FAQs on SEBI (Prohibition of Insider Trading) Regulations, 2015

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Insider trading is nothing but a 'white collar' crime. There are plenty of other white collar crimes, and more so in the world of digital technology. But the enormity of insider trading as an offence is explained by the fact that insider trading 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.

The seriousness that global regulators attach to insider trading may be viewed in several ways. If one were to refer to prominent public figures who have been prosecuted for insider trading offences, one would come across several stars of their good times who have later spent months in incarceration. This page on CNBC lists some of these cases. It may also be interesting to read a brief timeline of insider trading on NY Times page.

The attention that the subject has received may also be gauged from the movies on the theme: from The Wall Street (1987) to The Inside Job (2010), there are a plenty of titles. Closer hope, Sucheta Dalal and Debashis Basu's work on Harshad Mehta also got filmed as Scam 1992.

Insider trading is a crime prevalent across the globe and it exists almost dating back from 19th Century. Insider trading laws have developed over time. As asynchronous and non-democratic information can result into gains, there are variety of ways insiders have used to make a quick buck. As these methods proliferate and evolve, the law continues to change, mostly as a reaction.

In India, the first legislation to regulate stock exchange was Bombay Securities Contract Act, 1925. Thereafter various committees were formed to amend the legislation so as to assess the shortcomings. The present Securities (Contract) Regulation Act, 1934 is a result of recommendations of Goral Committee. However, the said Regulations did not contain any provision for curbing insider trading. Once the instances of insider trading was felt, it was then that the erstwhile regulations i.e. SEBI (Prohibition of Insider Trading) Regulations, 1992 (1992 Regulations) were recommended after taking into consideration the provisions as contained in the US and UK laws. Who will be an insider and what information should be regarded as price sensitive amongst other provisions was laid down by way of the said regulations.

The High Level Committee under the Chairmanship of N.K. Sodhi (Former Chief Justice) and the Committee on Fair Market Conduct under the Chairmanship of Dr. T.K. Viswanathan (Ex-Secretary General, Lok Sabha and Ex-Law Secretary) recommended amendment in PIT Regulations, 1992 and PIT Regulations, 2015 respectively based on experience gained from various cases of insider trading.

The 1992 Regulations had been replaced by SEBI (Prohibition of Insider Trading) Regulations, 2015 (the "Regulations"). The Regulations contained several new features, the scope of the Regulations was widened and the net of the provisions was casted too wider to get within its ambit almost every person who can be deemed to be an insider so as to curb this unfair trade practice. The Regulations have been further amended in the year 2018, 2019, 2020 and 2021 vide the following:

a. ***SEBI (PIT) (Amendment) Regulations, 2018 (w.e.f April 01, 2019);***
b. ***SEBI (PIT) (Amendment) Regulations, 2019 (w.e.f January 21, 2019);***
c. ***SEBI (PIT) (Second Amendment) Regulations, 2019 (w.e.f July 25, 2019);***
d. ***SEBI (PIT) (Third Amendment) Regulations, 2019 (w.e.f December 26, 2019);***
e. ***SEBI (PIT) (Amendment) Regulations, 2020 (w.e.f. July 17, 2020);***
f. ***SEBI (PIT) (Second Amendment) Regulations, 2020 (w.e.f. October 29, 2020);***
g. ***SEBI (PIT) (Amendment) Regulations, 2021 (w.e.f. April 26, 2021);***
h. ***SEBI (PIT) (Second Amendment) Regulations, 2021 (w.e.f. August 5, 2021);***
i. ***SEBI (PIT) (Amendment) Regulations, 2022 (yet to be effective).***

Since the existing set of FAQs was based on the initial set of Regulations and as mentioned above, the same has been amended on various occasions now, a review of the same was needed. Keeping this in mind, below we discuss and delve into some important issues connected with the Regulations so amended by way of the FAQs.

Further, the snapshot of the amendments till July, 2020 as presented by one of our colleagues on the Regulations can be viewed here.

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Glossary

AIFs	Alternative Investment Funds
AMC	Asset Management Company
BoD	Board of Directors
CEO	Chief Executive Officer
CP	Connected Person
CIRO	Chief Investor Relations Officer
DP	Designated Person
ESOP	Employee Stock Option Plan
KMP	Key Managerial Personnel
Listing Regulations	Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
MFR	Material Financial Relationship
PIT Regulations/ Insider Trading Regulations/ Regulations	Securities Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015
Reg.	Regulation
SAT	Securities Appellate Tribunal
SDD	Structured Digital Database
SEBI/ Board	Securities Exchange Board of India
SEBI Act	Securities Exchange Board of India Act, 1992
UPSI	Unpublished Price Sensitive Information
1992 Regulations	Securities Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992

Scope of applicability

1. What is meant by insider trading?

Insider Trading means trading[1] by an Insider at the time of having access of unpublished information which once generally available, will impact the price of securities.

By indulging in insider trading, the insider is able to reap profits or take position in securities on account of information asymmetry, before the information becomes generally available.

2. What are the elements of insider trading?

In order to determine any transaction to be insider trading, there must exist the following elements:

a. the possession of information (a price sensitive information) with an insider;
b. before everybody else has the same (i.e. before becoming generally available);
c. regarding the changes in the economic condition of companies and more particularly with respect to dividends, financial results, issue of bonus shares, or other impending conclusion of a favorable contract;
d. making a gain by trading in securities pursuant to having the above unpublished information.

3. What is the effective date of the Regulations?

The Regulations had come into force on the one hundred and twentieth day from the date of its publication in the Official Gazette. The Regulations were published on January 15, 2015 in the Official Gazette and therefore, became effective on and from May 15, 2015.

Meaning of certain terms used in the Regulations

1. UPSI & Generally available information

4. What is the meaning of Unpublished Price Sensitive Information or UPSI?

Reg. 2(1)(n) of the Regulations defines UPSI which is an inclusive definition and includes certain information as below:

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

[1]means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly

UPSI is such kind of information relating to the company or its securities which are yet to be disclosed in public or yet to be made generally available and which has the likelihood to affect the price of the securities materially, if it is made generally available. Therefore, UPSI is a broad concept to cover various information apart from the above, based on their capability to fluctuate the price of securities materially.

5. What is the meaning of the phrase 'generally available information'?

The term "generally available information" has been introduced for the first time under the Regulations which refers to such information which is available to anyone and everyone on a non-discriminatory basis (Reg. 2(1)(e) of the Regulations). Therefore, information which is available on the website of the company or in the newspaper or disclosed to the stock exchanges are regarded as generally available information.

2. Immediate relative

6. What does the term 'immediate relative' mean?

As per Reg. 2(1)(f) of the Regulations, 'immediate relative' means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities.

The spouse is deemed to be immediate relative, irrespective of the fact that he/she is financially independent and does not consult such person in taking trading decisions.

The parent, sibling and child of the person or of the spouse will be considered as immediate relative only if they are either financially dependent on such person or consult such person in taking trading decisions.

7. If a spouse is financially independent and does not consult an insider while taking trading decisions, is that spouse exempted from the definition of 'immediate relative'? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

A spouse is presumed to be an 'immediate relative', unless rebutted so.

3. Connected Person (CP)

8. Who are regarded as CPs? What is the key thread/ element of a "CP"?

As defined under Reg. 2(1)(d) of the Regulations, any person who is or has been associated with the company, directly or indirectly, in any capacity, during the six 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
- holding 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.

9. Who are deemed to be CPs?

The Regulations provide a list of persons who are deemed to be CPs as mentioned hereunder:

a) an immediate relative of connected persons; or
b) a holding company or associate company or subsidiary company; or
c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or
d) an investment company, trustee company, asset management company or an employee or director thereof; or
e) an official of a stock exchange or of clearing house or corporation; or
f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
h) an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
i) a banker of the company; or
j) a concern, firm, trust, Hindu undivided family, 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

Further, CP will also include observers, i.e. persons who are authorised to attend BoD meeting such as the invitees who may be present at the time of such meetings. Observers are not the directors of the company.

10. What is the key element of a person to be considered as CP?

The key element of a CP is the connection with the company that is expected to provide him with direct or indirect access to UPSI.

11. How can the company identify the following for the purpose of identification of CPs?

a. an official of a stock exchange or of clearing house or corporation;

b. 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;

c. an official or an employee of a self-regulatory organization recognised or authorized by the Board;

d. a concern, firm, trust, hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent of the holding or interest;

e. a banker of the company.

The compliance officer, on behalf of the company, may write to the stock exchange to identify who should be the CP. Otherwise, it is impractical for a company to identify an official of the stock exchanges specifically.

Likewise, the compliance officer needs to identify mutual funds that are the members of the company and accordingly, identify the CPs.

Further, the company needs to include only such Self-Regulatory Organisation (SRO) which governs the company based on its activities. E.g. Asset financing NBFCs will identify Finance Industry Development Council (FIDC).

As regards identification of other concern such as firm, HUF etc., the compliance officer should seek the relevant disclosures from the directors and the bankers of the company. Further, the directors' declaration shall also include details of concern of their immediate relatives.

The word 'banker', in our view, cannot mean the bank itself. For example, if the company is dealing with bank ABC, it will be impractical to deem the bank ABC as the CP. Instead, the relationship manager/ loan sanctioning officer dealing with the company and its affairs may be identified as CP. Accordingly, the company can take a list from the bank to identify such CP in relation to the company.

12. What would be the meaning of 'holding or interest' by/ of directors, immediate relatives thereof and the banker of the company for determining the CP?

Holding should mean the direct shareholding of the director of the company or of his immediate relatives or banker of the company. Interest, on the other hand, would mean direct or indirect interest whether or not by way of direct shareholding.

13. Who can be an officer for the purpose of being a CP?

The term "officer" is a term of wide connotation. Officer was also defined in the 1992 Regulations as *"Officer of a company' means any person as defined in Clause (30) of Section 2 of the Companies Act, 1956 (1 of 1956) including an auditor of the company"*.

Section 2 (30) of the Companies Act, 1956 defined an officer to include *any director, manager or secretary 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".*

The word "officer" is not defined under the Regulations. Therefore, the meaning can be taken from the Companies Act, 2013 as per Reg. 2 (2).

Section 2 (59) of the Companies Act, 2013 defines an officer to include *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.*

An officer is one who can direct or influence the affairs of the company as distinguished from a mere compliance officer- the view was observed by the Hon'ble Securities Appellate Tribunal (SAT) in Appeal No. 178 of 2011-Shri Mahendra Pandey Vs Securities and Exchange Board of India (SEBI).

14. Whether a person being an administrative head, such as head of human resource department or a general manager or a chief sales manager said to be within the meaning of an "officer"?

SEBI vide Order dated July 7, 2014 in the matter of ITC Limited held the head of the human resource department as an "officer" and penalised with an amount of Rs. 5 lacs for non-disclosure under Reg. 13 (4) and 13 (5) of the 1992 Regulations for sale of 10000 shares worth Rs. 35,37,078 lacs. SEBI has in the Order defined "officer" to mean every person having an authority. The SEBI Adjudicating Officer also found that, the Divisional Manager - HR Operations, Divisional Manager - Competency Development, District human resources managers (N/S/E/W), the Assistant HR Managers - Operations, Manager - HR Systems and Processes, Manager Skilling & Employability, Asst Manager Training, Asst Manager Training, Asst. HR Managers (N/S/E/W), HR Officer - Frontline Performance are the personnel subordinate to the "officer", which led to the conclusion that the defendant is clearly holding a higher position capable of giving directions to her subordinates and thus, an officer.

SAT had quashed and set aside the order on October 9, 2015 and remanded the matter back to Ld. Adjudicating Authority for a fresh order.

The Adjudicating Officer later on had concluded that Head-Operations"- Education and Stationery Products Strategic Business Unit of ITC Limited cannot be held as an "officer" of the company under the provisions of the Companies Act and the PIT Regulations as the position held by him in the company was very low in the chain of the management and hence, it was concluded by the Adjudicating Officer that he would not be a person on whose instructions or directions the BoD or any Directors of the company would be accustomed to act.

15. Who can be an intermediary for the purpose of CP?

In terms of the definition, an intermediary as specified in Section 12 of SEBI Act is to be treated as CP. As per Section 12 of the SEBI Act, stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers, depositories, depository participant, custodian of securities, foreign institutional investors, credit rating agencies etc. are intermediaries requiring registration with SEBI.

The definition further considers an employee as well as a director of such intermediary as CP.

Section 59 of the Chief Justice Act, 1993 of the United Kingdom also defines a "professional intermediary".

16. How can a compliance officer identify CPs?

SEBI circular dated May 11, 2015 mandates companies to ensure that a company deals with only such market intermediary/ every other person, who is required to handle UPSI, who have formulated a code of conduct as per the requirements of the Regulations. The compliance officer should ensure the following:

- Identifying such intermediary and every other person who is required to handle UPSI of the company;
- Sending a mail to each of such identified person enclosing a suggested format of confirmation that such identified person have formulated the code of conduct as per the PIT Regulation, 2015;
- Allow such identified person time frame of 14 days from the date of mail to confirm that they have the said code of conduct in place;
- Send a reminder mail after the expiry of 7 days from the date of original mail (in case no mail is received as such date);
- If no confirmation is received after the expiry of 21 days from the date of original mail, the company to stop sharing UPSI with such identified person.

4. Insider

17. Who is an insider?

According to Reg. 2(1)(g) of the Regulations, there are two limbs to this definition so as to fall within the meaning of an insider:

a. A connected person (already defined under the Regulations)
b. *Any person* who is in receipt of or has access to UPSI.

This will mean that any person who may be having access to UPSI or is in receipt of UPSI will be considered as an insider, whether or not he is a CP.

5. Designated Person (DP)

18. Who is a DP?

Reg. 9(4) provides for an inclusive definition of 'Designated Person'. The DPs are identified on the basis of their role and function in the organisation and the access that such role and function would provide to UPSI in addition to seniority and professional designation. Hence, DPs are not necessarily required to be employees of the company.

As per the Regulations, following are determined as DPs:

- Employees designated on the basis of their functional role or access to UPSI in the organization by the BoD or by analogous body in case of fiduciaries and intermediaries;
- Employees of material subsidiaries designated on the basis of their functional role or access to UPSI in the organization by their BoD;
- All promoters of the company and in case of intermediaries or fiduciaries, promoters who are individuals or investment companies thereof;
- CEO and employees upto two levels below CEO of the company, intermediary, fiduciary and material subsidiaries irrespective of their functional role in the company or ability to have access to UPSI;
- Any support staff of the company, intermediary or fiduciary such as IT staff or secretarial staff who have access to UPSI.

19. What is the scope of the terms 'investment company' as mentioned in regulation 9(4)(iii)? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Reg. 9 (4) (iii) intends to include only those non-individual corporate promoters of intermediaries or fiduciaries as DP, whose main object or principal activity, is investing in securities of other companies. For e.g. if the promoter of a broking entity is a Bank, then such promoter shall not be specified as DP to be covered by the code of conduct of the intermediary. However, if the promoter of a broking entity is an investment company which holds investments in various companies, then such an entity shall be specified as DP to be covered by the code of conduct of the intermediary.

20. Whether a person not having control over management but classified as a promoter pursuant to Listing Regulations will be considered as a DP and is required to adhere to the requirements of the code of conduct?

In the informal guidance issued by SEBI in the matter of Apollo Tricoat Tubes Limited, it has been provided that, Reg. 31A(3)(b) of the Listing Regulations prescribes that in order to be classified as a public shareholder the person shall not be holding more than ten percent of total voting rights in the listed entity.

Therefore a person not having control over the management but having voting rights more than ten percent will be classified as a promoter of the listed entity. Reg. 9(4) of the PIT Regulations prescribes that the BoD shall in consultation with the compliance officer specify the DPs to be covered by the code of conduct on the basis of their role and function which shall include all promoters of the listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries.

The PIT Regulations identify promoters as DPs. Hence, a person identified as a promoter needs to comply with the requirements of the code of conduct.

21. In case a DP resigns, what information should be collected by the company/ intermediary/ fiduciary under PIT Regulations? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

All information which is required to be collected from DPs, should be collected till date of service of such employees with the company. Upon resignation from service of DP, a company/ intermediary/ fiduciary should maintain the updated address and contact details of such DP. The company/ intermediary/ fiduciary should make efforts to maintain updated address and contact details of such persons for one year after resignation from service. Such data should be preserved by the company/ intermediary/fiduciary for a period of 5 years.

21A. Is it mandatory to include all team members of support staff i.e. IT, secretarial, finance etc. in the list of designated person or only manager & above to be included in the list. *(SEBI's Comprehensive FAQs dated March 31, 2023)*

As per Reg. 9(4), DPs to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to UPSI in addition to seniority and professional designation. Further, Reg. 9(4)(v) specify any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to UPSI shall be included in the list of DP.

21B. Should whole-time director/managing director of a holding company be added as designated person of the subsidiary company? *(SEBI'ensive FAQs dated March 31, 2023)*

The guiding principle for identifying DP is role and function in the organisation and the access that such role and function would provide to UPSI. Since whole-time director/managing director of holding company may have access to UPSI of its subsidiary company, the same shall be added as DP of the subsidiary company.

21C. As per reg. 9(4), whether the term "all promoters" cover promoter group under the ambit of DP? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Reg. 9(4)(iii) specifies that all promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries shall be included as DP. Further, if promoter group is having access to UPSI then the same shall also be included under the ambit of DP.

6. Material Financial Relationship (MFR)

22. What is the meaning of the term 'material financial relationship'?

As provided in the explanation under clause 12 of Schedule B and Schedule C of the Regulations, the term MFR shall mean:

- a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift;
- from a DP;
- during the immediately preceding twelve months;
- equivalent to at least 25% of the annual income of the DP.

The aforesaid however shall exclude relationships in which the payment is based on arm's length transactions.

Transactions which are non-monetary in nature would be considered to establish MFR. This was clarified by SEBI in its informal guidance in the matter of Gujarat State Petronet Ltd.

7. Compliance Officer

23. Who can be a Compliance Officer?

Pursuant to Reg. 2(1)(c) of the Regulations, a compliance officer *should be*

a. a senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there;
b. one who is capable of appreciating regulatory and legal requirements; and
c. one who is financially literate so as to understand the impact of UPSI on price discovery for securities so that he is able to administer the regulations in an informed manner.

The term 'financially literate' has been explained vide SEBI to mean a person who has the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Therefore, there is no prescribed qualification of a compliance officer unlike Reg. 6 of the Listing Regulations which prescribes only a qualified company secretary to act as compliance officer.

In the informal guidance issued by SEBI in the matter of Mindtree Limited, SEBI has provided that, the company may at its discretion appoint any senior officer as the compliance officer. Such senior officer must be necessarily reporting to the BoD or head of the organization. In case the company appoints more than one person as compliance officer, they shall be jointly and severally responsible for monitoring compliance with the Regulations.

24. What are the roles and responsibilities of a Compliance Officer?

The compliance officer is made responsible for:

- compliance with the codes, i.e. the Code of fair disclosure of UPSI as per Schedule A pursuant to Reg. 8 (1) and the code of conduct for regulating and monitoring insider trading as per Schedule B or Schedule C under Reg. 9(1);
- compliance with the policies, i.e. policy for determination of legitimate purposes, policies and procedures for inquiry in case of leak or suspected leak of UPSI, whistle blower policy
- setting forth the codes/ policies in consultation with the BoD;
- prescribing procedures for various activities referred to in the code of conduct;
- granting of pre-trading clearance to the DPs for dealings in the company's securities and monitoring of such trade of insiders' (incl. of their immediate relatives);
- maintaining of records as required under the Regulations;
- administering and implementation of the code and monitor other requirements of the Regulations;
- adherence to the code specified for preservation of UPSI;
- monitoring of trades and the implementation of code of conduct under the overall supervision of the BoD;
- assisting the board of directors in determination of DP;
- reporting to BoD and the chairman of the audit committee of trading by insiders;
- closure and opening of trading window as and when required;
- approving and assisting in implementation of the trading plan as and when presented by the insiders, in accordance with the Regulations and review thereof to assess any potential violation of the Regulations;
- notifying the trading plan to stock exchanges.

However, he is supposed to do all the above either under the supervision of the BoD or the head of an organization. This means that though compliance officer will be responsible for the above areas but the ultimate responsibility and accountability is that of the board or the head of the organization under whom or accordingly to whose instructions the compliance officer will work.

25. Who will be approving authority for trades done by the Compliance Officer or his immediate relatives, as Insiders? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

The BoD of the company shall be the approving authority in such cases and may stipulate such procedures as are deemed necessary to ensure compliance with these Regulations.

8. Chief Investor Relations Officer (CIRO)

26. Who can be a CIRO?

In terms of clause 3 of Schedule A of the Regulations, a senior officer of the company is required to be designated as CIRO to deal with dissemination of information and disclosure of UPSI.

27. What are the functions of CIRO?

The broad functions of CIRO are:

- Dealing with universal dissemination and disclosure of UPSI.
- Determination of questions as to whether any particular information amounts to UPSI.
- Determination of response, if any, of the company to any market rumour in accordance with Code of Fair Disclosure of the company.
- Dealing with any query received by any Insider about any UPSI.
- Providing advice to any Insider as to whether any particular information may be treated as UPSI.

28. Whether CIRO will also be responsible along with Compliance Officer for not disseminating information or non-disclosure of UPSI? ***SEBI's Comprehensive FAQs dated March 31, 2023)***

Reg. 2(1)(c) of the Regulations clearly provides the functions and responsibilities of the compliance officer. Specific responsibilities to deal with dissemination of information and disclosure of UPSI are given to CIRO under clause 3 of Schedule A.

It is company's discretion to designate two separate persons as CIRO and Compliance Officer, respectively for fulfilling specified responsibilities. In cases where both CIRO and Compliance Officer have been designated for overlapping functions, they shall be jointly and severally responsible.

9. Trading

29. What is trading?

As per Reg. 2(1)(l) of the Regulations, trading means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities.

The term 'dealing in securities' is used to widely define the term 'trading' to include other aspects of trading such as pledge which is not strictly buying, selling or subscribing.

In the informal guidance issued by SEBI in the matter of HDFC Securities Limited, SEBI has specifically provided that, transactions in the nature of Securities Lending and Borrowing (SLB) will constitute trade for the purpose of the Regulations.

30. What does the term 'dealing in securities' mean?

The definition of 'trading' as provided in the Regulations includes dealing in securities. The intent of the Regulation is to include such other activities which are strictly not buying, selling or subscribing of securities. Therefore, dealing shall include every other activity such as, gift, pledge etc.

30A. Whether trading only in equity shares is in violation of PIT Regulation while in possession of UPSI or it also includes trading in other form of securities? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Trading in securities while in possession of UPSI is prohibited as per the Regulations. For the applicability of PIT Regulations, securities shall have the same meaning assigned to it under the Securities Contracts (Regulation) Act, 1956, which inter-alia covers shares, scrips, stocks, bonds, debentures, derivative, etc. except units of mutual funds.

30B. Are PIT Regulations applicable on transmission of shares? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Yes, PIT Regulations are applicable on transmission of shares. However, they are exempted from provisions of trading window closure, pre-clearance and contra trade, but the norms relating to disclosure requirements shall be applicable on transmission of shares.

30C. Whether the immediate relative of the DP can trade in the derivatives of the company? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Yes. DP and its immediate relative can trade in derivatives when not in possession of UPSI and such trades are accordingly governed by the code of conduct.

30D. In case promoter gifts shares of the company to his niece who is not part of promoter group & not financially dependent on promoter:

i. **Is gift of shares to be considered as trading under PIT Regulations?**

ii. **Whether it require compliance with disclosure, pre-clearance and contra-trade restrictions? *(SEBI's Comprehensive FAQs dated March 31, 2023)***

"Trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and accordingly gifting shall be construed as dealing in shares. Thus, gift is a trade and the promoter shall be required to comply with requirement of disclosure, pre-clearance and contra trade restrictions.

Communication of UPSI

10.Restrictions on communication of UPSI

31. What are the restrictions imposed on Insiders under the Regulations?

As per Reg. 3(1) of the Regulations, insiders are prohibited to communicate, provide or allow access to any UPSI relating to the company or listed securities or securities proposed to be listed[2] to,

- other insiders or
- any person.

Further, as per Reg. 4 of the Regulations, insiders are prohibited to trade in listed securities as well as securities proposed to be listed when they are in possession of UPSI.

32. Are there any exceptions to the restriction on communication of UPSI by an insider?

The Regulations provide a carve out on communication, provision or allowing access to UPSI to any other insider/ any person, if the same takes place for legitimate purposes, performance of duties or discharge of legal obligations.

33. What are the restrictions imposed on any other person under the Regulations?

As per Reg. 3(2) of the Regulations, any person,

- shall not obtain any UPSI from any Insider of such UPSI;
- shall not induce any person to communicate UPSI.

34. When can UPSI be communicated, provided by an insider or procured by a person without violation of Regulation 3?

Reg. 3 will not get violated if the communication of UPSI is for following purpose:

- Where the board of the company is of the informed decision that sharing of UPSI is in the best interest of the company, such as, in case of mergers/takeovers and acquisitions involving change of control to assess a potential investment. This will entail making of an open offer under the takeover regulations which would not only make available the same price to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.

[2] The phrase 'proposed to be listed' shall include securities of an unlisted company:

i. if such unlisted company has filed offer documents or other documents, as the case may be, with the Board, stock exchange(s) or registrar of companies in connection with the listing; or

ii. if such unlisted company is getting listed pursuant to any merger or amalgamation and has filed a copy of such scheme of merger or amalgamation under the Companies Act, 2013.

- Where a transaction would not entail an open offer under the takeover regulation but where the BoD of the company is of informed opinion that sharing of UPSI is in the best interests of the company and UPSI is disseminated to be made *generally available* atleast two trading days prior to the proposed transaction being effected.

Further, the BoD shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential. Further, the parties shall not trade in securities while in possession of such UPSI.

11. Structured Digital Database (SDD)

Refer our detailed FAQs on SDD here.

Trading based on UPSI

35. When will a trade by a person regarded as Insider Trading? Who has the onus to prove the same?

When a person who has traded in securities has been in possession of UPSI, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

In the case of CPs, the onus of establishing, that they were not in possession of UPSI, shall be on such CP and in other cases, the onus would be on SEBI.

The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession UPSI is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

35A. Whether trading on the basis of UPSI is prohibited even for persons not falling under the definition of 'DPs' under the PIT Regulations? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Reg. 2(1)(g) of PIT Regulations defines 'insider' as any person who is:

(i) a connected person; or
(ii) in possession of or having access to unpublished price sensitive information.

Therefore, even if a person is not classified as a DP, having access to UPSI would make such a person an 'insider'. As per Reg. 4(1) of PIT Regulations, an insider is prohibited to trade while in possession of UPSI.

36. Whether trading in ADRs and GDRs by employees of Indian companies who are foreign nationals is covered under provisions of PIT Regulations on code of conduct? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Yes, trading in ADRs and GDRs of listed companies is covered under relevant provisions of PIT Regulations. Employees of such companies, including foreign nationals, who are DPs, shall be required to follow the code of conduct for trading in ADRs and GDRs. For such disclosures by such DPs, a unique identifier analogous to PAN may be used.

37. Are there any exceptions to the restriction on trading in securities while in possession of UPSI by an insider?

As per Reg. 4, trading by an insider who is in possession of UPSI, shall always be presumed to have been motivated by the knowledge and awareness of UPSI. However, in certain circumstances as below, such trading may be allowed,

- Off- market transactions between insiders having same UPSI in possession subject to the condition that such transaction shall be reported to the company within 2 working days which in turn shall report to the stock exchange within 2 working days of receipt;
- Transactions carried out through block deal window mechanism between persons who are in possession of UPSI;
- Transactions pursuant to statutory and regulatory obligation;
- Exercise of stock options where exercise price is pre- determined;
- Trades pursuant to trading plan;
- In case of non- individual insider,
    - the individuals taking trading decision are different from the individuals who are in possession of UPSI and such individuals are not having UPSI in possession;
    - appropriate and adequate arrangements were in place to ensure the Regulations are not violated;
    - no UPSI was communicated by the individuals having UPSI in possession to the persons who are taking trading decisions; and
    - no evidence of the aforesaid arrangements having been breached.

Further, an insider may after doing the needful compliances under the regulations trade in securities, such as under the trading plan or after obtaining pre-clearance from the compliance officer. Further, an insider may demonstrate that there were exonerating circumstances under which the trading might have taken place and hence, he has not indulged in insider trading.

37A. Whether trading under discretionary portfolio management scheme by the portfolio manager for the employee of the company or his relative is in compliance with PIT Regulations?

SEBI, in its informal guidance issued in the matter of HDFC Bank Ltd, stated that dealing in securities, whether it is direct or indirect, is not relevant, but that any insider when in possession of UPSI should not deal in securities of the company to which the UPSI pertains. Even while dealing in such securities through a discretionary portfolio management scheme, the trades of insider shall be assumed to be motivated by the knowledge and awareness of UPSI.

37B. Whether acquisition of shares by way of block deal by the promoters/ members of the promoter group from the employee benefit trust in order to comply with SBEB Regulations in is accordance with PIT Regulations?

SEBI, in its informal guidance issued in the matter of R S Software (India) Ltd., stated that SBEB Regulations do not indicate any regulatory requirement for promoters/ members of the promoter group to purchase shares sold by the employee benefit trust. Thus, such acquisition cannot be regarded as regulatory compliance. Hence, all applicable legal requirements have to be complied with, if the trades are executed by way of block deal.

Trading Plan

38. What is the essential philosophy of a trading plan? Who is required to frame the same?

Insiders who are perpetually in possession of UPSI such persons cannot be rendered incapable of trading in securities throughout the year. In such a situation, an Insider will be permitted to formulate in advance to effect trade at a subsequent date. By that time such insider would be in possession of new UPSI and the one they possessed at the time of formulating the plan would then be generally available.

A trading plan is to accommodate firm plans to acquire/ dispose off securities typically by strategic shareholders. For example, a holding company may have plan to do disposal of its subsidiary at a pre-specific time. Also, promoters of the company may have a firm plan to do a creeping acquisition of securities in their controlled company. These plans are pre announced, and are firm plans irrespective of the prevailing price. Hence, they are insensitive to prices, and hence, are presumably immune from allegations of insider trading.

Trading plan are required to be framed by such insiders who are at all times in possession of UPSI and the plan is required to be reviewed, approved and implementation of the trading plan is required to be monitored.

39. What are the prerequisites for trading plan?

Reg. 5(2) of the Regulations provides the perquisites for trading plan which are as follows:

- Trading only after 6 months from the public disclosure of the plan
  - Such a period is considered reasonably long for UPSI that is in possession of the insider when formulating the trading plan, to become generally available.
- If the financial period ends on X and financial results are disclosed to the stock exchange on Y, then not to trade in the period between (X-20 trading days) to (Y+2 trading days)
  - UPSI exists around declaration of financial results.
- Trading plan shall entail trading for a minimum period of 12 months
  - To avoid frequent announcements of trading plan.
- Trading plan should not lead to overlap of any period for which another trading plan is in existence.
- Trading plan shall set out either value of trades to be effected or the number of securities to be traded along with the nature of the trade (acquisition or disposal) and the intervals at, or dates on which such trades shall be effected;
- Trading plan shall not entail trading for market abuse.

40. Is there any relaxation provided to the trades done pursuant to the Trading Plan?

As per first and second proviso of Reg. 5(3), following are the relaxations provided:

- pre-clearance of trades is not required for a trade executed as per an approved trading plan;
- trading window norms are not applicable for trades carried out in accordance with an approved trading plan.
- restrictions on contra trade are not applicable for trades carried out in accordance with an approved trading plan.

41. Can a trading plan be revoked?

The Trading Plan once approved cannot be revoked. Therefore, the insider has to mandatorily implement the plan without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan. Considering these facts, trading plan is quite impractical.

42A. At the time of trading as per the trading plan, if the DP is in possession of an UPSI which was not existing at the time of formulation/submission of trading plan, would these trades be in violation of PIT Regulations? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

If an insider/DP trades on the basis of earlier UPSI, which is still not generally available, then it will be in violation of PIT Regulations. However, if at the time of formulation of trading plan, there was no UPSI or later on a new UPSI was generated, then the trading can be carried out as per the trading plan, even if the new UPSI has not been made generally available.

Codes and Policies under the Regulations

12.Code of Conduct

12.1 Code of Conduct for listed companies

42. What is the purpose of formulation of code of conduct for listed companies?

The purpose of formulation of code of conduct is to regulate, monitor and report the trading executed by its DPs and their immediate relatives. The DPs and their immediate relatives may execute the trades after taking into consideration the trading window restrictions, pre-clearance, contra trade restrictions and other compliance requirements under the Regulations.

43. Who is responsible for formulation of the code of conduct?

As per Reg. 9(1) of the Regulations, the formulation of code of conduct is a collective responsibility of the BoD of a listed company. The BoD will have to ensure that the code of conduct is formulated by the CEO or Managing Director, adopting the minimum standards set out in Schedule B of the Regulations.

44. A management trainee at a firm of practicing company secretaries comes into possession of UPSI while handling an assignment, will he be required to adhere to the code of conduct of the company whose UPSI is being handled?

The explanation provided in Reg. 9(2) states that the professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies should be collectively referred to as fiduciaries and are required to formulate the Code of Conduct ('Code') as per the minimum standards provided in Schedule C of the Regulations.

Therefore, the employees/ trainees/ other officials of the firm shall be guided by the Code framed by such firm if they are so identified under the Code. Therefore, the management trainee or any other official of the fiduciary is not required to follow the code of conduct framed by the company whose UPSI is in consideration but the code of conduct framed by the fiduciary.

45. What does the "process for how and when people are brought 'inside' on sensitive transactions" mean?

This should be a process which can be ensured by the taking the following steps-

- There should be a system to track where the information emerges;
- Who is authorized to share the information;
- With whom the information is shared;
- Analyzing the reason of sharing such information;
- The protocol of sharing the information;
- Sensitizing the person with whom the information is to be shared;
- Assuring that the person understands that the information is confidential;
- Executing confidentiality agreements;
- Disclosing the information to the Stock Exchange(s);
- Tracking the information until the same is disclosed to the public.

12.2 Code of conduct for intermediaries and fiduciaries

46. What is the need to formulate the code of conduct for intermediaries and fiduciaries?

The UPSI of a listed company is shared with intermediaries and fiduciaries for effective conduct of business, e.g. sharing of UPSI with credit rating agencies or legal advisors. To avoid misuse of such UPSI and restrict trading on the basis of such UPSI by the employees of the said intermediaries and fiduciaries, there is a need to formulate the code of conduct to regulate, monitor and report the trading of their DPs and their immediate relatives.

Further, SEBI vide circular dated May 11, 2015 required the companies to deal with only those market intermediaries/ persons, who are required to handle UPSI, who have formulated the code of conduct as per the requirements of the Regulations.

The BoD/ head of the organisations shall ensure that the code of conduct is formulated by the CEO or Managing Director or such other analogous person of intermediaries and fiduciaries, adopting the minimum standards set out in Schedule C of the Regulations.

47. What is the meaning of the term 'restricted list'?

'Restricted list' is a list of securities containing names of those listed companies who share UPSI with intermediaries and fiduciaries. Pursuant to clause 5 of Schedule C, the restricted list is confidentially maintained by the Compliance Officers of intermediaries and fiduciaries and is used as the basis for approving or rejecting the applications for pre-clearance of trades of the DPs.

The 1992 Regulations also defined the list as 'restricted list' / 'grey list'. The firms/ organisations were required to prepare and maintain a grey list in order to monitor Chinese wall procedures and trading in client's securities based on UPSI. The Compliance Officer was in charge of confidentially maintaining the list.

48. Whether trades in the securities of listed companies not covered under the restricted list also require pre-clearance from Compliance Officer of intermediary/ fiduciary?

SEBI, in its informal guidance in the matter of KP Capital Advisors Private Limited stated that trading in all the securities by the DPs shall be subject to pre-clearance by the Compliance Officer if its value is above the threshold stipulated by the BoD/ head of the organization. The restricted list maintained by the Compliance Officer shall be used as a basis for approving or rejecting applications for pre-clearance of trades.

49. Can a Compliance Officer share the restricted list with the DPs so that the latter knows the permissibility of their proposed trades?

In the informal guidance issued in the matter of KP Capital Advisors Private Limited, SEBI clarified that the Compliance Officer is responsible to maintain restricted list on a confidential basis which shall be used for approving or rejecting the applications for preclearance of trades. Such pre-clearance would decide the permissibility of proposed trade of DPs. Therefore, sharing the restricted list with the DPs would undermine the requirement of maintaining confidentiality of restricted list.

50. Whether the requirement of compliance with the code of conduct would be applicable to the employees of a fund manager who wish to invest in the schemes of AIFs or mutual funds?

In the informal guidance issued by SEBI in the matter of SBI Funds Management Private Limited, SEBI has provided that the provisions of Reg. 9 of the Regulations w.r.t. the code of conduct is applicable to trading or investment by employees in the units of AIF schemes that invest in securities listed or proposed to be listed.

SEBI has vide circular dated November 17, 2016 prescribed the monitoring the trading/ investment by the employees of AMCs and trustees of mutual funds. As per the circular, trustees, AMCs and their employees and directors are required to follow the Regulations.

Hence, the compliance w.r.t. code of conduct is required to be ensured.

50A. Whether the restriction on the intermediary or any of its employees, of not executing a contra trade, is applicable on securities which are not in their restricted list?

In the informal guidance issued in the matter of SBI Capital Markets Ltd, SEBI clarified that if the intermediary or its employee is a connected person with a listed company and have access to UPSI, the restriction of contra trade shall be applicable, while on the other hand, for securities of the listed companies where no connection and access to UPSI is envisaged, there may not be a need to impose the above restriction.

13. Code of Fair Disclosure of UPSI

51. Who is responsible for the formulation of code of fair disclosure of UPSI?

As per Reg. 8(1) of the Regulations, the BoD of the listed companies are responsible to formulate the code of practices and procedures for fair disclosure of USPI in accordance with the principles set out in Schedule A of the Regulations.

52. What should be covered in the code of fair disclosure of UPSI?

According to Schedule A, the following points should be covered in the code of fair disclosure of UPSI:

- Prompt public disclosure of UPSI that would impact the share price of the company as soon as credible and concrete information comes into existence.
- Uniform and universal dissemination of UPSI to avoid selective disclosure.
- Designation of CIRO to deal with dissemination and disclosure of UPSI.
- Prompt dissemination of UPSI that gets disclosed selectively.
- Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.
- Ensuring that the information shared with analysts and research personnel is not UPSI.
- Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website.
- Handling of UPSI on a need-to-know basis.

Further, pursuant to Reg. 3(2A) of the Regulations, the BoD shall make a policy for determination of 'legitimate purposes' which shall also be a part of Code of Fair Disclosure of UPSI.

53. Whether amendment to the code of fair disclosure is required to be intimated to the stock exchange?

As per Reg. 8(2) of the Regulations, code of practices and procedures for fair disclosure of UPSI and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

54. What is the difference between Code of Conduct & Code of Fair Disclosure?

Particulars	Code of conduct	Code of fair disclosure
Purpose	To regulate, monitor and report trading by its DPs and their immediate relatives	To ensure prompt and uniform disclosure of UPSI

Schedule	Schedule B	Schedule A
Disclosure on company's website	Not required	Required to be disclosed
Disclosure on stock exchange website	• Company need not disclose Code of conduct to stock exchange. • Company to confirm to stock exchange that it has formulated Code of conduct (SEBI Circular dated May 11, 2015).	• Company to disclose Code of fair disclosure to stock exchange **[**Reg. 8(2)]. • Company to confirm to stock exchange that it has formulated Code of fair disclosure (SEBI Circular dated May 11, 2015).

14.Policies and procedures for inquiry in case of leak/ suspected leak of UPSI

55. Whether the policy for inquiry of leak of UPSI is required to be framed separately?

In terms of Reg. 9A(5), formulation of such a written policy is required with the approval of the BoD. Further, in terms of Reg. 9A(6), the whistle blower policy shall mention the procedures for reporting of instances of leak of UPSI. On a combined reading of the aforesaid provisions, it may be construed that the policy for inquiry of leak of UPSI may form part of the whistle blower policy also as the later contains the provisions for inquiry in case of complaint received from a whistle blower which may include a complaint related to leak of UPSI.

The contents of the Policy may be as under:

- Mechanism to prevent any leak of UPSI;
- Identify the source of leakage of UPSI;
- Procedure for inquiry in case of any leak of UPSI or suspected leak of UPSI should be provided;
- Mechanism to handle the leak of any UPSI;
- Mechanism to initiate appropriate inquiries on becoming aware of leak of UPSI or suspected leak of UPSI;
- Authorizing Audit Committee/ Shareholders' Relationship Committee to take necessary steps against the person found guilty;
- Plug the loopholes in the internal control system in order to prevent the leak of UPSI in future;
- Educate the employees regarding the reporting of leak/ suspected leak of UPSI;
- Taking action against the person responsible for leak of UPSI;
- Informing SEBI promptly of such leaks, inquiries and results of such inquiries.

15.Policy for determining Legitimate Purpose

56. What would be the contents of the policy for determining legitimate purpose?

As per Reg. 3(2A), the policy for determining legitimate purpose shall be a part of Code of Fair Disclosure. It shall be an approach driven policy which should broadly specify the following:

- sharing of information only in the ordinary course of business;
- the information has to be shared only the person who is authorized to do so;
- where there is any sharing of price sensitive information, non-disclosure agreements should be executed;
- the person receiving such information should be sensitized or informed about the confidentiality of the matter in order to avoid any leakage;
- details of the person receiving such information should be maintained by the company, in order to track whether the information was exploited by the person or not.

Disclosure requirements under the Regulations

57. What are the various disclosure requirements under PIT Regulations?

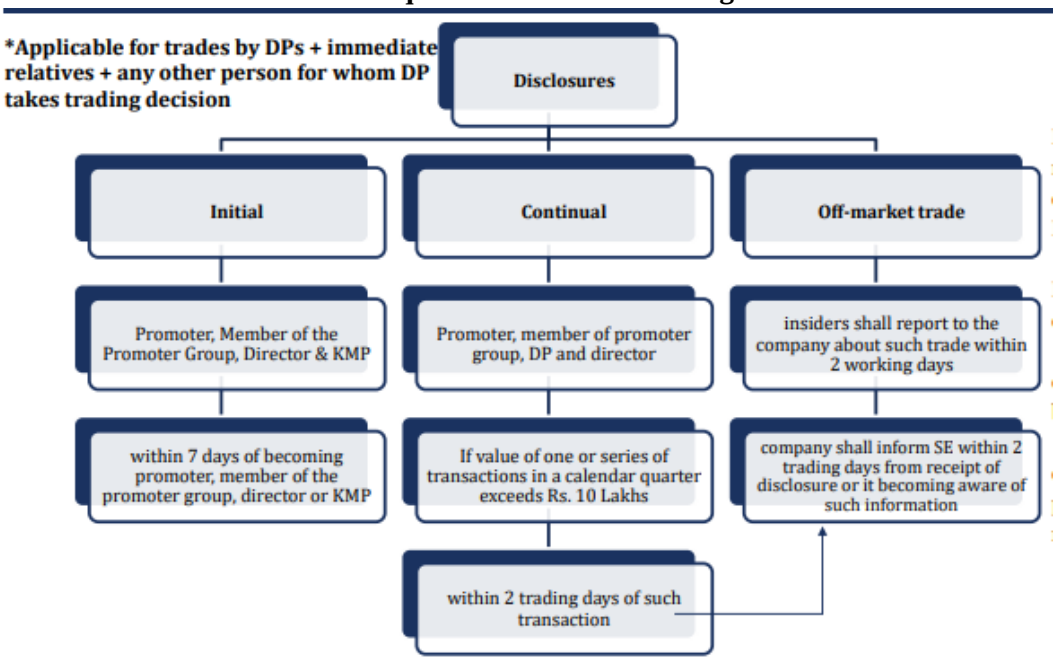


Figure 1: Disclosure requirements

58. What are the general provisions relating to disclosure requirements under the Regulations?

As per Reg. 6, following shall be disclosed generally:

- The concerned person making disclosure shall include trading by immediate relatives and by persons for whom such concerned person takes trading decisions.
- The disclosure of trading in securities shall also include trading in derivatives of securities and the traded value of derivate shall be considered for the purpose of disclosure.

The compliance officer is required to maintain the disclosures in physical or electronic form for a minimum period of 5 years.

59. Are the disclosures required for a promoter company (not individual promoter)?

As per definition under SEBI (ICDR) Regulations, 2018 – promoter includes both individual and body corporate that fulfill the requirements stated in the definition. In case the promoter is a company, the company needs to disclose. Therefore, the disclosure is required from both individual promoters as well as body corporate promoters. Further, the disclosure is required from the members of the promoter group.

16. Initial disclosure

60. What is initial disclosure? When is it required to be filed? Has SEBI specified any format for initial disclosure?

Pursuant to Reg. 7(1)(a) of the Regulations, initial disclosure of holding of securities of the company as on May 15, 2015 was required to be provided by promoter, director and KMP. The disclosure includes the holding of immediate relatives. The first Initial Disclosure was required to be given within 30 days from May 15, 2015. Further, pursuant to the amendment brought in by SEBI, the members of the Promoter group were also required to provide the initial disclosure within 30 days from January 21, 2019. The said disclosures were made in Form A specified by SEBI. Pursuant to SEBI (PIT) (Amendment) Regulations, 2021, SEBI deleted Reg. 7(1)(a) of the Regulations.

Further, as per Reg. 7(1)(b), initial disclosure is also required to be given by person on appointment as a KMP or director or upon becoming a promoter or a member of the promoter group thereby disclosing his holding of securities of the company as on the date of appointment or becoming a promoter to the company. The disclosure is required to be given within seven days of such appointment or becoming a promoter in Form B specified by SEBI.

17. Continual Disclosures

17.1 Manual disclosure

61. When is the continual disclosure required to be given?

According to Reg. 7(2)(a), every promoter, members of the promoter group, DP, and director is required to disclose the number of securities acquired or disposed, if the value of the securities traded, whether in one transaction or a series of transactions, over any calendar quarter, exceeds **Rs. 10 lakhs.** This is required to be disclosed within two trading days of such transaction. The continual disclosure is required to be given in Form C specified by SEBI.

Every disclosure will include the disclosure of the immediate relatives of the person disclosing as mandated under Reg. 6 (2).

61A. What must be the value that the designated person should mention while reporting trades to the Company? Should it be the market rate or should it be by subtracting Brokerage, Commission etc. i.e.net of taxes and all transaction charges? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

For the purpose of reporting trades, market rate should be considered.

62. Whether disclosure in Form C pertaining to the change in the holdings of securities needs to be made in case of transactions like Bonus, Shares received pursuant to the Scheme of Amalgamation/Demerger, Gift or off market transaction like transfer of shares to a family trust account where the traded value of securities is nil? If yes, at what value should the aforesaid transactions be disclosed?

In the informal guidance issued by SEBI in the matter of Kotak Mahindra Bank Ltd, SEBI stated that the number of securities acquired or disposed beyond the given threshold have to be disclosed, irrespective of the mode of acquisition or disposal. Therefore, disclosure pertaining to change in holdings of securities needs to be made by the concerned promoter/ member of the promoter group/ DP/ director to the company and in turn by the company to the stock exchanges.

Further, SEBI stated that in cases, wherein the person getting allotment of shares has no role in the transaction in question and relevant information or disclosure of such transaction is already in the public domain, for e.g., in case of bonus shares or shares received pursuant to Scheme of amalgamation/ demerger etc., a separate disclosure may not be necessary. For all other instances, like off market transaction or gifts, disclosure must be made in accordance with provisions of PIT Regulations.

The term value of securities traded is interpreted as the prevailing market value of the securities on the day they were acquired or disposed of. The same may be used for the purpose of calculation of threshold value beyond which disclosure is required; and must also be disclosed in the referred form.

62A. In case of trades exceeding Rs. 10 Lacs in a quarter, any subsequent trades need to be disclosed in Form C or should the next disclosure be only when the next Rs. 10 Lacs limit is breached? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

The explanation to Reg. 7(2)(b) states that the disclosure of the incremental transactions after any disclosure under this sub-regulation shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2). Hence, the next disclosure will be due when the next Rs. 10 lacs limit is breached.

62B. Whether disclosure requirement under reg. 7(2)(a) of PIT Regulations would be applicable to DP alone or it would include such person's immediate relatives? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Reg. 6(2) of PIT Regulations specifies that disclosures to be made by any person under this Chapter (Disclosures of Trading by Insiders) shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions. Hence, disclosure requirement is applicable to designated person along with its immediate relatives.

62C. In case a DP is taking financial assistance for acquiring the ESOP Shares, do Form C is required to be filed? ***(SEBI's Comprehensive FAQs dated March 31, 2023)***

The disclosures are required on receipt of shares pursuant to exercise of ESOPs.

62D. Whether transfer of shares from one Demat account to another Demat account of the same person will trigger the disclosure requirements? ***(SEBI's Comprehensive FAQs dated March 31, 2023)***

Since beneficiary ownership remains the same, the transfer of shares will not qualify as trading. Hence, disclosure requirements for the same will not be required. However, the disclosure requirements shall be applicable in cases where one of the demat accounts has more than single ownership clearance.

63. What are the obligations of the company towards continual disclosures by DP?

In accordance with Reg. 7(2)(b), the continual disclosures received by the company are required to be notified to the stock exchange within two trading days of receipt of disclosure. Disclosure of the incremental transactions after any disclosure under this Reg. 7 (2) shall be made when the transactions effected after the prior disclosure crosses the threshold specified above.

The company is also obligated to notify the stock exchange within two trading days of the incremental transaction after it becomes aware of such information, irrespective whether a disclosure has been received or not.

64. If the DP does not make the continual disclosure, however, the company gets to know about the trading activity by tracking the BENPOS, is there any obligation on the company to disclose?

As per Reg. 7(2)(b), the company is required to disclose the particulars of trading within 2 trading days of receipt of disclosure ***or from becoming aware of such information***. This has been clarified by Adjudicating Officer of SEBI in its order dated January 16, 2020 in the matter of Zee Media Corporation Limited. The relevant extract of the order is given below:

*"**In this regard, it is observed from the letter dated July 15, 2019 of ZMCL to SEBI that ZMCL became aware of "Number of shares" debited from the beneficiary Account of 25FPS i.e. the dates when the company received its weekly monitoring report**. Therefore, in light of this, it is observed that ZMCL was aware of the transactions on the dates when the company received its monitoring reports viz. April 15, April 22 and April 30, 2019. At the same time, it is observed that ZMCL had informed BSE and NSE regarding the said transactions of 25FPS only on June 10, 2019. In view of this, it is alleged that ZMCL made the following delay in making disclosures under Regulation 7(2) (b) of PIT Regulations XX"*

Accordingly, even if the DP fails to make continual disclosure under Regulation 7(2), still the company is obligated to make the disclosure on its part to the stock exchange based on the continuous weekly tracking from the beneficiary position or BENPOS.

However, the Adjudication Officer in the matter of ITC Limited holds a contrary view. As per the said order, the BENPOS data has limited information and the same cannot be treated as a source for disclosure requirements under PIT Regulations. The relevant extract of the SEBI order is provided hereunder:

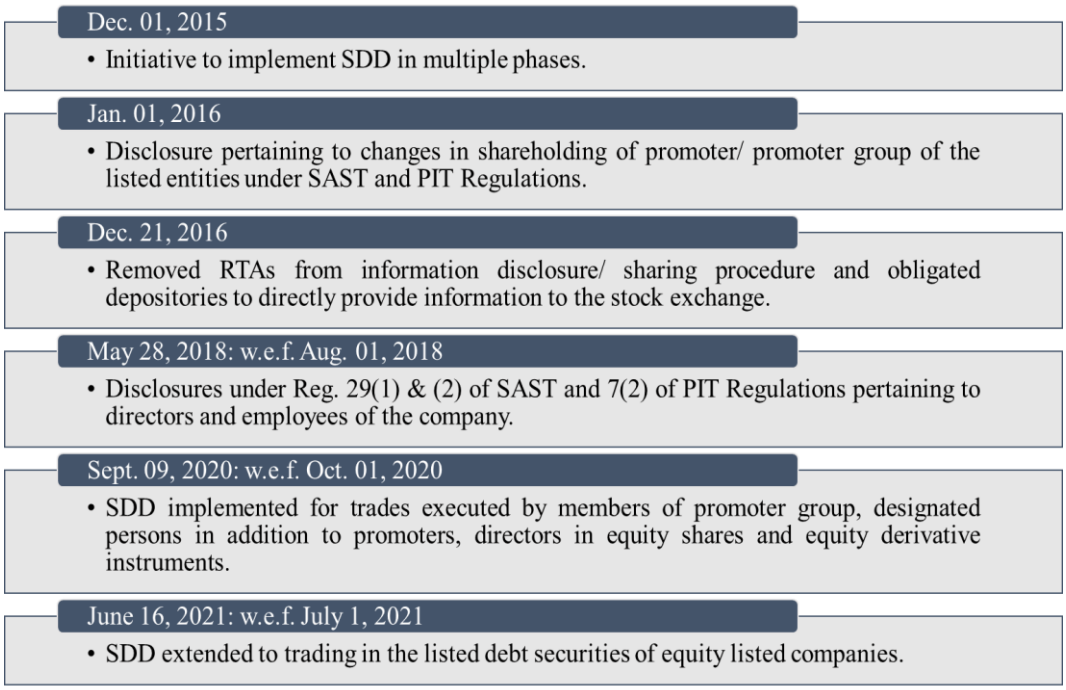
"There are numerous circumstances which require disclosure but not captured under BENPOS data. For example, a person may have done intraday trading in his account even to the extent of every transaction crossing the valuation limit of Rs. 10,00,000 but having net zero position by the end of the week. In that case, the BENPOS data would not show any change in his shareholding. Similarly, BENPOS data cannot capture any trading in derivative segment provided the scrip is listed in that segment.

I note that BENPOS data does not capture all transactions in a scrip on number of situations alike those mentioned above. Further, BENPOS data only provides holding of a person in a scrip in cash segment at the end of the last trading day of the week. No other information such as transaction type, price, date of trade, market/off-market transaction, etc. don't get captured, making it insufficient for the purpose of disclosure under regulation 7(2)(b) of PIT Regulations. It is therefore not possible for a company to make disclosure under regulation 7(2)(b) of PIT Regulations merely on the basis of information received from BENPOS data."

17.2 System Driven Disclosure

65. What is System Driven Disclosure ('SDD") mechanism issued by SEBI? What is the current requirement under SDD?

SEBI vide its various circulars as discussed in our write up have brought the system of automating the disclosure to be made under Reg. 7 (2) of the Regulations.



Under this, the PAN of promoters, members of promoter group, DPs and directors is required to be shared with the designated depository by the listed company. By doing so, the system shall on real time basis keep tracking the trading activities and use the information to check any violation of the Regulations. The manual filing of disclosures as required under Reg. 7(2) for equity shares and equity derivative instruments has been discontinued w.e.f. August 13, 2021[3].

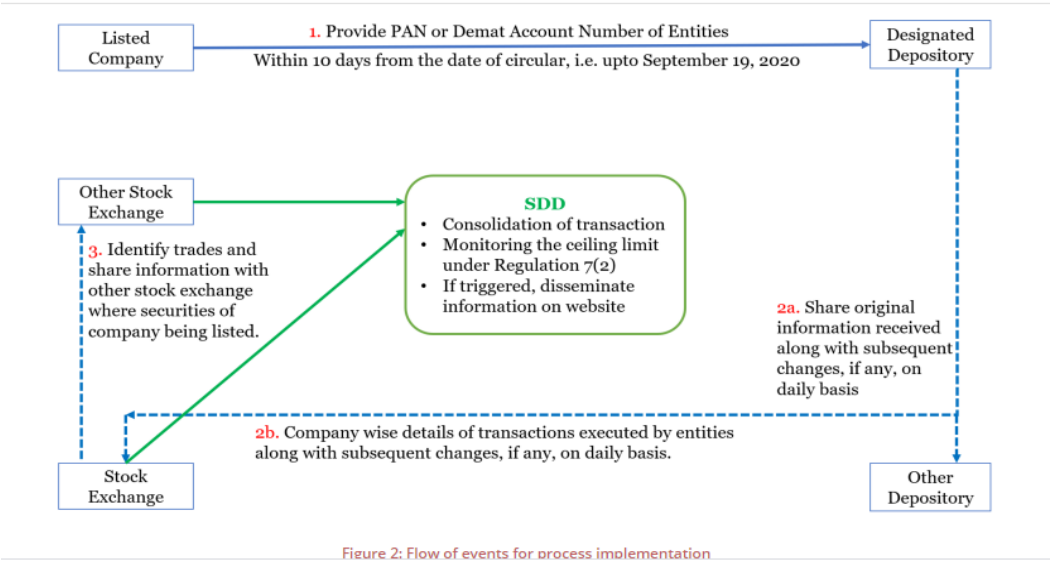


Figure 2: Flow of events for process implementation

65A. Whether the system driven disclosure is applicable to all kinds of securities of listed companies?

As per the SEBI Circular dated September 09, 2020, the system driven disclosure was applicable only to the trading in equity shares and equity derivate instruments. Pursuant to the SEBI circular dated June 16, 2021, the same has been extended to the listed debt securities of equity listed entities.

Therefore, at this stage, continual disclosure w.r.t. trading in listed preference shares of equity listed companies and all the listed securities of debt listed companies are not system driven and requires manual disclosure.

66. Whether information including PAN of promoters, members of the promoter group, directors and DPs is to be provided to both the depository? *(NSE FAQs dated January 28, 2021)*

No. the company is required to designate one of the depositories as its designated depository and provide the information including PAN of promoters, members of the promoter group, directors and DPs as per PIT Regulations. Therefore, information is to be only provided to the designated depository.

67. How will the company designate a depository? *(NSE FAQs dated January 28, 2021)*

[3] https://www.sebi.gov.in/legal/circulars/aug-2021/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures-ease-of-doing-business_51848.html

The company will need to choose any one of the depository as its designated depository in the manner as specified by the depositories.

68. Whether both PAN and demat accounts details are required to be provided to the designated depository? *(NSE FAQs dated January 28, 2021)*

No. PAN is required to be provided in all cases expect PAN exempt cases. Entities/multilateral agencies which are exempt from paying taxes/filing tax returns in India or investors residing in the State of Sikkim are exempted from the mandatory requirement of PAN these type of entities can be considered under PAN exempt cases. In such cases, BO ID details of demat accounts in depositories system should be provided.

69. In case the promoters, members of the promoter group, directors and DPs do not have PAN or Demat Account, what details are to be provided to the designated depository? *(NSE FAQs dated January 28, 2021)*

In case of persons/entities who do not have PAN or Demat Account say for example; Foreign Nationals who are directors and DPs in the company and do not have PAN or Demat Account, the company need not provide their details. As and when these persons/entities obtain PAN, the company may provide the details to designated depository.

70. Although the required promoter/ promoter group details were already provided by R&T agent to depositories, is the company required to provide such details again to the designated depository? *(NSE FAQs dated January 28, 2021)*

Yes, the company need to upload the latest details once again to their designated depository using respective Issuer login.

71. What is the timeline for reporting changes in information about promoters, members of the promoter group, directors and DPs to the designated depository? *(NSE FAQs dated January 28, 2021)*

In case there is any subsequent change in the information about promoters, members of the promoter group, directors and DPs, the company shall update the information with the designated depository on the same day.

72. With the implementation of SDD, are manual disclosures as required in regulation 7 still required to be submitted by every promoter, member of the promoter group, DP and director to the company and company in turn with the stock exchanges? *(NSE FAQs dated January 28, 2021)*

Yes, the manual disclosures shall continue to be submitted till further intimation in this regard.

72A. Whether companies are required to provide the details of immediate relatives also along with the details of DPs? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

As per SEBI Circular dated September 09, 2020, SEBI has mandated system driven disclosure for members of promoter group and designated persons only in addition to promoters and directors of the company under Reg. 7(2) of PIT Regulations, 2015.

72B. In case a DP is a foreign national/individual who do not possess PAN or a demat account number, whether system driven disclosures are required to be submitted? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

If a DP does not have PAN or a demat account number, then such a person cannot trade in the Indian securities market. Hence, system driven disclosures will not trigger for such a person.

18. Annual Disclosure

73. What are the annual disclosures required to be made by the DPs?

DPs are required 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:

- immediate relatives;
- persons with whom such DP(s) shares MFR;
- phone, and mobile/ cell numbers which are used by them;
- one-time information:
    - the names of educational institutions from which DP have graduated;
    - names of the past employers of the DP shall also be disclosed.

73A. If a DP shares MFR with one of his immediate relatives, whether the same is required to be disclosed separately in the category of persons with whom he shares MFR?

As an immediate relative may rebut connectedness with the DP, a DP is also required to disclose the names of immediate relatives with whom he shares MFR separately as well. SEBI clarified the same in its informal guidance in the matter of Gujarat State Patronet Ltd.

73B. In which of the following transactions, will a DP be required to disclose the MFR?

i. **A DP is making the payment of fees of his granddaughter by directly depositing such amount of fees to the account of the University and such amount of fees is exceeding 25% of the DP's annual income. If the disclosure is required, the details of which person should be disclosed, i.e., with whom the DP is sharing MFR, the granddaughter (who is a minor) or parents of such granddaughter?**

ii. **A DP has gifted a small piece of land to her daughter on her birthday, the cost of which constitutes to be more than 25% of DP's annual income.**

iii. **A DP has credited his daughter's account with a sum of Rs. 2 lakhs as a gift on her birthday which exceeds 25% of DP's annual income.**

iv. **A DP has deposited an amount to the account of her niece for payment by her of the fees of the University for Higher Management Studies and such amount of fees is exceeding 25% of the DP's annual income. The niece will return such amount (without interest) gradually once she starts earning the money after completing her education.**

v. **A DP's maternal uncle has sponsored foreign country trip of DP which constitutes to be more than 25% of such person's annual income.**

vi. **A DP undertakes to repay financial obligations of a person exceeding 25% of his annual income in a year, wherein, the actual payment takes place in piecemeal over a period of more than two years.**

In transaction no (i), the DP shall be required to disclose the name of the granddaughter and in case the grand daughter is a minor, the name of both the parents and guardian, if any, in addition to the minor granddaughter.

With respect to transactions from (ii) to (iv), the DP will be required to disclose the name of the person with whom he is sharing MFR.

For transaction no. (v), the DP is not required to disclose the name of his maternal uncle who sponsors his trip when disclosing the name of persons with whom he has MFR as in this case, the DP is a recipient.

With respect to transaction no. (vi), the DP will be required to disclose the name of the person to whom the DP makes payment for repaying his financial obligations.

The above matters were clarified by SEBI in its informal guidance in the matter of Gujarat State Patronet Ltd.

19.Event based disclosures

19.1 Disclosure requirement w.r.t. off-market trades

74. What is the disclosure requirement for off-market trades?

In case of off-market inter-se transfer between insiders who were in possession of the same UPSI while making an informed trading decision, the following disclosure requirement shall apply:

- Such off-market trade shall be reported by the insiders to the company within two working days;
- Company shall notify the particulars of such off-market trades to the stock exchanges on which its securities are listed within two trading days from receipt of disclosure or from becoming aware of such information.

19.2 Disclosure requirement w.r.t. connected person

75. What is the disclosure requirement in relation to CP?

The company may at its discretion require other CPs or CPs to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company.

76. Disclosures from CPs cannot be insisted upon by the company. While it can request the CPs to disclose, it cannot be mandatory – is the statement true?

The company can request the connected person to disclose who can be regarded as Insiders. E.g. In case of bank – the entire bank cannot be connected person. The officials who sanction limits for the company and seemingly have access to UPSI will be regarded as connected person.

Once they are identified, the company may take a call on whether disclosure is required to be obtained from them. If the company intends to, the same should be as per SEBI prescribed indicative format (Form D).

Closure of Trading Window

77. What is meant by Trading Window? When is the same required to be closed and opened? What are the consequences of closing a trading window?

It is a notional trading window used as an instrument of monitoring trading by the DPs.

The trading window is required to be closed when the compliance officer determines that a DP or class of DPs can reasonably be expected to have possession of UPSI. Such closure may be imposed in relation to such securities to which such UPSI relates. The timing of re-opening shall be determined by compliance officer. However, in all cases trading window shall be opened atleast 48 hours after the information becomes generally available.

DPs and their immediate relatives shall not trade in securities when the trading window is closed.

78. What is the expression used in other countries for closure of trading window?

Trading window closure is known by various names such as “blackout period”, “closed trade window”, “trading closure period” etc. However, the most common expression seems to be “blackout period”.

79. When should the trading window be closed and opened?

The period for closing of trading window may be kept as per the discretion of the company. However, the same is dependent on the origination of the price sensitive information not yet made generally available. Therefore, there are two limbs to it:

a. When should be the start of the closure of the trading window, i.e., which event should trigger the requirement of closure of trading window?
b. When should the same close?

As soon as there is an origination of UPSI with an insider, the trading window must be closed at that point of time. As regards how long should it last, the Regulations provide a minimum of 48 hours’ time until the UPSI is made generally available.

UPSI may not arise only in the event of board meeting but may arise even otherwise in relation to any material event.

In respect of declaration of financial results, the trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results.

In case of other material events, the trading window should be closed as soon as there is an origination of UPSI with an insider. The company may by way of its Code frame the same.

80. Are there any exceptional situations wherein trading window restrictions are not applicable?

The trading window restrictions shall not apply in respect of –

(a) transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub- regulation (1) of regulation 4:

- Off- market transactions between insiders having same UPSI in possession subject to the condition that such transaction shall be reported to the company within 2 working days which in turn shall report to the stock exchange within 2 working days of receipt;
- Transactions carried out through block deal window mechanism between persons who are in possession of UPSI;
- Transactions pursuant to statutory and regulatory obligation;
- Exercise of stock options where exercise price is pre- determined;
- Trades pursuant to trading plan.

(b) transactions in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to pre clearance by the compliance officer and compliance with the respective regulations made by the Board;

(c) transactions which are undertaken in accordance with respective regulations made by the Board such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy- back offer, open offer, delisting offer or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time.

81. Whether trading window restrictions are applicable on inter-se transfer of shares between promoter and promoter group by way of block deal mechanism?

In the informal guidance issued by SEBI in the matter of Raghav Commercial Ltd, SEBI stated that where there is an inter-se transfer of shares between the promoter and promoter group through block deal window mechanism while in possession of UPSI without in breach of Regulation 3 and both the parties make a conscious and informed trade decision, then such transaction shall not attract trading window restrictions subject to the proviso to regulation 4(1) and pre- clearance by the compliance officer.

SEBI also stated that the circumstances under (i) to (vi) of regulation 4(1) are for demonstrating innocence and not an exemption from the applicability of regulation 4 of the PIT Regulations.

81A. Whether DP can trade during the trading window closure for which pre- clearance was earlier provided by the compliance officer when the trading window was opened? ***(SEBI's Comprehensive FAQs dated March 31, 2023)***

The DP cannot trade when the trading window is closed by the compliance officer. Any earlier pre-clearance obtained when the trading window was open, would be invalid once the trading window is closed.

81B. If the trading window is closed, whether the compliance officer is required to inform the DP or rejecting their trades during pre-clearance would be sufficient? ***(SEBI's Comprehensive FAQs dated March 31, 2023)***

The compliance officer shall communicate the closure of trading window to the designated persons. Mere rejection of their trades during pre-clearance would not be sufficient.

81C. During trading window closure, whether trades pursuant to trading plan can be executed? ***(SEBI's Comprehensive FAQs dated March 31, 2023)***

Clause 4(3) read with Reg. 4(1) (vi) provides that trading window restrictions shall not apply in respect of trades pursuant to a trading plan.

81D. Can insiders trade through block deal window mechanism during trading window closure? ***(SEBI's Comprehensive FAQs dated March 31, 2023)***

Clause 4(3) read with Reg. 4(1) (ii) provides that trading window restrictions shall not apply in respect of trades carried out through the block deal window mechanism between insiders without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

81E. Can a promoter acquire shares from the liquidator of another promoter group during the trading window closure as off-market sale?

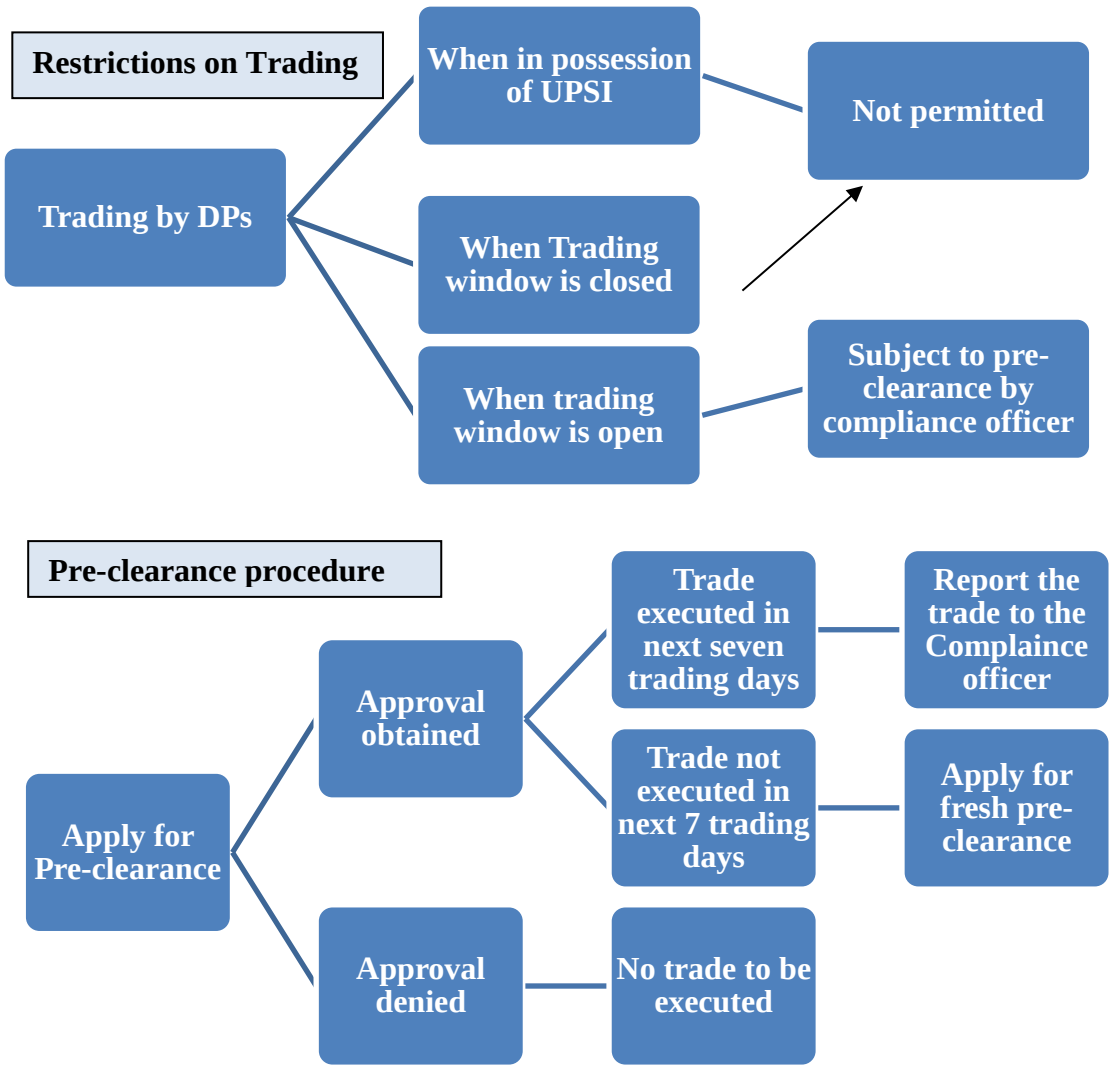
SEBI, in its informal guidance issued in the matter of KCP Ltd., stated that if the off-market inter-se transfer of shares is taking place between the promoters (through the liquidator) and if both the parties are having no UPSI and are making conscious and informed trade decisions, then such transaction is in compliance with the Regulations subject to pre-clearance by the Compliance Officer.

Pre-clearance of Trades

82. What procedure needs to be ensured when an insider intends to trade?

An insider cannot trade when in possession of UPSI. Further, DPs and their immediate relatives cannot trade when the Trading window is closed. When the trading window is open, trade by DPs shall be subject to pre-

clearance by the compliance officer if the value of proposed trade exceeds a particular threshold (E.g. 10 equity shares or of Rs. 10,000 or more) as the Board may stipulate.



83. 89A. Can DP of a listed entity, at the time of seeking pre-clearance for trading in the shares of the listed entity, give a declaration that he does not possess UPSI or not trading on the basis of UPSI?

A DP is always in possession of quite a lot of information about the listed entity. However, the information needs to be – a. unpublished and b. price sensitive in order to be classified as UPSI. Therefore, he may declare that the information about the company in his possession is not UPSI in his knowledge, at the time of seeking pre-clearance.

84. What will be the basis of pre-clearance of trades by the compliance officer? What are the guiding factors for him?

The basis will be evaluating whether the applicant is in possession of UPSI. The Compliance officer shall obtain declaration/ undertaking to the above effect.

84A. Can a managing director trade in its own company's shares with pre – clearance alone or a trading plan is necessary? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Yes, managing director can trade with pre-clearance alone, if not in possession of UPSI. However, if the code of conduct of the company mandates trading plan for persons who may be perpetually in possession of unpublished price sensitive information, such persons shall abide by such code of conduct.

84B. Does pre-clearance required in case of off-market transfer of securities? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

For the purpose of PIT regulations, trade includes both on – market and off – market. Hence, off-market transfer of securities would require pre-clearance as per the code of conduct of the company.

84C. Whether the pre-clearance will be required from the promoters even though they have no role in the management of the company or have access to UPSI of the company?

SEBI clarified in its informal guidance issued in the matter of Kirloskar Chillers Pvt. Ltd. that if a promoter is designated as DP by the BoD in consultation with the Compliance Officer, he will be required to obtain pre-clearance for trading, if the value of the proposed trades is above the thresholds stipulated by the BoD.

84D. Whether a Compliance Officer has the power to reject pre-clearance request for reasons extraneous to the Code and PIT Regulations?

In the informal guidance issued in the matter of Kirloskar Chillers Pvt. Ltd., SEBI stated that the Compliance Officer acts under the overall supervision of the BoD or the audit committee. Any question with respect to the act of Compliance Officer whether or not extraneous to the powers so conferred according to the PIT Regulations and the Code of Conduct, may be referred to the BoD and the audit committee for examination in accordance with the extant laws and the relevant facts of the case.

The basic intent of PIT Regulations is that no undue advantage accrue to certain category of investors on account of their access to UPSI, and in this regard, any actions of Compliance Officers, Board of Directors or other entities entrusted with ensuring adherence to these Regulations, should be to ensure compliance in letter and spirit to the PIT regulations and not for any ulterior motive.

Pledge

85. Is pledge a case of trading?

While the statutory note below Reg. 2 (1) (l) of the Regulations lists pledge as an example, a pledge is mostly associated with a financial transaction. A pledge may be regarded as a "trading" in a wide sense, but it is difficult to envisage how a pledge could be regarded as "insider trading". It cannot be said that the invocation

of a pledge can be said to be in response to insider information. Hence, the compliance with the code in case of a pledge may merely be for technical reasons.

If the creation of pledge is regarded as disposal, then release of a pledge may be regarded as acquisition. Applying the principles of contra trade (see later), does that mean that a pledge cannot be released before 6 months of creation?

As an answer to earlier query, it may be too hyper technical an interpretation to take to regard a pledge as a case of disposal of securities and hence trading. Hence, if release of a pledge is at all regarded as acquisition, the compliance officer should use his powers to grant an approval for a contra trade, viz., release of a pledge before the expiry of 6 months.

Our write up discussing 'Pledge in case of insider trading regulations' can be accessed here.

85A. Whether creation of pledge, invocation of pledge and revocation of pledge can be deemed as trading? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

As per SEBI's Comprehensive FAQs dated March 31, 2023, the term trading is widely defined to include dealing in securities and intended to curb the activities based on UPSI which are strictly not buying, selling or subscribing, such as pledging etc. Hence, trading would include creation/invocation/revocation of pledge.

86. (a) Whether SEBI's intent is to prohibit creation of pledge or invocation of pledge for enforcement of security while in possession of UPSI?

(b) Whether creation of pledge or invocation of pledge is allowed when trading window is closed? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Yes. However, the pledge or pledgee may demonstrate that the creation of pledge or invocation of pledge was bona fide and prove their innocence under proviso to sub-regulation (1) of regulation 4 of the Regulations.

This was also clarified by SEBI in its informal guidance issued in the matter of Geentanjali Trading and Investment Pvt. Ltd. It further stated that if any pledge transaction is carried out, it shall be expected to be within the spirit of PIT Regulations. The onus to demonstrate bone fide intention behind such transactions shall lie with pledgor/pledgee.

87. What should be the value of the pledge / revoke transaction for the purpose of disclosure? Is it the market value on date of the pledge / revoke transaction or is it the value at which the transaction has been carried out between the pledge and pledgee? For instance, if the pledgor has availed a loan of Rs 10 Lacs against which he has pledged shares worth Rs 15 Lacs, would the transaction value be Rs 10 Lacs or Rs 15 Lacs. *(SEBI's Comprehensive FAQs dated March 31, 2023)*

For the purpose of calculation of threshold for disclosures relating to pledge under Chapter III of the Regulations, the market value on the date of pledge/revoke transaction should be considered. In the above illustration, the value of transaction would be considered as fifteen lakh rupees.

88A. If the lender sells the shares pledged by the DP (shares acquired under ESOP by availing loan) to recover the loan then how to represent this transaction in Form C (i.e. invoke/revoke)? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

When the lender sells the shares pledged by DP, the transaction can be represented as invocation in Form C.

Contra Trade

88. What are the restrictions on the DP after he/ she has traded?

As per clause 10 of Schedule B, DP shall not execute contra trade in next 6 months.

The compliance officer can be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing. However, such relaxation should not violate the regulations.

89. Is contra trade a clear no-no or merely a profit surrender requirement?

Contra-trade is an exercise where the person engages himself in opposite transactions in a short span of time so as to derive benefit from the change in prices of the securities. The same is clearly prohibited under the Regulations except for in certain circumstances where the execution of the opposite trade is either the very intent of purchasing the shares (example ESOP) or generally provided to all without any specific favor to such person who is regulated by the Code (example buy back, rights issue, bonus issue, etc).

Accordingly, the same is not merely a profit surrender exercise.

90. A DP has purchased shares of the company on December 31, 2014. Within what time period he can sell the shares?

A DP is restricted to execute a contra trade within six months from the prior transaction. Therefore, in this case, the sale of shares shall have to take place on and after July 1, 2015 provided that the trading window is not closed on such date.

91. X, a DP is holding say 20 shares of A Ltd for more than 12 months and purchased another 5 shares one month back. X intends to sell, say 10 shares now. Whether X can sell 10 shares now citing that the same are being sold from the shares purchased by him 12 months back?

The intent of putting a restriction on contra-trade on DPs is to remove any opportunity for them to make short-swing profit. In this case as well, while the investment to the tune of 20 shares were already made and held for more than a year, since the concerned person bought 5 shares recently a month ago, the contra-trade restriction period will be applicable in this case.

If one takes a view on applying the contra-trade restrictions based on the number of shares bought or sold subsequently, then one may find DPs entering into contra-trade even more frequently. Accordingly, the period of six months keeps on shifting forward as any trade is executed by the DPs subsequently.

At the most, in cases of emergency situations, waiver of the said restriction may be allowed for the purpose of selling the shares by the Compliance Officer in accordance with the Code.

92. In case an employee or a director enters into Future & Option contract of Near/Mid/Far month contract, on expiry will it tantamount to contra trade? If the scrip of the company is part of any Index, does the exposure to that index of the employee or direct or also needs to be reported?*(SEBI's Comprehensive FAQs dated March 31, 2023)*

Any derivative contract that is cash settled on expiry shall be considered to be a contra trade. However, closing the contract before expiry (i.e. cash settled contract) would mean taking contra position. Trading in index futures or such other derivatives where the scrip is part of such derivatives need not be reported.

93. Whether contra trade is allowed within the duration of the trading plan? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Any trading opted by a person under Trading Plan can be done only to the extent and in the manner disclosed in the plan, save and except for pledging of securities.

94. Whether the restriction on execution of contra trade in securities is applicable in case of buy back offers, open offers, rights issues, FPOs, OFS, share split, bonus, exit offers, merger/amalgamation, demerger, etc. by/of listed companies? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Any acquisition of securities by way of Rights issue, Follow-on Public Offer (FPO), Offer for Sale (OFS), Bonus issue, Share Split, Merger/Amalgamation, Demerger, would not attract restriction of 'contra-trade', provided the initial transaction of disposal was completed in accordance with PIT Regulations.

Similarly, any disposal of securities by way of Buy-back, Open offer, Exit offer, Merger/Amalgamation etc. would not attract restriction of 'contra-trade', provided the initial transaction of acquisition was completed in accordance with PIT Regulations.

95. In case securities are acquired/disposed of pursuant to rights issue, FPO, buy back offers, open offers, bonus, OFS, share split, merger/amalgamation, demerger etc., whether the contra trade restrictions would apply if such securities are disposed/ acquired through open market trade, before completion of 6 months from the initial date of acquisition/disposal? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

If the initial transaction is an acquisition by way of Rights issue, Follow-on Public Offer (FPO), Offer for Sale (OFS), Bonus issue, Share Split, Merger/Amalgamation, Demerger, then subsequent disposal of securities within 6 months from the date of initial transaction would be considered as a contra trade. Similarly, if the securities are disposed through Buy-back or Open offer, then subsequent acquisition of securities within 6 months from the date of initial transaction would be considered as a contra trade.

However, for the transactions involving merger/amalgamation, demerger, bonus and split, the period of 6 months shall be calculated as under:

a. **Merger/ amalgamation** – For securities received subsequent to a merger/ amalgamation, period of 6 months is to be calculated from the date of acquisition of securities of the entity(ies), which were merged/amalgamated.

However, if an unlisted entity gets merged/ amalgamated with the listed entity, the employees of the unlisted entity who are now the DPs of the listed entity as a result of merger/ amalgamation, the period of six (6) months for such DPs shall be counted from the first transaction in the entity, post-merger/ amalgamation.

b. **Demerger** - For securities received subsequent to a demerger, period of 6 months is to be calculated from the date of acquisition of the securities of the entity, which was demerged.

c. **Bonus and share split** – For securities received subsequent to bonus or share split, 6 months to be calculated from the date of acquisition of original securities, on which bonus/split shares were received.

96. Whether the DP can trade in the Rights Entitlement if he/ she has earlier acquired the shares of the Company (within the 6 months period)? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Trading in Rights Entitlements tantamount to open market trade in the Company securities and contra trade provisions are applicable on them. Thus, if the DP has earlier acquired the shares of the Company and if they sell the Right Entitlement within a time span of 6 months, it will attract contra trade provisions.

97. Whether restriction on execution of contra trade is applicable only to DPs of a listed company or whether it would also apply to the designated employees of market intermediaries and other persons who are required to handle UPSI in the course of business operations? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

The code prescribed by the Regulations is same for listed companies, market intermediaries and other persons who are required to handle UPSI in the course of business operations. Therefore, restrictions with regard to contra trade forming part of clause 10 of code of conduct shall apply to all according to the Regulations.

98. Whether the restriction on contra trade by DPs is applicable only in respect of the listed company's own securities or for all listed securities?

The Code of conduct restricts contra trade in those securities of which the UPSI is available with the DPs. The same was clarified by SEBI in its informal guidance issued in the matter of HDFC Ltd.

99. If any DP has sold shares in the capacity of an executor of a will to distribute assets to the legal heirs of the will, will he be debarred from buying shares of the company in his personal capacity?

In the informal guidance issued by SEBI in the matter of Arvind Ltd, SEBI stated that if a person is specified as a 'DP' by the BoD of the company, the restrictions of contra-trade would be applicable to all shares held under the PAN of such DP irrespective of the capacities in which he holds shares in the company.

100. If a single Promoter has executed a trade, then whether the restrictions on contra trade will apply to it separately or will it apply to the entire Promoter Group?

In the informal guidance issued by SEBI in the matter of Raghav Commercial Ltd, SEBI stated that the contra trade restrictions apply to trades made by promoters individually and not the entire promoter group.

101. Whether the contra trade restrictions as prescribed in Schedule B and Schedule C of PIT Regulations are applicable on DP only or DP and their immediate relatives? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Clause 3 of Schedule B and Schedule C specifies DPs and immediate relatives of DPs in the organisation shall be governed by an internal code of conduct governing dealing in securities. Hence, contra-trade restrictions (as mentioned in code of conduct) would be applicable to DP and their immediate relatives collectively.

102. Does contra-trade restrictions apply to debt securities of the company? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

For the applicability of PIT Regulations, securities shall have the same meaning assigned to it under the Securities Contracts (Regulation) Act, 1956, inter-alia covers debt securities. Hence, contra trade restrictions would apply to debt securities.

103. Is Contra Trade restriction only applicable to trades under Pre – Clearance or on any transaction even if the trading does not exceed the threshold limit? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Contra Trade restrictions are applicable on each and every trade irrespective of whether the trades are below or above the threshold limit of Pre Clearance.

104. (i) Whether off-market inter-se transfer between the promoters within 6 months of receipt of shares pursuant to conversion of warrants will violate provisions regarding contra trade?

(ii) If the promoters/ members of the promoter group who had acquired shares through off-market transfer or block deal mechanism, wants to transfer the shares to the family trusts within 6 months, will it violate provisions regarding contra trade?

The sale of shares by the promoters within 6 months of receipt of the same pursuant to conversion of warrants will attract contra trade restrictions. Further, the transfer of shares by the promoters/ members of the promoter group to the family trust within 6 months of acquisition through off-market transfer or block deal mechanism will also attract contra trade restrictions. This was clarified by SEBI in its informal guidance issued in the matter of Nimish Upendrabhai Patel.

105. MD of the IT Ltd purchased 5000 shares of his company on 11th June, 2021. Her wife, who is also a shareholder in the IT Ltd wants to sell her 2000 shares on 5th August, 2021. Can she do so?

As per clause 10 of Schedule B, a DP cannot execute contra trade in next 6 months from date of trading in the shares. Therefore, a wife, being an immediate relative of DP, cannot sell her shares till 6 months i.e. 10th December, 2021.

106. MD of the Kim Ltd holds 9000 shares of his Company. He further purchased 5000 shares of the company on 11th June, 2021. Can he sell 4500 shares from his shareholding before acquiring such additional shares on 7th September, 2021?

Since, as per clause 10 of Schedule B, DP cannot execute contra trade in next 6 months from date of trading in the shares, the same applies on all shares held by him, whether the ones purchased within 6 months or his existing shareholding. He cannot sell the shares till 10th December, 2021.

Employee stock option plan

107. Will exercise of ESOP get covered under the Regulations?

The Model Code of Conduct under erstwhile regulations – Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 provided the following in case of ESOP:

> ***3.2-6*** *In case of ESOPs, exercise of option may be allowed in the period when the trading window is closed. However, sale of shares allotted on exercise of ESOPs shall not be allowed when trading window is closed.*

However, there was no such specific provision stated in the PIT Regulations. Thereafter, SEBI, vide its amendment dated December 31, 2018 provided that where the transaction in question is undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations, the same shall be treated as a trade under exonerating circumstances.

108. Whether requirement of pre-clearance is applicable for exercise of employee stock options? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Employee stock options being issued under SEBI (Share Based Employee Benefits) Regulations, 2014, the exercise of such stock options is covered under clause 4(3)(b) of Schedule B of the Regulations. However, sale of shares by employees obtained after exercise of options shall not be covered under the aforesaid Clause. Thus, no pre-clearance is required for exercise of stock options.

101B. Can grant of ESOP be made in trading window closure period? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Grant of ESOP refers to a right but not an obligation to acquire the shares of the company as and when the options are vested and correspondingly exercised by the Employees. Hence, grant of ESOP per se is not trading and accordingly can be made during trading window of closure.

1061. Is pre-clearance required for cashless option of ESOP wherein employees avail Sell- all/sell to cover option involving market sale of shares acquired under ESOP? *(SEBI's Comprehensive FAQs dated March 31, 2023)*

Yes, pre-clearance is required for cashless options because exercise of options and sale of shares acquired under ESOP are taking place simultaneously. Further, only exercising of ESOP is exempted from taking pre-clearance.

Internal Control Mechanism

109. How would the company ensure compliance with the requirement of having an internal control system?

In terms of Regulation 9A(2), the company should ensure that its internal control system includes the following:

- all employees who have access to UPSI are identified as DP;
- all the UPSIs are identified and its confidentiality is maintained;
- adequate restrictions are placed on communication or procurement of UPSI;
- lists of all employees and other persons with whom UPSI is shared is maintained and either confidentiality agreements are signed or notice of confidentiality is served to all such employees and persons;
- all other requirements of the Regulations are complied with;
- evaluation effectiveness of the system considering the aforesaid.

The broad contents of the internal controls manual may be on the following lines:

- Meaning of UPSI, when is an information to be regarded as price-sensitive, determination of whether the information is price-sensitive;
- Organisational commitment to ensuring integrity of UPSI and building compliant culture;
- Identification of typical places/divisions where UPSI may arise, with illustrative situations;
- Ensuring adequate firewalls, Cyber Security for safeguarding UPSI;
- Manner of transmission of UPSI to insiders;
- Manner of transmission of UPSI by bringing persons “inside”;
- Communication of UPSI to stock exchanges and press;
- Determination of leaks of UPSI;
- Role of various functionaries such as, the BoD, Audit Committee, CEO, Compliance Officer;
- Review of efficiency of internal controls by audit committee including the frequency and manner of review along with the ways to strengthen internal controls;
- Whistle blower mechanism, dissemination of the same, nodal officer and point of contact for whistle blowers;
- Periodic sensitization of employees of the organisation in terms of requirement under the Regulations and the Code.

Informant, Voluntary Information Disclosure etc.

110. Who is an Informant?

Reg. 7A (1) (b) of the Regulations defines informant as individual(s), who voluntarily submit to the Board a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur, in the manner provided under the Regulations, regardless of whether such individual(s) satisfies the requirements, procedures and conditions to qualify for a reward from the Board.

Seeing the definition, any individual can be an informant whether he/ she is an employee of the entity or an outsider. Therefore, even an outsider not associated with the company in any capacity may also be considered as informant for the purpose of the Regulations.

111. Whether each and every employee can be an informant?

As per the Explanation 1 to regulation 7I of the Regulations, an employee means any individual who during employment may become privy to information relating to violation of insider trading laws and files a Voluntary Information Disclosure Form under the Regulations and is a director, partner, regular or contractual employee, but does not include an advocate. Evidently, the definition provides for twin conditions i.e. the individual being privy to the information as well as holding of a certain nature of positions such as a director/ partner/ regular or contractual employee of the entity.

112. What kind of information can be disclosed?

An information which is:

a. an 'original information'
b. regarding alleged violation of 'insider trading laws' that has occurred, is occurring or informant has a reasonable belief that it is about to occur

shall be disclosed.

Reg. 7A (1) (h) of the Regulations defines original information which is:

- derived from the independent knowledge and analysis of the Informant
- not known to SEBI from any other source, except where the Informant is the original source of the information;
- is sufficiently specific, credible and timely[4] to –
    - commence an examination or inquiry or audit,
    - assist in an ongoing examination or investigation or inquiry or audit,
    - open or re-open an investigation or inquiry,

[4] Information shall be considered timely, only if as on the date of receipt of complete Voluntary Information Disclosure Form by the Board, a period of not more than three years has elapsed since the date on which the first alleged trade constituting violation of insider trading laws was executed.

- inquire into a different conduct as part of an ongoing examination or investigation or inquiry or audit directed by the Board;

- not exclusively derived from an allegation made in a judicial or administrative hearing, in a Governmental report, hearing, audit, or investigation, or from the news media, except where the Informant is the original source of the information; and
- not irrelevant or frivolous or vexatious as defined in Regulation 7A (1) (e).

Insider trading laws have been defined under Reg. 7A(1)(d) to mean:

- Section 15G of SEBI Act, 1992;
- Regulations 3, 4, 5, 9/ 9A of these Regulations.

113. How can an Informant submit details of alleged violation of insider trading laws?

As per Regulation 7B, an Informant shall submit Original Information by furnishing the **Voluntary Information Disclosure Form** to the Office of Informant Protection of the Board in the format prescribed in Schedule D of the Regulations.

Informant has the option to submit the form either on his own or through his legal representative. However, in case the Informant does not submit the said form through a legal representative, the Board may require such Informant to appear in person to ascertain his/ her identity and the veracity of the information so provided. The Informant shall remove such information which may disclose his identity from the information being filed in the Form and in case such part cannot be removed he may identify such part so that the Board will take necessary steps to maintain confidentiality of such information.

114. In case informant is an employee of the company, is it necessary to report the matter to his organization first?

Regulation 7E(3) clearly states that an Informant may be eligible for a Reward whether or not he reported the matter to his organization as per its internal legal and compliance procedures and irrespective of such organization's compliance officer subsequently providing the same Information to the Board. Therefore, reporting to the organization is not a pre requisite for filing a **Voluntary Information Disclosure Form.**

115. How much confidential is Informant's identity?

The Informant is not required to disclose his identity while submitting the Original Information to Board but the Informant may disclose it if the same cannot be expunged/ removed from the declaration form.

Regulation 7H provides for confidentiality of Informant in the following manner:

The Original Information and identity provided by an Informant shall be held in confidence and exempted from disclosure under the Right to Information Act, 2005.

A prohibition is also prescribed against the act of any person compelling disclosure of the identity, existence of an Informant or of the information provided by an Informant.

The confidentiality in respect of the identity and existence of the Informant shall be maintained throughout the process of investigation, inquiry and examination as well as during any proceedings before the Board and save where the evidence of the Informant is required during such proceedings, advance notice of such evidence may be provided to the noticee at least 7 working days prior to the date of the scheduled hearing for evidence.

In proceedings before any authority other than the Board, the Board may request maintenance of confidentiality of the identity and existence of an Informant in such proceeding.

As per Regulation 7B, legal representative shall maintain confidentiality of the identity and existence of the Informant.

Regulation 7M also provides for non-disclosure of such information that could identify the Informant.

Disclosure of identity: As per Regulation 7F (2), prior to the payment of a reward, an Informant shall directly or through his or her legal representative, disclose his or her identity and provide such other information as the Board may require.

In nutshell, Board has provided significant measures to protect the identity of the Informant to increase the number of reporting against such allegations.

116. What is monetary reward? How the quantum of monetary reward will be decided? Is it mandatory in nature?

It is a reward given to the Informant in case he discloses any alleged violation of insider trading laws through which monetary sanction of atleast 1 crore has been collected by the Board. It is given out of Investor Protection and Education Fund.

Quantum of Reward is provided in Regulation 7D. Reward shall be 10% of the monetary sanctions collected or recovered and shall not exceed Rupees 1 crore or such higher amount as the Board may specify from time to time.

The Board may if deemed fit, out of the total Reward payable, grant an interim reward not exceeding Rupees 10 lacs or such higher amount as the Board may specify from time to time, on the issue of final order by the Board against the person directed to disgorge.

In case of more than 1 informant, reward shall be equally divided.

As per Regulation 7D, the reward is not mandatory in nature, the Board may at its sole discretion, declare an informant eligible for reward.

117. What is the eligibility for obtaining monetary reward?

An informant who submits original information to the Board through which monetary sanction of atleast 1 crore has been collected by the Board is eligible for reward. Further, Regulation 7G also provides for rejection of claim for reward.

118. What are the duties of Legal Representative of an Informant?

Regulation 7B provides for following duties of Legal Representative:

i. verify the identity and contact details of the Informant;
ii. maintain confidentiality of the identity and existence of the Informant, including the original Voluntary Information Disclosure Form;
iii. give an undertaking as prescribed in the Form;
iv. submit to the Board, the copy of the Form in the manner provided in Schedule D of these regulations along with a signed certificate as required under clause (iii) of this sub-regulation (2).

119. Can an Informant who disclosed violations done by him be eligible to monetary reward?

As per Regulation 7K, the Informant may, after payment of any monetary amounts be eligible for a Reward. The amount of monetary sanctions that the Informant is ordered to pay Board shall not be included in the value of monetary sanctions.

Therefore, the reward to which informant in entitled to does not comes from the monetary sanction paid by him but from any other person involved in the violation independent of Informant's act.

120. Will the company be liable to disclose the violations in case the informant informs the company instead of Board?

SEBI issued a circular dated July 19, 2019 (superseded by circular dated July 23, 2020) with an objective to standardize the process related to dealing with violations of the Code of Conduct. As per the circular, for any violation by DPs and their immediate relatives, all listed companies, and intermediaries and fiduciaries who handle UPSI of a listed company in the course of business operations shall:

- Report violations to the stock exchange(s), where the concerned securities are traded, in the standardized format prescribed by the Board in the said circular;
- Maintain database of violation of code of conduct that would initiate appropriate action against them.

121. What steps does the company need to take to protect Informant?

The company shall provide in its Code of Conduct provisions related to protection of employee from any discharge, termination, demotion, suspension, threats, harassment, directly or indirectly or discrimination.

Miscellaneous

122. What are the actionables that companies are required to carry out to ensure prevention of insider trading?

Companies having their securities listed or whose securities are proposed to be listed on a stock exchange have to ensure following:

- Identify and designate a compliance officer to administer the Code of Conduct and another requirements under these Regulations;
    - Compliance officer to determine the CPs.

- Formulate and publish on its official website, a Code of Practices and Procedures for Fair Disclosure (**Code of Fair Disclosure**) of UPSI that the Board will follow to ensure uniform dissemination of UPSI;

- Formulate a policy for determination of legitimate purpose[5], which should be an approach driven policy and shall be a part of the Code of Fair Disclosure.

- Formulate a Code of Conduct to regulate, monitor and report trading by the DPs and their immediate relatives as prescribed in Schedule B and or Schedule C, as the case may be. This Code shall, *inter alia*, specify the following requirements:
    - Identification of DPs;
    - Maintaining list of DPs and their immediate relatives;
    - Intimating the DPs regarding the disclosure requirements of the persons with whom the DPs have MFR;
    - Provisions related to pre- clearance;
    - Trading window restrictions;
    - Setting up of a process to know 'how' and 'when' people are brought 'inside' on sensitive transactions;
        - There should be a system to track where the information emerges;
        - With whom the information is shared;
        - The protocol of sharing the information;
        - Sensitizing the person with whom the information is to be shared;
        - Assuring that the person understands that the information is confidential;
        - Disclosing the information to the Stock Exchange(s);
        - Tracking the information until the same is disclosed to the public.

- Maintain a Structural Digital Database of persons with whom UPSI is shared;

- Put in place adequate and effective system of internal controls to ensure compliance of the provisions of the Regulations in order to avoid insider trading:

- Review of the system of internal control by the Audit Committee atleast once a year, verifying whether the systems for internal control are adequate and are operating effectively.

- Formulate a Policy / mechanism to prevent any leak of UPSI and to set up the procedure for inquiry in case of leak of UPSI or suspected leak of UPSI.

[5] the term "legitimate purpose" includes sharing of UPSI in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

- Ensure compliance with initial, annual and continuous disclosure requirements from the promoters, KMPs, directors, DPs respectively and intimate the same to the stock exchange(s);

123. What kind of violation is required to be reported to stock exchange?

All violations including violations of the code of conduct is required to be reported to stock exchange. SEBI has prescribed a standard format for reporting of such violations, the same is referred in Annexure – II.

Penalty

124. What is the penalty imposed for contravention of provisions of the Regulations?

Any contravention of the provisions of regulations shall be dealt with by the Board in accordance with the SEBI Act.

- **Penalty for insider trading:**

Section 15G of the Act prescribes that an insider who is found guilty of insider trading shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

- **Penalty for failure to make disclosures:**

Section 15A (b) of the Act states that if a person (which includes company) fails to file any return within the time prescribed therefor in the Regulations, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

In a case, as an interim measure, SEBI vide its interim order dated May 21, 2015, in the matter of Sabero Organics Gujarat Limited took an urgent preventive step of impounding and retaining the proceeds along with interest at 12% p.a. lying in the bank accounts of the alleged insiders and further ordered that, if the funds lying their bank accounts are insufficient to meet the unlawful gains, then the securities lying in the demat account of these persons shall be frozen to the extent of the remaining value.

125. In the event of penalty charged by a company for contravention of the provisions or non-adherence of code of conduct, what should the company do with the penalty?

The penalty charged by the company should be transferred by the company to Investors Education Protection Fund. The penalty has been charged by the company for a misdeed of someone else and therefore, such amount cannot be surely retained by the company as the company cannot become wealthier and richer by someone else' money made out of unlawful means.

International Scenario

126. Laws and regulations of various countries to prohibit insider trading:

Countries	*Enforcement Body*	*Specific Laws*	*Maximum Fines & Fees*	*Maximum Prison Time*
United States	Securities and Exchange Commission	Securities Exchange Act of 1934	Civil: Greater of $1 million or 3 times amount of profit Criminal -maximum $5 million	20 years
United Kingdom	Financial Services Authority	Criminal Justice Act	Unlimited	7 years
Canada	Different governing body for different provinces	Securities Act & Criminal Act	$ 5 million	10 years
Brazil	Brazilian Security Commission	Brazilian Legislation Act	$ 19 million	5 years
Australia	Australian Securities and Investment Commission	Corporations Act	Greater of AUD$ 495,000 or 3 times amount of profit	10 years
France	AMF or Autorité des Marchés Financiers	Monetary and Financial Code of 2000, Banking and Financial Regulation Act of 2010	EUY 100 million	2 years

The insider trading laws has been enforced by various countries in different decades.

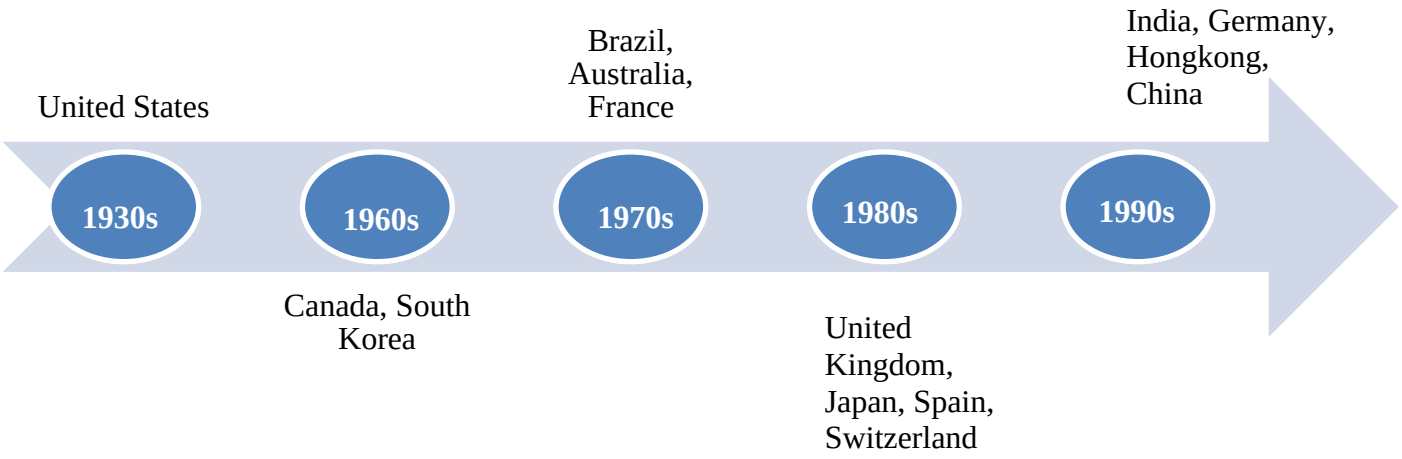


Figure 2: Insider Trading laws enforced in different decades by various countries[6]

[6] Source: http://www.macrothink.org/journal/index.php/ijafr/article/viewFile/3269/2976

Annexure – I

Contents of Structured Digital Database of recipients of UPSI
[See Regulation 3(4) and 3(5) of the SEBI (Prohibition of Insider Trading) Regulations, 2015]

Sl. No.	Name and category of the recipient	PAN	Address	Name of Immediate relative along with their PAN or of Affiliates, in case the recipient is an entity or company	Details of UPSI along with reason of sharing thereof	Name of the person who shared such UPSI	Date and Time of Sharing	Whether NDA has been signed and Notice of confidentiality has been given?	Date of entry	Date when UPSI became publicly available	Remarks, if any

Note 1:
The categories of recipients shall include:

a. Employees of the company who are not DPs;
b. Persons who are neither employees nor DPs but may come into contact with the DPs and other insiders of the company;
c. Affiliates shall mean the promoter and promoter group, associates and JVs of the entity/ company.

Note 2:

a. The database shall be maintained under the supervision of the Compliance Officer of the company;
b. The database shall be reviewed by the Compliance Officer on a periodic basis

Annexure – II

Report by (Name of the listed company/ Intermediary/Fiduciary) for violations related to Code of Conduct under SEBI (Prohibition of Insider Trading) Regulations, 2015.

[For listed companies: Schedule B read with Regulation 9 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015

For Intermediaries/ Fiduciaries: Schedule C read with Regulation 9(1) and 9(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015]

Sr. No.	Particulars	Details
1.	Name of the listed company/ Intermediary/Fiduciary	
2.	*Please tick appropriate checkbox* Reporting in capacity of : ☐ Listed Company ☐ Intermediary ☐ Fiduciary	
3.	**Details of Designated Person (DP)**	
	i. Name of the DP	
	ii. PAN of the DP	
	iii. Designation of DP	
	iv. Functional Role of DP	
	v. Whether DP is Promoter or belongs to Promoter Group	
	B. If Reporting is for immediate relative of DP	
	i. Name of the immediate relative of DP	
	ii. PAN of the immediate relative of DP	
	C. Details of transaction(s)	
	i. Name of the scrip	
	ii. No of shares traded and value (Rs.) (Date- wise)	
	D. In case value of trade(s) is more than Rs.10 lacs in a calendar quarter	
	i. Date of intimation of trade(s) by concerned DP/director/promoter/promoter group to Company under regulation 7 of SEBI (PIT) Regulations, 2015	
	ii. Date of intimation of trade(s) by Company to stock exchanges under regulation 7 of SEBI (PIT) Regulations, 2015	
4.	Details of violations observed under Code of Conduct	
5.	Action taken by Listed company/ Intermediary/ Fiduciary	
6.	Reasons recorded in writing for taking action stated above	
7.	Details of the previous instances of violations, if any, since last financial year	
8.	If any amount collected for Code of Conduct violation(s)	
	i. Mode of transfer to SEBI - IPEF (Online/Demand Draft)	
	ii. Details of transfer/payment In case of Online: **Particulars** | **Details**	

<table>
<tr><th>Sr. No.</th><th>Particulars</th><th>Details</th></tr>
<tr><td></td><td>
<table>
<tr><td>Name of the transferor</td><td></td></tr>
<tr><td>Bank Name, branch and Account number</td><td></td></tr>
<tr><td>UTR/Transaction reference Number</td><td></td></tr>
<tr><td>Transaction date</td><td></td></tr>
<tr><td>Transaction Amount (in Rs.)</td><td></td></tr>
</table>

In case of Demand Draft (DD):

<table>
<tr><th>Particulars</th><th>Details</th></tr>
<tr><td>Bank Name and branch</td><td></td></tr>
<tr><td>DD Number</td><td></td></tr>
<tr><td>DD date</td><td></td></tr>
<tr><td>DD amount (in Rs.)</td><td></td></tr>
</table>
</td><td></td></tr>
<tr><td>9.</td><td>Any other relevant information</td><td></td></tr>
</table>

Yours faithfully,

Date and Place

Name and Signature of Compliance Officer
PAN:
Email ID:

- **Our Resource Centre on PIT Regulations**
- **FAQs on Structured Digital Database**
- **FAQs on PIT Regulations**

Disclaimer: This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied for real life facts.

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