

# SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS 2015

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# Indiabulls Ventures CEO, 4 others pay Rs 5 cr to settle insider trading case – Oct. 2021

The Applicants in the matter was Divyesh B Shah, who was chief executive officer and whole time director, his relatives Dravinaben L Desai, Vikram L Desai, Sharwary V Desai, and Vikram L Desai HUF.

The firm on April 23, 2018, informed NSE and BSE regarding its audited standalone and consolidated financial results for the quarter and financial year ended on March 31, 2018. It had also declared an interim dividend. The period of UPSI was from April 2, 2018 to April 23, 2018.

Divyesh allegedly communicated the UPSI to his relatives who traded in the scrip of Indiabulls Ventures during the UPSI period. Vikram also traded on behalf of Dravinaben, Sharwary and Vikram Desai HUF.

# Indiabulls Ventures CEO, 4 others pay Rs 5 cr to settle insider trading case – Oct. 2021

By trading in the scrip of the company during the UPSI period, Dravinaben was alleged to have made unlawful gains of Rs 1.22 crore.

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Pending the proceedings, they filed separate settlement applications with Sebi proposing to settle the case without admitting or denying the guilt.

Divyesh Shah has paid Rs 74.58 lakh as settlement amount while Vikram L Desai, Sharwary V Desai and Vikram L Desai HUF have paid Rs 22.31 lakh each.

Besides, Dravinaben L Desai has paid Rs 3.56 crore. This includes settlement charges, disgorgement of wrongful gains along with interest.

## Videocon Industries — Venugopal Dhoot — September 2021

Sebi had penalized promoters of Videocon Industries — Venugopal Dhoot and two of his investment companies — with a total fine of Rs 75 lakh for pledging Videocon shares without proper disclosure to shareholders and also for entering into off-market transactions using inside information.

The case relates to Sebi rule violations by these entities between April and September 2017. Each of the entities have been fined Rs 25 lakh.

## Videocon Industries.....Cont...

During the period of investigation by Sebi, Dena Bank, one of the lenders to Videocon, had classified its loans to the company as a non-performing asset (NPA), which in turn was expected to have a negative impact on Videocon's stock price. Hence, this was considered an UPSI.

During this period, the two promoter entities had pledged their holdings in Videocon and also transferred some shares through off market deals. Dhoot, also an insider, had traded in Videocon shares, either directly or on behalf of the two companies.

**Trading** in securities with the advantage of having **asymmetrical access to unpublished price sensitive information (UPSI)** which upon becoming generally available, is likely to materially affect the price of the securities

In India, Insider trading is not only a **tort** i.e. a civil wrong but also a **crime**





# Why is Insider trading illegal?

## Moral dimension

- Informed investors have an unfair advantage
- Erosion of investors confidence in the market
- Ordinary investors especially retail investors may not participate in rigged market
- Breach of trust and violation of fiduciary duty by officials/ person

## Economic dimension

- Reduce market liquidity and increase volatility
- Reduce returns to ordinary investors leading to financial misfortunes and losses
- Deters outsiders and thus impede fair price discovery
- Difficulty in mobilizing capital and adverse consequences to the cost of capital
- Makes stock market less efficient and thus affects the Economy

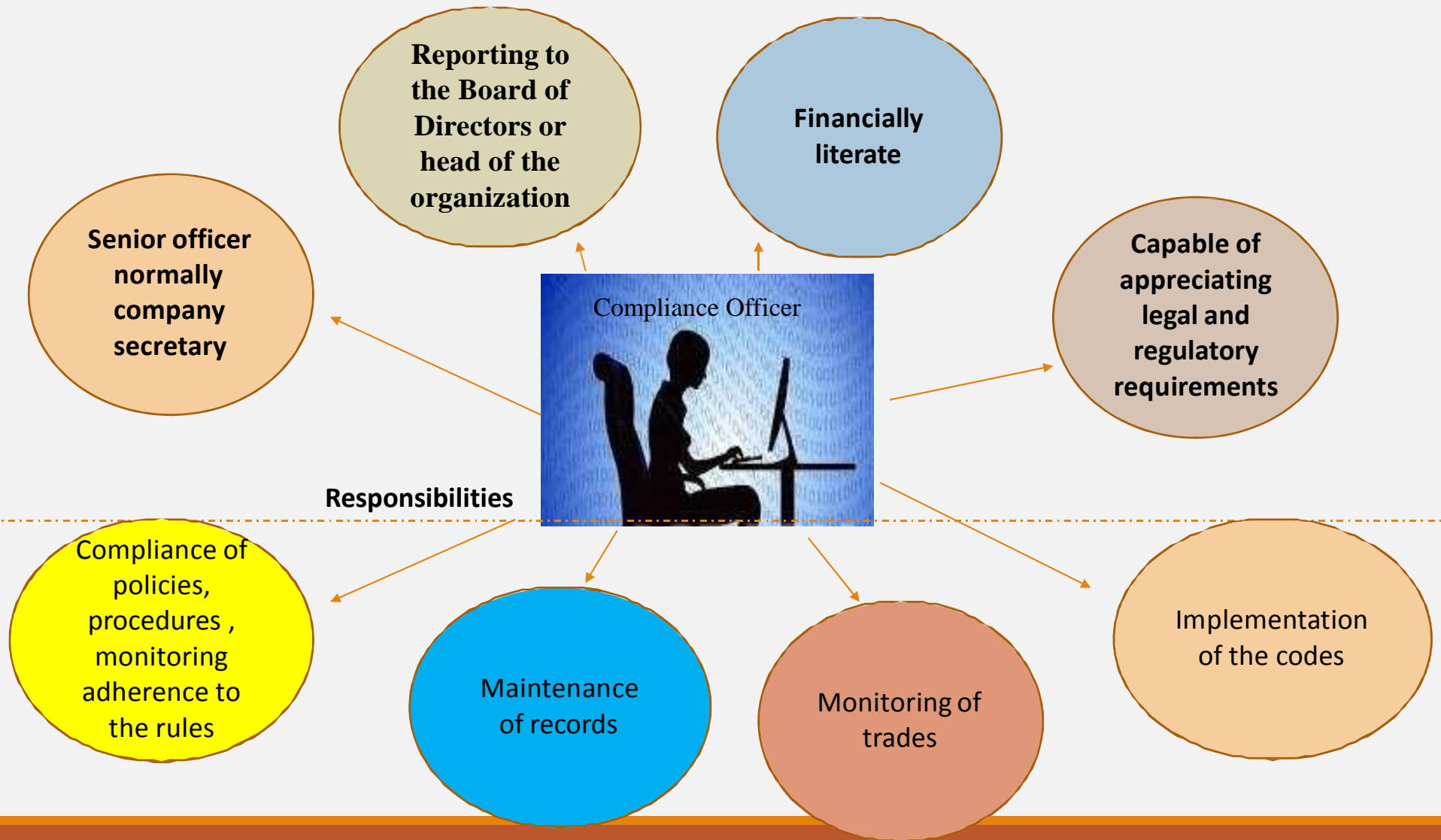


DEFINITIONS

Important

DEFINITIONS





# INSIDER

## Insider

— Connected Person **OR** person in possession of /having access to UPSI

### Connected person

~~ANY Person who is or has during the six months~~  
prior to the concerned act been associated with a  
company, **directly or indirectly**, in any capacity  
that allows/ reasonably allows such person, direct  
or indirect, access to UPSI

### **Designated Person**

# Deemed to be connected persons

Immediate relative of connected persons



Holding company or company subsidiary or associate company



Banker of the company



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



Public servants & others such as

Spouse of a person

parent, sibling, and child of such person or of the spouse

Dependent financially

or

Consults in taking trading decisions

Deemed to be connected persons

- Intermediary
- Official of a stock exchange or of clearing house or corporation
- member of board of trustees of a mutual fund / asset management company of a mutual fund or employee thereof

# Designated Persons

**Board of directors or such other analogous authority**

in consultation with

**Compliance Officer**

**Designated Persons**

**Employees of such listed company/ material subsidiaries of listed company/ intermediary/ fiduciary**

**Employees on the basis of seniority and professional designation**

**Promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries**

role and function in the organization

Chief Executive Officer

**and**

**and**

access that such role and function would provide to unpublished price sensitive information

Two levels below Chief Executive Officer

**Support staff having access to UPSI**

# UNPUBLISHED PRICE SENSITIVE INFORMATION

*“generally available information” means information that is accessible to the public on a non-discriminatory basis”*

- Relating to a company or its securities
- directly or indirectly
- not generally available
- which upon becoming generally available, is likely to materially affect the price of the securities

Information that is capable of being accessed by any person without breach of any law would be considered generally available for eg-

Analysis and research based on generally available information would also be generally available information.

Information on website of stock exchange

## *Illustrative list*

- ✓ financial results
- ✓ dividends
- ✓ change in capital structure

- ✓ mergers, de-mergers, acquisitions, delisting, disposal and expansion of business and such other transactions

- ✓ changes in key managerial personnel

**“Trading”** means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities.

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### **PROPOSED TO BE LISTED**

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

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

# Obligations of Insider



**Not to communicate, provide or allow access to UPSI**



**Not to trade in securities when in possession of UPSI**

**except as permitted under Regulations.**

# Communication or procurement of UPSI



No **Insider** shall communicate, provide, or allow access to UPSI including to other insiders



No **Person** shall procure from or cause the communication by any insider of UPSI

Except

Board of directors to make Policy for determination of “**legitimate purposes**” as a part of ‘codes of fair disclosure and conduct’

✓ furtherance of legitimate purposes

✓ performance of duties

✓ discharge of legal obligations

- **Recipient** of UPSI will be considered Insider
- **Due notice** shall be given to such persons to maintain confidentiality of such UPSI



# Communication or procurement of UPSI allowed in connection with transactions-



## • OPEN OFFER

- entail an obligation to make an **open offer**
- board of directors is of informed opinion that **sharing of such information is in the best interests of the company;**



## OTHER TRANSACTIONS

- where the board of directors is of informed opinion that **sharing of such information is in the best interests of the company**
- UPSI is **disseminated** to be made generally available at least **two trading days prior to the proposed transaction**

- Execution of **AGREEMENTS** to contract confidentiality and non-disclosure obligations
- No **TRADING** in securities of the company when in possession of UPSI

# STRUCTURED DIGITAL DATABASE

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Board of directors or head(s) of the organization of every person required to handle UPSI shall ensure maintenance of



**STRUCTURED DIGITAL DATABASE**

- **N**ature of UPSI
- **N**ames of person sharing and receiving UPSI
- **P**AN or any other identifier authorized by law where PAN is not available
- **N**ot be outsourced and shall be maintained internally
- **I**nternal controls and checks such as time stamping and audit trails
- **P**reservation i.e. 8 years

# Trading when in possession of UPSI



**P**rohibition on trading by an insider while in possession of UPSI



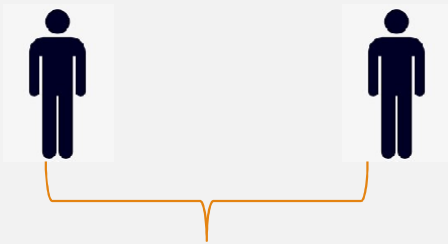
**T**rading when in possession of UPSI would be presumed to have been motivated by the knowledge and awareness of such information in possession



**O**nus of establishing, that they were not in possession of UPSI, shall be on connected persons and in other cases, the onus would be on the SEBI

# Trading when in possession of UPSI.....defences available

Off-market  
*inter-se* transfer  
between Insiders



- ✓ conscious and informed trade decision
- ✓ such UPSI was not obtained under sub-regulation (3) of regulation 3 of these regulations

Off-market trade

2 working days

reporting to the company by insiders

2 trading days of  
receipt of  
disclosure/becoming  
aware

stock exchange

# Trading when in possession of UPSI.....defences available

➔ block deal window mechanism

➔ statutory or regulatory obligation to carry out bona fide transaction.

➔ exercise of stock options

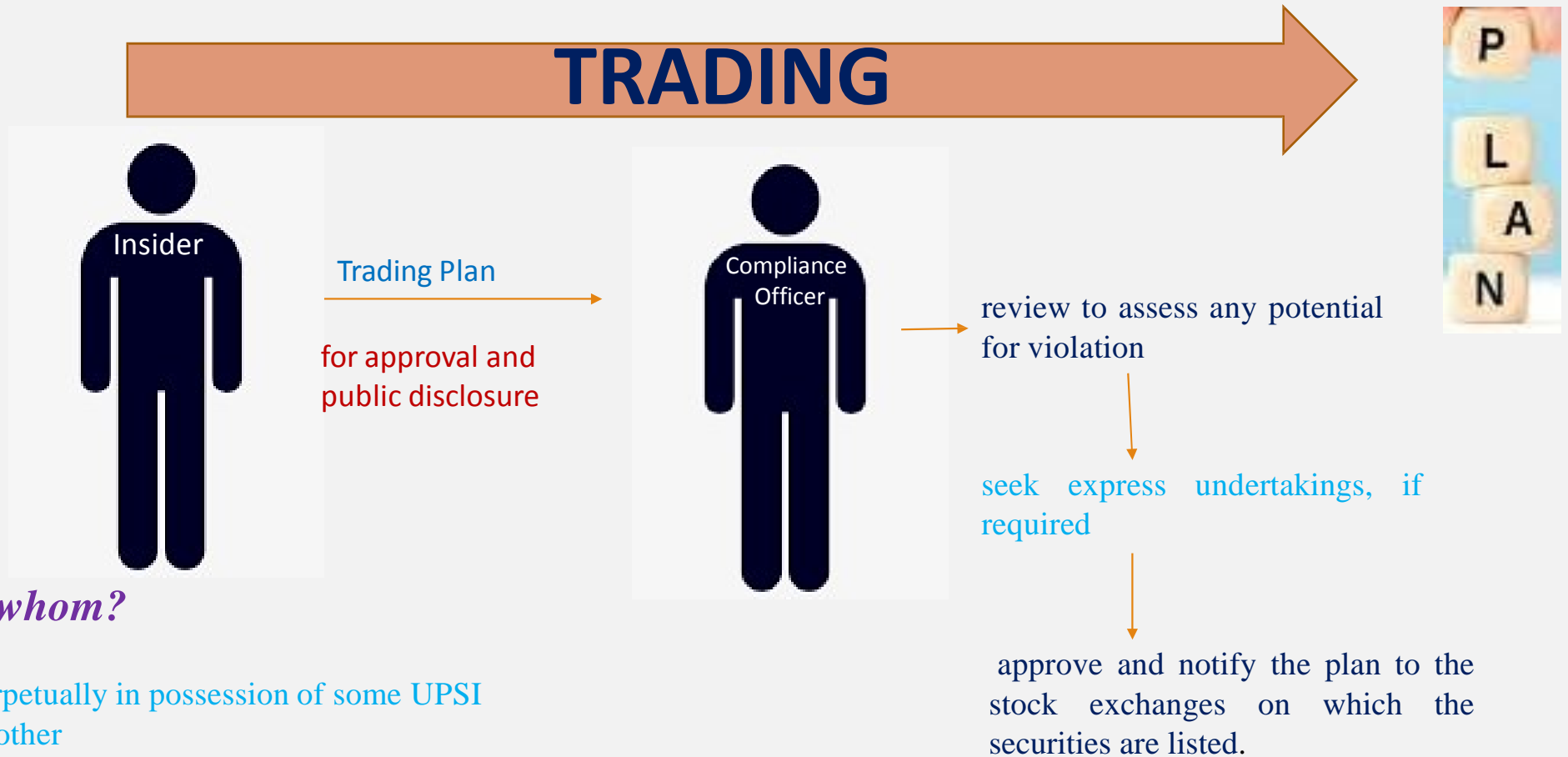
➔ pursuant to a trading plan

➔ in the case of non-individual insiders:

Individuals in possession of UPSI and decision-making were different and decision making person was not in possession of UPSI when he took the decision to trade

appropriate and adequate arrangements were there and there is no evidence of such arrangements having been breached

# TRADING



## For whom?

- Perpetually in possession of some UPSI or other
- rendering such persons incapable of trading in securities throughout the year



- not entail commencement of trading earlier than six months from the public disclosure of the plan
- not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced and the second trading day after the disclosure of such financial results (i.e. practically FEB month to May always remains close.
- entail trading for a period of not less than twelve months
- not entail overlap of any period for which another trading plan is already in existence
- set out either the value of trades to be effected Or the number of securities to be traded along with the nature (i.e. acquisition of disposal ) of the trade and the intervals at, or dates on which such trades shall be effected
- not entail trading in securities for market abuse and is irrevocable
- Implementation to defer if UPSI in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation

# DISCLOSURES OF TRADING

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SELF



Immediate relatives



Any other person for whom  
such person takes trading  
decisions

trading in securities shall also include trading in derivatives of securities

disclosures shall be maintained by the company, for a minimum period of five years



# Types of Disclosures (Reg 7)

## INITIAL DISCLOSURES

- **key managerial personnel/director/promoter or member of the promoter group**
- Within **7 days** of such appointment /becoming promoter or members of promoter group
- Disclose **holdings** of securities of the company as on the date of such appointment/becoming promoter or members of promoter group
- **Disclosure to company (FORM B)**

## CONTINUAL DISCLOSURES

- **promoter, member of the promoter group, designated person and director of every company**
- Value of securities traded, in aggregate, in a **calendar quarter**, exceeds traded value of **Rs. 10 Lac or such other value** as may be specified
- within **two trading days** of such transaction
- **Disclosure to company (FORM C)**
- **Company to stock exchange** within **2 trading days** of receipt of the disclosure or from becoming aware of such information

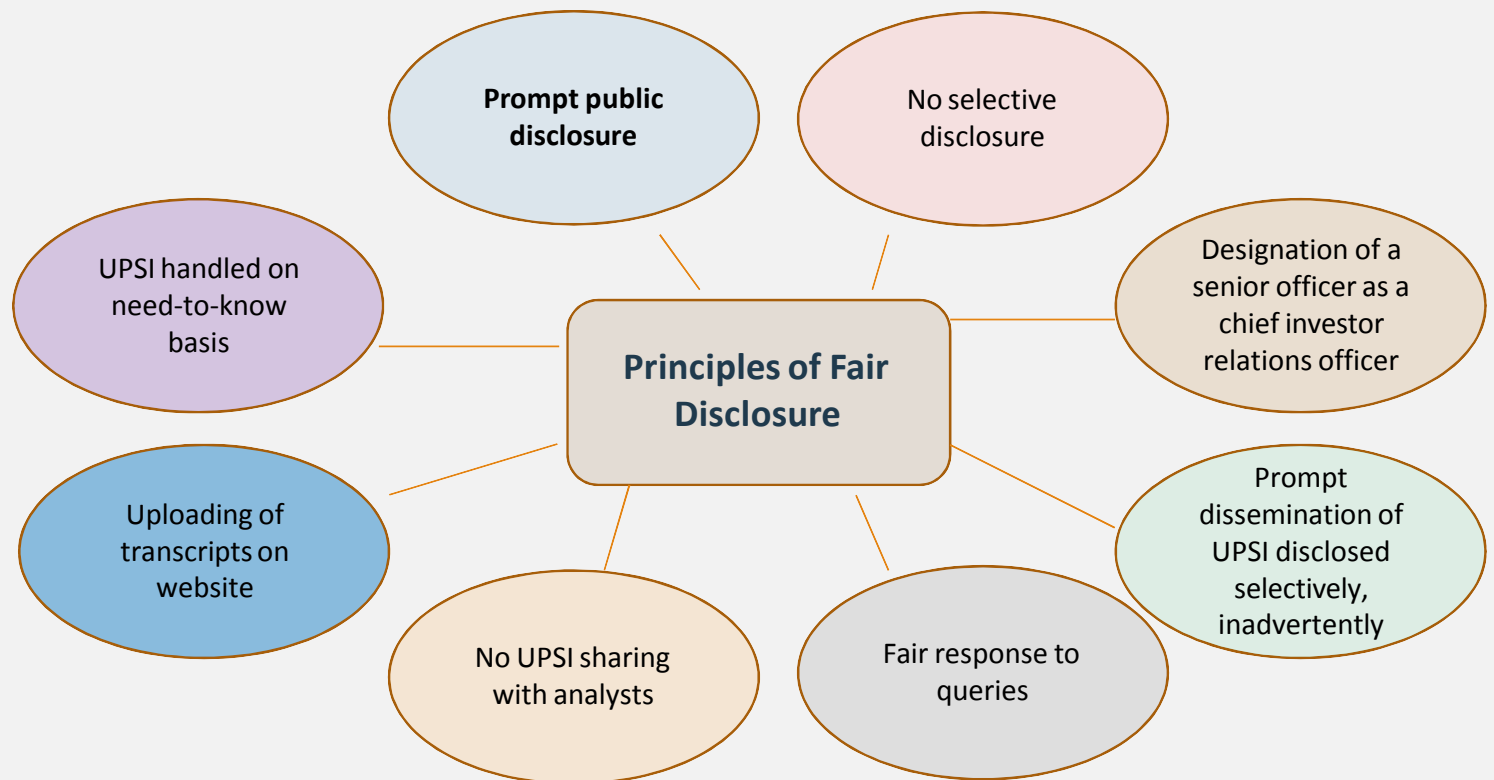
## DISCLOSURE BY OTHER CONNECTED PERSON

- other **connected person as may be** required by the company
- disclosures of **holdings and trading** in securities of the company (**FORM D**)
- at specified **frequency**

# CODE OF PRACTICES AND PROCEDURES FOR FAIR DISCLOSURE OF UPSI

Regulation 8 read with Schedule A

- Board of Directors to formulate
- Publish on website
- Promptly intimate to Stock Exchanges code and every amendment thereto
- Policy for determination of 'legitimate purpose'



# CODE OF CONDUCT

## Designated Persons

## Immediate relatives of designated persons

Listed Company — Board of directors

Intermediary

Fiduciaries

Board of directors or head(s) of the organization

CEO/MD

Formulate code of conduct to regulate, monitor and report trading (with the approval of Board or head of the organization)

Identify and designate a compliance officer to administer

Schedule B

Schedule C

# **CODE OF CONDUCT TO REGULATE, MONITOR AND REPORT TRADING BY DESIGNATED PERSONS AND IMMEDIATE RELATIVES OF DESIGNATED PERSONS**

(Regulation 9 read with Schedule B)

Reporting by compliance officer to Board/  
Chairman of Audit Committee

Handling of UPSI on need to know basis

Regulation of trading - Designated Persons and their immediate relatives

One time/annual disclosures by Designated Persons/prescribe formats

Sanctions and disciplinary actions for contravention

Information to stock exchanges in case of violation of provisions of Regulations

# CODE OF CONDUCT TO REGULATE, MONITOR AND REPORT TRADING BY DESIGNATED PERSONS AND IMMEDIATE RELATIVES OF DESIGNATED PERSONS

(Regulation 9 read with Schedule B)

## One time/annual disclosures by Designated Persons

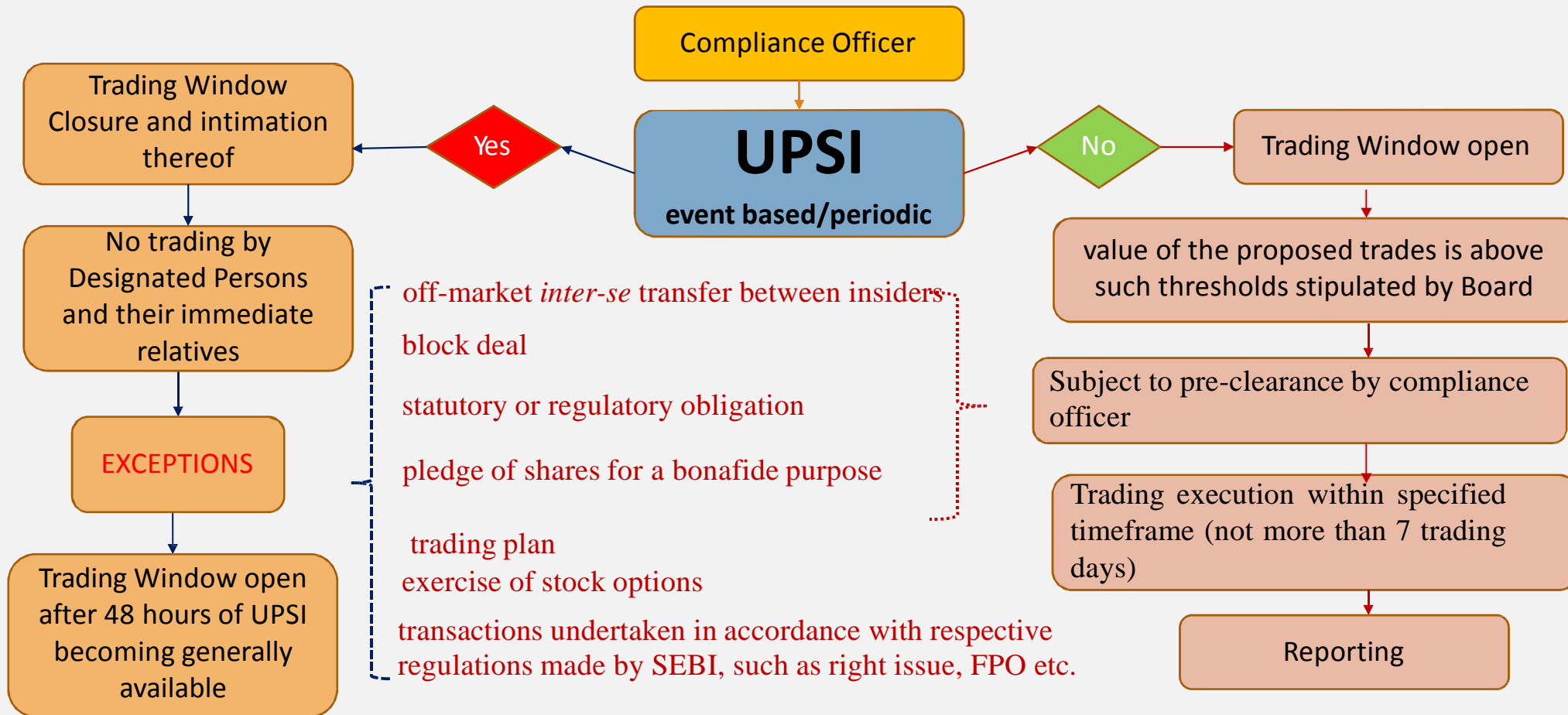
Designated persons shall be required to disclose names and Permanent Account Number or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes:

- a) immediate relatives
- b) persons with whom such designated person(s) shares a material financial relationship
- c) Phone, mobile and cell numbers which are used by them

In addition, the names of educational institutions from which designated persons have graduated and names of their past employers shall also be disclosed on a one time basis.

“**material financial relationship**” 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 designated person during the immediately preceding twelve months, equivalent to at least 25% of the annual income of such designated person but shall exclude relationships in which the payment is based on arm’s length transactions.

# REGULATION OF TRADING - DESIGNATED PERSONS AND THEIR IMMEDIATE RELATIVES



# CONTRA TRADE

A term used to denote a opposite trade transaction in respect of a transaction previously executed

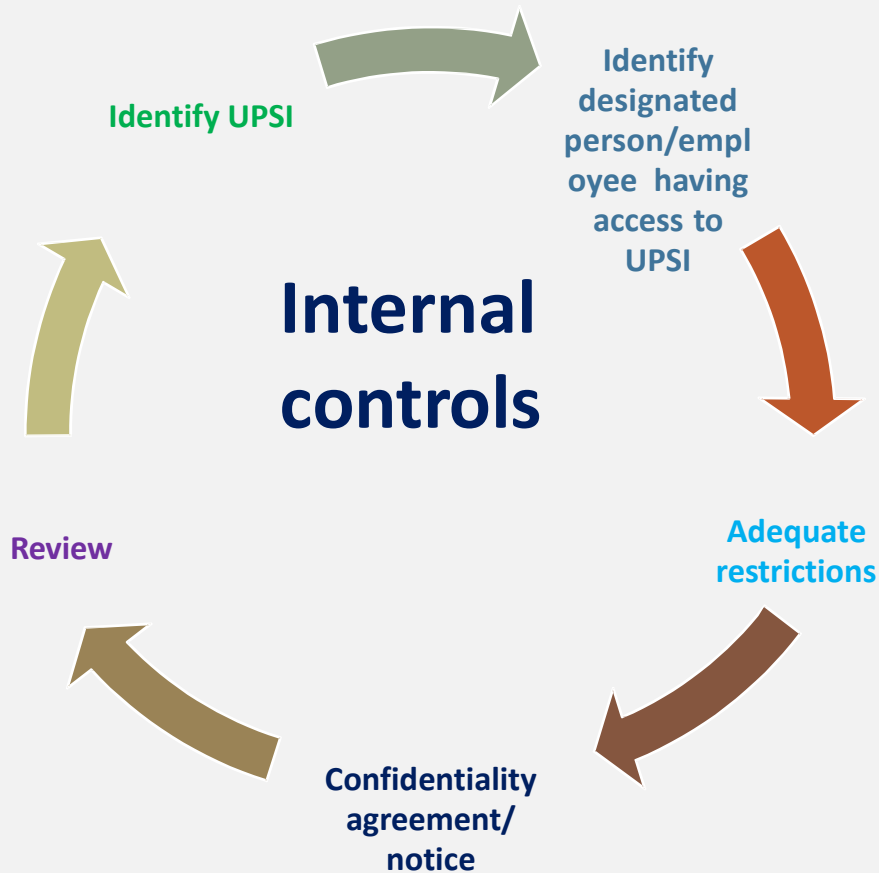


0.00	+0.00	0.00%	5,027	0.04	0.05	20	-39	0.27938
17.22	+0.32	1.95%	113	17.21	17.22	476	7,950	11.3333
0.04	0.00	0.00%	2,042	0.03	0.04	20	0.04	0.395
0.20	+0.01	5.00%	4,802	0.25	0.26	18,708	2,708	2,708
0.06	+0.01	20.00%	774	0.05	0.06	643	0.04	4,192
0.02	0.00	0.00%	0.04	0.04	0.04	4,192	0.04	0.66667
3.36	+0.09	1.53%	87	5.95	5.97	414	9,000	0.66667
0.07	+0.01	16.67%	3,279	0.07	0.08	3,875	0.08	3,875
0.01	-0.01	-20.00%	2,599	0.01	0.02	21,627	0.02	21,627
12.44	+0.18	1.49%	1,494	12.44	12.45	3,511	3,511	3,511
0.09	+0.05	7.81%	1,467	0.66	0.70	3,814	0.70	3,814
0.20	+0.01	5.26%	802	0.19	0.22	6,524	0.22	6,524
0.05	0.00	0.00%	619	0.04	0.06	684	0.06	684
0.03	0.00	0.00%	357	0.02	0.04	1,319	0.04	1,319
0.07	0.00	0.00%	3,202	0.05	0.07	83	0.07	83
0.02	+0.02	15.38%	35	0.00	0.03	2,723	0.03	2,723
0.24	+0.08	30.00%	307	0.16	0.18	1,619	0.18	1,619
0.00	0.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00
15.38	+0.11	0.71%	460	15.57	15.58	926	15.58	926
20.00	+0.14	0.65%	166	20.39	20.60	1,628	20.60	1,628



not be applicable for trades pursuant to exercise of stock options and permitted other transactions such as right issue, buyback etc.

# INSTITUTIONAL MECHANISM FOR PREVENTION OF INSIDER TRADING

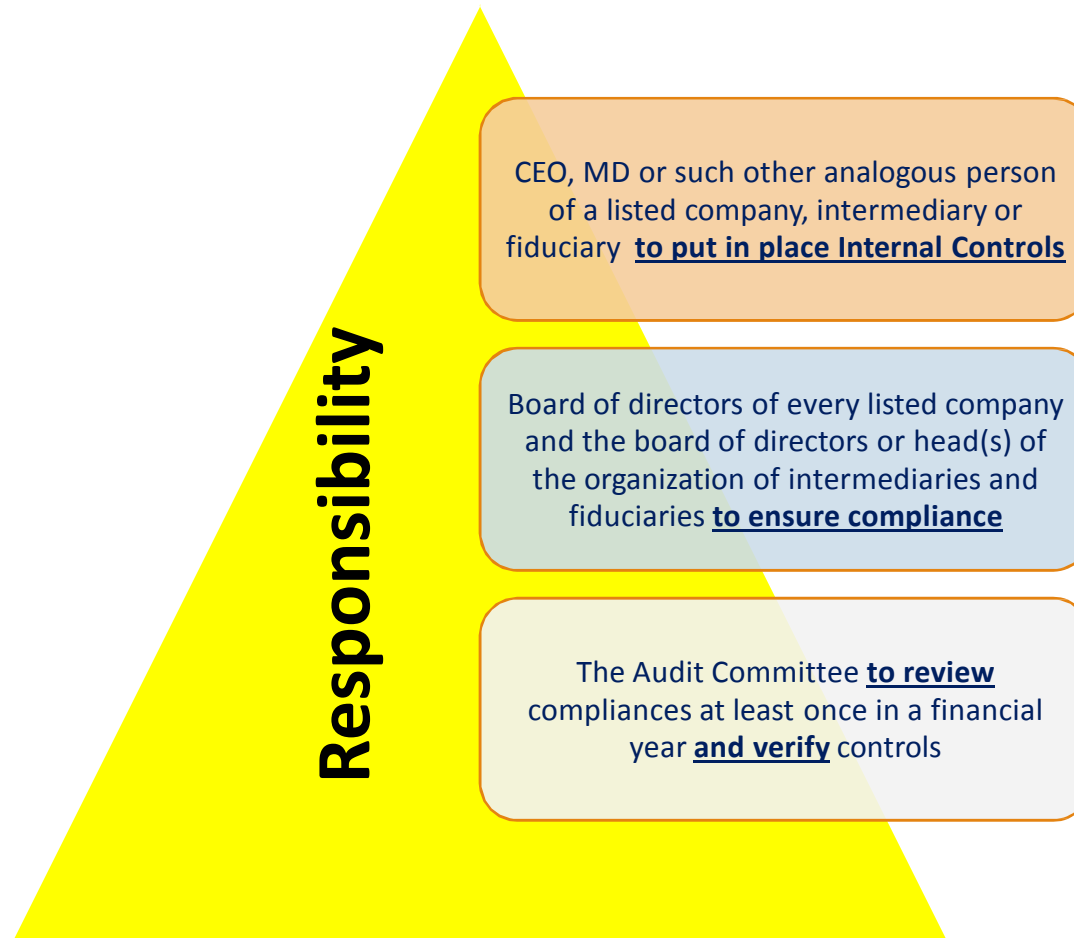


## Illustrative controls to protect UPSI

- ✓ Identification of place /team/ division/ where UPSI may arise
- ✓ Separation of departments dealing with UPSI. Access be restricted and no information, physical or otherwise, should be allowed to be transmitted outside the department
- ✓ Use of password protected files while sharing confidential information amongst team members via emails, ensuring cyber security for safeguarding UPSI
- ✓ Manner of sharing UPSI with Insiders/manner in which people may be 'bought in'
- ✓ Complete inventory of all locations where UPSI is being stored with list of person having server access
- ✓ Sensitizing Employees
- ✓ Protocol to be followed while speaking to press/public forums, so that no UPSI gets leaked
- ✓ Prior and post Information security assessments



# INSTITUTIONAL MECHANISM FOR PREVENTION OF INSIDER TRADING



## INSTITUTIONAL MECHANISM FOR PREVENTION OF INSIDER TRADING

- ❑ Written policies and procedures for inquiry in case of leak /suspected leak of UPSI
- ❑ Above policies approved by board of directors of the company
- ❑ appropriate inquiries on becoming aware of leak/suspected leak of UPSI
- ❑ Information to SEBI promptly of such leaks, inquiries and results of such inquiries.
- ❑ relevant intermediaries and fiduciaries shall cooperate with the listed company
- ❑ whistle-blower policy
- ❑ Sensitize employees to enable employees to report instances of leak
- ❑ Code of Conduct to provide protection to employee against retaliation and victimization who files a Voluntary Information Disclosure Form

# System Driven Disclosures

- ❖ Automated process
- ❖ Run parallel with the existing system of disclosures
- ❖ PAN of Promoter(s) /member(s) of promoter group/ designated person(s)/ director(s) of company to be shared with designated depository
- ❖ Currents coverage is trading in equity shares, equity derivative instruments and w.e.f. July 01, 2021, listed debt securities of equity listed companies are also covered.

# PENALTIES

Regulation 10- Any contravention of these regulations shall be dealt with by the SEBI in accordance with the Securities and Exchange Board of India Act, 1992 .

## **MONETARY PENALTY:**

Section 15G of the SEBI Act, 1992 imposes penalty of atleast Rs10 Lacs, which may extend to Rs. 25 Crore or three times of profits made out of insider trading, whichever is higher.

## **IMPRISONMENT:**

Section 24 of SEBI Act even goes to the extent of imprisonment for a term upto 10 years or fine upto Rs. 25 Crore, or both, for any offences pertaining to contravention of the provisions of the SEBI Act, 1992.

