



**INSIDER
TRADING**

Key elements of framework for PIT Controls

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 - Based out of Kolkata, New Delhi, Mumbai and Bangalore
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Meaning of insider trading

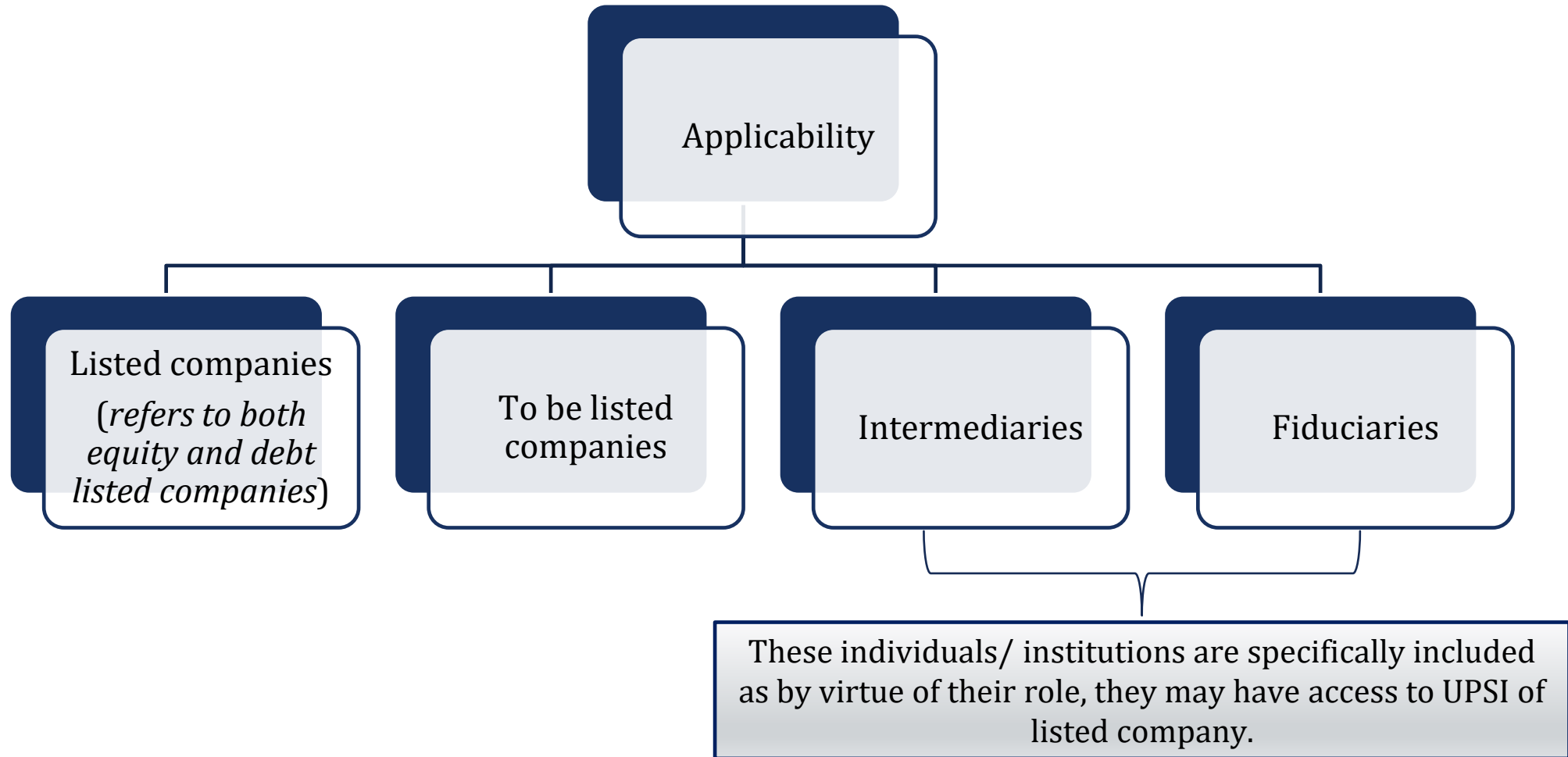
■ Insider trading

- means trading in the securities of a company by 'insiders' to the company, on the basis of their knowledge of Unpublished Price Sensitive Information ('UPSI').
- seeks to exploit inside information to the advantage of a few, and to the disadvantage of the market in general. Hence, insider trading is a fraud upon the market in general.
- Insider trading is not only a civil wrong but also a crime.

■ Intent to prohibit insider trading

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

Applicability of SEBI (PIT) Regulations, 2015



Key components under PIT Regulations: An Overview

- Role of Functionaries
 - Board of Directors
 - Codes and Policies
 - Sharing of UPSI
 - Others
 - Audit Committee
 - Managing Director & CEO
 - Compliance Officer
 - Overall responsibilities
 - UPSI related
 - Trading related
- Unpublished Price Sensitive Information
 - Determination, communication, preservation, sharing etc.
- Designated Persons
 - Identification
 - Responsibilities under the Regulations
- Systems
 - Codes, policies and procedures
 - Internal controls



Role of various functionaries

Board of Directors, Audit Committee, Managing Director/CEO and Compliance Officer



Role of Board of Directors

■ Codes and Policies

- Formulate a Policy for determination of “legitimate purposes” [Reg. 3(2A)]
 - as part of Code of Fair Disclosure.
- Formulate a Code of Fair Disclosure in line with Schedule A [Reg. 8(1)]
 - Designate a senior officer as a Chief Investor Relations Officer [Sch. A(3)].
- Formulate a Code of Conduct to regulate, monitor and report trading by its Designated Persons (‘DPs’) and immediate relatives in line with Schedule B [Reg. 9(1)]
- Formulate a policy and procedures for inquiry in case of leak of UPSI [Reg. 9A(5)]
- Have a whistle-blower policy [Reg. 9(6)]

■ Sharing of UPSI

- Determine sharing of UPSI in the best interest of the Company, in connection with a transaction [Reg. 3(3) and (4)]
 - Whether or not attracting open offer obligations under SAST;
 - Requiring the parties to execute NDA and abstain from trading in securities.
- Ensure maintenance of Structured Digital Database (‘SDD’) [Reg. 3(5)]

■ Others

- Identify and designate a Compliance Officer [Reg. 9(3)]
 - To administer the code of conduct and other requirements.
- Specify the DPs to be covered by the Code of Conduct [Reg. 9(3)]
 - In consultation with the Compliance Officer.
- Ensure preservation of SDD for atleast 8 years [Reg. 3(6)]
- Ensure that MD/ CEO ensures compliance w.r.t. Code of Conduct and framing of internal controls [Reg. 9A(3)]

Role of Audit Committee

- Review compliance with the Regulations atleast once in a financial year. *[Reg. 9A (4)]*
- Verify adequacy and effective operation of internal control systems. *[Reg. 9A (4)]*
- Chairman of Audit Committee to receive reports from the Compliance Officer atleast once in a year. *[Sch. B]*

Role of MD/CEO

- Put in place an adequate and effective system of internal controls which includes. *[Reg. 9A (1)&(2)]*
 - Identification of employees who have access to UPSI as Designated Persons (DP);
 - Identification of UPSI and maintain its confidentiality as per the requirements of the Regulations;
 - Placing restrictions on communication or procurement of UPSI;
 - Maintaining lists of persons with whom UPSI is shared;
 - Signing confidentiality agreements or serving notice of confidentiality;
 - Ensuring other compliances under the Regulations;
 - Putting in place an adequate & effective system of internal controls;
 - Periodically review the effectiveness of such internal controls.

Role of the Compliance Officer

■ Overall responsibilities [Reg. 2(1)(c)]

- Compliance of policies, procedures;
- Maintenance and preservation of records;
- Monitoring adherence to the rules for preservation of UPSI;
- Monitoring of trades;
- Implementation of the Codes;
 - Providing reports to the Chairman of the Audit Committee/ Board;
 - Maintaining list of DPs and obtaining requisite disclosures.

■ UPSI related

- Giving due notice to persons to maintain confidentiality of UPSI [Reg. 3(2B)];
- Informing SEBI promptly of leak of UPSI, inquiries and results thereof [Reg. 9A(5)];
- Making employees aware about whistle blower policy [Reg. 9A(6)];
 - To enable employees to report instances of leak of UPSI.
- Determining trading window closure period [Sch. B(4)];
 - For DPs or class of DPs.

■ Trading related

- Reviewing and approving trading plans submitted by insiders [Reg. 5(3)];
 - Notifying the trading plan to the stock exchange;
 - Monitoring the implementation of trading plan.
- Submitting disclosures/ intimations to the stock exchange;
- Deciding on obtaining disclosures from connected persons [Reg. 7(3)];
- Granting pre-clearance of trades by DPs (including immediate relatives) [Sch. B(6) & (8)];
 - Seeking declaration for pre-clearance.
- Granting relaxation from contra-trade restrictions [Sch. B(10)];
 - Disgorging the profits in case of contra-trade.
- Crediting the penalty amounts collected from DPs to IPEF. [Sch. B(12)]

Key elements of framework for PIT controls: An Overview

■ Controls relating to UPSI

- Identification of UPSI
 - Manner of determining 'information';
 - Price sensitivity of information;
 - Persons responsible for determining;
 - UPSI v/s material events.
- Communication or sharing of UPSI
 - Based on policy for legitimate purpose.
- Preservation of UPSI
 - Giving notice of confidentiality, execution of NDA;
 - Chinese Walls;
 - Process in case of leak of UPSI.
- Making UPSI generally available
 - Code of Fair Disclosure.
- Maintenance of SDD
 - Manner and pre-requisites;
 - SDD compliance certificate;
 - Consequence of violation of SDD maintenance.

■ Controls relating to DPs

- Identification of DPs
 - Manner of determining;
 - Persons responsible.
- Handling of UPSI by DPs
 - Manner and purpose of sharing UPSI.
- Monitoring of trades by DPs
 - Code of Conduct;
 - Trading window controls;
 - Tracking of trades;
 - Pre-clearance requirements;
 - Contra trade restrictions.
- In case of intermediary/ fiduciary
 - Code of Conduct;
 - Maintenance of restricted list;
 - Monitoring of trades by DPs;
 - Maintenance of SDD.

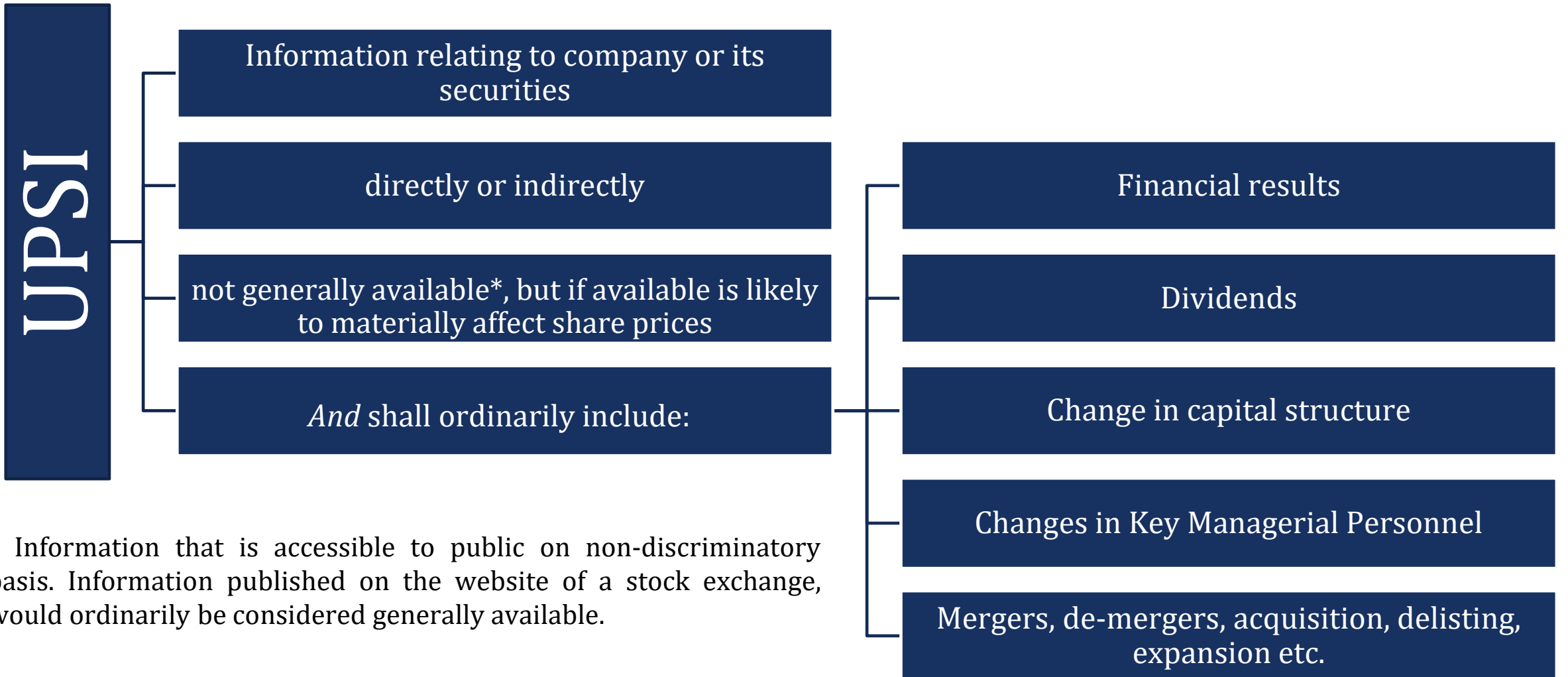


Determination of UPSI

Meaning, manner of determination



Unpublished Price Sensitive Information (UPSI)



* Information that is accessible to public on non-discriminatory basis. Information published on the website of a stock exchange, would ordinarily be considered generally available.

Determination of UPSI: Meaning of “information” (1/2)

- UPSI necessarily is “information”
- EU’s Market Abuse Regulation uses the term “information of precise nature”
- It then defines such information:
 - Information shall be deemed to be of a 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.
- Unless information reaches concretisation, it is not an “information”.
- When information reaches certainty, that is when it requires dissemination to the public.
- Between the concretisation stage and dissemination stage, the information is unpublished.
- If material, it is a UPSI.
- The idea is to preserve the confidentiality of information at this stage, not to result into selective disclosures.
- Key features of UPSI:
 - Recognising something as UPSI is not a bet on the certainty of happening; a UPSI may die down and not become market information at all;
 - There is surely an element of subjectivity is recognition of something as “material”.

Determination of UPSI: Meaning of “information” (2/2)

- For it to be UPSI, it has to be “information”
 - The meaning of the term “information” has to fit into overall meaning of UPSI:
 - Material non-public information, based on case law, has been defined by SEC in Final Rule on Code of Fair Disclosures as “*there is a substantial likelihood that a reasonable shareholder would consider it important*” in making an investment decision”
 - Mere intent, desire, or dream cannot be regarded as information.
 - Information has to weight the probability of occurrence, over that of non-occurrence
- Since, the definition of UPSI refers to material impact on prices, the information should be “material”.
 - A project/development or task becomes a probabilistic or potential information when the probability of its occurrence is higher.
 - It becomes a concrete information when the uncertainty is largely removed.
 - At this stage, since it is material, the information requires disclosure in terms of Reg 30. of LODR
 - Until the concretisation and dissemination of the information, the probabilistic information is with some persons, not democratic.
 - It is this availability of potentially material information with some persons which needs to be recorded in SDD
 - In *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*”.

Determination of UPSI: Meaning of 'Price Sensitive' & 'Unpublished'

■ What is price sensitive information?

- Information likely to materially affect the price of the securities
 - When made generally available

■ How to determine the price sensitivity?

- It is probabilistic in nature
- Requires 'taking of a view' based on price sensitivity.
- Quantum of impact on price cannot be ascertained upfront
 - Impact on other parameters that will ultimately impact the price, to be ascertained
 - Forms the basis for determining the thresholds
 - E.g. 10 % of turnover or net-worth or specific limit.

■ Correlation with material events under Reg. 30

- Event / information that is deemed material under Reg. 30
 - May or may not be price sensitive.
- Event/ information determined as material under Reg. 30
 - Will be deemed to be price sensitive

■ System of determining

- Feedback system to be adopted
- Type of information not regarded as material in the past, however, had an impact on price
- System should be dynamically reviewed and evolved

■ What is Unpublished?

- Information that is not generally available

■ When is an information said to be generally available?

- Information available on a non-discriminatory basis
- Information published on the website of stock exchange, would ordinarily be considered generally available

■ Disclosure of material event/ information to the stock exchange

- Information ceases to be unpublished.
- Becomes generally available information

■ Manner of making UPSI generally available

- As per Code of Fair Disclosure
 - Prompt public disclosure once credible and concrete information comes into being
 - Uniform and universal dissemination
 - No selective disclosure
 - In case of any inadvertent selective disclosure, prompt corrective action
 - Until then, handle all UPSI on need to know basis.

UPSI & Material events : manner of determination

■ Material events and information

- Guidance on criteria for determining materiality given in Reg. 30 of Listing Regulations
- Events deemed to be material
 - Indicated in Para A of Part A of Schedule III to Listing Regulations
- Events determined to be material
 - Indicated in Para B of Part A of Schedule III to Listing Regulations
 - Based on the impact of the omission of an event or information is likely to result
 - in discontinuity or alteration of event or information already available publicly;
 - in significant market reaction if the said omission came to light at a later date;
 - Based on the opinion of the board of directors
 - Manner laid down in the board approved policy
 - For determination of materiality.
 - One or more KMP authorized to determine
 - Includes events relating to subsidiaries
 - Material for the listed parent.

■ UPSI

- Includes few events deemed to be material under Reg. 30
 - Financial results;
 - Dividend;
 - changes in KMP;
 - change in capital structure;
 - mergers, de-mergers, acquisitions, delistings, disposals.
- Events determined to be material
 - Deemed UPSI?
 - 'Events' determined 'material' if it is likely to 'materially affect the price'.
 - Criteria is same as definition of UPSI
- KMP authorised under Reg. 30 should be responsible for determining UPSI
 - Recording of reasons, rationale
 - For determination as well as non-determination
- Events/ information that materially impacted the price in the past

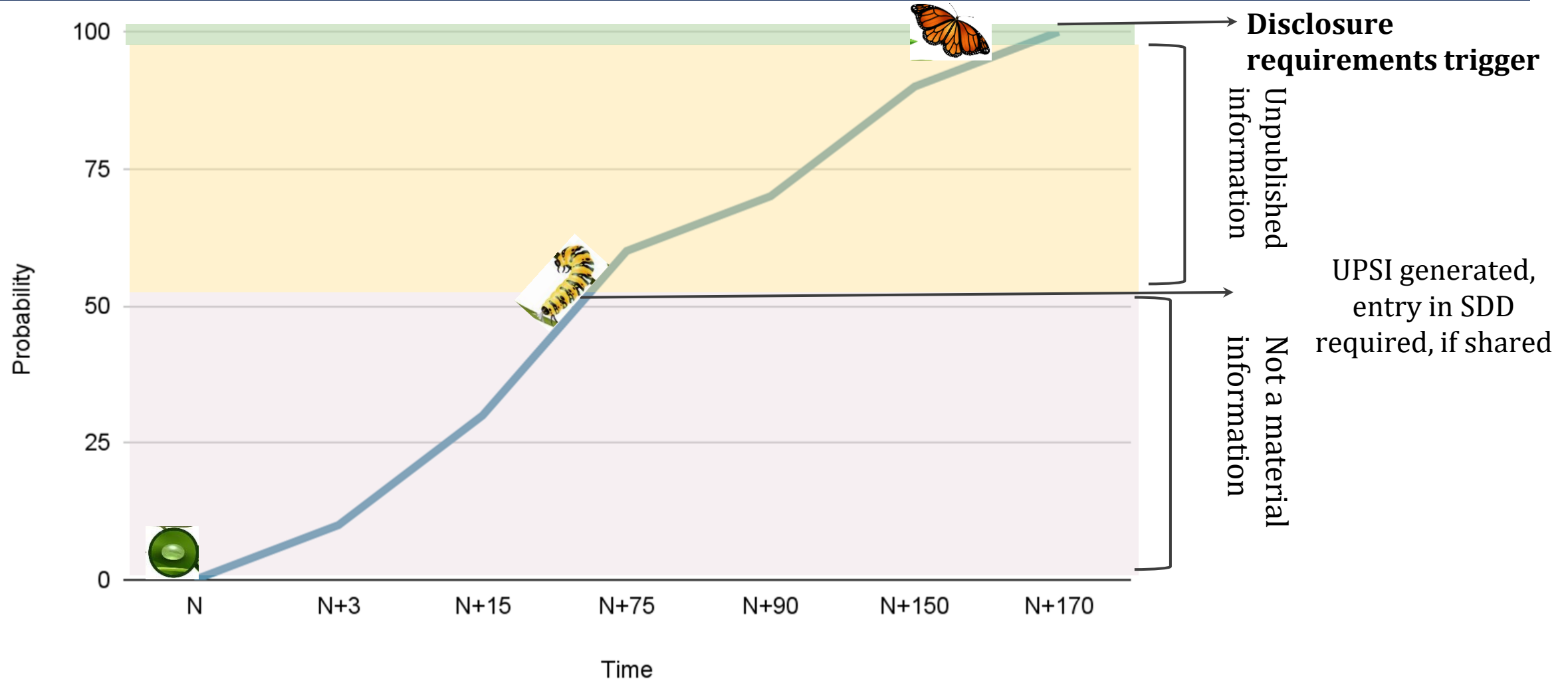
Indicative list of UPSI

- Acquisitions/ takeovers
 - Proposal for merger/ amalgamation
 - Setting up a significant subsidiary or joint venture by way of significant expansion of business/assets
 - Proposal for setting up new units
 - Dissolution of a significant subsidiary or a joint venture
- Revenue side UPSI
 - Financial results of a company
 - Expansion of production capacity, new product launch
 - Major orders of a non-recurring nature or unusual concession agreement, or similar item
- Expense side UPSI
 - Significant breakdown in production
 - Disruption of operations due to natural calamity, strikes, lockouts etc
- Shareholder related UPSI
 - Proposal for declaration of dividend
 - Management change/shareholders' agreement indicating change of control
 - Proposal for raising funds through increase in capital
- Regulatory changes/ approvals related UPSI
- Debt-related UPSI
 - Debt-restructuring arrangements or inter-creditor arrangements
 - Application for CIRP by the company itself or by any operational/ financial creditor against the company
 - Potential but almost certain Default in loans or debt servicing obligations
- Corporate governance UPSI
 - Changes in management structure
 - Resignation of independent directors signalling corporate governance issue
- Litigation/ exposures/negatively impacting UPSI
 - Tax demand notice received by the company
 - Notice for initiation of any major regulatory proceedings against a company
 - Initiation of arbitration proceedings for a major demand/claim
 - Commencement of investigation by regulators such as RBI, SEBI etc
 - Fraud/defaults by promoter or KMP or by the listed company
 - Arrest of KMP or promoter
 - Initiation of forensic audit
 - Giving of guarantees, indemnity, becoming surety for third party

The trajectory of information in an organisation

- N: The MD spots a tender/scheme of the Orissa Govt whereby there will be allotment of land, provided the entrepreneur makes an minimum capex of Rs 500 crores in a new plant. Other conditions are there.
- N+1 Captivated by the idea, the MD would want to examine the feasibility of setting up a new unit in Orissa.
- N+3 The MD discusses the matter with the CFO and the two agree to engage one of the consulting firms to do a feasibility study for setting up the Orissa plant
- N+15 At this stage, an in-principle board approval is taken by circulation for carrying the feasibility study, to be reported back to the Board.
- N+ 75 The feasibility study comes a couple of months later. The study inter alia recommends an investment of Rs 650 crores. This will nearly doubling the current capacity of the company
- N+ 90 After doing further work on the matter, the MD and the CFO set up an internal team to identify the technology/machinery vendor, make financial projections, identify land parcel, etc.
- N+ 115 A board meeting is to be called by the CS, setting up the details as currently available.
- N + 123 Board resolution passed for making application to the Govt of Orissa for the plant; if the application succeeds, the matter to come back to the board.
- N+ 125 Application made
- N+ 155 Govt of Orissa sanctions the application
- N+ 170 Further board resolution for setting up a WOS
- **N+ 170 At this stage, the information is disclosed to SE**

Metamorphosis of “information” to publication





Dealing with UPSI

Communication, Preservation and Dissemination



Communication of UPSI

■ Restriction on communication of UPSI

- No person shall:
 - communicate, provide, or allow access; or
 - procure from or cause the communication
 - With respect to UPSI, relating to a company or securities listed or proposed to be listed

■ Exception

- Communication or procurement is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

■ What is legitimate purpose?

- Refers to sharing of UPSI in ordinary course of business by an insider with outsiders for business purpose, without circumventing the prohibitions of PIT Regulations.
- Inducement and procurement of UPSI not in furtherance of one's legitimate duties and discharge of obligations would be illegal

■ Manner of determining 'legitimate purpose'?

- The Board of Directors of every company to formulate a policy
 - For determination of 'legitimate purpose'
 - as a part of Code of Fair Disclosure and Conduct.
- Such policy may include:
 - Instances of sharing that can be regarded as 'legitimate'
 - required in the ordinary course of business;
 - Pursuant to statutory requirement;
 - Pursuant to regulatory order or direction.
 - Board of directors determine under Reg. 3 (3)
 - Sharing of information is in the best interest.
 - Person responsible in determining if the purpose is legitimate or not;
 - Process of sharing
 - As per the Code of Conduct.
 - Person to whom UPSI is provided must be sensitized about the policy and confidentiality so as to avoid leakage.
 - Entry in Structured Digital Database

Preservation of UPSI : Responsibility and Manner

■ Board of Directors

- in case of sharing of UPSI for a transaction
 - entailing an obligation to make an open offer or not
 - Which, in the view of the Board, is in the interest of the Company.
- require the parties to execute agreements
 - to contract confidentiality and non-disclosure obligations on the part of such parties
 - such parties to keep information so received confidential,
 - except for the purpose of the approved transaction
 - Parties to abstain from trading in securities of the company when in possession of UPSI.
- ensure CEO/MD frames internal controls
- Formulate written policies and procedures for inquiry
 - In case of leak or suspected leak of UPSI

■ Audit Committee

- Review compliance with PIT regulations
- Verify adequacy and operative effectiveness of internal controls

■ CEO/ Managing Director

- Framing of internal controls for:
 - Identification of UPSI and maintaining its confidentiality
 - Adequate restrictions on communication or procurement of UPSI
 - Identifying all employees having access to UPSI as DPs
 - Maintaining list of all employees and other persons with whom UPSI is shared
 - Signing confidentiality agreements or serving notice of confidentiality
 - Complying with other relevant requirements.
 - Periodic process review to evaluate effectiveness of internal controls
- Manner of preservation
 - having a process of how and when people are brought 'inside' on sensitive transactions;
 - having norms for appropriate Chinese Wall procedures, and processes for permitting any designated person to "cross the wall".
 - Physical separation of departments
 - Restrict flow of information
 - Security of sensitive documents
 - Information barriers for restricting flow of material non-public information
 - Handling information on need to know basis
 - Executing NDA/ giving notice of confidentiality

Disclosure of UPSI

- **Making it generally available**

- Ceases to be UPSI upon making it generally available

- **Responsibility of the Board of Directors**

- Formulate a code of practices and procedures for fair disclosure of UPSI

- Based on principles provided in Schedule A

- Prompt public disclosure once credible and concrete information comes into being;
- Uniform and universal dissemination of UPSI;
- Prompt dissemination of UPSI that gets disclosed selectively, inadvertently or otherwise.
- Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities
- Requirements relating to meetings with analysts and research personnel
 - UPSI not to be shared
 - making of transcripts or records of proceedings of meetings
 - ensure official confirmation and documentation of disclosures made
- Handling UPSI on need to know basis.

- **Responsibility of Chief Investors Relations Officer**

- Dissemination of information and disclosure of UPSI



Maintenance of Structured Digital Database

Intent, manner, pre-requisites, reporting requirement.



History and development

Report by
Committee
on Fair
Market
Conduct

SEBI PIT
(Amendment)
Regulations,
2018

SEBI PIT
(Amendment
) Regulations,
2020

SEBI FAQs
on PIT
Regulations

Intent of SDD

- Commentary of Shri T K Vishwanathan Committee Report -

*“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.”*

- Helps in establishing trail of flow of information
- Helpful in investigation pertaining to insider trading matters

Regulatory basis for SDD maintenance – Reg. 3 (5) & (6)

- *The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure*
 - *that a structured digital database is maintained;*
 - *containing the nature of unpublished price sensitive information; and*
 - *the names of such persons who have shared the information; and*
 - *the names of such persons with whom information is shared*
 - *along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available.*
 - *such database shall not be outsourced; and*
 - *such database is maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.*
- *The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure*
 - *that the structured digital database is preserved*
 - *for a period of not less than eight years after completion of the relevant transactions; and*
 - *in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings,*
 - *the relevant information in the structured digital database shall be preserved till the completion of such proceedings.*

Global equivalents

- Difficult to find precise global equivalent
- However, the nearest comparable may be Article 18 of Market Abuse Regulation of the EU
- This requires preparation of an “insider list”
 - a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies
- The list shall at least include:
 - the identity of any person having access to inside information
 - the reason for including that person in the insider list
 - the date and time at which that person obtained access to inside information
 - the date on which the insider list was drawn up
- Issuer shall update the Insider List promptly, with each update mentioning the date and time
- Retention of insider list for 5 years
- There is a concept of Permanent Insider List - persons who are regularly in receipt of such information. These names may not repetitively be entered
- There is Commission Implementing Regulation (EU) 2016/347 relating to Insider Lists in electronic form

Maintenance of Structured Digital Database

Board of Directors and heads of organisation **required to handle UPSI**

Who?

Shall ensure

What?

Sharing of UPSI for legitimate purpose

How?

Setting up and maintaining structured digital database containing:

- a) Name
- b) PAN or any other identifier

Of persons or entities with whom UPSI is shared and the person who shares such information

System should ensure adequate checks and controls:

- Time stamping
- Audit trails, etc

To ensure non-tampering of database

Other requirements

- Information should be preserved for 8 years after completion of relevant transaction
- Should be maintained internally and not outsourced
- Entry will be required to be made for sharing internally or externally (*FAQ No. 3 & 6*)
- 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. (*FAQ No. 7*)
- To be maintained independently by every company and not at group level (*FAQ No. 9*)

Suggested minimum contents of SDD

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					
Date and Time of sharing					
Purpose of Sharing					
Date when UPSI became publicly available					
NDA or confidentiality agreement executed in this regard					
Date of entry in SDD					
Details of person making the entry (Note 2)					
Remarks, if any:					

Note 1:

The categories of recipients shall include:
 Designated Persons (DPs);
 Employees of the Company who are not DPs;
 Connected Persons;

Note 2:

The database shall be maintained under the supervision of the Compliance Officer of the Company;
 The database shall be reviewed by the Compliance Officer on a periodic basis.
 The identity of the person accessing the database is required to be established for the purpose of audit trail (*FAQ no. 8*)

Manner of maintaining SDD

- Pre-requisites
 - Maintained internally and not outsourced
 - Audit trail to be maintained
 - Facility of date and time stamping
 - Shall be tamper-proof
- Can it be maintained on Excel sheets?
 - Spreadsheets are easy; however, no 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.
- Can it be maintained on Google sheets?
 - Time stamping is possible
 - Audit trail possible since the edit history is maintained
 - Maintained on google cloud, so may amount to outsourcing
- Softwares provided by third party
 - May be used if all features are there
 - Need to ensure that the same does not result in “outsourcing”
 - FAQs have clarified that use of external software maintained internally by company does not amount to outsourcing
- Suggested mode for maintenance
 - Emails may be tagged as “containing price-sensitive information” at the time of sharing information
 - Systems to be linked such that all such emails are captured automatically
 - Once events are identified, other relevant information may be populated by those having access controls
 - In case of multiple people having access controls, there still need to have a centralised point of control
- In case of Fiduciaries/ intermediaries
 - To be maintained likewise for UPSI received from client entities (*FAQ No. 2 and 6*)
 - In case of UPSI being shared with listed entity, entry to be made accordingly.

SOP for SDD

- 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?

SDD compliance certificate - what it is, and what it is not?

What the Compliance Certificate is?

- That the Company is maintaining SDD, in the manner required by reg 3 (5)
- The SDD answers the basic attributes - access control, non tamperability, audit trail, etc
- If an item has been internally recognised as UPSI, and the same has been shared internally or externally, procedures exist to ensure that the sharing of such information is entered into the SDD
 - Such procedures are working satisfactorily

What the Compliance Certificate is not

- Whether information has properly been characterised, or omitted from being characterised, as UPSI
- Whether UPSI has been shared by someone inside the entity, other than on need to know basis
- Whether UPSI has been shared by someone without entering the same in the SDD
- Whether an outsider has obtained access to UPSI, or shared the same with someone
- Whether trades have been made while in possession of UPSI

Requirement of SDD compliance certificate

■ From where does the requirement trigger?

- Q1 of FY 22-23 – notices sent to listed entities by SEs
- Q2 and Q3 of FY 22-23 – circulars issued by SEs dated 28th October, 2022
- Q4 of FY 22-23 - separate circular to be issued by the SEs.

■ What does the certificate pertain to?

- compliance with respect to maintenance of SDD and capturing of all events of sharing of UPSI

■ Periodicity and timelines of compliance certificate?

- On a quarterly basis
 - For Q2 FY 22-23 – by 18th November, 2022
 - For Q3 FY 22-23 – by 21st January, 2023

■ Who is required to certify?

- Compliance Officer of the Company or a practicing Company Secretary

■ Manner of submission

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

■ Power to SE to inspect the SDD system

- After giving notice of 1 working day
- If company is non-compliant with respect to SDD, appropriate action shall be initiated by the Exchanges

■ Placing of certificate before the Board

- Recommended as responsibility w.r.t. SDD maintenance is on the Board.

Format of SDD compliance certificate

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 listed entity), or I, _____, Practising Company Secretary appointed by _____ (name of 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 striked 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:

Consequences of violation of maintenance of SDD

- Instances of violation
 - No audit trail
 - Not maintained internally
 - No time stamping
 - 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
- As per BSE Circular dated 4th November, 2022 & NSE circular dated 4th November, 2022
 - 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
 - Exchanges have satisfactorily verified that the company has completely complied
- As per BSE Circular dated 25th January, 2023 & NSE circular dated 25th January, 2023
 - Details of the Compliance Officer will also be displayed under the ‘Get Quote’ page, where the above information is displayed.

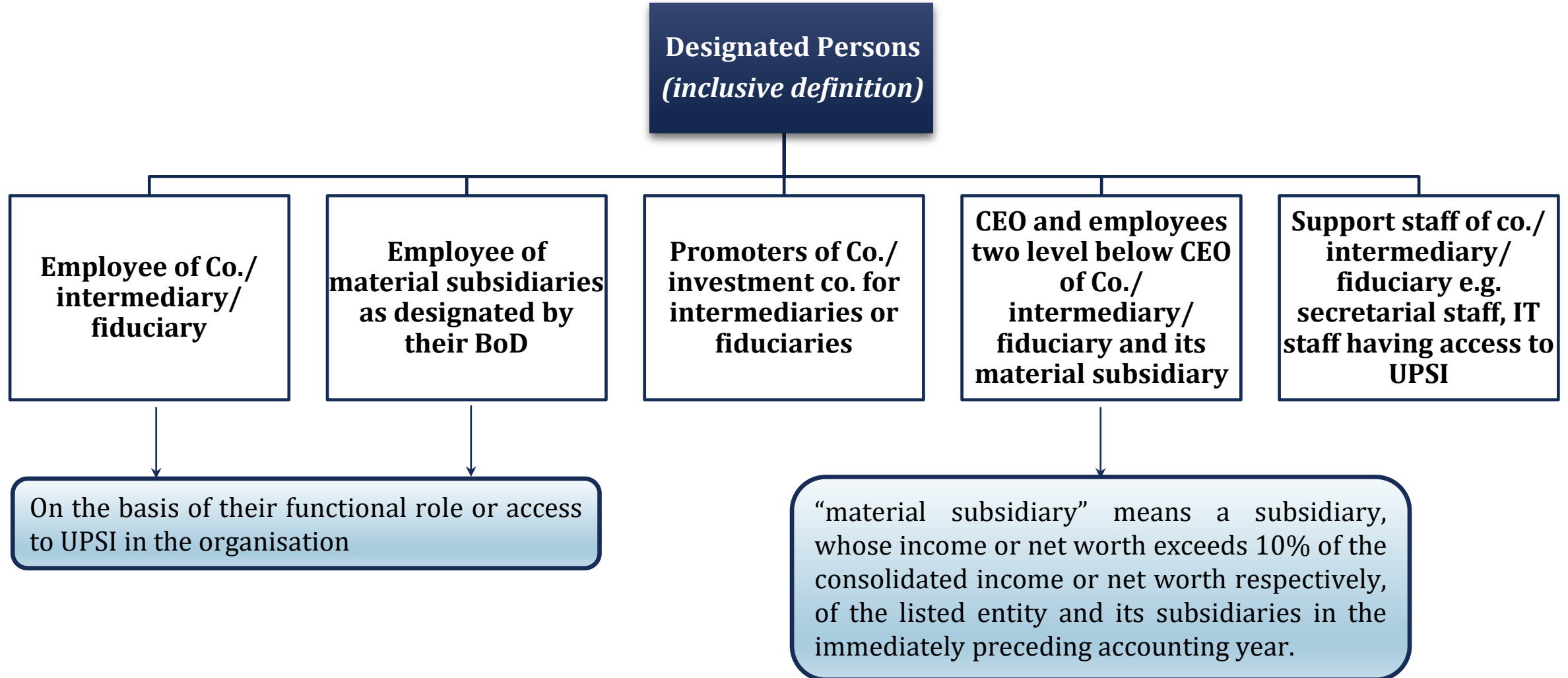


Controls relating to Designated Persons

Identification, handling of UPSI, monitoring of trades etc.



Identification of Designated Persons



Obligations of Designated Persons (DPs)

Timely disclosures

- Initial disclosures on holding of securities
- Continual disclosures on occurrence of trade
- Annual disclosures of personal details of DP
(Details in the next slides)

Compliance with the Code

- Comply with the Code of Conduct of the company
(see slides on code of conduct)

Prohibition on trading during TW closure

- Cannot execute trades during closure of trading window
(see slides on trading window)

Obtain pre-clearance before trading

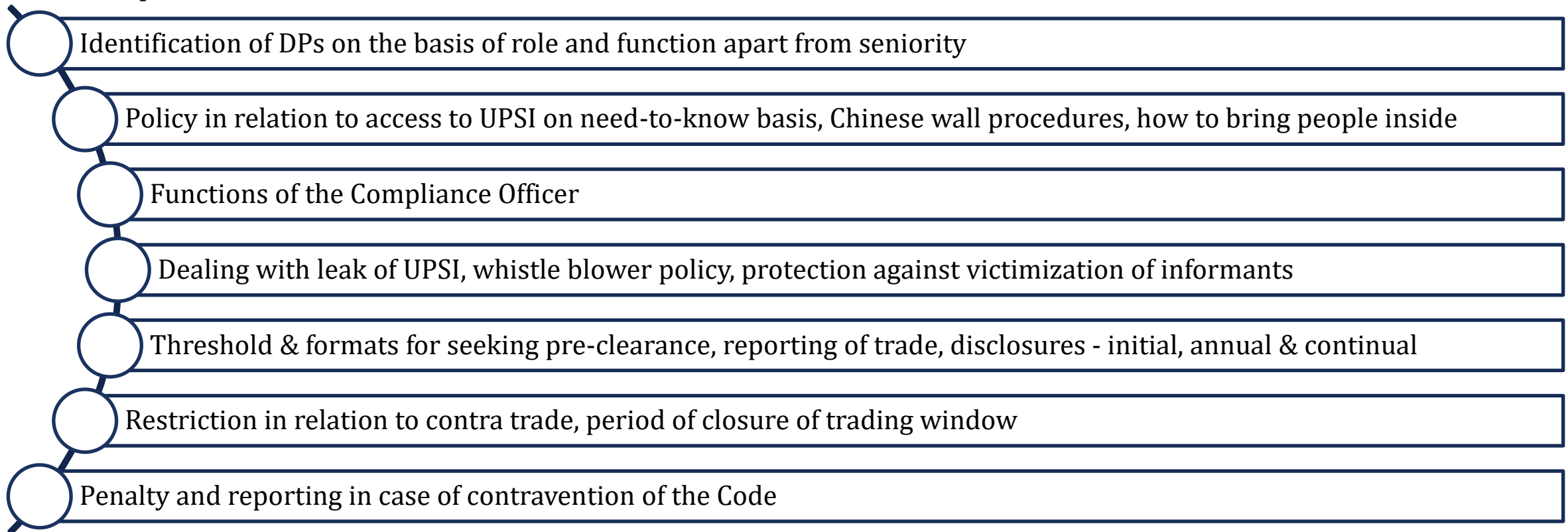
- Pre-clearance to be obtained from Compliance Officer, before trade during permitted period
(see slides on pre-clearance)

No contra trade for 6 months

- No contra trade to be executed for the next 6 months
(see slides on contra trade)

Code of Conduct to regulate, monitor and report trades by DPs and their immediate relatives

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



Trading Window restrictions

■ Trading Window

■ In case of Financial Results

■ Trading window shall be closed:

31st March, 2022 (quarter end)

Declaration of financial Results

48 hours after declaration of Results

■ In case of other UPSI

■ Trading window shall be closed from the point of time the information is available to insider

No trades permitted during window closure, except for

Off market *inter-se* transfer between insiders having same UPSI

Transaction executed through block deal mechanism by insiders except for UPSI under Reg. 3 (3)

Carried out pursuant to statutory or regulatory obligation

Pursuant to ESOP where exercise price was pre-determined

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

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

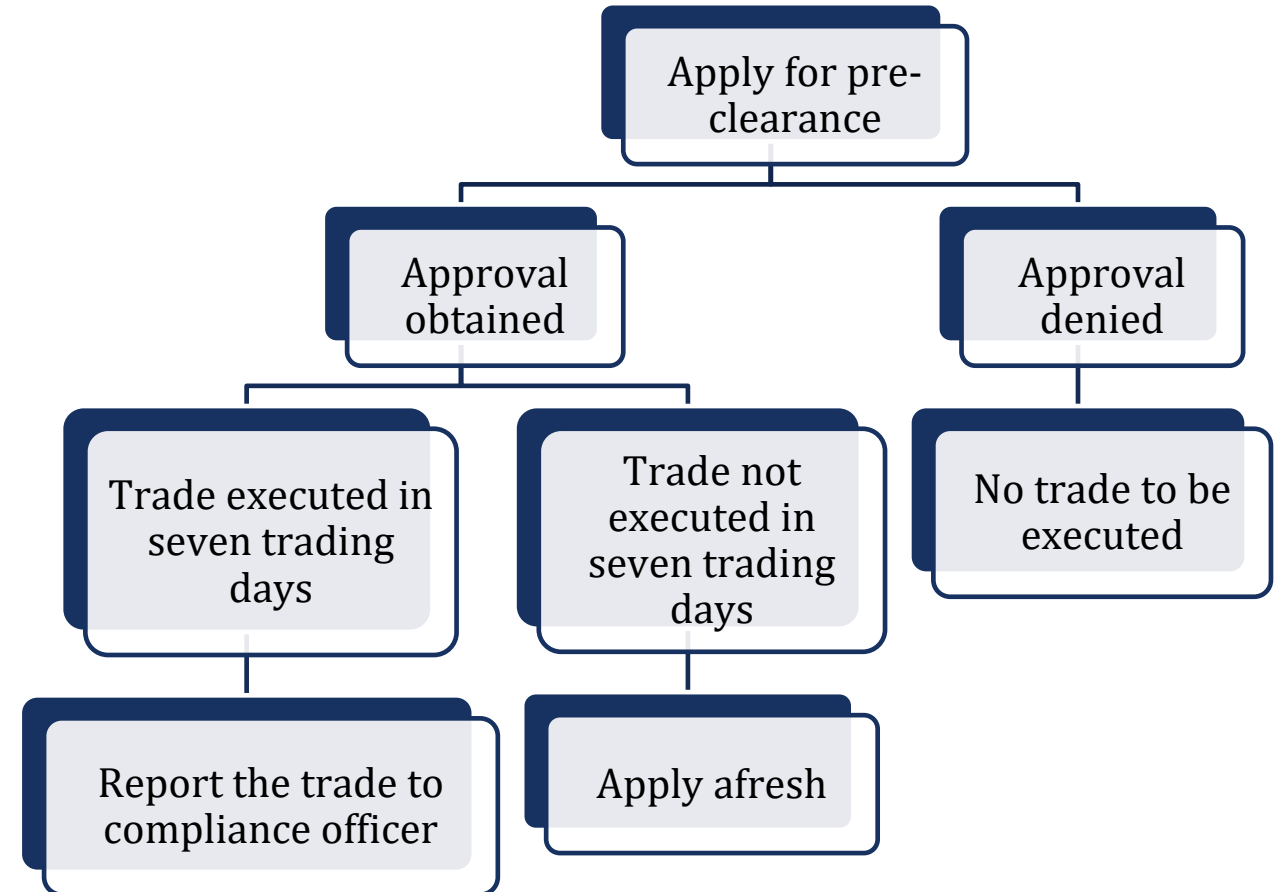
Transactions which are undertaken through any other mechanism as may be specified by SEBI

In case of non-individual insider: Individuals possessing the information and those taking decisions were different

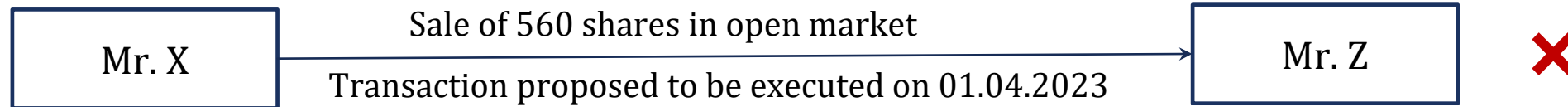
Pre-clearance of trade

Pre-clearance

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



Concept of contra-trade

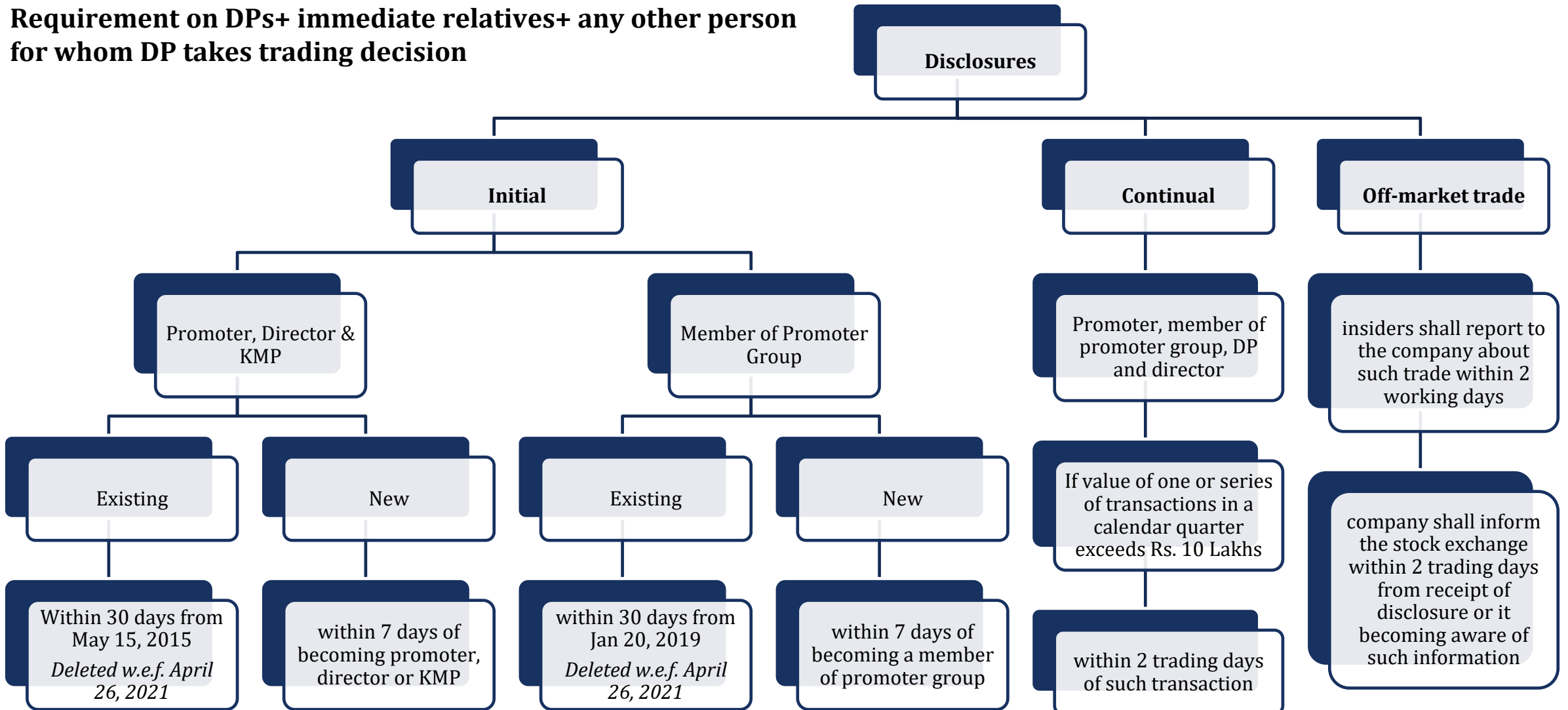


- DPs cannot execute contra trade or opposite transaction for next 6 months.
- Compliance officer may grant relaxation from strict application of contra trade restriction (subject to the condition that it is not against the provisions of the Regulations).

Exception: trades pursuant to exercise of stock options

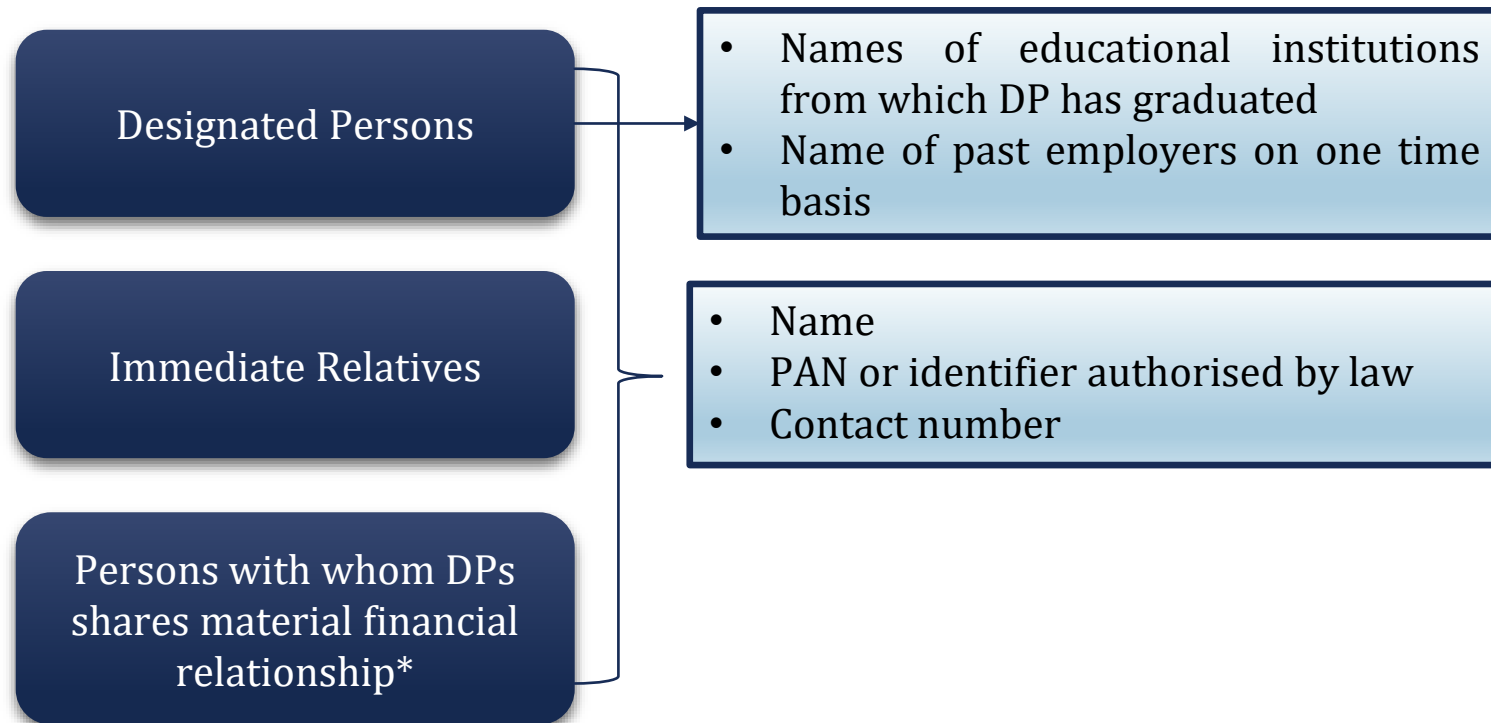
Disclosures by DPs

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



Annual Disclosure by DPs

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



* Such as a transaction of a loan or gift during immediately preceding 12 months equivalent to at least 25% of the DP's annual income. Shall exclude arms' length transaction



Penal provisions



Powers of SEBI

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

Penalties under SEBI Act, 1992 for violation of the Regulations

Section	Violation	Penalty amount
Section 15A(b)	Failure to file return or furnish the information, books or other documents within the time specified in the regulations or furnishing or filing false, incorrect or incomplete information, return, report, books or other documents	<ul style="list-style-type: none"> • Minimum: Rs. 1 lakh • Where failure continues <ul style="list-style-type: none"> • Maximum: Rs. 1 lakh per day subject to Rs. 1 crore
Section 15G	Dealing in securities of the company while in possession of UPSI	<ul style="list-style-type: none"> • Minimum: Rs. 10 lakhs, • Maximum: <ul style="list-style-type: none"> • Rs. 25 crores or • 3 times the amount of profits made out of insider trading, • whichever is higher
	Communication of UPSI	
	Counselling or procuring of UPSI	
Section 15HB	Non-compliance of any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided	<ul style="list-style-type: none"> • Minimum Rs. 1 lakh, • Maximum Rs. 1 crore

Our Resources on the subject

- [FAQs on Structured Digital Database](#)
- [FAQs on Insider Trading Framework for Mutual Funds](#)
- [Structured Digital Database: some emerging concerns](#)
- [Guide to Compliance Certificate for Structured Digital Database](#)
- [Discussion on Structured Digital Database](#)
- [FAQs on PIT Regulations](#)
- [Requirements under PIT Regulations – corporate employees perspective](#)
- [Resource Centre on PIT Regulations](#)

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