

Recent amendments in SEBI (Prohibition of Insider Trading) Regulations 2015



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Objective

- Major provisions of SEBI (PIT) Regulations 2015.
- Recent amendments and their implications.
- Two amendment notifications :
 - Dated December 31, 2018. The provisions will come into effect from April 1, 2019 .Based on recommendations of “SEBI Committee on Fair market conduct “
 - Dated January 21, 2019. Will come into effect from January 21, 2019.

Main provisions

Who is insider?

What is insider prohibited from ?

Any exceptions to prohibitions?

Preventive regulatory mechanism /
framework

Penal provisions

Who is insider ??

- **Insider**- anyone who is connected person or who is in possession of UPSI.
- **Connected person**
 - Any person associated with a company, in any capacity that would allow such person access to UPSI relating to the company
 - Association to be during 6 months period prior to the transaction
 - Includes deemed to be connected persons- Rebuttal presumption
- **Unpublished Price Sensitive Information**
 - Information relating to co, which is likely to impact price of the scrip if becomes public and includes financial results, dividend etc .

What is insider prohibited from ??

- Insiders prohibited from
 - From communicating UPSI
 - From trading while in possession of UPSI
 - From Procuring UPSI **

*** Any person (whether insider or not) is prohibited from procuring UPSI*

Any exceptions to prohibitions?

- ✓ Can communicate or procure UPSI provided UPSI is shared
 - for legitimate purpose / discharge of duties etc.
 - for undertaking transactions in compliance with Takeover Regulations
 - Attract open offer obligations
 - May not attract open offer obligations
- ✓ Can trade in scrip when in possession of UPSI under following:
 - Inter-se transfer amongst promoters having equal access to UPSI
 - In case of non individual entities, person having UPSI different from person trading in scrips.
 - Trading pursuant to a **trading plan** in terms of regulations (TP Trading)

Preventive regulatory mechanism / framework

- Disclosures of holding of insiders viz promoter, KMP and directors/ employees on initial and continuous basis.
- Laying down of code of conduct for compliance by designated employees.
- Laying down and complying with code of fair disclosures.

Penal provisions

- Failure to file returns entails a liability of up to Rs 1 lakh per day for the delayed period or Rs 1 Crores whichever is less.
- For insider trading, Penalty of Rs 25 crore or three times the amount of profits made out of insider trading whichever is higher.
- **SEBI Consent mechanism** : Violations of Regulation 3 & 4 of PIT are not eligible for settlement under this scheme.

Comparative analysis of earlier provisions vis a vis new provisions

Earlier provisions	New Provisions
Amendments made on December 31, 2018	
Compliance officer to be financial literate. Financial literate not defined	Financial Literate explained to mean persons having ability to read and understand basic financial statements
“Proposed to be listed securities” not included in the definition part	Included and defined as “securities of an unlisted company <u>if it has filed a draft document with sebi / ROC</u> <u>or if it has filed a scheme of arrangements in terms of companies Act</u> “
“Material events in accordance with listing agreement “ was enlisted as one of the information ,which shall be treated as UPSI.	The same has since been deleted.
No explanation of the term “ legitimate purpose”	New regulation 3(2A) added to provide The BOD shall make a policy for determination of legitimate purpose as a part of code of fair disclosures and conduct

Earlier provisions	New Provisions
<p>Legitimate purpose not explained</p>	<p>Explained “legitimate purpose” means sharing of UPSI in ordinary course of business by an insider with partner, collaborators, lenders , merchant bankers, legal advisers or other consultants etc provided such sharing has not been carried out to evade or circumvent the prohibitions contained in the regulations.</p>
<p>No such specific clarity about the person receiving the UPSI.</p>	<p>3(2B) clearly state that any person receiving information on legitimate basis, shall be considered “ insiders” and shall be obliged to maintain the confidentiality of UPSI received , in terms of regulations.</p>
	<p>3(5) Inserted to provide that BOD to ensure maintaining of a digital database of all those parties with which whom UPSI is shared, containing name, PAN of such persons , with adequate internal control / time stamping/ audit trail provision.</p>

Earlier provisions	New Provisions
<p>Regulation 4 states that no insider shall trade in securities listed or proposed to be listed when in possession of UPSI.</p>	<p>Same regulation is retained but an explanation added that when a person who has traded, has been in possession of UPSI, his trades would be presumed to have been motivated by knowledge and awareness of such a UPSI in his possession.</p>
<p>Exceptions to regulation 4 (defenses available to insiders)</p> <p>Off market Inter-se transfer amongst promoters having same UPSI</p>	<p>Scope widened to include even non promoters. It states off market intese transfer amongst <u>insiders</u>. The transaction to be reported to company and company to stock exchanges.</p> <p>Even the transaction amongst the insiders done through block deal window is also covered.</p>
<p>No such provision</p>	<p>Transaction pursuant to statutory and regulatory obligation to carry out a bona fide transaction.</p>
<p>No such provision</p>	<p>Transaction was carried our pursuant to exercise of stock option in which exercise price was pre determined in terms of the regulations.</p>

Earlier provisions	New Provisions
Not clarified in Trading plan provisions.	Clarified the following : <ul style="list-style-type: none"> •Preclearance of trades not required for trades conducted in terms of trading plan •Trading window norms and restrictions of contra trade will not be applicable to trades executed in terms of trading plan.
Amendments made on January 21, 2019	
“Promoter group “ not included in definition part	Included and definition aligned with ICDR
Disclosure obligation: <ul style="list-style-type: none"> ➤ Initial disclosure by promoter, Key Managerial person and director ➤ Continuous disclosure by promoter, employee and director 	<ul style="list-style-type: none"> ➤ In addition , the obligation now on member of the promoter group. ➤ continuous disclosure obligation extends to members of promoter group and now confined to designated person.

Earlier provisions

New Provisions

Amendments made on December 31, 2018

➤ BOD of listed company and market intermediary shall frame code of conduct.

➤ The code of conduct was to regulate, monitor and report trading of employees and connected persons.

➤ One model code of conduct for listed company as well as market intermediary or other entities possessing UPSI.

Provision for identification of designated persons given in the schedule for minimum standards for code of conduct

➤ Clearly stated that Board of director or head of the organization shall ensure that CEO or MD frame the Code of conduct, with the approval of the BOD.

➤ The code is to regulate, monitor and report trading of designated persons and their immediate relatives.

➤ Listed market intermediary to have two codes in place ; one for listed company for trading in their own securities and one for market intermediary for trading in others securities by designated persons and their immediate relatives

Included as a separate regulation in 9(4)

Earlier provisions	New Provisions
	<p>9(4) says: BOD shall in consultation with compliance officer identify <u>designated persons</u> for the purpose of code of conduct. And shall include :</p> <ol style="list-style-type: none"> 1. Employees of listed company, based on their functional role or access to UPSI. 2. Employee of material subsidiaries based on their functional role or access to UPSI 3. All promoters of listed companies or promoters who are individuals or investments companies for intermediaries or fiduciaries 4. CEO and employees up to two levels below of CEO of such listed company, intermediary , fiduciary or material subsidiary irrespective of their functional role or ability to have access to UPSI. 5. Any support staff of listed company, intermediaries or fiduciary which has access to UPSI, IT staff, secretarial staff etc
No such Provision	<p>Institutional mechanism for PIT</p> <ul style="list-style-type: none"> ➤ <u>CEO or MD to put in place</u> system of internal control, to ensure compliance with PIT regulations. ➤ <u>Internal control shall include :</u> <ul style="list-style-type: none"> ▪ All employees having access to UPSI are identified as designated persons ▪ All UPSI to be identified and confidentiality maintained. ▪ List of employees or persons with whom UPSI is shared shall be maintained and due notice given to such persons to maintain the confidentiality . ▪ Periodic process review ➤ <u>BOD to ensure CEO/ MD complies with aforesaid.</u> ➤ <u>Audit committee to review compliance atleast once in FY .</u>

Earlier provisions	New Provisions
	<ul style="list-style-type: none"> ➤ Every listed company to have written policy and procedures for inquiry in case of leak of UPSI, which is approved by BOD. ➤ Every listed company to initiate inquiry as per the written policy in case of leak of UPSI or suspected leak of UPSI and inform SEBI promptly about such leak . ➤ Company to have whistle blower policy and make employees aware of the same so that they can inform about any leak of UPSI. ➤ If any inquiry initiated by listed company w.r.t leakage of UPSI, intermediaries, fiduciaries are to cooperate with the listed company .
No such Trading restriction stipulation.	<ul style="list-style-type: none"> ➤ Trading restriction period shall be made applicable from end of ever quarter till 48 hours after the declaration of financial results. ➤ The gap between clearance of accounts by audit committee and board shall be as narrow as possible , preferably on the same day to avoid any leakage.
Trading window shall be applicable to any persons having contractual and fiduciary relation with company such as auditors, advisers etc	This provision has been removed.

Earlier provisions	New Provisions
<p>No designated person to apply for pre clearance when Trading window is not closed if he is in possession of UPSI</p>	<p>This provision is deleted.</p>
	<ul style="list-style-type: none"> •Contra trade restrictions shall not be applicable to trades pursuant to exercise of stock options. •Recording of reasons for not trading after securing pre clearance, no longer a condition .
	<p>Designed persons to inform name of their education institution and past employees to the company and to also inform the names and PAN of following to the company on annual basis or as and when information change s</p> <ul style="list-style-type: none"> •Immediate relatives •Persons with whom they share material financial relationship •Phone,Mobile numbers which are used by them

Earlier provisions	New Provisions
	<p>Material financial relationship means where one person is recipient of any kind of payment in immediately preceding 12 months which form atleast 25 % of the annual income of such payers. Transaction done on arms length basis excluded.</p>
	<p>Listed company shall have a process for how and when the persons are brought to be an insider to sensitive information, individuals to be made aware of their obligations, responsibilities and liabilities .</p>

THANK YOU