

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

B.NEHA NAIDU

EXECUTIVE

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WEBSITE-

<http://www.vinodkothari.com/>

OVERVIEW

- What is insider trading?
- What are the effects?
- What is the intent of this regulation?
- Important definitions
- Internal control mechanism
- Role of Audit Committee
- Structured digital database
- Codes under the Regulation
- Disclosure requirement

WHAT IS INSIDER TRADING?

- Insider Trading refers to trading in securities of a listed company on the basis of unpublished price-sensitive information (UPSI)

INSIDER

- Defined under regulation 2(1)(g)
- Connected Person or a person who is in possession of UPSI

TRADING

- Defined under regulation 2(1)(l)
- Dealing in securities of the company

UPSI

- Defined under regulation 2(1)(n)- *inclusive definition*
- Information not generally available
- If becomes available, likely to materially affect the securities' prices

WHAT ARE THE EFFECTS?

- Volatility in prices
- Losing investor confidence
- Impact on reputation of the organization
- Impact on operation of organization
- Impact on economy

WHAT IS THE INTENT BEHIND REGULATION?

- Prohibit insider trading
- Protection of interest of investors
- Maintain stability in market
- Protection of economy
- Provide framework for communication of UPSI and trading by the Designated Person
- Bring the violator of regulation under legal charges'
- Provide roles and responsibilities of important functionaries of the organization

IMPORTANT DEFINITIONS

Insider

Trading

UPSI

Designated
person

Connected
person

Compliance
officer

DESIGNATED PERSON

Designated Persons (inclusive definition)

- Employee of Co./ intermediary/ fiduciary
- Employee of material subsidiaries as designated by their BoD
- Promoters of Co./ investment co. for intermediaries or fiduciaries
- CEO and employees two level below CEO of Co./ intermediary/ fiduciary and its material subsidiary
- Support staff of co./ intermediary/ fiduciary e.g. secretarial staff, IT staff having access to UPSI

ROLE OF DESIGNATED PERSON

Designated person is under the duty to-

- not to share/ communicate UPSI except for legitimate purpose
- to not to execute trade when trading window is closed by designated person
- trade subject to pre-clearance by compliance officer if the value exceeds the amount specified.
- not to execute contra trade during time period specified by company's Code of conduct
- disclose the trades if the value exceeds Rs. 10 lakh in a quarter
- to disclose names and PAN or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes:
 - a) immediate relatives
 - b) persons with whom such designated person(s) shares a material financial relationship
 - c) Phone, mobile and cell numbers which are used by them.

CONNECTED PERSON

- Any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including :

By reason of frequent communication with its officers

By being in any contractual, fiduciary or employment relationship.

By being a director, officer or an employee of the company or Holds any position including a professional or business relationship between himself and the company whether temporary or permanent

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

COMPLIANCE OFFICER

- Means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there.
- Who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and
- Who shall be 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 of the listed company or the head of an organization.

COMMUNICATION OF UPSI

- No Insider shall communicate, provide or allow access to any UPSI to any person.
- No person shall procure from or cause the communication by Insider of UPSI

However UPSI can be shared only for -

- Legitimate business purpose
- Performance of duties
- For legal obligations

Trading while in the possession of UPSI

- Statutory obligations
- Trading plan
- Off market transfer between insider having same UPSI
- Block deal window mechanism between the insider having same UPSI
- Trade is pursuant to exercise of ESOPs

TRADING WINDOW

- Period during which trading in securities of the company can take place

Closure of trading window

- In case of financial results- Trading window shall be remained closed from the end of every quarter till 48 hours after the declaration of financial results.
- In other cases- Trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of UPSI.

RESTRICTION OF TRADING WINDOW SHALL NOT APPLY

- Off market transaction between insiders having same UPSI
- Carried pursuant to statutory requirement
- Carried through block deal window mechanism between insiders having same UPSI
- Transaction is pursuant to exercise stock options
- Trade according to trading plan
- Pledge of shares for a bona fide purpose

INTERNAL CONTROL MECHANISM

- The CEO, MD or any such officer of the organization shall put in place an internal control system to prevent insider trading.

This shall include:

- All employees who have access to UPSI are identified as Designated Persons
- All the UPSI of which confidentiality shall be maintained as per the requirements of these regulations
- Restrictions to be placed on communication or procurement of UPSI as required by these regulations
- Lists of all employees and other persons with whom UPSI is shared
- Periodic review process to evaluate effectiveness of such internal controls
- Compliance of all other relevant requirements specified under these regulations.

ROLE OF AUDIT COMMITTEE

- Review compliance with the Regulations at least 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 at least once in a year.[Sch. B]

STRUCTURED DIGITAL DATABASE

- The board of directors or head of the organization shall ensure that a structured digital database is maintained.
- Shall contain the nature of UPSI and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation(along with the PAN or any other identifier authorized by law where PAN is not available).
- Such database shall not be outsourced and shall be maintained internally with adequate internal controls

Timeline for preservation-

For a period of not 8 years after the completion of transaction.



CODES PRESCRIBED



CODE OF FAIR DISCLOSURE

- The board of directors of every listed company shall formulate a code of practices and procedure for fair disclosure of UPSI and place it on the website of the company.

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 rumors 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

CODE OF CONDUCT

- The board of directors of every company shall formulate a code of conduct to - regulate ,monitor and report the dealing in securities by designated person and their immediate relative
- Every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

Schedule B

- 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
 - Identification of DPs on the basis of role and function apart from seniority
 - Policy in relation to access to UPSI on need-to-know basis
 - Functions of the Compliance Officer
 - Dealing with leak of UPSI, , whistle blower policy, protection against victimization of informants
 - Threshold & formats for seeking pre-clearance, reporting of trade, disclosures -initial, annual & continual, personal information
 - Restriction in relation to contra trade, period of closure of trading window
 - Penalty and reporting in case of contravention of the Code

DISCLOSURE

Initial disclosure

By-Promotor, Director KMP & Member of promoter group
Within- 7days of becoming promotor director, KMP or becoming part of promoter group.

Continual disclosure

By- promoter, member of promoter group, DP and director, when the value of one series of transactions in a calendar quarter exceeds Rs 10 Lakhs
Within- 2 trading days of such transactions

Off- market trade

By – insider to the company about such trades
Within- 2 working days
Further, Company shall inform stock exchange within 2 trading days from receipt of disclosure or it becoming aware of such information