Latest changes in SEBI (Prohibition of Insider Trading) Regulations, 2015

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Objective

- Insiders of listed entities cannot trade based on privileged information;
- Based on the principle of symmetrical information to all investors;
- SEBI constituted a Committee on Fair Market Conduct in August, 2017 under the Chairmanship of Shri T.K. Viswanathan, Ex-Secretary General, Lok Sabha and Ex-Law Secretary. Representatives of law firms, MFs, brokers, forensic auditing firms, SEs, data analytics firms, SEBI.
- existing legal framework to deal with market abuse to ensure fair market conduct in the securities market was reviewed.
- surveillance, investigation and enforcement mechanisms undertaken by SEBI were also reviewed to make them more effective in protecting market integrity and the interest of investors from market abuse.
Dating back the history of PIT regulations

- **Sachar Committee** 1979: Recognised various categories of Insiders & introducing Trading Window Closure
- **Patel Committee** 1986: Insider Trading & UPSI defined. Insider Trading identified as a cognisable offence; Requirement of a Separate legislation recognised
- **Abid Hussain Committee** 1989: Recommendation to SEBI (formed in 1988) to formulate PIT Regulations and enforce
- **SEBI PIT Reg. 19 Nov ’92**
- **SEBI PIT Reg. Committee 2013**
- **Sodhi 2015**
- **SEBI PIT Reg. Amendments w.e.f. 01.04.2019**
- **T K Viswanathan Committee – 2018:** Amendments to providing mechanism for better implementation & rationalization of provisions

Plethora of changes in definitions, disclosure requirements, formulation of policies – Notified in Jan 2015 effective from May 2015

Recognised various categories of Insiders & introducing Trading Window Closure

Recommended maintenance of Director’s shareholding in Co. Act

Recommended formulation of policies – Notified in Jan 2015 effective from May 2015
Significant Terms

• UPSI – any information relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities.

• Generally available means information that is accessible to public on a non-discriminatory basis.

• Insider – connected person or those in possession of or having access to UPSI.

• Immediate relative – means a spouse of a person and includes a 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.

• Trading means and includes subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell, deal in any securities.
Significant Amendments

- Determining and specifying the ‘legitimate purposes’ for sharing of UPSI and tracking flow of information;
- Structured Digital Database – creation of a database of persons with whom UPSI is shared;
- Mandatory Internal Control Mechanism which would be subjected to audit;
- Code of Conduct – separate codes for intermediaries and also fiduciaries;
- Leak of UPSI – inquiry process and procedure;
- Leakage of UPSI brought under Whistle blower mechanism established by companies;
- Designated Persons – extends to Promoters and employees of material subsidiaries;
- Audit Committee – terms of reference enhanced.
Other amendments

- Term financially literate explained;
- PIT Regulations extends to not only securities listed but proposed to be listed;
- Material events reportable under Regulation 30 which was listed as UPSI has been now dispensed with (IN LETTER);
- Off-market inter se transfers between insiders listed as a ground for demonstrating innocence.
- Relaxations from pre-clearance and trading restrictions when trades are conducted as per trading plan.
- Disclosure norms extended to members of Promoter Group
- Not all employees are covered by disclosure norms.
Legitimate purposes

- Sharing or procuring UPSI is restricted u/reg 3(1) and 3(2).
- Only exception is when the communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.
- UPSI should be handled by Insiders strictly on a Need to Know basis.
- Now, Board of every listed entity should make a policy for determination of legitimate purposes for which UPSI of the Company could be shared.

Regulations illustrates that the term “legitimate purpose” shall include 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.

- Existing Code of Fair Disclosure and Conduct to be amended to include a ‘policy for determination of legitimate purpose’.
- Persons in receipt of UPSI pursuant to legitimate purpose considered an INSIDER and due notice to be given to such persons to maintain confidentiality of such UPSI in compliance with PIT regulations.
Structured Digital Database

• Responsibility - Board to ensure maintenance of a Digital Database

• What needs to be maintained - Name, PAN (or any other identifier authorised by law where PAN is not available) of such persons / entities with whom UPSI is shared;

• Database to be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database
Internal Control Mechanism

• CEO/MD/any other analogous person of a listed company to put in place adequate and effective system of internal controls to ensure compliance with PIT regulations

• Internal Controls may include:
  • The formulation of the Code itself;
    • All employees having access to UPSI to be identified as designated persons; Preclearance process;
    • All UPSI to be identified and its confidentiality to be maintained;
    • Adequate restrictions to be placed on communication or procurement of UPSI;
    • List of all employees and persons with whom UPSI is shared to be maintained & Confidentiality agreements signed or notice served to all such employees and persons;
    • Timely disclosures, monitoring of trades, Chinese walls, inquiry process in case of leak, training etc.
    • Periodic process review to evaluate effectiveness of such internal controls
  • Annually - Audit Committee to review compliance with these regulations and verify that the systems for internal control are adequate and are operating effectively.
Code of Conduct

• Erstwhile there was a Common Code for listed entities, intermediaries and other persons who are required to handle UPSI during the course of their business operations;

• Minimum Standard for Code of Conduct for Listed entities – Schedule B
  • The existing Code was prescribed to regulate, monitor and report trading by ‘Insiders’. Limited to only ‘Designated Persons’ and not the wider term ‘insiders’.

• Minimum Standard for Code of Conduct for Intermediaries and Fiduciaries - Schedule C.

• Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., (Fiduciaries) assisting or advising listed entities to formulate Code of Conduct in Schedule C
Amendments to Code of Conduct

- Reports to the Board of Directors and/or Chairman of Audit Committee – Periodicity set to at least once in a year;
- Board to specify the DPs to be covered by this Code on the basis of their role and function in the organisation and the and access that such role and function would provide to UPSI in addition to seniority and professional designation and include:
  - Employees designated by the Board in the basis of functional role/access to UPSI;
  - Employees of material subsidiaries designated based on functional role/access to UPSI;
  - Promoters of listed entities
  - CEO and employees upto two levels below CEO irrespective of their functional role / access to UPSI
  - Support Staff such as IT staff, secretarial staff who have access to UPSI
- Process for how and when people are brought ‘inside’ on sensitive transactions
- Individuals to be made aware of duties and responsibilities attached to receipt of inside information & the liability attached to misuse/unwarranted use of info.
Amendments to Code of Conduct

- Trading window period can be from the end of every quarter till 48 hours after declaration of financial results;

- Incremental compliance –
  - DPs required to provide names and PAN of:
    • Immediate Relatives
    • Persons with whom they share a ‘material financial relationship’, i.e. where one person is a recipient of any kind of payment such as by way of a loan or gift during the immediately preceding twelve months, equivalent to at least 25% of such payer’s annual income but shall exclude relationships in which the payment is based on arm’s length transactions;
  - DPs are required to provide their phone, mobile numbers used by them;
  - Names of educational institutions from which DPs have graduated;
  - Names of past employers shall also be disclosed on a one time basis.

- Clarification: Restriction of trade during a trading window closure will not be applicable to exercise of ESOP under an ESOP Scheme.
Leak of UPSI

- Formulate written policies and procedures for inquiry in case of leak of UPSI or suspected leak of UPSI – Responsibility Board.

- In order to initiate appropriate inquiries on becoming aware of leak of UPSI or suspected leak of UPSI and inform SEBI promptly of such leaks, inquiries and results of such inquiries.

- Enable reporting of instances of leak of UPSI under the Whistle Blower Policy.
Disclosure requirements

• Applicability of Initial Disclosure restricted to Promoter, KMP & Directors extended to Promoter Group as well;

• Applicability of Continual Disclosure:
  • Promoter – Extended to Promoter & Promoter Group (21st January 2019 Amendment)
  • Employees – Restricted to only Designated Employees
  • Directors – no change
Trading while in possession of UPSI

- No insider to trade when in possession of UPSI - 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.

- Insider may prove his innocence by demonstrating the circumstances including:
  - Off-market inter-se transfer between insiders who were in possession of UPSI and both parties made a conscious and informed trade decision.
    - Trade to be reported to Co. within 2 working days to Co. → Co. to report within 2 working days to SE
  - Transaction carried out through block deal window between persons who were in possession of UPSI and both parties made a conscious and informed trade decision.
  - Transaction carried out pursuant to statutory or regulatory obligation to carry out a bona fide transaction.
  - Pursuant to exercise of ESOP.
Other changes

• Trading Plan
  • Preclearance requirement for every trade covered under Trading Plan dispensed with
  • Obligations during Window Closure not applicable to trades covered under trading plan
  • Provisions of contra trade not applicable to trades executed under an approved trading plan
Sebi fines 4 entities for violating insider trading norms

Besides, it noted that Kisan Moudgil, made preferential allotment of 11.17 lakh shares to Polsons, a promoter of the firm, in April, 2016.

Wipro share sale: Sebi fines individual for delayed disclosure

PTI Sept 2, 2017, 23:04 IST

New Delhi, Aug 30 | Markets regulator Sebi on Wednesday imposed a total penalty of Rs 11.17 lakh on four entities for violating insider trading norms.

The Securities and Exchange Board of India (Sebi) has levied a fine of Rs 1.17 lakh on Kisan Moudgil, Rs 2.5 lakh each on SurINDER Kangani Agrawal and Polsons Under 1L and Rs 2 lakh on Surinder Kangani Agrawal.

The regulator conducted an examination in the scrip who were promoters of the company in the relevant period from April 2016 to May 2017. However, they failed to make disclosures to Wipro within two trading days as per the Trading Day Pairing norms as per the Sebi regulations, the regulator noted.

Wipro stock price was trading at Rs 742.50.

It is mandatory that the regulator has under the regulatory norms, for two trading days of preferential allotment traded in the scrips.

He has violated the PIT RegCo. He has violated the PIT RegCo.

Accordingly, the regulator has imposed a penalty of Rs 2 lakh on Surinder Kangani Agrawal and Rs 1.17 lakh on Kisan Moudgil.

NEW DELHI, OCT 2: The regulator has imposed a fine of Rs 1.17 lakh on Wipro Co-founder Chitra Ramkrishnan for trading in the shares of Mahindra & Mahindra during the restricted period.

It is not immediately clear whether Ramkrishnan is an employee of Mahindra & Mahindra Ltd (M&M) as there is no specific mention about her current status in the Sebi order.

The regulator has imposed a fine of Rs 1.17 lakh on M&M for violating the PIT regulations.

He had traded in the scrip for 30.49 lakh and engaged in an intra-group transaction within six months following the prior transaction. As per Sebi norms, intra-group transactions refer to sale or buying any number of shares within six months following the prior transaction.
Thank you