

# SEBI (Prohibition of Insider trading) Amendment Regulation, 2018



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# Who is an Insider?

Insider means a person who is;

- (i) A connected person- ( FB and WA group)
- (ii) In possession of or having access to UPSI
- (iii) Any person in receipt of UPSI to a “legitimate purpose” shall be considered an “insider” and due notice shall be given to such person to maintain confidentiality of such UPSI.

## What is trading?

Trading means and include subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal, in any securities, and “trade” shall be construed accordingly.

# What is Insider Trading ?

Insider trading generally means **trading** in the securities of the company **by Insider** who is in the **possession of UPSI** which is **not available to others** . It is betrayal of fiduciary position .

# What is Unpublished Price Sensitive Information(UPSI)

Means any information, relating to a company or its securities, directly or indirectly, that is not generally available and if it becomes available, is likely to materially affect the price of the securities and shall include the following :

- ✓ Financial result;
- ✓ Dividends;
- ✓ Change in capital structure;
- ✓ Merger, de-merger, acquisition, delisting, disposal & expansion of business;
- ✓ Changes in KMP

# Reason for insertion of this Regulation

1. This is “white collar crime” due to conflict of interest and misuse of fiduciary position.
2. Fiduciary Position is misused even if there is no personal gain directly or indirectly

Huge penalty has been provided for insider trading under **regulation 15G of SEBI, 1992.**

# Wrong doers punished heavily

Former Goldman Sachs group Inc. Director **Rajat Gupta** convicted of Insider Trading in a scheme in the **year 2012** and \$13.9 MN was fined by the US Securities and Exchange Commission for **passing off tip to Raj Rajaratnam** a co-fonder of Galleon Group LLC Hedge fund

# Wrong doers punished heavily

Mr. V K Kaul who was non executive and ID was punished for purchasing the scrip of Ranbaxy in the name of his wife Mrs. Bala Kaul when he was in possession of UPSI that Solrex was to purchase large number of shares of the target company for which funds were being arranged by Ranbaxy.



# Background

- To deal with **market abuse** related to Insider Trading, first time SEBI has introduced SEBI (Insider Trading) Regulations, 1992 on 30<sup>th</sup> January 1992.
- In the **year 2002** SEBI has changed the Regulation with Title as SEBI (PIT) Regulations, 2002 and mandated formulation of
  - (a) **Code of Conduct for Prevention of Insider Trading** as per model in **Schedule I** and
  - (b) **Code of Corporate Disclosure Practices** as specified in **Schedule II**

# Background

**In spite** of substantial amendments in year 2002 and 2008 there were certain **vulnerability** in erstwhile Insider Regulation, 1992 & hence SEBI had put in place a new framework for PIT based on an expert (**Sodhi Committee**) **Report** which has been Resulted into promulgation of SEBI PIT Regulations, 2015

# Background

## ▶ In 2017:

- ✓ In August, 2017 SEBI constituted a Committee to review on Fair Market Conduct under the Chairmanship of **T.K. Viswanathan to review** the Regulation 2015
- ✓ The Committee was mandated **to review the existing legal framework** to deal with market abuse to ensure fair market conduct in the securities market.
- ✓ Based on the recommendations of this Committee, SEBI made significant amendments to SEBI (PIT), 2015 Regulation on **31 December, 2018 effective from 1<sup>st</sup> April, 2019** so that the market participants can realign their internal procedures,

# Objective of the Amendment Regulation, 2018

- Remove certain **ambiguity**
- Bringing **more clarity and certainty** to the principal regulation
- Widen stringent **compliance net covering Intermediaries and Fiduciary and**
- New definition of **Designed Person**
- **Institutional Mechanism** for PIT

<b>Sr. No.</b>	<b>Synopsis of amendments SEBI (PIT) Amdt 2018</b>
1.	Meaning and thrust of <b>Insider Trading</b>
2.	Definition of “ <b>Insider</b> ”, “ <b>Trading</b> ” & “ <b>UPSI</b> ”
3.	Explanation of “ <b>financially literate</b> ” in the definition of “ <b>Compliance Officer</b> ”
4.	Definition of “ <b>Proposed to be listed</b> ”

Sr. No.	Synopsis of amendments SEBI (PIT) Amdt 2018
5.	Policy for determination of “Legitimate Purpose” in Code of Fair Disclosure and Conduct u/r 8
6.	Explanation added inclusive definition of sharing of UPSI for “Legitimate purpose”
7.	Deemed to be Insider to whom Notice to be given to maintain confidentiality
8.	Exempted Trade while in possession of UPSI

Sr. No.	Synopsis of amendments SEBI (PIT) Amdt 2018
9.	Structured <b>Digital Database</b> for sharing UPSI for Legitimate Purpose with time stamp and audit trail
10.	<b>Trading Plan</b> – No pre-clearance and Contra Trade
11.	<b>Employees are no longer Insider</b> unless BoD specify any employee as Designated Person

<b>Sr. No.</b>	<b>Synopsis of amendments SEBI (PIT) Amdt 2018</b>
<b>12.</b>	<b>Code of Conduct</b> to be redrafted for listed company/ intermediaries and fiduciaries and MD/ CEO ( with their approval) to regulate, monitor and report trading by Designed Person and immediate relatives of Designated Person
<b>13.</b>	Define <b>Designated Persons</b>



<b>Sr. No.</b>	<b>Synopsis of amendments SEBI (PIT) Amdt 2018</b>
<b>14.</b>	<b>Institutional Mechanism</b> for prevention of Insider Trading and setting of Internal Control
<b>15.</b>	<b>Audit Committee</b> to review and verify once in a year that the system for internal control are adequate and operating effectively
<b>16.</b>	Formulate policy and procedure <b>for inquiry for leak or suspected leak of UPSI</b>

Sr. No.	Synopsis of amendments SEBI (PIT) Amdt 2018
17.	Amend <b>Whistle Blower Policy</b>
18.	Amendment in <b>Schedule B</b> -in Code of Conduct for listed company
19.	New <b>Schedule C</b> has been inserted-Code of Conduct for Intermediaries and Fiduciaries
20.	SEBI (PIT) (Amendment) Regulation, 2019– <b>dated 21<sup>st</sup> January 2019</b>

# Immediate Action required due to changes in SEBI (PIT) Regl 2018

1. Disclosure requirements of member belonging to the **promoter or promoter group** under Regulation 7 (1)
2. Policy for determination of **legitimate purposes** for sharing of UPSI under Regulation 3 (2A)
3. **Digital Data base** and Audit Trail with Time-stamp under Regulation 3 (5)

# Immediate Action required due to changes

4. Amending **Code of Conduct** as per schedule B under Regulation 9 (1) for listed company
5. Amending **Whistle Blower policy** as per Regulation 9A (6)
6. **Institutional Mechanism and internal control** under new Regulation 9A

# Immediate Action required due to changes

7. Preparing **Policy for inquiry** in case of **leak of UPSI** or suspected leak of UPSI
8. Preparing list of **Intermediaries and Fiduciaries**
9. Preparing **Restricted List/ Grey List**
10. **Sensitization** of employees/ **Intermediaries & Fiduciaries**

# SEBI (PIT)(Amendment)Regulations, 2018

Lets have understanding of  
amendment clause by clause

## Amendments -1- Regl 2

To remove the ambiguity, an Explanation is inserted in the definition of **Compliance Officer**

In the Explanation “financially literate” shall mean a person who has the ability to read and understand basic financial statement i.e. balance sheet, profit and loss account and statement of cash flow.

# Amendments-2 –Regl 2

New definition of “Proposed to be listed” has been inserted

Means and include securities of an unlisted company

1. If such unlisted company has filed offer document with Board, Stock Exchange, RoC.
2. If such unlisted company is getting listed pursuant to any merger or amalgamation and has filed a copy of such scheme or merger or arrangement under the Companies Act, 2013.



## Amendments-3 – Regl 2

In definition of Unpublished Price Sensitive Information clause (vi) is omitted which is

~~(vi) material events in accordance with the listing agreement~~

The reason being all material events may or may not be price sensitive

# Amendments -4- Regl 3 (2A) new

Policy for determination of “legitimate purpose” a new sub- regulation 2A in regulation 3 has been inserted

The BoD of a listed company shall make a policy for determination of “legitimate purpose” as a part of “code of conduct for Fair Disclosure and Conduct” formulated under regulation 8.

# Amendments-5- Regl 3 (2A) Expl new

## Meaning of Legitimate Purpose - Expl -Regl 3(2A)

“Legitimate purpose” shall include sharing of unpublished price sensitive information (UPSI) in the ordinary course of business by an insider with partners, collaborators, lenders, customers, supplier, merchant banker, legal advisors, auditors, insolvency professional or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulation.

# Amendments -6- Regl 3 (2B)

## Deemed to be Insider

Any person in receipt of UPSI pursuant to a “legitimate purpose” shall be considered an “insider” for purpose of these regulation and due notice shall be given to such person to maintain confidentiality of such UPSI in compliance with these regulations.

# Amendments -7- Regl 3 (3)

## UPSI may be communicated in connection with transaction, by BoD

- Which entail to an obligation to make an open offer under takeover regulation, where BoD of Listed Company is of the view that sharing of such information is in the best interest of the company.
- Which may not attract the obligation to make an open offer under takeover regulations, where BoD of Listed Company is of the view that sharing of such information is in the best interest of the Company AND such information is disseminated at least 2 trading days prior to proposed transaction being effected and BoD may determine the same to be adequate & fair to cover all relevant & material facts.

# Amendments-8 – Regl 3 (5) new

## Structured digital database for sharing UPSI for legitimate purpose

The BoD shall ensure that a structured digital database is maintained containing the names of such person or entities as the case may be with whom information is shared under this regulation along with PAN or any other identifier authorised by law where PAN is not available.

Such database shall be maintain with adequate internal control and checks such as time stamping and audit trails.

# Amendments-9 – Regl 4(1)

## Restriction on Insider for Trading while in possession of UPSI

### Explanation is inserted -- Presumed

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.

# AMENDMENT 10-Regl 4(1)

## Defence – when traded while in possession of UPSI

Insider (not just promoter) if traded in securities while in possession of UPSI has to **prove his innocence** by demonstrating the circumstances that why he is not guilty of misuse of his position

1. Off market inter-se transfer between **Insiders (not just Promoters)** provided not obtained such UPSI u/r 3(3) from BoD for transaction entail of Takeover and he has reported to the company in **2 working days** and the company shall inform such particulars of trade to **SE in 2 trading days**

2. Block Deal Window mechanism

3. Statutory obligation to carry out a bonafide transaction

4. Exercise of ESOP in which the price was predetermined

5. Trades were pursuant to Trading Plan as per regulation 5



# Amendments-11 (Cont.)

6. In case of Non-Individual Insider, the defense will be that

(a) The individual who were in **possession** of such UPSI were **different** from the individual taking trading **decision** and such decision making individual were not in possession of UPSI;

(vi) Appropriate & adequate arrangement have been in place and **no UPSI was communicated** by individual possessing information to the individual taking trade decision and there is no breach of such arrangement.

# Amendments-12 Regl 5 (3)

**Two new provisos were inserted in regulation 5 (3)  
About Trading Plan**

- (a) Any trade executed as per **approved Trading plan shall not require pre-clearance.**
- (b) Trading window norms and restrictions on **contra trade shall not** be applicable for traders carried out in accordance with the approved trading plan

# Amendments-13 –Regl 7 (2)

Amendment in the making continual disclosure under regulation 7 (2)

For the word “**employee**” the word “**Designated Person**” has been substituted.

Hence now for continual disclosure, every promoter, **Designated Person** and director of every company shall disclose to the company the number of securities acquired or disposed of **within 2 trading days** of such transaction if the value of securities traded in one transaction, or series of transaction exceeds **Rs. 10 lakh** .

# Amendments-14 – Regl 9(1)

## Code of Conduct :

The BoD of every listed company and the **BoD or heads of the organization** of every Intermediary shall **ensure that the CEO or MD shall formulate a code of conduct** with their approval to regulate, monitor and report trading by **Designated Person and immediate relative of Designated Persons** towards achieving compliance with these regulation, adopting the minimum standard set out in Schedule B (in case of a listed company) and Schedule C (in case of intermediary) to these regulation.

# Amendments-15- Regl 9(1)

## New explanation after sub- regulation 9(1) inserted

Explanation – It is clarified that **Intermediaries, which are listed** would be required to formulate two code of conduct to regulate, monitor and report trading by Designated Person by adopting minimum standard set out in

1. Schedule B (wrt trading in **their own securities**)
2. Schedule C (wrt trading in **other securities**).

# Amendments-16 – Note under Reg 9 (1)

In Note to sub- regulation 9(1)following amendments are made

Every Listed Company and every Intermediary registered with SEBI is mandatorily required to formulate Code of Conduct governing trading by Designated Persons and immediate relatives of Designated Person.

# Amendments-17 – Regl 9(2)

## Regulation 9 (2) has been substituted--- Code of Conduct by Fiduciaries

The **BoD or head of organization**, of every other person who is required to handle **UPSI** in the course of business shall formulate a **Code of Conduct** to regulate, monitor and report trading by their Designated Persons (~~Employee and other connected persons is deleted~~) and immediate relative of Designated Persons by adopting minimum standard set out in Schedule C.

**Explanation:** Professional firms such as auditors, accountancy firms, law firm, insolvency professional entities, banks, consultants shall be collectively referred to as **Fiduciaries** for the purpose of this regulation.

# Amendments-18 – Note in Regl 9 (2)

## Note after sub- regulation 9 (2) has been substituted

Person other than listed companies and intermediaries that are required to handle UPSI to formulate a **code of conduct** governing trading in securities by their Designated Persons.

These entities include Professional firms such as auditors, accountancy firms, law firm, insolvency professional entities, banks, consultants assisting or advising listed companies. **Even entities operating outside the capital market may handle UPSI. This provision it would be mandated to all of them to formulate a code of conduct.**



# Amendments-19 – Regl 9 (4)

New sub- regulation 9 (4) has been inserted

Designated Person to be specified

The BoD or other analogous authority in consultation with compliance officer shall specify the Designated Person to be covered by code of conduct on the basis of their role and function in the organization and the access that such role and function would provide to UPSI in addition to seniority and professional designation and shall include following :

# Amendments-19 – Regl 9 (4) (Cont.)

- (i) **Employees of such listed company, intermediary or fiduciary** designated on the basis of their functional role or access to UPSI in their organization by their BoD or analogous body.
- (ii) **Employees of material subsidiaries** of such listed companies designated on the basis of their functional role or access to UPSI in the organization by their BOD;
- (iii) **All promoters of listed companies** and promoters who are individuals or **investment companies for intermediaries or fiduciaries**;

# Amendments-19 – Regl 9 (4) (Cont.)

- (iv) CEO and employees up to two levels below CEO of such listed company, intermediary, fiduciary and its material subsidiaries irrespective of the functional role in the company or ability to have access to UPSI;
- (v) Any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to UPSI.

# Amendments-20- Regl 9A- new

New Regulation 9A has been inserted

## Institutional mechanism for prevention of insider trading

### Regl 9A (1)

CEO, MD or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of Internal Control to ensure compliance with the requirement and to prevent insider trading.

# Amendments-20(Cont.)

Reg 9A(2)---

## The internal control shall include the following

- (a) All **employees** who have access to UPSI are **identified as designated employee**;
- (b) all the **UPSI shall identified** and its confidentiality shall be maintained as per the requirement of these regulation;
- (c) adequate restriction has been placed on **communication procurement of UPSI** required by these regulation;

# Amendments-20(Cont.)

- (d) List of employees and other person with whom UPSI is shared shall be maintained and **confidentiality agreement** shall be signed or notice shall be served to all such employee or person;
- (e) All other relevant requirement specified under **PIT Regulation has been complied;**
- (f) Periodic **process review** to evaluate effectiveness of such internal controls .

# Amendments-20(Cont.)

Regl 9A (3)---

The **BOD** of every listed entity and the BoD or head of the organisation of intermediaries and fiduciaries **shall ensure that the CEO or the MD** or such other analogous person **ensure compliance with regulation 9 (1) &(2) of SEBI (PIT) Regulation, 2018.**

Reg 9A(4) ---

The **audit committee** of a listed entity **shall review** compliance with the provision of these regulation **at least once in a financial year** and shall verify that the **system for internal control are adequate and are operating effectively.**

# Amendments-20(Cont.)

Reg 9A (5)---

Every Listed company shall formulate written policies and procedure for inquiry in case of leak of UPSI or suspected leak of UPSI, which shall be approved by BOD of the company and accordingly initiate inquiries on becoming aware of leak of UPSI or suspected leak of UPSI and inform the board promptly of such leak, inquiries and result of such inquiries.



# Amendments-20(Cont.)

Reg 9A(6)---

The **listed company** shall have a **whistle-blower policy** and make employees aware of such policy to enable employees to report instances of leak of UPSI.

Reg 9A(7)---

If **any inquiry** has been **initiated** by a listed company **in case of leak of UPSI** or suspected leak of UPSI, the relevant **intermediaries and fiduciaries shall co-operate with the listed company** in connection with such inquiry conducted by listed company.

# Internal Control

## Policy and procedure for inquiry in case of leak or suspected leak on UPSI

The employees who have access to UPSI to be informed and sensitized adequately by various ways like during Orientation Programme, Introduction Programme, workshops or Seminars or Webinars, Programme by Team Leaders or Senior Department Head on following matters and the same to be review periodically:

1. About **all identified UPSI** and how to handle it
2. How to maintain **confidentiality** about these UPSI
3. What is his **duties** when he has access of UPSI
4. **Restriction on communication** of UPSI if in possession

# Internal Control

5. What is his **duties if the UPSI is leaked** or he came to know about leakage of UPSI
6. Identify and explain who are **Intermediaries and Fiduciary**
7. Who all are identified by BoD as **Designated Person**
8. **Disclosure** on Need To Know basis
9. **Whistle Blower** Policy
10. Modes of **Inquiry and fine/penalties** for misuse of UPSI

# Internal Control– Sch –B Min standard for Code of Conduct for listed company

1. Compliance officer to report particulars of Trades by Designated Person to BoD / Chairman of Audit Committee **at least once in a year**
2. **Legitimate Purpose** to be identified
3. **Chinese Wall procedure** and process for permitting to Cross the wall
4. List of all **Designated Person and their Relatives**
5. **Closure and re-opening** of Trading Window ( to trade in 7 trading days from pre-clearance and in 6 months no contra trade . However ESOP is exempted)

## Internal Control– Sch –B Min standard for Code of Conduct for listed company

6. **Minimum gap** between the Audit Committee meeting and Board Meeting to clear the Financial Statement of the Company
7. **Threshold limit for the value of proposed trade** by Designated Person subject to approval of Compliance Officer or BoD as may be decided
8. Take **declaration from employee** prior to approval for trade that he is not in possession of UPSI
9. Designed person is **aware of formats** for various intimation, pre-clearance , reporting etc.
10. Code shall have mention of **disciplinary action** in case of violation of code , like wage freeze, suspension, **recovery and claw back**
11. BoD of listed company **to inform SEBI** in case of violation of SEBI (PIT) Regulation

# Amendments-21 – Sch B

- **Designated Person & Immediate Relative** of Designated persons in the organisation shall be **governed** by an **internal code of conduct** governing dealing of securities.
- Designated Person may execute trade subject to compliance with these regulation. A **notional trading window** shall be used as an instrument of monitoring trading by designated person.
- The **trading window** shall be **closed when compliance officer determines** that designated partner can reasonably be expected to **have UPSI**.

# Amendments-21 – Sch B(Cont.)

- Designated person and their immediate relative shall not trade in securities when the trading window is closed.
- Trading restriction period can be made applicable from the end of every quarter till 48 hours after the declaration of financial result.
- The gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information

# Amendments-21 – Sch B (Cont.)

Timing for re-opening of trading window shall be determined by compliance officer taking into accounts various factors including UPSI in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than 48 hours after information becomes generally available.

Prior to approving any trade, the compliance officer shall be entitled to seek declaration that the applicant is not in possession of UPSI.



# Amendments-21 – Sch B (Cont.)

- When the trading window is open, trading by designated person shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the BOD may stipulate.
- The code of conduct shall specify timeframe, which in any event shall not be more than 7 trading days, within which trade that have been pre-cleared have to be executed by designated person.

## Amendments-21 – Sch B (Cont.)

- Code of conduct shall specify the period, which in any event **shall not be less than 6 months**, within which designated person who is permitted to trade shall not execute a **contra trade**.
- In case a **contra trade is executed, inadvertently/ accidentally**, than in such case the **profit** from such trade shall be **credited** to Investor Protection and Education Fund (**IPEF**).

# Amendments-21 – Sch B (Cont.)

## ➤ Clause 14 inserted

Designated Person shall be required to disclose names and PAN or any other identifier authorised by law of the following person to the company on an annual basis and when information changes

(i) Immediate relatives.

(ii) person with whom such Designated Person shares Material Financial Relationship-----which shall mean a relationship in which one person is a recipient of any kind of payment such as by way of loan or gift during the immediate preceding 12 months, equivalent to at least 25% of such payer's annual income but shall exclude relationship in which the payment is based on arm's length transactions.

## Amendments-21 – Sch B (Cont.)

(iii) Phone, Mobile and cell numbers which are used by them

(iv) names of educational institutions from which designated person have graduated and names of their past employee shall be disclosed on a one time basis

# Amendments-21 – Sch B (Cont.)

## Clause 15 inserted

Listed entities shall have a process for how and when people are brought ‘inside’ on sensitive transactions. Individuals should be made aware of the duties and responsibilities attached to the receipt of Inside Information, and the liability that attaches to misuse or unwarranted use of such information

# Amendments-22 –Sch C

## New Schedule C has been inserted

Minimum standards for Code of Conduct for **Intermediaries and Fiduciaries** to Regulate, Monitor and Report Trading by Designated Person

# Amendments-23- Notfn-21<sup>st</sup> January 2019

## SEBI (PIT) (Amendment) Regulation, 2019

### Regl 2 (ha) inserted

New definition of “Promoter Group” has been inserted and promoter group shall have the same meaning as assigned under SEBI (ICDR) regulation, 2018

### Regl 7(1)

Initial Disclosure under regulation 7 (1) shall be made to listed company by every promoter, member of promoter group, KMP and every director of the company within 30 days i.e. on or before 20<sup>th</sup> February, 2019.

# Amendments-23- Notfn-21<sup>st</sup> January 2019

## Regl 7 (2)

Every promoter, member of the Promoter Group, Designated Person and director of every company shall disclose to the company the number of such securities acquired or disposed of within 2 trading days of such transaction, if the value of such securities traded, exceeds Rs.10 lakh or such other value as may be specified ( in one or series of transaction).





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