

Workshop on Recent regulatory developments for listed entities: critical changes under LODR and PIT Regulations

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- Vinod Kothari and Company, company secretaries, is a firm with more than 35 years of vintage
 - Based out of Kolkata, Mumbai, New Delhi and Bengaluru
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Coverage

- Disclosure of material events and information
 - Overview of Reg 30 read with Schedule III
 - Interplay with PIT Regulations
 - Determination of materiality
 - Reporting continuing events or information
- Mandatory verification of market rumours
- Amending policy on materiality of events or information
- Disclosure of regulatory actions to stock exchange
- Other amendments to Schedule III
- Disclosure of agreements impacting listed entities
- Senior Management Personnel
 - identification and obligations
- Understanding the basic actionable under the PIT Framework
 - Identification of DP, CP and insider
 - contra -trade restrictions
 - concept of UPSI
 - Structured Digital Database
 - closure of trading window and freezing of PAN

Applicability of various amendments under LODR

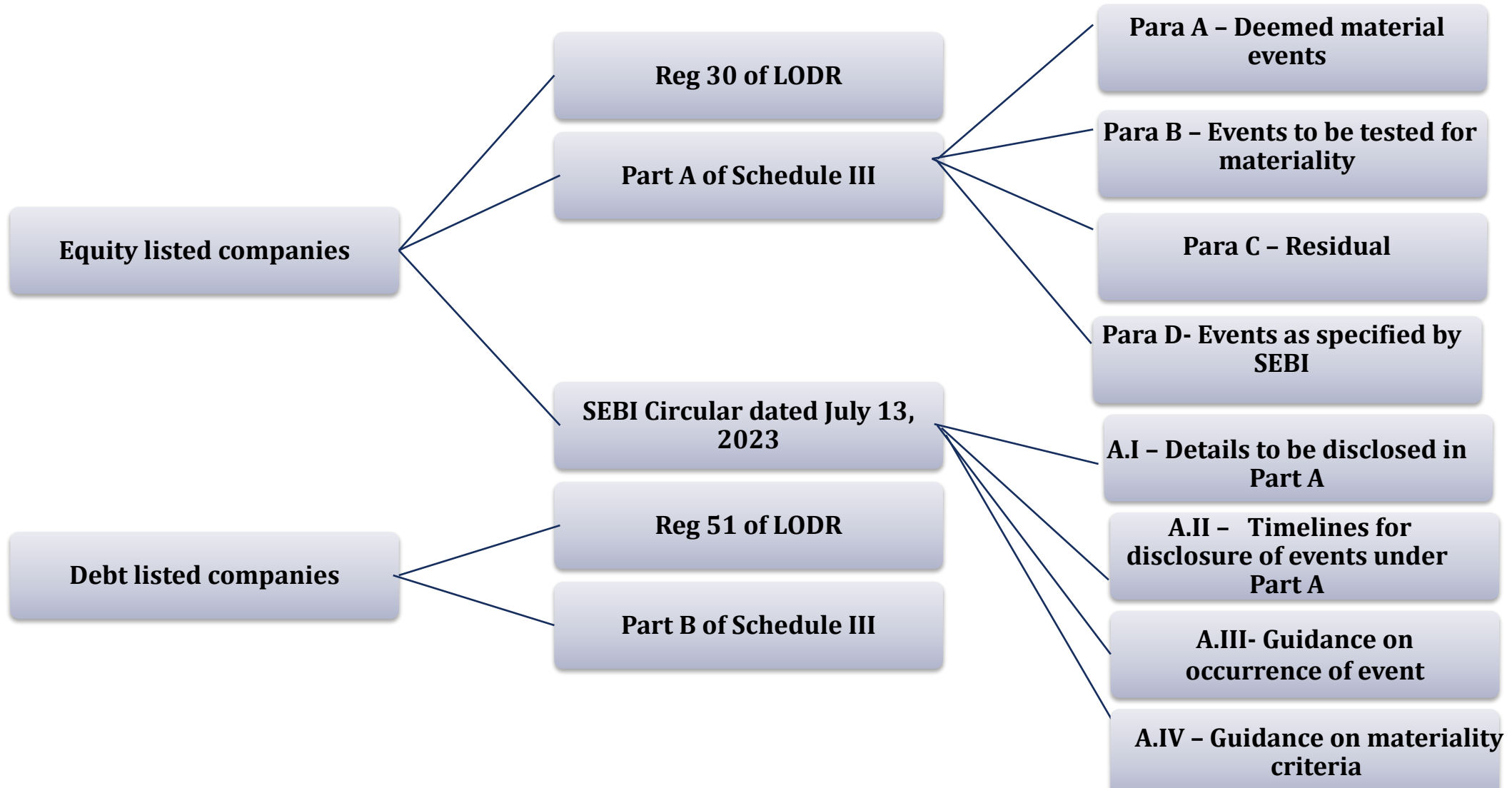
Date of applicability	Relevant Regulation
14 th June, 2023 (Immediately applicable)	<ul style="list-style-type: none"> • Regulation 37A – Disposal of undertaking by listed entity outside scheme of arrangement • Compliance of Reg 15-27: Extension of relaxation for HVDLEs • Regulation 57: Intimation to stock exchange regarding status of payment of dividend, interest, repayment or redemption of principal of NCS • BRSR to be immediately effective; Core and assurance requirements: notified separately
14 th July, 2023 (1 month from notification of Amendment Regulations)	<ul style="list-style-type: none"> • Regulation 6(1A) :Vacancy in office of compliance officer • Regulation 17(1E) :Vacancy in office of director • Regulation 27(ba) : Disclosure of cyber security incidents • Regulation 30: Disclosure of material events and information • Regulation 30A : Disclosure of agreements binding listed entities • Regulation 31A :Special Rights to Shareholders • Regulation 33(3)(j) : Submission of Financial Results by new listed entities: for IPO commencing on or after 14th July, 2023 • Regulation 26 :Vacancy of office of CEO, CFO to be filled within 3 months
FY 24-25	<ul style="list-style-type: none"> • Re-approval of shareholders for continuation of directors beyond 5 years • Disclosures under CG Report pertaining to particulars of SMPs



Disclosure of material events or information



Provisions governing disclosure of material events and information



Broad overview of Reg 30

- Disclosure of material events or information - Reg 30 (1)
 - Deemed material event - Sched III.A.A
 - Tested for materiality - Sched III.A.B
 - Other events which may be material - 30 (12), Sched III.A.C
- Criteria for materiality: significant impact on price discovery. Reg 30 (4)
 - Now complemented with numerical standards
- Information to SE first, and ASAP
 - Timelines reduced to 12 hours for info emanating within the listed entity
 - 30 minutes from BM where decision taken in BM
 - Existing timeline of 24 hours continue for those originating outside the listed entity
 - specific timelines for events listed in Sched III.A.A (4)
- Material information about subsidiaries also to be disclosed - 30 (9)
- responses to rumours - earlier, the LE has the option to confirm or deny any reports - Reg 30 (11)
 - Now, mandatory for top 250 LEs in a phased manner
- Sched III.A.A – “deemed” material events
 - events to be disclosed without testing for materiality
 - 21 events are currently listed post amendment
 - as the intent is informational, entities should do a liberal reading of the entries, and go by intent
- Sched III.A.B – “tested” material events
 - 13 listed events, to be tested for materiality, based on materiality policy and Reg 30(4)
- Penalties for non-disclosure or delayed disclosure
 - not covered under SOP for penalties levied by SEs
 - to be adjudicated by SEBI
 - Penalty u/ s 23A of SCRA
 - Minimum Rs. 1 lac
 - Continuing Rs. 1 lac per day
 - Maximum Rs. 1 crore

Broad overview of Part A of Schedule III

- Schedule III provides an indicative list of events and information that require disclosure under Reg 30
- Classified into 5 parts on the basis of nature of securities
 - Part A deals with specified securities
 - Sub-divided into 4 Paras
 - **Para A** deals with events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30)
 - “deemed” material events
 - **Para B** deals with events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30)
 - **events requiring materiality assessment**
- **Para C** further requires disclosure of –
 - Any other information/event viz. **major development that is likely to affect business**, e.g. emergence of new technologies, expiry of patents, any change of accounting policy that may have a significant impact on the accounts, etc. and brief details thereof **and any other information which is exclusively known to the listed entity which may be necessary to enable the holders of securities of the listed entity to appraise its position and to avoid the establishment of a false market in such securities.**
 - Other material events or information expected to trigger **Significant Market Reaction** (*refer next slide*)
- **Para D** requires disclosure of all other events and information as may be specified by SEBI from time to time.

Trigger point for disclosure of material events and information

- Reg 30(6) specifies timelines for disclosure
 - requires disclosure to SEs as soon as reasonably possible, but not later than
 - 30 mins from conclusion of board meeting in which decision pertaining to event/ information has been taken
 - 12 hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity
 - 24 hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity
- **When is an event considered to have occurred?**
 - should be disclosed once the happening of the event can be determined with reasonable certainty
 - SEBI Circular dated 13th July, 2023 also provides guidance on the same

For events involving stages of discussion, negotiation and approval	For events not involving such stages
on receipt of requisite approval (generally board approval)	as and when the listed entity becomes aware of the same or as soon as an officer of the entity has, or ought to have reasonably come into possession of the information in the course of the performance of his duties
E.g. - rights issue, acquisitions etc	E.g. - strikes, lock-outs etc

Interplay with PIT Regulations

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

Provisions are complementary and not conflicting



Determination of “materiality” for disclosure of information or events

Quantitative thresholds along with subjective tests of determination



Tests for determination of materiality of information or events

- Reg 30(4) specifies guidelines for determination of material events and information
- The erstwhile guidelines were only subjective
 - (a) the omission of an event or information, which is **likely to result in discontinuity or alteration of event or information already available publicly**;
 - or
 - (b) the omission of an event or information is **likely to result in significant market reaction if the said omission came to light at a later date**;
 - (c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the **opinion of the board of directors of listed entity**, the event / information is considered material.
- Amended regulations specify “**quantitative**” thresholds for determining “materiality”
 - the same is in addition to and not in substitution of subjective thresholds
 - the omission of an event or information, whose **value or the expected impact in terms of value, exceeds the lower** of the following:
 - **2 percent of turnover**, as per the last **audited consolidated** financial statements of the listed entity;
 - **2 percent of net worth**, as per the last audited consolidated financial statements of the listed entity, except in case the arithmetic value of the net worth is negative;
 - **5 percent of the average of absolute value of profit or loss after tax**, as per the **last three** audited consolidated financial statements of the listed entity.
 - E.g. - Profit of Rs. 5 crores in FY 20-21, Profit of Rs. 3 crores in FY 21-22 and loss of Rs. 1 crore in FY 22-23
 - profit based materiality threshold will be [5% of $\{(5+3+1)/3\}$], i.e., Rs. 15 lacs

Understanding thresholds of materiality

Value v/s expected impact in terms of value

- **Value** would generally be **certain**
- **Expected impact** on value should mean
 - **monetary impact** of an event or information,
 - whether **immediate or over a period of time**,
 - **directly relatable** to or occasioned by the event or information,
 - on the **basis of the full expected potential** of the event or information,
 - **on turnover, net worth or profit/ loss** of the company, as **appropriate** for the given event/ information
 - **ascertained** or expected **at the time of occurrence** of the event or information.

Rule of correspondence in determining materiality

- Materiality thresholds are based on 3 financial parameters
 - least of the 3 forms the base for determining materiality
 - threshold based on **profits would generally be the lowest**
- there may be practical difficulties arising out of the same
 - for e.g. actual impact on turnover as numerator against profit based threshold as denominator does not form appropriate comparison
- **Rule of correspondence** should be applied
 - expected impact on turnover be compared against turnover based materiality threshold
 - expected impact on profits be compared against profit based materiality threshold
- E.g. - Launch of new product
 - Expected impact - Increase in turnover by Rs. 200 crores
Increase in profits by Rs. 15 crores
 - Materiality thresholds - as per turnover - Rs. 2000 Cr
as per profits - Rs. 150 Cr

Meaning and relevance of Significant Market Reaction (SMR)

- Not defined under the Regulations
- may be based on LE's own judgement of SMR
 - may be defined in the Materiality Policy of the LE
- SMR would generally mean
 - a movement in the prices of shares of the LE
 - based on a moving average of a determined number of trading days
 - whereby the prices of the equity shares of the LE may be expected to move up or move down by at least a specified percentage
 - less than 5% - not significant
 - between 5-10% - LE may apply discretion to decide
 - more than 10% - will be significant
 - independent of a general broad market index or index for relevant shares
 - in the absence of any stakeholder communication

Relevance of Significant Market Reaction

- one of the **subjective criteria u/r 30(4)** for determining materiality
- assistance in assessing **impact of market rumour** and whether the same requires disclosure
- for ascertaining **disclosure requirements under Schedule III.A.C or Reg 30(12)**



Mandatory verification of market rumours



Verification of market rumours by listed entities

Erstwhile provisions	Amended provisions
<ul style="list-style-type: none"> ● Reg 30(11) - The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s). ● Clause (5) of Code of Fair Disclosures under PIT Regulations <ul style="list-style-type: none"> ○ Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities 	<p>Provided that the top 100 listed entities (with effect from February 1, 2024) and thereafter the top 250 listed entities (with effect from August 1, 2024) shall confirm, deny or clarify any reported event or information in the mainstream media which is not general in nature and which indicates that rumours of an impending specific material event or information in terms of the provisions of this regulation are circulating amongst the investing public, as soon as reasonably possible and not later than twenty four hours from the reporting of the event or information:</p> <p>Provided further that if the listed entity confirms the reported event or information, it shall also provide the current stage of such event or information.</p>

Understanding mandatory verification of market rumours

- **Applicable from?**
 - 1st February, 2024 - for top 100 listed entities
 - 1st August, 2024 - for top 250 listed entities
- **Applicable on whom?**
 - Top 100 listed entities based on market capitalization as on 31st March, 2023
 - Top 250 listed entities based on market capitalization as on 31st March, 2024
 - Once applicable, always applicable – reg 3(2)
- **Type of reported event?**
 - rumours of an impending specific material event or information in terms of Reg 30
 - Not general in nature, specific to LE
 - Indicates leakage of UPSI
- **Reported where?**
 - On mainstream media (refer definition)
- **Obligation of LE?**
 - To **confirm, deny or clarify** reported event
 - if confirms, **current stage** of such event/ information **to be disclosed**
- **Mainstream media** (definition u/ Reg 2(1)(ra))
“mainstream media” shall include **print or electronic mode** of the following:
 - i. Newspapers registered with the Registrar of Newspapers for India;
 - ii. News channels permitted by Ministry of Information and Broadcasting under Government of India;
 - iii. Content published by the publisher of news and current affairs content as defined under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021; and
 - iv. Newspapers or news channels or news and current affairs content similarly registered or permitted or regulated, as the case may be, in jurisdictions outside India;

What constitutes rumour?

Inclusions

- Unofficial/ selectively disclosed information
- about a material event or information in terms of Reg 30
- that, if verified to be true, would require disclosure by the company on reaching a certain stage or SMR
- constitutes both
 - impending specific material information that would have triggered disclosure u/r 30 at a later stage
 - specific information about material information or event that does not exist

Exclusions

- Any matter, news or comments on matters of general relevance, not directly related to any event or development pertaining to the company;
- Some person's interpretation or analysis of, or views on official intimation of disclosure made by company
- Any comparison or analysis of company with that of any of its peers, other companies or entities
- A pure conjecture, speculation of imprecise or incoherent nature, or a generic statement which any reasonable person would not have related with or referring to any material event or development.

Responding to rumours: Getting the grip of 30(11)

Is this rumour requiring a response?	How does the company get to know? Where does it respond?	What would be the company's response?	Information integrity checks
<p>If the answer to either question is “yes”</p> <ul style="list-style-type: none"> • Is it an impending development, which, at appropriate stage, would have required disclosure u/r 30 (11)? • There is no such development, but had it been there, it would have required reg 30 disclosure? 	<p>Check for any rumour if:</p> <ul style="list-style-type: none"> • There is an unusual market reaction in the company's securities. • There is a question from the stock exchange about some rumoured information <p>No need to continuously scan press for any such news or rumours.</p>	<p>Deny, if there is no such news or information.</p> <p>If there is a news or information, even though not mature for disclosure, the publication of the rumour forces the company to make disclosure.</p> <p>It discloses the current stage of development</p> <p>Consider what best describes: preliminary, non-binding, pre-approval or pending approval (if so, whose approval), etc.</p>	<p>A rumour about an impending news or information implies a leakage.</p> <p>Leakage is serious, and hints at the failure of internal controls on price sensitive information. PIT controls are in question. Boards should take it seriously.</p> <p>Investigate.</p> <p>Plug.</p> <p>Report the result of any enquiry into leakage to SEBI (9A(5) of PIT Regs)</p>
<p>If answer to both is “no”, the matter does not come u/r 30</p>	<p>After checking the rumour, respond to SE</p>	<p>(see next slide)</p>	

Disclosing current stage of impending material event

Exploratory stage	Preliminary	Non-binding	Pre-approval stage	Pending approval
<p>Given the fact that all agile companies are always exploring options and possibilities, if the stage is purely exploratory, the company may actually deny the existence of any news or information.</p> <p>The news in question has not even been born.</p>	<p>Discussions are on. Parties have been identified. Parties have begun their due diligence. However, neither party has made any offer yet.</p>	<p>Either party has made a non-binding offer.</p>	<p>The matter is awaiting an approval from one or both the parties at their ultimate approving authority.</p>	<p>The matter is awaiting approval / sanction from one or more authorities. This approval is a prerequisite to proceed with the transaction.</p>



Guidance on disclosure of certain items under Schedule III

r/w SEBI Circular dated July 13, 2023

Broadening the indicative list of disclosure requirements



Disclosure of regulatory actions taken or initiated (New insertion under Sch. III.A.A)

Basis of comparison	Clause (19) of Schedule III.A.A.	Clause (20) of Schedule III.A.A.
Actions covered	<p>Actions initiated or order passed in respect of the following:</p> <p>(a) search or seizure; or</p> <p>(b) re-opening of accounts under section 130 of the Companies Act, 2013; or</p> <p>(c) investigation under the provisions of Chapter XIV of the Companies Act, 2013</p>	<p>Actions taken or orders passed in respect of -</p> <p>(a) suspension;</p> <p>(b) imposition of fine or penalty;</p> <p>(c) settlement of proceedings;</p> <p>(d) debarment;</p> <p>(e) disqualification;</p> <p>(f) closure of operations;</p> <p>(g) sanctions imposed;</p> <p>(h) warning or caution; or</p> <p>(i) any other similar action(s) by whatever name called;</p>
Stage of disclosure	On the initiation of an action.	On passing of appropriate orders amounting to action
Actions/orders by	Regulatory, statutory, enforcement authority or judicial body	
Actions/orders against	Listed entity, its directors, KMP, senior management, promoter or subsidiary	
Relating to	The listed entity	
Scope	Restricted to disclosure of 3 events.	Wider scope, covering 9 events.
Timelines	within 24 hours (since these do not emanate from within the listed entity)	

Disclosures required for regulatory action (r/w Reg 30(13))

- Name of the **authority**;
- Nature and details of **actions taken, initiated or orders passed**
- **Date of receipt** of direction or order, including any ad-interim or interim orders, or any other communication from the authority
- **Details of the violation(s)/contravention(s)** committed or alleged to be committed
- **impact on financial, operation or other activities** of the listed entity, **quantifiable in monetary terms** to the extent possible

Reg 30(13) of LODR

*“In case an event or information is required to be disclosed by the listed entity in terms of the provisions of this regulation, **pursuant to the receipt of a communication from any regulatory, statutory, enforcement or judicial authority**, the listed entity **shall disclose such communication, along with the event or information, unless disclosure of such communication is prohibited by such authority.**”*

Whether issue of Show Cause Notice (SCN) amounts to an action taken or action initiated?

- SCN is a formal notice issued by the authority, to a person/entity, requiring the recipient to explain or justify a particular act or omission that is apparently in violation of the provisions
- is a step prior to initiation of action by authorities, if so required
- In Union of India another v. Kunisetty Satyanarayana, SC also observed the same

Examples of regulatory actions to be disclosed under Schedule III.A.A. (1/2)

Action taken	Disclosed under	Remarks
Levying of fines by stock exchanges	Clause 20	Stock exchange may be considered as statutory body as it acts under the aegis of SEBI and has several powers being delegated by SEBI to ensure implementation of rules, regulations guidelines, circulars etc. rolled out by SEBI. Hence, levying fines by stock exchanges should require disclosure.
Notice issued by ROC for u/s 206 of CA	NA	Notice issued by ROC in regard to any inquiry or inspection will not require disclosure until such inquiry or inspection results in investigation
Assessment order by Income Tax Authority	NA	Assessment order is not with regard to the items covered by either of the clauses.
Settlement of proceedings with any regulatory authority	Clause 20	Settlement of proceedings with regulatory authorities is covered
Show cause notice by Tax Authority	NA	Show cause notice is not an action initiated or taken
Letter seeking Clarification by stock exchanges	NA	Clarification letter does not amount to any action taken/ initiated.

Examples of regulatory actions to be disclosed under Schedule III.A.A. (2/2)

Action taken	Disclosed under	Remarks
Search and seizure by a tax department against the LE or against director	Clause 19	Search and seizure fall in the scope of clause 19
Suspension of License under Factories Act, 1948	Clause 20	Suspension of license will construe as action taken under clause 20
Levying of additional fees for delay in MCA filings	NA	Levying of fees is not covered in both the clauses
Appointment of Inspector by Central Government for investigation	Clause 19	Investigation under CA is covered in clause 19

Intimations being filed by companies for fine/ penalty or pending litigation:

- Non-compliance with RBI Regulations
- Penalty by stock exchanges for non-compliance with certain provisions of LODR
- Penalty levied by GST department for excessive claim of ITC
- Penalty under Customs law and Legal Metrology Act - amount as low as Rs. 25,000

Disclosure of frauds and defaults

<p>Deemed material event under Para A of Part A of Schedule III</p>	
<p>Fraud or defaults by a listed entity, its promoter, director, key managerial personnel, senior management or subsidiary or arrest of key managerial personnel, senior management, promoter or director of the listed entity, whether occurred within India or abroad</p>	<ul style="list-style-type: none"> -Default is limited to financial default only -Definition of fraud is inclusive -Disclose as soon as such fraud or default unearthed
<p>Tested for materiality under Para B of Part A of Schedule III</p>	
<p>Frauds or defaults by employees of the listed entity which has or may have an impact on the listed entity</p>	

‘Fraud’ shall include fraud as defined under Regulation 2(1)(c) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

‘Default’ shall mean non-payment of the interest or principal amount in full on the date when the debt has become due and payable.

In case of ‘revolving’ facilities - if the outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, **for more than 30 days**.

Only such ‘default’ which **has or may have an impact on the listed entity**.



Disclosure of certain agreements impacting listed entities

Insertion of Regulation 30A to Listing Regulations read with Clause 5A of Schedule III.A.A.



Disclosure of agreements binding listed entities

What exactly is clause 5A of Sch. III.A.A	What exactly is the obligation on promoters and major shareholders /third parties		Some of the agreements that may potentially require disclosure
Clause 5A, Sch. III.A.A requires SE disclosure of certain agreements where LE may or may not be a party to the agreement	Since the listed entity may not be a party to the agreement, obligation is cast on the “agreement parties” to disclose their agreements to the LE		<ol style="list-style-type: none"> 1. SHAs that deal with management or control of a listed entity. 2. Pledge of holdings by a holding company that may cause change of management 3. Territorial, product or business allocation agreements For e.g. - see SHA governing management, family arrangement on board succession
<ol style="list-style-type: none"> A. Agreements impacting management or control B. Agreements, other than those in normal course of business, imposing restriction or creating a liability 	Usually, SHAs, promoter agreements, family agreements, JV agreements, etc contain clauses on management/ control		
Parties to agreement (“Agreement Parties”)	Timeline for subsisting agreements		These agreements may not come
promoters, related parties, directors, KMPs, employees, and at LE level, or holding entity, subsidiary or associate	For Agreement Parties	31 st July, 2023	<ol style="list-style-type: none"> 1. Lending agreements requiring lender approval for change of control
Does an MOU require disclosure: Non-enforceable understanding may not be an “agreement”	For LE to <ul style="list-style-type: none"> • Intimate to SE • Put on website 	14 th August 2023	<ol style="list-style-type: none"> 2. Agreements which are already shareholder approved or public, with requisite disclosures, E.g. - RPTs



Periodicity of disclosures



Stricter timelines for disclosure of material events and information (1/2)

- Reg 30(6) specifies timelines for disclosure of material events and information
- Guidance on information emanating/ not emanating within the organization may be referred to in Consultation Paper
- Timeline for disclosure of material events/ information given in Part A of Schedule III has been specified in [SEBI Circular dated 13th July, 2023](#)

Extant Regulations	Amendment Regulations
<p>The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:</p> <p>Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:</p> <p>Provide further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within the timelines specified therein</p>	<p>The listed entity shall first disclose to the stock exchange(s) all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following:</p> <p>(i) thirty minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken;</p> <p>(ii) twelve hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity;</p> <p>(iii) twenty four hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity:</p> <p>Provided that disclosure with respect to events for which timelines have been specified in Part A of Schedule III shall be made within such timelines:</p> <p>Provided further that in case the disclosure is made after the timelines specified under this regulation, the listed entity shall, along with such disclosure provide the explanation for the delay.</p>

Stricter timelines for disclosure of material events and information (2/2)

Nature of information	Timelines for disclosure
Developments happening or information originating within a listed entity	Within 12 hours
Information originating outside a listed entity that is informed to the same by a third party	Within 24 hours
Outcome of board meeting for matters specified in Schedule III	Within 30 minutes from conclusion of board meeting
Detailed reasons and other disclosures pertaining to resignation of independent director, KMP, SMP, Compliance Officer, directors	Within 7 days from date of resignation
Schedule of analysts or institutional investors meet	At least 2 clear working days in advance
Presentation and audio/ video recording of analyst/ investor meet	before the next trading day or within 24 hours from the conclusion of such calls, whichever is earlier
Transcripts of analyst/ investor meet	Within 5 working days of conclusion of such call

Events/ information to be disclosed within 12 hours* (Para A Part A)

- Acquisition (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s), the whole or substantially the whole of the undertaking, or subsidiary, or sale of the stake in associate company of the listed entity or any other restructuring
- Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc
- Agreements which are binding and not in the normal course of business, revision(s), amendment(s) thereof, where listed entity is a party
- Agreements impacting listed entity where listed entity is a party
- Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), senior management, Auditor and Compliance Officer (except for resignation)
- Managing Director or the Chief Executive Officer of the listed entity is indisposed or unavailable to fulfil requirements of his/her role in a regular and consistent manner
- Appointment or discontinuation of share transfer agent.
- Issuance of Notices, call letters, resolutions and circulars sent to shareholders, debenture holders or creditors or any class of them or advertised in the media by the listed entity.
- Proceedings of Annual and extraordinary general meetings of the listed entity
- Amendments to memorandum and articles of association of listed entity, in brief
- Initiation of Forensic audit, if initiated by the listed entity
- Voluntary revision of financial statements

Events/ information to be disclosed within 24 hours* (Para A Part A)

- New Ratings(s) or Revision in Rating(s)
- Agreements which are binding and not in the normal course of business, revision(s), amendment(s) thereof, where listed entity is a party
- Agreements impacting listed entity where listed entity is not a party
- Fraud/defaults by promoter or director or key managerial personnel or senior management or subsidiary or by listed entity or arrest of key managerial personnel or senior management or promoter or director.
- Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), senior management, Auditor and Compliance Officer due to resignation
- Resolution plan/ Restructuring in relation to loans/borrowings from banks/financial institutions
- One time settlement with a bank
- Winding-up petition filed by any party / creditors
- CIRP related events
- Initiation of Forensic audit, if initiated by external agency
- Announcement or communication through social media intermediaries/ mainstream media in relation to any event/ information which is material for the listed entity in terms of reg 30 and is not already made available in the public domain.
- Action(s) initiated or orders passed by any regulatory, statutory, enforcement authority or judicial body against the listed entity or its directors, key managerial personnel, senior management, promoter or subsidiary, in relation to the listed entity

Events/ information to be disclosed within 12 hours* (Para B Part A)

- Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division
- arrangements for strategic, technical, manufacturing, or marketing tie-up; or adoption of new line(s) of business; or closure of operation of any unit, division, or subsidiary (entirety or piecemeal)
- Capacity addition or product launch.
- Agreements (viz. loan agreement(s) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof, where listed entity is a party
- Options to purchase securities including any ESOP/ESPS Scheme
- Giving of guarantees or indemnity or becoming a surety, by whatever name called, for any third party

Events/ information to be disclosed within 24 hours* (Para B & C Part A)

- Awarding, bagging/ receiving, amendment or termination of awarded/bagged orders/contracts not in the normal course of business.
- Agreements (viz. loan agreement(s) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof, where listed entity is not a party
- Disruption of operations of any one or more units or division of the listed entity due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.
- Effect(s) arising out of change in the regulatory framework applicable to the listed entity.
- Pendency of any litigation(s) or dispute(s) or the outcome thereof which may have an impact on the listed entity
- Frauds or defaults by employees of the listed entity which has or may have an impact on the listed entity.
- Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals
- Delay or default in the payment of fines, penalties, dues, etc. to any regulatory, statutory, enforcement or judicial authority

- Any other information/event viz. major development that is likely to affect business, e.g. emergence of new technologies, expiry of patents, any change of accounting policy that may have a significant impact on the accounts, etc. and brief details thereof and any other information which is exclusively known to the listed entity which may be necessary to enable the holders of securities of the listed entity to appraise its position and to avoid the establishment of a false market in such securities

**Note: In case the event or information emanates from a decision taken in a meeting of board of directors, the same shall be disclosed within thirty minutes from the closure of such meeting as against the timeline already indicated.*

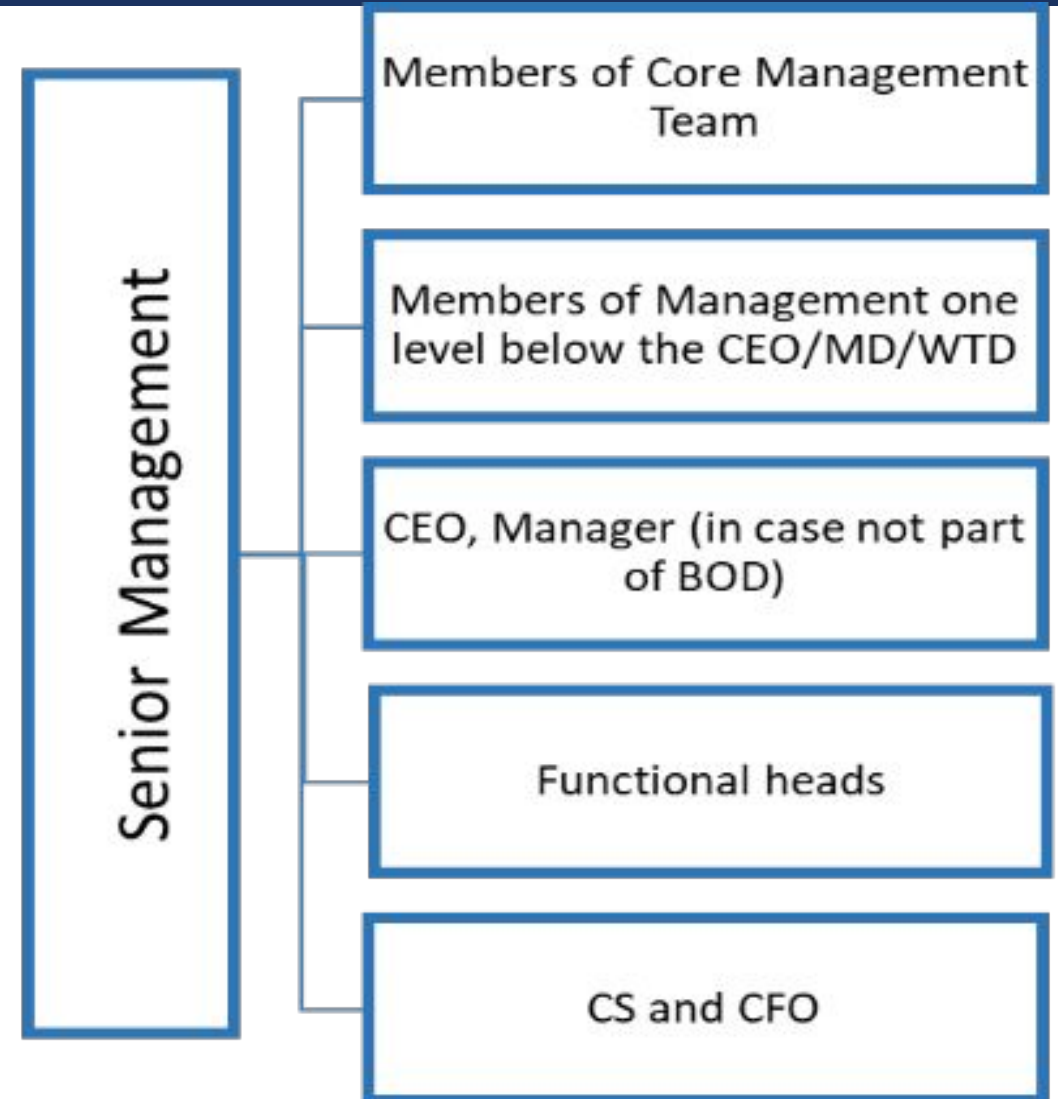


Senior Management Personnel - identification and obligations



Senior Management Personnel (SMPs): Companies to relook at the tag

- Defined u/s 178 of CA and Reg 16 of LODR
 - members of core management team
 - generally include CEO, CFO, CTO, CRO, COO etc
 - members of management one level below the CEO/ MD/ WTD/ Manager
 - functional heads
 - should ideally mean head of core functions
- Appointing Authority
 - Board, on recommendations of NRC
 - as per criteria for appointment fixed by NRC
- Remuneration
 - as per Remuneration Policy of the LE



Provisions pertaining to SMPs

Obligations of LE

- Intimating change in SMPs to the stock exchange
 - In case of resignation, along with the letter.
- Disclosure of particulars of SMPs to be given in Annual Report [Clause 5B of CG Report under Schedule V]
 - including changes thereto
- Intimation u/r 30 in the event of
 - Fraud/ default by/ arrest of SMP [clause 6 of Para A of Part A of Sch III]
 - default that has an impact on the listed entity
 - Change in SMP [clause 7 of Para A of Part A of Sch III]
 - Resignation of SMP [clause 7C of Para A of Part A of Sch III]
 - Announcement/ communication through social media intermediaries or mainstream media by SMPs [clause 18 of Para A of Part A of Sch III]

Obligations of SMPs

- act with operational transparency while also maintaining confidentiality of information [Reg 4(2)(f)]
- Adhere to code of conduct and affirm compliance on an annual basis [Reg 26(3)]
- disclose all material, commercial and financial transactions in which they have personal interest and which may lead to potential conflict of interest with the listed entity at large [Reg 26(5)]
- Other obligation arising as relevant employee under Reg. 30
- Disclosure requirements under Para A of Schedule III
 - Fraud, default, arrest
 - Resignation letter
 - Actions initiated or taken, order passed under Para A (19)
 - Actions taken, order passed under Para A (20)
- Obligations as a Designated Person under PIT Regs



Amending policy on materiality of events or information

Guidance to KMPs and relevant employees for timely disclosure



Amendments required to Materiality Policy

- Reg 30(4)(ii) of LODR
 - Requires LE to frame a policy for determination of materiality
 - In identifying any potential material event, and
 - Reporting the same to authorized KMP
 - Policy to not dilute any provisions of existing Regs
- What should the Policy provide?
 - Broad principles on manner of determining
 - expected impact on value
 - significant market reaction
 - market rumours
 - materiality for events relating to subsidiary
 - other material events or information
 - recording of decisions taken
 - guidance of Schedule III items - unit, division, nature of agreements etc and occurrence of event
 - Roles and responsibilities of board, authorized KMPs, Compliance Officer, other relevant employees
 - SOP will be internal document framed basis the
- Who can be “relevant employees”?
 - Depending on the nature of event; events may be diverse and may arise anywhere within the LE
 - Material event/ information may flow from any department of LE
 - Hence HoD of all departments and functions may be included
 - **Are DPs the “relevant employees” for escalating the information?**
- Are the “Amendments further require policy to assist “relevant” employees
- evant employees” required to determine materiality of an event or information?
 - No, ultimate responsibility rests with authorized KMPs
 - Relevant employees are required to identify any potential material event and report to KMP for further determination and disclosure
- How can “relevant employees” assist in the same?
 - Needs to be sensitized on events/ information that are usually considered material
 - Quantitative thresholds may be provided with
 - Additional guiding criteria to supplement
- Can LE have internal SOPs instead of complete disclosure in the policy?
 - Seems to be so, policy, in turn, may refer to the SOP

Indicative Outline of SOP

■ Purpose and Coverage

- explaining its importance in complying with Reg 30

■ Regulatory Framework

- including the relevant provisions of Listing Regulations, and any other applicable guidelines or circulars;
- reference of policies framed under Insider Trading Regulations to be added

■ Definitions and Key Terms

- definitions for relevant terms used in the SOP to ensure clarity and understanding among users.

■ Roles and Responsibilities

- Identifying 'relevant employees' for escalation of the details of event / information to Authorised KMPs
- Identifying employee(s) who needs to ensure regular follow up on the understanding and implementation of the process under the SOP
- Setting out the mechanism for flow of information from the source of information/ event to the KMPs

■ Materiality Determination

- Guidance on Schedule III items (Para A of Part A)
- Defining criteria and methodology for determining material events/ information (Schedule III Para B of Part A)
- Guidance on the matters falling outside the list of Schedule III to be identified as a potential material event/ information for escalation

■ Rumour Verification

- What is a rumor? What will be the scope of a rumor
- How to differentiate between "rumor" and "misinformation"
- How will the Company become aware about the rumor
- When does the Company respond to rumor? Manner of responding.
- Ascertaining any instance of leak of UPSI

■ Timeline & Disclosure

■ Communication & Training

■ Monitoring & Compliance

■ Record Keeping & Documentation

■ Review & Revision



Overview of important concepts under PIT Regulations

MEANING OF DP, CP AND DEEMED CP



Applicability of PIT Regulations

Applicability

Listed companies
(refers to both equity and debt listed companies)

Proposed to be listed companies

Intermediaries

Fiduciaries

Units of mutual fund

These individuals/ institutions are specifically included as by virtue of their role they may have access to UPSI of listed company

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

DP vs. CP vs. Insider

DP

Designated by Company as to have access to UPSI

Determined on the basis of function and seniority

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

CP

Associated with company during 6 months prior to the concerned act

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

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

Insider

Connected person

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

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

Insider

DPs: Position or function gives access to UPSI

CP (Presumed Insider)

Unconnected, but in possession of UPSI

**Deemed CP:
(Rebuttable presumption)**

Insider

- Insider has two limbs
 - Insider-insider
 - Connected person
 - Outsider
 - But having or having access to inside information
- Difference in the nature of obligations of outsiders and insiders
 - In case of connected persons
 - Onus of proving innocence is on the insider
 - In case of outsiders
 - Onus is on SEBI

Obligations of Insider

- Insider shall not communicate, provide, allow access to UPSI
- No person shall procure or cause communication by any insider
- Insider shall handle UPSI on 'need to know basis'
- Share UPSI only for legitimate purpose
- Insider shall not trade in securities of the Company while in possession of UPSI

Designated Person (DP)

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

Who is a Designated Person?

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

FUNCTION

Eg- Accounts department by virtue of their function shall have access to financial statements even before approval
Secretarial department by virtue of their function shall have access to Board Minutes/AGM Minutes even before finalisation

SENIORITY

Eg- first two layers of organisational ladder are presumed to have access to UPSI at all times.

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**

On the basis of their functional role or access to UPSI in the organisation

“material subsidiary” means a subsidiary, whose income or net worth exceeds 10% of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

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)*

Connected Person (CP)

■ **Connected Person** means-

- any person who is or has been associated with a company, directly or indirectly, in any capacity
- during 6 months prior to the concerned act
- including by reason of frequent communication with its officers
- or by being in any contractual, fiduciary or employment relationship
- or by being a director, officer or an employee of the 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.

- Meaning of Officer not defined in PIT Regulations
- Section 2 (59) of Act 2013 defines officer as
- *"officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.*
- SEBI *vide* its order in the matter of ITC Limited held that head of human resource department as an "officer"
 - and therefore guilty of violation of the Regulations 1992
 - penalty imposed - Rs. 5 lakh

Deemed to be Connected Person

■ **Deemed to be connected person** means

- an immediate relative of connected person
- holding company or associate company or subsidiary company
- an intermediary as specified in section 12 of SEBI Act or an employee or director thereof
- an investment company, trustee company, AMC or an employee or director thereof
- an official of a stock exchange or of clearing house or corporation
- a member of board of trustees of a mutual fund or a member of the board of directors of the AMC of a mutual fund or is an employee thereof
- a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of Act, 2013
- an official or an employee of a self-regulatory organization recognised or authorized by the Board
- a banker of the company
- a concern, firm, trust, HUF, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than 10% of the holding or interest.

- There is no concept of investment company in India.
- The investment companies are real investment companies
- The phrase therefore seems to have been taken from international laws
- “banker of the company” is also a deemed connected person
- Since the stress is on frequent communication, the relationship manager who has such access must be taken to be “deemed connected”



Restrictions on Contra-trade

APPLICABILITY IN CASE OF ESOP AND PLEDGE OF SECURITIES



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).
- Recent SEBI FAQs clarify that contra trade restrictions applicable for only open market trades, i.e., otherwise than by way of a corporate action (*refer FAQ no. 36*)

Exception: trades pursuant to exercise of stock options

Applicability of PIT Regulations on ESOPs

Stage of ESOP	Contra trade restriction	Pre-clearance requirements	Disclosure requirements
Grant of ESOPs	Not applicable since no trade <i>per se</i>	Not applicable since no trade <i>per se</i>	Not applicable since no trade <i>per se</i>
Exercise of ESOPs	Exempt in terms of Clause 10 of Schedule B	Not applicable (refer SEBI FAQ no. 25)	Disclosures are system-driven
Sale of shares acquired pursuant to ESOPs	NA from exercise of ESOPs, but applicable in case of “buy” transaction prior to ESOP exercise (refer SEBI FAQ no. 36)	Applicable	Disclosures are system-driven

Applicability of PIT Regulations on pledge of shares

- SEBI, in its Guidance Note of 2015 regarded pledge as trade.
- In the Comprehensive FAQs on PIT Regulations, SEBI clarified a step further covering the stages of pledge to the effect that trading would include creation/invocation/revocation of pledge.
- Consequently, every restriction and compliance requirement applicable to a trade undertaken by a Designated Person ('DP') is equally applied in case of pledge of listed securities.
- In the matter of *PTC India Financial Services Limited v. Venkateshwar Kari and Another* (*'PTC India ruling'*), Hon'ble Supreme Court upheld that "beneficial ownership" in the context of the Depositories Act should not be confused with beneficial ownership in law as it is merely a procedural precondition to sale by the pawnee. Further, that there is no concept of 'sale to self' by the pledgee and that the pledgee is bound by the two options provided under Section 176 of the Indian Contract Act, 1872 (*'ICA, 1872'*), viz., right to bring a suit against the pawnor and retain the goods pledged as collateral security, or sell the thing pledged on giving reasonable notice to the pawnor and sue for the balance, if any.

Stages of pledge and applicability of PIT Regulations (1/2)

Stage of pledge	Impact	Contra trade restriction	Pre-clearance requirements	Disclosure requirements
Creation of pledge	Lock-in of shares in demat account of pledgor	Not applicable since bona-fide purpose	Applicable, though perfunctory since TW closure restrictions does not apply	Disclosures are system-driven
Release of pledge	Satisfaction of charge resulting in unlocking of shares	Should not be applicable since the same does not result into any acquisition/ disposal		Disclosures are system-driven
Notice of invocation of pledge	No dealing in securities, only intimation of intention by lender	No compliance requirements		

Stages of pledge and applicability of PIT Regulations (2/2)

Stage of pledge	Impact	Contra trade restriction	Pre-clearance requirements	Disclosure requirements
Invocation of pledge	Pawnee gets registered as a beneficial owner upon default	Cannot be applicable since invocation is triggered on default, not under the control of pawnor	Perfunctory requirement for the same reason	System driven
Redemption of pledged securities	Transfer of securities to pawnor	Applicable. However, should not apply considering that the same is consequential to settlement of dues		System driven
Sale of pledged securities	Disposal of securities	Should not be applicable considering that the trading decisions were taken by persons other than the pawnor, who is the DP		System driven



UNPUBLISHED PRICE SENSITIVE INFORMATION (UPSI)



Restrictive provisions under PIT Regulations

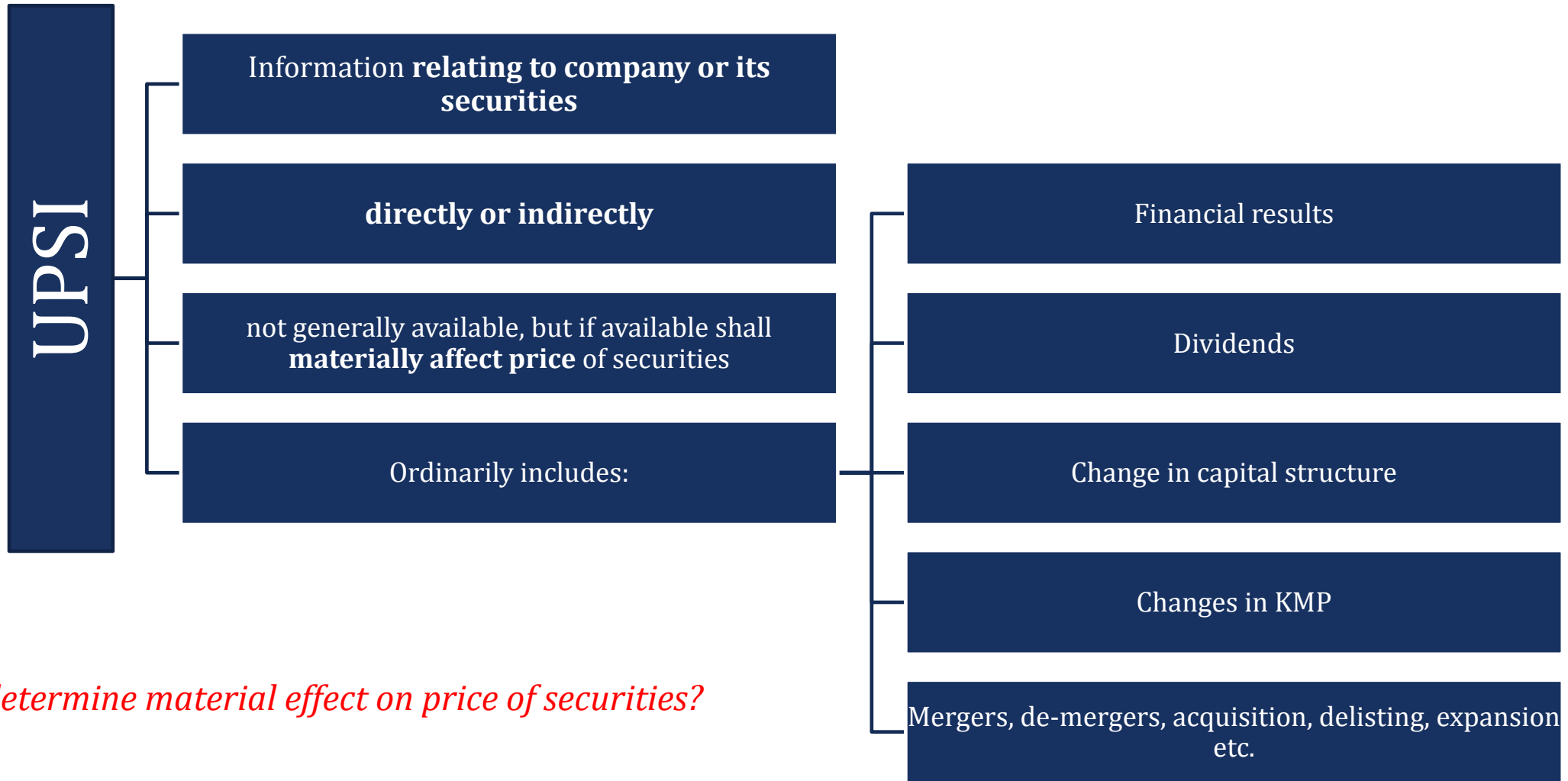
Restriction on communication of UPSI

- No person shall:
 - Do what?
 - procure from or cause the communication by any insider
 - With respect to?
 - UPSI, relating to a company or securities listed or proposed to be listed
- **Exception**
 - in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.
- The restriction is on passing and procuring of UPSI

Trading on the basis of UPSI

- No insider shall trade in securities that are
 - listed or
 - proposed to be listed
- When?
 - while in possession of UPSI
- When a person who has traded in securities has been in possession of UPSI, his trades are presumed to have been motivated by the knowledge and awareness of UPSI.

Unpublished Price Sensitive Information (UPSI)



How to determine material effect on price of securities?

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
 - 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
- **Debt-related UPSI**
 - Debt-restructuring arrangements or intercreditor 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/ 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

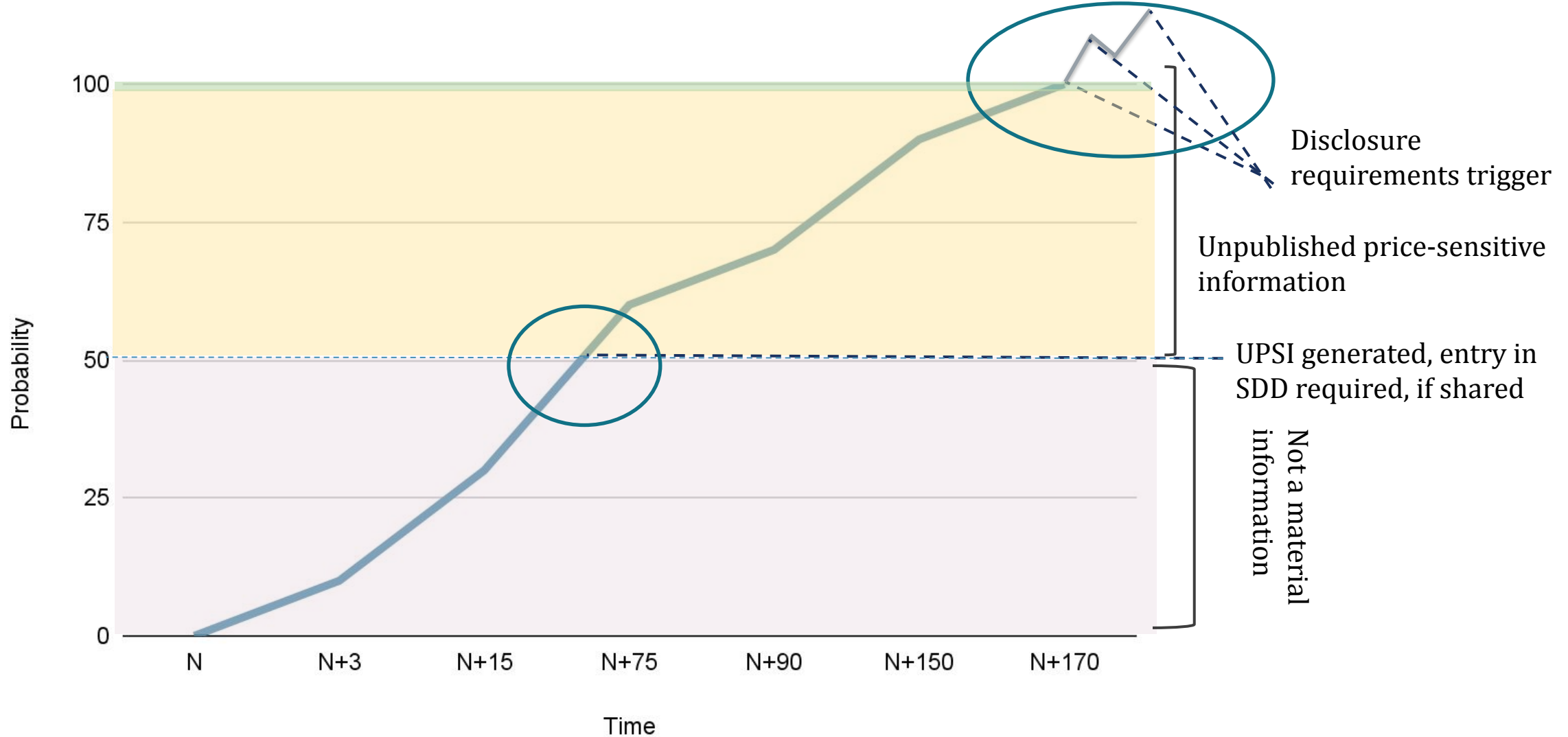
“Information” and parties to the information

- When does something become “information”?
- For it to be UPSI, it has to be “information”
 - The meaning of the term “information” has to fit into overall meaning of UPSI:
 - Mere intent, desire, or dream cannot be regarded as information.
 - Information has to weigh 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”.
 - Material nonpublic 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*
- 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”

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+ 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**
 - **N+200 Subscription to shares of WOS**
 - **N+300 Tender cancelled for uncontrollable reasons**

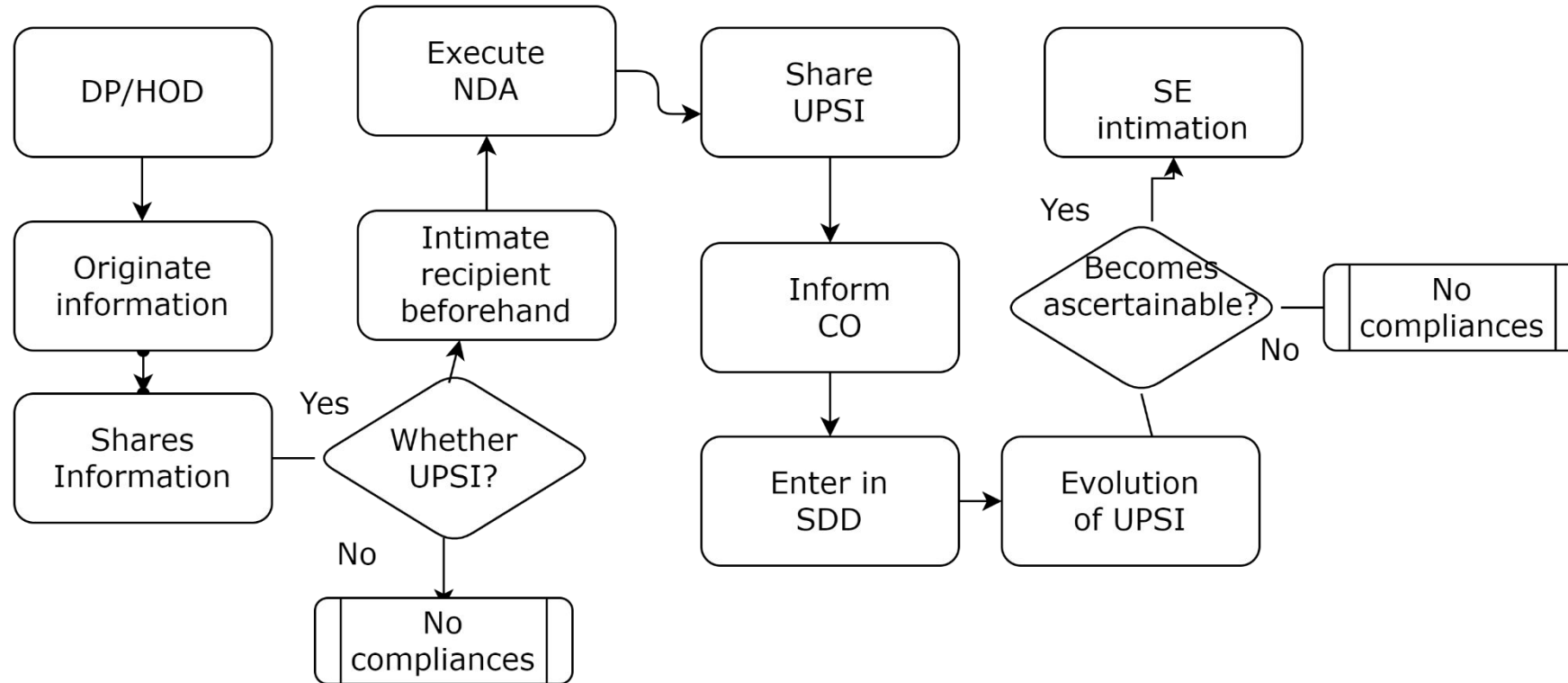
Metamorphosis of “information” from “origin” to “publication”



SEBI's proposal of linking UPSI with Reg 30

- SEBI *vide* its Consultation paper dated 18th May, 2023 has proposed to **re-include “material event in accordance with Regulation 30”** of Listing Regulations in the definition of UPSI.
 - was explicitly taken out *vide* an amendment effective from 1st April, 2019
- Potential consequences:
 - Even events which are though material but not in the nature of UPSI will also come into the purview of same
 - Leading to the formalities like entry in SDD, closure of trading window etc. even for those events which are not in the nature of UPSI
- **What could be the way out?**
 - Including only the following under the definition of UPSI
 - Matters included in Part A : Para B and C
 - which have been tested for materiality using the given thresholds
 - From the point of germination and identification
 - Till the same is made publicly available

Stages of information and dealing with the same



- ❑ Information tends towards concretization as UPSI when the probability of it being materialised is higher than that of not going ahead with the same (*FAQ no. 5*).
- ❑ Example – A company is evaluating various proposals for growth by way of making investments in small companies with similar objectives. The company proceeds to shortlist 3-4 companies and further initiates due diligence for one of them. Here the information has concretised and therefore, seems to be the point for recognition as an UPSI.



STRUCTURED DIGITAL DATABASE



What is Structured Digital Database?

Structured  Digital  Database

- **“Database”** containing flow of sharing of UPSI
 - Maintained on a **“digital”** platform
 - In a **“structured”** manner so as to track the complete flow of information
- Details of **“sharing”** of information in the nature of **UPSI** required to be maintained
 - **“Sharing”** of information
 - The word “sharing” implies that the recipient did not have, or was not usually expected to have, access to the information
 - There cannot be a sharing of information with someone who is already in possession of the information/ is the originator of such information
 - Only for **UPSI**
 - Refer discussion in earlier slides

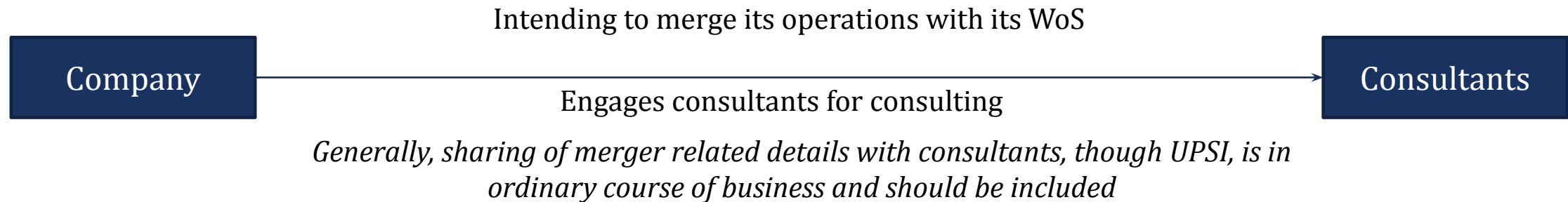
Regulatory basis

- The requirement comes from Reg 3 (5) and 3 (6) of the PIT Regs
- The requirement should be read with Reg 3 (1), Reg 3 (2) and Reg. 3 (4)
 - 3 (1) - *an insider is prohibited from sharing any UPSI, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.*
 - 3 (2) - *no person shall procure from or cause the communication by any insider of UPSI, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations*
 - Further, reg 3 (4) provides non-disclosure and confidentiality agreements to be entered into and intimation to recipients about maintaining confidentiality of the information received and abstaining from trading in the securities during the said period.
- *(5) 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 also the names of such persons with whom information is shared under this regulation 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 shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.*
- *(6) 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.*

Sharing of UPSI for legitimate purpose

■ 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.



Whether this is legitimate purpose?

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

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

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 (for listed entity, fiduciary and intermediaries)

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:					

Note 1:

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;

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*)

Various aspects of SDD maintenance and responsibility centers (1/2)

Item	Responsibility center	Comments
Overall internal controls in the matter of insider trading	CEO/MD or such other analogous person	Reg 9A(1) requires the CEO/MD/ such other head to put in place adequate and effective system of internal controls
Instituting structured digital database, in accordance with Reg 3 (5), ensuring access and preservation as per reg 3 (6)	Board of directors	Without absolving of its overall responsibility, the board may delegate the matter to a competent person, say, Compliance Officer. Ref definition in Reg 2(1)(c) of PIT Regs
Ensuring that UPSI is shared with an outsider only on need to know basis, after NDA, etc	Board of Directors, all DPs and persons covered by the Code of Conduct under PIT Regs	The Code of Conduct for the DPs require all information to be handled on a “need-to-know” basis. Further, the board of directors is mandated to require parties, receiving UPSI, to execute NDAs for maintaining confidentiality and ensuring non-dealing in securities.

Various aspects of SDD maintenance and responsibility centers (2/2)

Item	Responsibility center	Comments
Recipient of UPSI, having been intimated that the information is confidential, needs to ensure that the information is not shared	Recipient of the information - head of the Fiduciary or intermediary, or other entity receiving information	Reg 9(2) puts a responsibility on the recipient of UPSI to formulate a code of conduct to regulate, monitor and report trading by their DPs and immediate relatives.
When UPSI is shared, person sharing the UPSI needs to ensure it is entered in SDD	Depending on controls put up by the board, either the person sharing the UPSI, or, on intimation, the Compliance Officer	Primary responsibility lies on the board of directors or head of the organisation. Access control centers should be established as per written internal mandates.
Certificate for SDD as per SE format	Sec auditor under ASC report Compliance officer or PCS if not covered under Reg 24A of LODR	SE circular dated 28th Oct, 2022 read with 29th Mar, 23 requires quarterly certification of compliance with maintenance of SDD and entries in SDD for entities not covered under Reg 24A of LODR
Matters pertaining to SDD - tamper proof, access controlled, 8 year preservation, etc	Board of directors or head of organisation	Primary responsibility is on the board of directors or head of organisation. Being an IT based function, these matters are required to be ensured at the time of design/ purchase of software for maintenance of SDD.

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”
- server has to be maintained internally
 - vendor shall not have access to login (FAQ no. 8)

Reporting of compliance with SDD requirements

- **Annual Secretarial Compliance Report** under Reg 24A of LODR Regulations
 - Requires **PCS to affirm compliance** with Reg 3(5) & (6) of PIT Regulations (refer NSE circular dated 16th March, 2023)
 - Applicable on **all equity listed entities and HVDLEs**
 - Except entities exempt from corporate governance provisions of LODR
- For **entities not covered by Reg 24A**
 - **SDD compliance certificate** to be submitted (refer NSE circular dated 29th March, 2023)
 - **Quarterly – within 21 days** from end of each quarter
 - To be **certified by the Compliance Officer of the LE or PCS**
 - As per **format** provided *vide* circular dated 28th October, 2022 (*refer next slide*)

Format of 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 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

■ Practical lapses:

- Non-capturing of material events as UPSI and SDD maintenance during prelim phase
- SDD as database of UPSI instead of sharing of UPSI
- Multiple persons having access to making entry in SDD, therefore, becoming privy to existence of UPSI
- Non-maintenance of SDD

- As per NSE circular dated 4th Nov, 2022 read with circular dated 25th Jan, 2023
 - 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
- Penalty may be levied under SEBI Act (refer next slide)

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	Minimum Rs. 1 lakh, maximum Rs. 1 lakh for each day during which default continues subject to a maximum of Rs. 1 crore
Section 15G	Dealing in securities of the company while in possession of UPSI	Minimum Rs. 10 lakhs, maximum Rs. 5 crores or 3 times the amount of profits made out of insider trading, whichever is higher
	Communication of UPSI	
	Counselling or procuring of UPSI	
Section 15HB	Non-compliance of any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided	Minimum Rs. 1 lakh, maximum Rs. 1 crore

Applicability of SDD requirements on Intermediaries/ Fiduciaries

- **Applicability**
 - Reg 3(5) &(6) applicable to all organizations required to handle UPSI, therefore applicable
 - In the same manner as applicable to the listed entity
- **When to be entered? On Sharing or Receiving?**
 - Receiving of UPSI from listed entity also required to be recorded
 - Refer SE FAQs no. 2
 - Also provided in SEBI FAQs on PIT Regulations (FAQ no. 6)
 - Relevance of maintaining a counter entry not clear
 - May be a compliance nightmare for Banks/ Merchant Bankers etc.
 - How to ascertain an entry is needed?
 - Upon signing of NDA
 - Receipt of intimation from the listed entity that UPSI has been shared
 - Details required for entering in SDD to be obtained from listed entity.
 - Onward sharing of UPSI as received from the listed entity on a “need-to-know” basis
 - Sharing of UPSI, relating to the listed entity, with the listed entity
 - Originating at their end
- **Requirement of submission of SDD compliance certificate**
 - Not applicable as the circular is applicable only on listed entities (both equity and debt).
- **Other requirement under PIT Regulations**
 - Framing of Code of Conduct
 - Identification of Designated Persons
 - Maintenance of restricted list



Trading Window Closure and Freezing of PAN



Closure of Trading Window

■ Trading Window

■ In case of Financial Results

■ Trading window shall be closed:

30th June, 2023 (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

EXCEPTIONS: Trades permitted during window closure

Inter se transfer between insiders

Transaction executed through block deal mechanism by insiders

Carried out pursuant to statutory or regulatory obligation

Pursuant to ESOPs where exercise price was pre-determined

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

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

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

trades carried out in accordance with a trading plan

Freezing of PAN during Trading Window Closure

- SEBI *vide* SEBI Circular dated August 5, 2022 read with SEBI Circular dated July 19, 2023 read with BSE & NSE Circular dated June 28, 2023 notified freezing of PAN for TW closure
- Whose PAN is frozen?
 - for **DPs of LEs**
- For which securities?
 - w.r.t. **ISINs of equity shares and securities convertible into equity**
- For which events of TW closure?
 - in case of TW closure for **declaration of financial results**
- Type of transactions covered
 - **for on-market transactions, off-market transfers and creation of pledge**
- **Quarterly reporting by depositories**
 - Details of number of LEs on whom requirement is applicable
 - No. of PANs of DPs provided by each LE for freeze
 - Total no. of accounts in which PAN-ISIN level freeze was levied for the quarter
 - Total no. of exemptions given by LEs to DPs
 - *for cases falling under clause 4(3) of Schedule B*

Applicability of provisions relating to Freezing of PAN

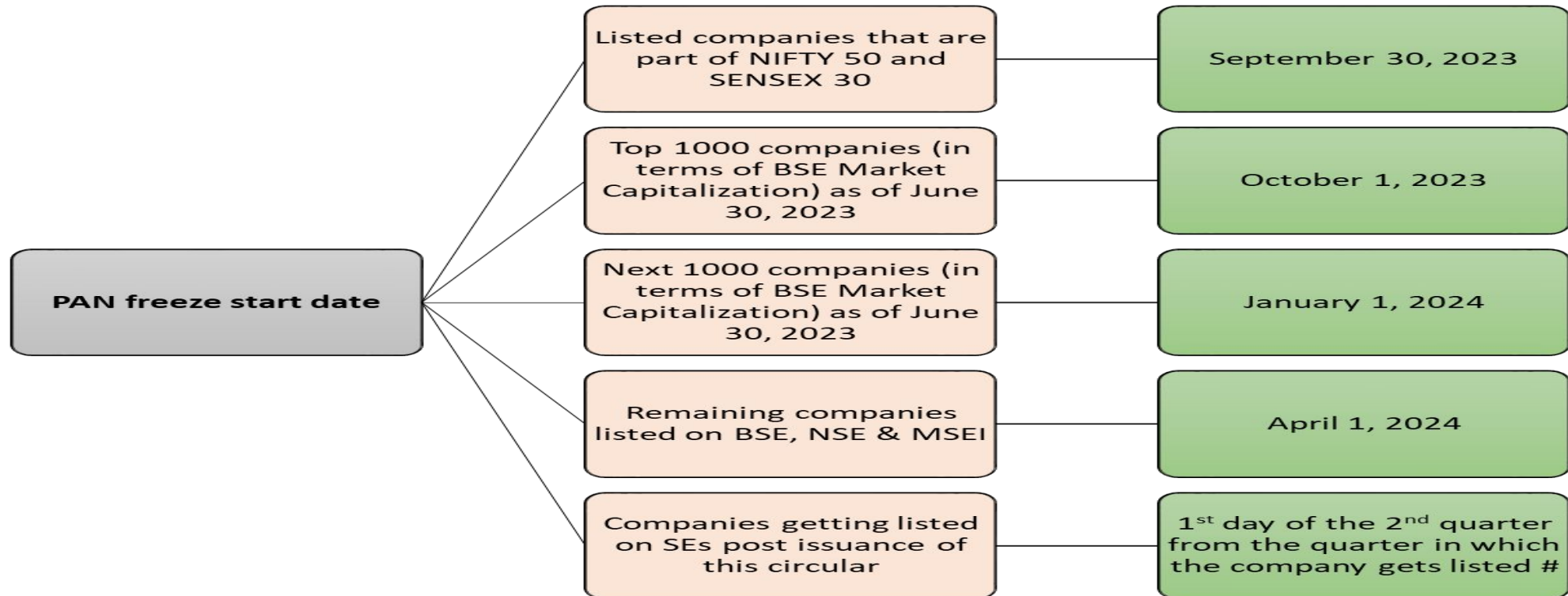
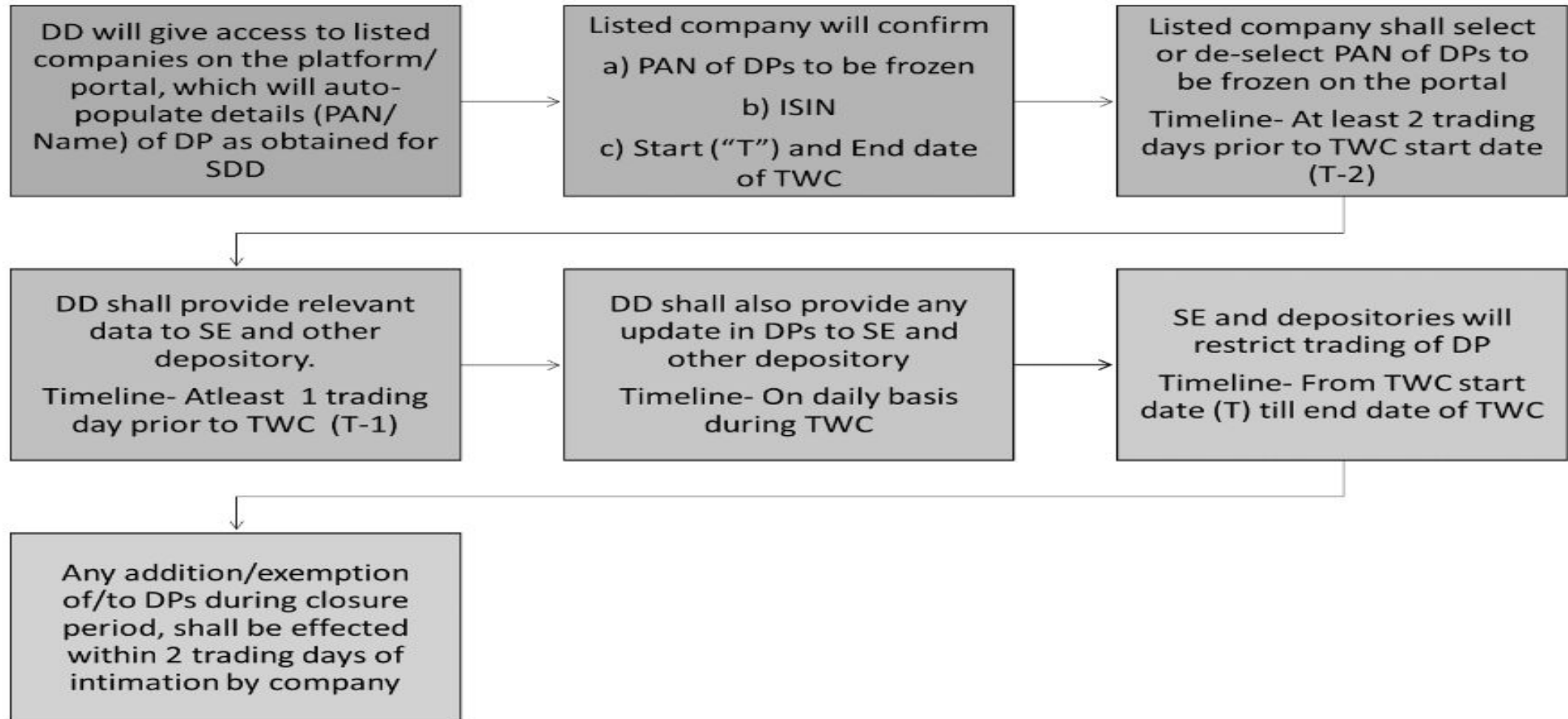


Illustration: For a company getting listed during January 01 to March 31, 2023, PAN of DPs should be frozen at security level as per prescribed framework latest from July 01, 2023.

Procedure to be followed for freezing of PAN during TW closure



Whether trading window (TW) closure should be intimated to the SE?

- Companies inform the stock exchange about the trading window closure period at the beginning of every quarter.
- BSE, *vide* its circular dated [February 03, 2014](#), advised the companies to disclose the applicable trading window closure period while disclosing the UPSI.
 - to inform the stock exchange that for a particular UPSI, the company had closed the trading window. Such intimation was to be given while disclosing UPSI and not when the UPSI was generated.
- NSE [Circular dated June 14, 2023](#) seeking comments on XBRL migration of TW closure announcement
 - Indicates SE intimation is required for TW closure
- TW closure to contain the following information (as per NSE draft format)
 - Name of the company and SE code
 - Type of announcement – new/ revision
 - Type of event – TW closure
 - Date of original announcement
 - **Should be applicable only in case of revision announcement**
 - TW start date and end date
 - Details of TW end date
 - Purpose of closure of TW
 - **Category of UPSI may be disclosed**
 - Any other disclosure w.r.t. compliance of any SEBI Act, Regulation, Circular or provision
 - Any other information
 - Remarks (separate remarks may also be provided for SE that will not be disseminated on website)
 - Date of report