responsibility will remain on the compliance officer and the Board.

Hence, one may not be able to take a stand that the compliance officer was not aware of the sharing of UPSI. In case the same has come to the knowledge of the compliance officer at a later stage, the entry may be made at that stage.

33. Can access be given to a single person or multiple persons?

The law is silent on this. It is upon the Board to decide whom to give access to. Having multiple touch points will result in inconsistency of maintenance of the database and lack of control. Therefore, in our view, limited persons should have access to SDD so that integrity of SDD is maintained.

34. What are the key technological requirements of the SDD?

While no particular format of the SDD has been prescribed, the SDD must satisfy the following features:

- a. The SDD should be tamper proof;
- b. Should track the audit trail of changes;
- c. Should be able to facilitate date and time stamping.

35. What may be a suggested mode of maintaining SDD?

Companies may consider to integrate an application with their mailing system, such that when a mail is classified as sharing information, it automatically results into an entry on the SDD. Where the system is synchronous with actual sharing of UPSI, there will be no element of time gap between sharing and entering

in the SDD.

The identification of “events” for the purpose of recording in SDD, is the most crucial part of the whole exercise. Therefore, assuming that the UPSI originates within the Company and is shared by DP with other DPs or outsiders for legitimate purpose, we suggest that the sender of emails containing UPSI may tag the said email as “contains price sensitive information”. The SDD may be linked with the emails of every DP in the organisation such that the same identifies and records the “events” marked as “contains price sensitive information”, creates a repository of the same and populates requisite fields of the SDD. Once the same is done, the other blank fields of the SDD may be populated by the persons having access to the same.

36. Can external software be purchased for maintenance of SDD? ([BSE FAQs on SDD](#))

Yes, a software can be used to maintain the SDD. However, the same has to be maintained internally.

37. Can SDD be maintained on Cloud?

Yes, so long the Company can ensure the access rights are not with any third party.

38. Will an SDD maintained on Excel serve the purpose?

No. Spreadsheets are easy; however, the concern will be that they do not automatically have an audit trail, unless created by security features. Some tech experts contend that even enabling tracking creates an audit trail; there are others who recommend VBA codes (which may not be very hard to create).

There are some [write-ups from the UK](#) which have expressed doubts on whether Excel is a good tool for insider lists as required by UK regulations.

39. What is the meaning of audit trail?

An audit trail is referred to as *“a chronological record of system activities that is sufficient to enable the reconstruction and examination of the sequence of environments and activities surrounding or leading to an operation, procedure, or event in a security-relevant transaction from inception to final results”*¹.

40. How to ensure audit trail and time stamping during the maintenance of SDD? Does it have to be fetched automatically on a real time basis or can the same be done manually?

An audit trail is required to be maintained for the information recorded in the SDD. Maintenance of an audit trail ensures the tracking of all changes made in the records entered by the company. For maintaining audit trails, affixing a digital signature after each time an entry is made in the SDD, may be of some help since the digital signature contains the system-generated date and time, at the time of signing, and cannot be tampered with. Entering the information manually makes the SDD more prone to tampering. It should be ensured that the entry and changes if any are appropriately auto-captured.

41. Is there any time period for which the database shall be preserved?

As per Reg. 3(6), the SDD is required to be preserved for a period of atleast eight years after completion of the relevant transactions and in the event of receipt of any information from SEBI regarding any investigation or enforcement proceedings, the relevant information in the SDD shall be preserved till the

¹ Internet Security Glossary - RFC 4949

completion of such proceedings.

42. What are the implications of non-availability of PAN? ([BSE FAQs on SDD](#))

The SDD shall be maintained with such details as sought under provisions of Reg. 3(5) of the Regulations. Therefore, it is imperative to capture the PAN details wherever available, else any other identifier of such person shall be captured.

43. Whether PAN of team members of a fiduciary has to be captured or PAN of the fiduciary is enough?

PAN of the person with whom UPSI is shared is required to be captured in the SDD. PAN of the fiduciary may be additionally captured.

44. In case of sharing UPSI with foreign nationals, can the Company allot any unique number instead of PAN or Passport etc ?

The intention of providing the PAN in SDD is that the regulator can track the trading details, if need arises. In case of foreign nationals it is recommended to provide a legal ID, so that it is easily possible to trace the foreign nationals, rather than mentioning any unique number.

45. In case where there are lapses in identifying instances of sharing of UPSI and the software adopted by the Company for the purpose of SDD allows for an entry by mentioning the actual date of sharing, will the same still be considered as a deviation?

It is pertinent to note that the software housed by the company for the purpose of SDD should record the date and time of entry in the system. Thus, the date of entry is to be time stamped and not the date of sharing. Accordingly, making of subsequent entries in order to rectify an existing entry or to enter details of sharing that was missed earlier, should not be considered as a deviation.

46. Is an entry required to be made when financials are shared with the audit committee and BOD, what are the consequences if such entries were not made for previous quarters?

Whenever, there is sharing of UPSI among DPs, entry will be required to be made. If any entry relating to the previous quarter has not been recorded, then the same should be entered forthwith with date of sharing being the actual date on which the UPSI was shared. The SDD is a record of sharing of UPSI and therefore, it is suggested to make delayed entries rather than not making the entries at all.

Breach of SDD obligations, consequences, role of compliance officer

47. How can a Compliance Officer safeguard if he/she is not aware of information/UPSI and entry is not made in SDD?

The Compliance Officer is a person responsible for ensuring compliance under the Regulations. The Compliance Officer should ensure that an SOP is framed for identification of UPSI and maintenance of SDD. The Compliance Officer should sensitize the DPs of their responsibilities of handling UPSI.

48. Who will be held responsible in case of any lapses in the maintenance of SDD, failure to make an entry, etc?

As the regulations cast the responsibility on the board of directors, which in turn implements through the

compliance officer, they will be held responsible for any lapses. The DPs authorized pursuant to the code of conduct may be charged for violation of the code in case of any lapses.

49. What are the likely violations possible with respect to maintenance of SDD?

- No audit trail;
- Not maintained internally;
- No timestamping;
- Capable of being tampered/ instance of actual tampering;
- Details not filled entirely;
- Entry for certain instance of sharing UPSI not captured;
- Rectification entry not made in the manner provided in FAQ no. 7;
- Entry made by person not authorized;
- Entries not maintained for 8 years or till completion of proceedings, as the case may be;
- Non-submission of compliance certificate;
- Incorrect reporting made in compliance certificate

50. What are the consequences of non-fulfillment of compliances w.r.t. maintenance of SDD as indicated above?

As per [NSE circular dated 4th Nov, 2022](#), the Company will be displayed as “*non-compliant with SDD*” under the ‘Get Quote’ page of Exchange Website of the listed entity from the next trading day till the Exchanges have satisfactorily verified that the company has completely complied.

In terms of SEBI Act, 1992 penalty may be levied on the responsibility centers under Sec 15A (b)-failure to furnish or file return, information, records within time, or furnishing false, incomplete or incorrect information

- Minimum penalty - Rs. 1 lac
- Continuing default – Rs. 1 lakh per day
- Maximum penalty - Rs. 1 crores

Further, penalty may also be imposed in terms of Sec 15HB - failure to comply with any provisions of law for which no specific penalty has been provided

- Minimum penalty - Rs. 1 lac
- Maximum penalty - Rs. 1 crores

Regulation 30 disclosure and SDD entry

51. Should every item covered under Reg. 30/Reg. 51 be considered as UPSI for the purpose of recording in SDD?

Reg. 30/ Reg. 51 read with Schedule III of the SEBI LODR Regulations have both items - deemed material and material based on the thresholds determined by the Company.

Every material information under Para A may not be in the nature of UPSI - for e.g. change in +/- 2% of existing investments, every alteration of memorandum or articles of association. Therefore, only those

items falling under the said Schedule which materially affect the prices of listed securities will be required to be recorded in the SDD.

52. How should one determine that the item under Reg. 30/51 will materially impact the price?

The same may be determined by the policy on determination of materiality framed under Reg. 30(4)(ii) approved by the board.

The KMPs authorized by the board for the purpose of determining material information, should also be made responsible for identifying whether the information is in the nature of UPSI requiring an entry into SDD.

53. How to determine materiality in a case where the Company is not required to adopt a policy on determination of materiality of events?

Even in cases where the Company is not required to frame a policy on determination of materiality of events, the obligation to determine materiality and disclose still remains. Hence, the Board may authorize certain KMPs to ascertain materiality of events and the same persons may determine if the said information is in the nature of UPSI, for the purpose of making an entry into SDD.

54. If we decide that the information is not a UPSI then where do we document it?

Ideally, the KMPs authorized to determine materiality should also be made responsible to determine whether an information is a UPSI or not. The discussion among the authorized KMPs should be recorded and intimated to the compliance officer for further course of action i.e. closure of trading window, monitoring of entry in SDD etc. The intention of documenting is that in case of a future investigation, the Company can safeguard itself and present the rationale for the classification or non-classification.

Trading window closure the SDD entry

55. An entry is made in the SDD, indicating thereby that there is an UPSI shared with some insider, or some outsider. Should every time such an entry is made, the trading window be closed?

We will wish to answer in the affirmative, however, with several caveats:

- Trading window closure is only for DPs, whether being employees of the company or the outsiders identified as such. On the other hand, sharing of information may be to persons other than DPs as well.
- Trading window closure may be generic - that is, for all the DPs, or specific, that is, only for those DPs who possess specific information. The latter is both possible and strongly recommended.
- There is a generic trading window closure for all DPs - from the end of the quarter till 48 hours after the board meeting - so there is no question of a specific trading window closure during that time.

56. An entry is made in the SDD about sharing of an UPSI to a DP; however, the trading window was not closed for the DP. Will the compliance officer be responsible for a breach of obligations?

We will wish to answer in the affirmative. In fact, the SDD entry should automatically ring a bell in the mind of the compliance officer to close the trading window for such DP.

Over time, we expect that much of this should be automated - both the entry in the SDD and the closure of trading window notice to the DP.

Format, periodicity of submission, certification of Compliance Certificate

57. Which entities are required to submit the SDD compliance certificate?

All listed entities are required to submit the SDD compliance certificate to the stock exchange.

58. What is the format for submission of the SDD compliance certificate?

The format of compliance certificate is enclosed as [Annexure I](#).

59. What is the timeline to submit the SDD compliance certificate with the stock exchanges?

For the quarter ended June 2022 it was August 09, 2022. For quarters ending September 2022 and December, 2022 it is required to be submitted by November 18, 2022 and January 21, 2022 respectively.

For the quarter ending March 2023 and onwards, a separate circular will be issued by the stock exchanges.

60. In what manner is the certificate required to be submitted?

- Mode of submission on BSE: BSE Listing Centre > Listing Compliance > Compliance Module > Structured Digital Database (SDD) Compliance Certificate
- Mode of submission on NSE: This certificate has to be emailed on the following email id of the Exchange: sdd_pit@nse.co.in

61. Who is required to furnish the SDD compliance certificate?

It may be furnished either by the compliance officer of the listed entity or by a Practicing Company Secretary ('PCS').

62. What is the scope of certification to be made in the compliance certificate?

The compliance certificate is to confirm the requirements of maintenance of SDD and making of requisite entries in the SDD for sharing of UPSI, internally or externally, during a particular quarter.

It is not a certificate on determination of UPSI or ensuring sharing of UPSI only on need-to-know basis or compliance with the other requirements of the Regulations.

63. As per BSE's notice dated 28th October, the Compliance Certificate may be given either by the compliance officer or by a practicing company secretary. Would we normally expect the certificate to be given by the former, or by the latter?

The Compliance Certificate relates not only to the structural requirement of SDD, it also relates to capturing of UPSI shared internally or externally. The compliance officer being a part of the entire process, and with intrinsic familiarity with internal sharing of information, will be in a better position to give the certificate. However, listed entities may approach a practicing professional to give a certificate to ensure independent checking of the SDD mechanism. The Compliance Officer is usually the one who is assigned with the

responsibility of preparation and maintenance of the SDD itself. Therefore, a certificate by the compliance officer does not do justice to the maker-checker distinction. Maintenance of SDD serves as an important part of the internal control mechanism on insider trading, and therefore, the Board/Audit Committee may, for their own comfort, have the certificate from a practicing professional.

64. Is it possible that for a certain quarter, the certificate is given by the compliance officer, and for the next quarter, the certificate is given by a professional?

Yes, it is quite possible.

65. Is there a requirement of passing a board resolution for appointment of the professional for furnishing the certificate?

No, as in the case of other certifications obtained from a professional, there is no requirement for passing a board resolution for obtaining the said certification.

66. Assuming a professional is giving the Compliance Certificate on maintenance of SDD. What should be the approach, documentation and format of certificate, if the same is separately attachable. ?

It is important to note that the Certificate is not for general adherence with Reg 3 (5) of Regulations; though it is possible to argue that the first point (see below) is actually indicating adherence to the requirements of the Regulations on SDD. However, the way the points are worded, it seems that the certification is on specific items. While the compliance officer will be in a more advantageous position, the level of work or basis of certification is the same in both the cases. However, for the PCS giving the certificate, obviously, there is a process of data gathering before giving the assurance.

There are 6 items in the certificate, and 2 items in the following paragraphs. We discuss the potential approach to each of these:

1. The Company has a Structured Digital Database in place

This point may be read as a mere confirmation of the existence of SDD, or may be read in a wider context of adherence to regulations pertaining to SDD. Properly speaking, the intent couldn't have been a simple affirmation. If it were mere confirmation of existence of the SDD, it is not conceivable that the answer to the question will be in the negative, and therefore, the confirmation itself becomes meaningless. Thus, while this point is not a generic confirmation of all the requirements with respect to SDD, it is surely such maintenance of SDD as meets the requirements thereof.

2. Control exists as to who can access the SDD:

The certifying professional is expected to give confirmation of the existence of controls on access. The access can be controlled mostly through an SOP or board/AC instruction. Controls are both a matter of assertion and implementation - that is to say, there has to be a formal existence of control by way of an internal mandate, and that control must be observed too. The certifying professional should get a copy of the internal control mandate, and should see whether the access is controlled through technology.

3. All the UPSI disseminated in the previous quarter have been captured in the Database:

By far, this is the most important, and relatively daunting part of the certification process. The assurance here includes the following most important things:

- (a) What all UPSI “germinated” during the preceding quarter?

- (b) Were such UPSI shared, internally or externally?
- (c) If yes, whether such sharing of UPSI has been captured in the database?
- (d) Whether such capturing in the database is done within the timeframe permitted by the internal control mechanism.

Before getting into details of the above, it is important to understand the meaning of the term “disseminated”. Dissemination to whom? Dissemination to the exchanges or public, or dissemination internal or externally, before the information becomes public? UPSI clearly refers to unpublished information. Once an information is published, it ceases to be UPSI. Dissemination, therefore, cannot be referring to public dissemination. There is no question of capturing public dissemination as a part of the SDD. SDD needs to capture internal or external sharing of information **before** it is published.

There is yet another reason why the word “dissemination” cannot mean public dissemination. An UPSI may die down, and may not result into a public disclosure. It cannot be argued that such information, shared but not eventually going to public as the information itself has died down, does not require to be captured in the SDD.

We have earlier discussed when an UPSI is said to have been “germinated”. For a certifying professional, to come to a finding whether there were UPSI germinating in a quarter or not will be difficult, particularly if the UPSI in question did not result in an eventual public dissemination. However, most UPSI that gets germinated will either result in a “fruition”, or will die down. If there is a fruition, it may be possible to backtrack the germination, even though the fruition may take substantial time. However, for such UPSI which died down and did not result into any dissemination, the role of certifying professional extends to assessing the potential sources from UPSI may commonly result (for instance, litigation, acquisition or restructuring, senior management changes, major contracts, major expansion proposals, etc), and getting confirmation for the existence of such UPSI items.

When it comes to sharing of UPSI, most sharing will happen through emails. Depending on the UPSI in question, the likely persons within the organisation or outside may be identified.

Once the above two items have been tracked, tracking the third and fourth sub-items is consequential.

4. The system has captured nature of UPSI along with date and time:

It is important to note that what is to be entered in the SDD is the “nature of UPSI” and not the UPSI itself. “Nature” does not have to be specific so as to become a pointer to the actual information. For instance, “financials” are shared with the auditor. “Tax issues” may be shared with the tax consultant. “Expansion plans” may be shared with advisers, etc.

The date and time referred to seem to be the date and time of sharing the information, and not that of the UPSI itself.

5. The database has been maintained internally and an audit trail is maintained

What is the meaning of “internal” maintenance? The meaning, in our view, is that the maintenance of the SDD is neither outsourced, nor is it accessible to any person other than the one(s) authorised by the board/AC. Cloud maintenance, provided the access is controlled, does not mean the database is not

maintained internally.

Audit trail should have been maintained. The certifying professional will get to know about the audit trail if at all there is any edits in the information.

6. The database is non-tamperable and has the capability to maintain the records for 8 years.

This is a factual matter. As regards the capability to maintain records for 8 years, it seems that the system should have adequate free storage space.

No storage system is good unless there is a backup and recovery mechanism also. Hence, while certifying the above point, the certifying professional should also ensure that there is an automated or manual back up process. Generally back ups should be at least on n+1 basis.

7. Number of material events required to captured, and those captured:

The idea of this confirmation is that all such UPSI, which arose during the quarter and were shared internally or externally, has been captured in the SDD.

8. Lapses and remedial action

SDD, like PIT controls in general, is a process of evolution. Entities learn to make their control effective as breaches, exceptions or deviations are noted. It is neither the intent nor is it practical to expect that there will be no lapses in SDD maintenance. Sometimes, information may be shared without the compliance officer coming to know. Sometimes, an information may not have been tagged as being UPSI, whereas it is price sensitive. Hence, merely because exceptions have been noted does not mean there is a case of non-compliance. In fact course correction is important, and companies should not hesitate to put on record improvisation made by them.

Our detailed write-up on Guide to Compliance Certificate for Structured Digital Database under PIT Regulations can be accessed [here](#).

67. In case the compliance certificate is furnished by a PCS, what should be the format of certification?

The PCS should annex the basis of certification with the compliance certificate, giving the basis of certification, reservations, if any, documents/ information relied upon etc.

An indicative format of the annexure to the compliance certificate can be seen [here](#).

68. What is the meaning of “event” for the purpose of reporting in the compliance certificate?

Every UPSI will be an event and details with respect to sharing of the said UPSI, internally or externally, will be required to be captured. For instance, if information relating to financial results has been shared 10 times, the number of events reported in the certificate will be 1 and not 10.

69. Which entries will fall under the purview of the certificate to be submitted for quarter ended September 30, 2022?

The scope of the certificate will be on the manner of maintenance of SDD and entries made in the SDD w.r.t. instances of sharing of UPSI during July 1, 2022 to September 30, 2022, which may even have germinated prior to the said period or in the said quarter.

70. If there is no UPSI during the reporting period, is the company still required to submit the certificate?

It is very unlikely that a listed company will have no UPSI during a quarter. Every listed company will have at least one event w.r.t. UPSI relating to financial results.

71. The certificate (point no. 3) requires reporting of “Whether all the UPSI disseminated in the previous quarter had been captured in the Database?”. Does it mean that the SDD should include details of all UPSI?

The SDD is not a database of UPSI where all details relating to UPSI are captured. It is a database to capture the nature of UPSI and details of sharing of such UPSI.

72. Whether the compliance certificate is required to be placed before the Board of Directors?

In view of Reg. 3 (5), it is the responsibility of the Board of Directors to ensure maintenance of SDD and therefore, the certificate submitted to the stock exchange in this regard should be placed before the board of directors.

73. Is there a correlation between sharing of UPSI, entering into the SDD, and trading window closure?

Logically, if there is an internal sharing of UPSI and the recipient is a DP, the action should also result in trading window closure for such DPs who are in possession of UPSI.

74. Will compliance certificates be qualified if entries are delayed?

Yes, the compliance certificate shall be qualified, if the entry is not made within the time period as mentioned in the SOP of the company and the remedial actions taken shall also be mentioned.

75. Is the secretarial auditor required to report all non-compliances reported under SDD Compliance Certificate in MR-3 and ASCR?

If the same has been rectified and resolved before the end of the financial year, in that case the secretarial auditor may report accordingly as a note in MR-3 & ASCR. If the violation is continuing, then it will have to reported likewise.

76. What should be the approach of a secretarial auditor while checking the SDD requirements during the course of audit?

If the SDD compliance certificate has already been certified by the PCS, the secretarial auditor may rely on the said certification, as it does for other certifications under applicable law. In case the same is certified by the compliance officer, the secretarial may carry out a sample check to understand the process and adequateness of the reporting and internal controls.

SEBI’s Informal Guidance and FAQs on SDD matters

77. What information should be maintained in an SDD, in case the DP is a fiduciary or intermediary?
(SEBI’s FAQs dated October 08, 2020)

The listed company should maintain the names of the fiduciary or intermediary with whom they have shared

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

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

78. Whether the requirement to maintain SDD is applicable on intermediaries and fiduciaries? Will the requirement change if the fiduciary is unlisted? [*\(SEBI's Guidance Note dated August 24, 2015\)*](#)

The requirement to maintain an SDD containing the names of such persons or entities with whom UPSI is shared, is applicable to listed companies, and intermediaries and fiduciaries (whether listed or not) who handle UPSI of a listed company in the course of business operations.

Further, SEBI vide its [FAQs](#) dated October 08, 2020 and BSE in its [FAQs on SDD](#) has clarified that fiduciary or intermediary shall be required to internally maintain the SDD capturing information as mentioned in Query No. 2, in accordance with Reg. 9A(2)(d) and as required under Schedule C of the Regulations.

79. If the SDD is maintained on Amazon, Google or cloud server hosted outside India, will it be considered as outsourced or internal? [*\(SEBI's Comprehensive FAQs dated April 29, 2021\)*](#)

Databases/servers provided by third party vendors whether within India or outside India will be considered as outsourced.

80. Reg. 3(5) requires that the SDD shall not be outsourced and shall be maintained internally with adequate internal controls and checks. Whether a listed company can use software provided by third party vendors, wherein the server is of the vendor but requisite entries are made by the employees of the company only? [*\(SEBI's Comprehensive FAQs dated April 29, 2021\)*](#)

SEBI's answer: The third party vendors are providing the services/software on login basis, where the server is maintained by the vendor. Therefore, the vendor may have access to such records which would be contrary to the regulations with respect to maintenance of an SDD.

BSE's view: An external software can be used to maintain the SDD. However, the same has to be maintained internally.

In our view, the mere fact that a facility provider, say a cloud database service, provides information storage service, does not mean such a facility provider can access the information. The information is mostly encrypted. If cloud storage of database is ruled out, that would be a retrograde step, during an environment where more and more information is moving to the cloud. There may be various devices used to ensure the sanctity and confidentiality of the information.

81. Are companies required to maintain this SDD even when the information is shared only within the company? ([SEBI's Comprehensive FAQs dated April 29, 2021](#))

Yes, irrespective of the fact that information is shared within or outside the Company, requisite records shall be updated in a SDD as and when the information gets transmitted.

However, it has to be noted that the requirements of maintaining SDD apply in the event of sharing of information. Designated Persons (DP), on the basis of their roles and functions, are presumed to have access to UPSI. Therefore, in our view, all the information in possession of the DPs need not be recorded, rather, the requirement shall apply in the event of sharing UPSI to such persons within the organisation who would have otherwise, not presumed to be privy to such information.

82. Nominee directors sharing information to their bank or financial institution for legitimate purpose, will it be covered as communication of UPSI? ([SEBI's Comprehensive FAQs dated April 29, 2021](#))

SEBI's answer: If the directors fall under the list of DPs or as an insider, then sharing of UPSI by them for legitimate purpose with the Bank/FIs, would be considered as communication of UPSI. Accordingly, the same would be recorded in the SDD of the company.

Our view: As we have discussed earlier, the sharing of information with the directors is an internal information flow, and the question of the same being entered into the SDD does not arise in our view. If a nominee director shares the information with the nominator, first of all, the nominee himself is bound by the confidentiality and Code of Conduct ('CoC'), and the same can only be shared to the extent required for protection of the nominator's interest. Further, in cases where any investor has nominated board observers or nominee directors to represent their interest on the board, it is usually seen that the nominator is also categorized as a DP on account of having certain affirmative voting rights pursuant to which, certain major decisions cannot be taken by the board without the prior approval of the nominator. Hence, the question of entering details in the SDD should arise only when any matter in the nature of UPSI is being shared with the nominator which otherwise should not have been shared as per the shareholder's agreement while in other cases, being categorized as a DP itself for such matters, entering of details of sharing of UPSI in accordance with the SHA and as per the CoC does not arise.

Miscellaneous

83. Are debt listed companies required to maintain SDD?

Yes, as the provisions of the Regulations is applicable to all listed entities. Further, it is very unlikely that there will be no UPSI even in the case of debt listed entities, since there can be instances which might affect the servicing of such securities like payment of interest and repayment of the principal amount or may trigger breach of any covenant - for e.g. information on non-maintenance of security cover. Therefore, in our view, even debt listed entities are required to maintain SDD.

The above stand is also clarified by BSE in its [FAQs on SDD](#). It states that every entity, which has issued securities which are listed/ proposed to be listed (as defined under Reg. 2(1)(hb) of the Regulations) are required to maintain SDD, in case, such securities fulfil the definition of "Securities" under the Securities

Contracts (Regulation) Act, 1956.

84. Are companies under Corporate Insolvency Resolution Process (CIRP) required to maintain SDD? ([BSE FAQs on SDD](#))

Yes. Further, Circular No. [IP/002/2018](#) dated January 03, 2018 issued by IBBI makes it mandatory on the Resolution Professional to ensure compliance with all applicable laws.

85. Fiduciaries are required to enter the details of information received from the company and information shared ahead. Will the fiduciary maintain all this information in the same SDD or different?

The fiduciary is required to have only one SDD in which details of UPSI received and shared ahead, shall be entered. It may have a separate module to record the entries received as a fiduciary/intermediary.

Annexure I

COMPLIANCE CERTIFICATE FOR THE QUARTER ENDED

(Pursuant to Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015)

I,____, Compliance Officer, of ____ (name of the listed entity), or I,____, Practising Company Secretary appointed by ____ (name of the listed entity) am aware of the compliance requirement of Structured Digital Database (SDD) pursuant to provisions of Regulation 3(5) and 3(6) of **Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015** (PIT Regulations) and I certify that:

1. the Company has a Structured Digital Database in place
 2. control exists as to who can access the SDD
 3. all the UPSI disseminated in the previous quarter have been captured in the Database
 4. the system has captured nature of UPSI along with date and time
 5. the database has been maintained internally and an audit trail is maintained
 6. the database is non-tamperable and has the capability to maintain the records for 8 years.
- (relevant points from 1 to 6 can be strucked off in the case of non-compliance)

I also confirm that the Company was required to capture __number of events during the quarter ended and has captured__number of the said required events.

I would like to report that the following noncompliance(s) was observed in the previous quarter and the remedial action(s) taken along with timelines in this regard:

For_____

Compliance Officer or Practising Company Secretary

Date:

Place

Annexure II

Supplier of Information			Recipient of information		
Name	PAN	Any other information	Name	PAN	Any other information
Category of the person (Note 1)					
Nature of UPSI and reason of sharing UPSI					
Source of Information					
NDA or confidentiality agreement executed in this regard					
Date and Time of sharing					
Date of entry					
Date when UPSI became publicly available					
Details of person making the entry (Note 2)					
Remarks, if any:					

Notes:

- *The categories of recipients shall include: Designated Persons (DPs); 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 of the Company;*
- *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.*
- *The identity of the person accessing the database is required to be established for the purpose of audit trail (FAQ no. 8)*

Annexure III

[To be read with Compliance Certificate dated ** issued under SEBI (Prohibition of Insider Trading Regulations, 2015 and BSE Circular No. 20221028-15 & 20221028-16 and NSE Circular No. NSE/CML/2022/51 dated October 28, 2022]

To,

We have been engaged by [_____] ('Company') to issue Compliance Certificate for the Quarter ended **, in terms of BSE/NSE Circular No. *** dated ** ('Circular') read with regulation 3(5) and 3(6) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations') ('Engagement').

Accordingly, we have issued the Compliance Certificate for the Quarter ended **, of the even date which should be read along with this Annexure. Our certification, as above, is subject to the following:

1. Maintenance of Structured Digital Database ('SDD') is the responsibility of the board/management of the Company. The Engagement only seeks to certify the extent of compliance as required in terms of the Circular. Also, the certification does not cover other compliances under PIT Regulations.
2. We have relied on the details, documents, information and explanations provided by the management and information freely available in the public domain for the purpose of issuance of the Compliance Certificate.
3. Wherever required, we have obtained the management representation about the happening/not happening of events, an information being in the nature of unpublished price sensitive information ('UPSI') or otherwise, etc.
4. We understand that the purpose of the Engagement is limited to checking compliance with the requirements pertaining to maintenance of SDD and capturing the nature of UPSI disseminated during the previous quarter. Accordingly, we have not gone into the question of determining whether an information is/was UPSI or otherwise. We have relied on the Company's decision as to classifying (or not classifying) the information as UPSI. Wherever necessary, we have submitted our views to the management.
5. Further, none of the information shared with us by the Company during the Engagement has been tagged as UPSI by the Company. Hence, we understand that none of such information is an UPSI and thus, has not been treated as UPSI by us.
6. There may be several aspects involved in the certification which may be largely driven and determined by information technology systems, softwares and computer applications used for the purpose, e.g. controls on accessibility to SDD, maintenance of audit trail, non-tamperability of SDD, etc. As a part

of review, we have made all efforts to check for the features in the SDD and take management representation, wherever required; however, we offer no comments and provide no assurance as to the functioning, efficacy and suitability of such technology systems, software and computer applications, and our certification is limited to that extent.

7. We have followed the practices and the processes as were appropriate to obtain reasonable assurance about the sanctity of the processes and correctness of the contents of the records. Wherever deemed appropriate, the verification was done on a test basis. We believe that the processes and practices we followed provide a reasonable basis for our certification.
8. The Engagement has been conducted online, as facilitated by the Company, for the purpose of issuing this Compliance Certificate. In doing so, we have followed the [guidance](#) as issued by the Institute.