

SEBI (Prohibition of Insider Trading) Regulations

An Overview

**PIT Regulations is applicable only to
Listed Companies?**

REGULATION 9 – CODE OF CONDUCT:

BOD of every listed companies, Head of intermediary, other person such as auditors, law firms, insolvency professions etc. shall formulate code of conduct to regulate and monitor and report trading by its designated person & their immediate relatives.

(Immediate Relatives: Spouse, Parent, Sibling, Child who is financially dependent or consults in taking decisions relating to trading in securities.)

Aforesaid shall identify and designate a compliance officer to administer the code of conduct & other requirements.

Designated Person includes:

- a. Employees on the basis of their functional role or access.
- b. Material Subsidiaries of such listed companies
- c. Promoters
- d. CEO and employees upto two level below CEO irrespective of their role.
- e. Support Staffs

Q: ABCD Ltd, listed in BSE and NSE. ABCD Ltd approached PCS firm for seeking advise and disclosed UPSI. ABCD Ltd and PCS firm executed NDA. One employee of PCS firm who was part of the discussion and in possession of UPSI traded in the shares of ABCD Ltd.

- a. Is this violation of PIT Regulations?
- b. If yes, who has violated?
- c. Any impact to PCS firm?

A Ltd, is in process of listing its equity shares in Stock Exchanges.

Mr. B, employee of A Ltd, shares confidential information with his friend. His friend then applies for shares of A Ltd and makes profit.

Is this a violation under PIT Regulations?

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Regulation 3(1):

No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

Code of Conduct:

1. Compliance officer to provide reports at least once in a year to BOD.
2. Designated Person and immediate relatives of designated person shall be governed by code of conduct.
3. Trading Window closure from the end of every quarter till 48 hours after the declaration of results.
4. Pre-clearance to be obtained by Designated Person for trading in securities of the Company.
5. Trading shall be completed within 7 trading days
6. Contra Trade not allowed at least for next 6 months.
7. COC to stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, etc.,
8. Any amount collected shall be remitted to the Board for credit to the IEPF.
9. Name, PAN, phone, email, cell numbers shall be obtained from DP and of their immediate relatives
10. Person with whom DP shares a material financial relationship (Payment such as loan or gift equivalent to 25% of annual income) excludes if paid arm's length
11. Individuals should be made aware of the duties, responsibility and liability that attaches to misuse.

Mr. A and Mr. B are members of promoter group in C Ltd. The Board of Directors of C Ltd allotted shares to Mr. A and Mr. B under Rights Issue during March 2022.

Mr. A in the month of May 2022 wants to sell the shares to Mr. B which will be inter-se transfer between the members of promoter group.

Is this allowed?

Mr. A, Designated Person of listed company purchased 500 equity shares of the Company from open market on 8th Jan, 2022 after obtaining pre-clearance from compliance officer. The same was disclosed to the SE.

Further, Mr. A wants to purchase additional 200 equity shares on 10th Mar 2022 (Within 6 months from first transaction).

Is this allowed?

- **REGULATION 3: RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS**

- **No Insider shall share or allow access to UPSI** to any person except for legitimate purposes.
- Legitimate Purpose: Consultants, Partners, Lenders, Customers, Suppliers, auditors, legal advisors etc.
- Any person in receipt of UPSI pursuant to a “legitimate purpose” shall be considered an “insider”.
- The BOD of a listed company shall make a policy for determination of “legitimate purposes”.
- BOD or Head of Organization of every person required to handle UPSI to maintain structured Digital Database
- Due notice shall be given to maintain confidentiality of such UPSI in compliance with PIT Regulations.

DIGITAL DATABASE:

- **Name of person to whom UPSI shared**
- **PAN or any other identifier authorized by law where PAN is not available.**
- **Adequate internal controls like time stamping and audit trails.**

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- **Name of person who shared the UPSI**
- **Nature of UPSI Shared**
- **Name of person to whom shared**
- **PAN or any other identifier authorized by law where PAN is not available.**
- **Adequate internal controls like time stamping and audit trails.**

In the event of investigation, preserve till the completion

Database shall be maintained in house and shall not be outsourced

Database to be maintained for 8 years after completion of transactions

A Ltd, listed in NSE and BSE, approached Mr. R, PCS (having 20 employees) for seeking opinion and advisory services on compliance of an event and disclosed UPSI for legitimate purpose.

Mr. R, PCS appointed B Legal Advisory Pvt Ltd (having 10 employees) for availing professional services for work related to A Ltd.

- Who should maintain structured digital database?

REGULATION 4 - TRADING WHEN IN POSSESSION OF UPSI:

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- Provided, insider may prove his innocence by demonstrating the circumstances

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Vijay Ltd (Vijay), listed in NSE and BSE appointed Ajit Legal Advisors Pvt Ltd (Ajit) for availing advisory services and disclosed UPSI to Directors of Ajit. Vijay and Ajit executed NDA.

Mr. D, GM – Finance of Ajit, authorized signatory to invest surplus funds of Ajit in security market, decided to trade and purchased 500 equity shares of Vijay on behalf of Ajit and made profit by selling at higher price.

Is this a violation under PIT Regulations?

REGULATION 5 - TRADING PLAN:

- Insider is entitled to formulate trading plan and present it to compliance officer.
- Public disclosure to be made pursuant to which trades may be carried out.

Mr. Sharukh, applies for a trading plan in the month of January 2022 and wish to purchase 1L shares in multiple tranches over a period of 12 months starting from 11th April 2022. Few important dates of trading plan are as given below:

Proposed Date of trading	Date of Board Meeting fixed for approving financials	No. of shares planned to purchase
11 th April 2022	20 th April 2022	20,000
29 th June 2022	-	10,000
4 th August 2022	12 th August 2022	25,000

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Key provisions

- 1. Commencement of trading not earlier than 6 months from public disclosure.**
- 2. *“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 by the issuer of the securities and the second trading day after the disclosure of such financial results”***

REGULATION 7 - DISCLOSURES:

- **A. Initial Disclosures:**

- Every promoter, member of the promoter group , KMP & director within 30 days.
- On appointment as a KMP/Director/Promoter/Member of the Promoter Group – Within 7 Days

- **B. Continuous Disclosures:**

- Every Promoter, MOPG, DP, Director shall disclose trading details within 2 trading days.
- If the transaction value, in one or a series of transactions over any calendar quarter, exceeds Rs. 10 lakh
- Every Company shall notify the particulars of such trading to the SE (where listed) within 2 Trading Days

- **C. Disclosure by Other Connected Person:**

- Listed Company may, at its discretion require any other CP to make disclosures of holdings.

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System Driven Disclosures of Trading :

- The listed companies shall provide information of Promoters, MOPG and DP to Depositories
- The depositories shall provide the data to the stock exchanges on daily basis
- Stock exchanges will identify the transactions carried out on their trading system.
- Such information on trades shall be shared with all other SE where the Company is listed
- The stock exchanges shall disseminate the same on their websites.

As and when the Company receive initial disclosure or upon becoming aware, the Company shall update the SDD

Regulation 7A – Informant Mechanism

REGULATION 7A – DISCLOSURES BY INFORMANT:

- Informant – Individual
- Original Information:
 - A. Derived from independent knowledge
 - B. Not known to SEBI from any other sources
 - C. Specific, credible and timely information (Not more than 3 years has elapsed)

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- **U.S. Securities and Exchange Commission:**
- Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act
- Who provides original information that leads to action yielding monetary sanctions over \$1 million.
- Award – Between 10% and 30% of total monetary sanctions collected.
- Year 2020 – Largest award - \$50 Million to an individual who Informed about misconduct.

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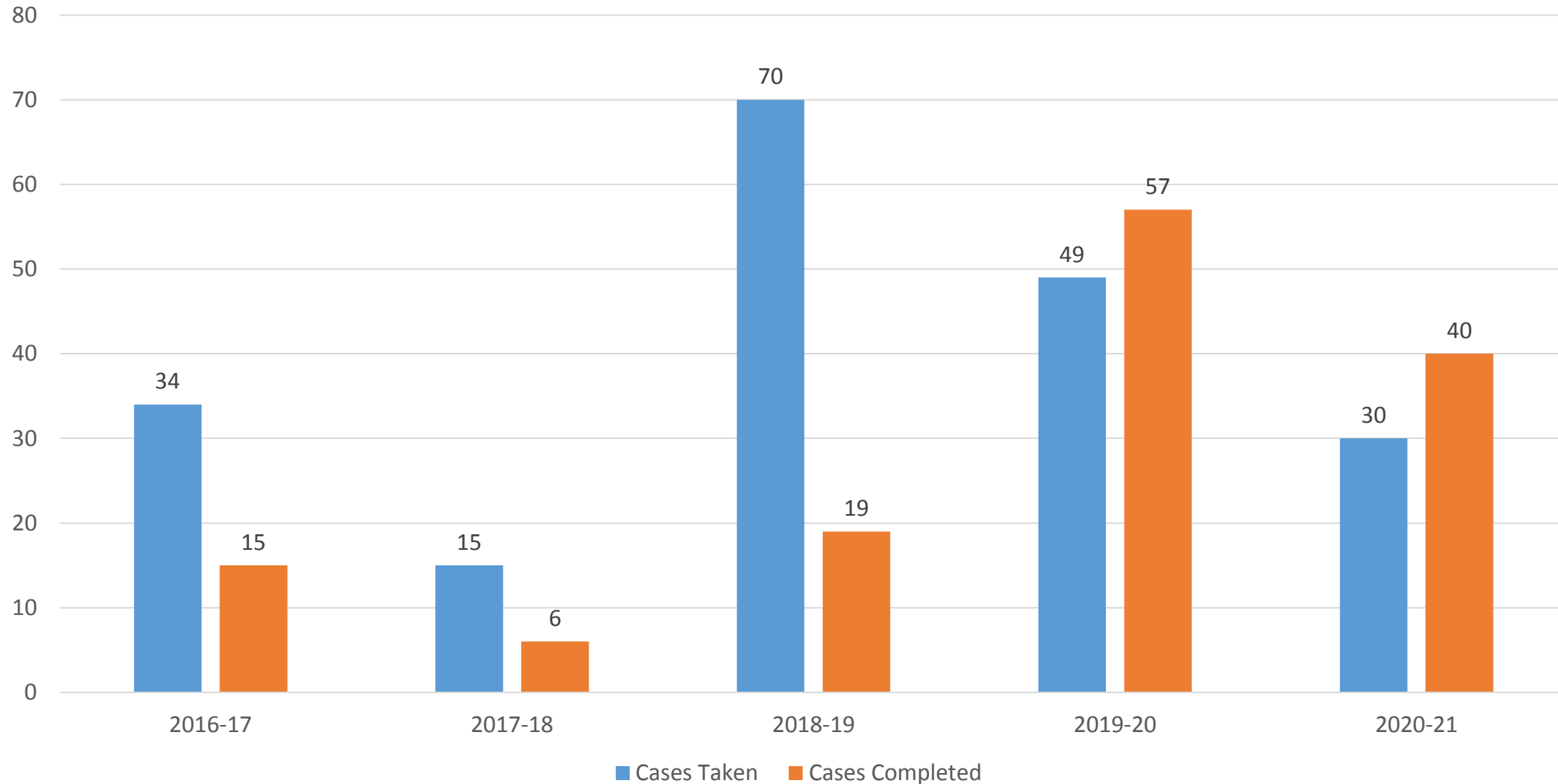
\$500 Million

INR 3600Cr

Source: U.S. Securities and Exchange Commission website

No of Cases Taken By SEBI

Insider Trading Cases



Source: SEBI Annual Report

REGULATION 9A – INSTITUTIONAL MECHANISM FOR PREVENTION OF INSIDER TRADING:

1. Internal Controls:

- a. To identify Designated Person
- b. UPSI to be defined
- c. Adequate restrictions shall be placed on communication of UPSI
- d. Serve Notice or obtain confidentiality agreement

2. Audit Committee to review the internal controls at least once in a year.

3. Written policies and procedures for inquiry in case of leak of UPSI or suspected leak of UPSI

4. Whistle-blower policy shall be maintained and make employees aware of such policy.

What are the various options/tools available to monitor trading activities of Insider

NSE – Insider Trading Compliance Monitoring Service

NSE has provided platform which can be used for monitoring the trading activities

Conditions:

- a. Consent of BOD of Company shall be obtained for availing NSE services for monitoring
- b. Consent to be obtained from Insiders to share their PAN with NSE to obtain trade reports.

Fee – Free as of now.

Other Options

Company can avail trading report on weekly basis from RTA.

Obtaining declaration from employees/ connected person

Overview and Discussion Point

- Do we have effective system for monitoring the trading by Insider?
- Is there sufficient awareness programmes?
- Whether Material Events are disclosed within the prescribed timeline in spirit?
- Informant Mechanism has been introduced. Will it really motivate the individuals?
- Whether Whistle Blower Mechanism effectively used in India?

Thank You