

PROHIBITION OF INSIDER TRADING REGULATIONS, 2015 THANE CHAPTER OF WIRC OF ICSI

SUDHAKAR SARASWATULA

CHIEF CONSULTANT – MEHTA & MEHTA (CORPORATE LAW FIRM)

FORMER VICE-PRESIDENT (CORPORATE SECRETARIAL) - RELIANCE INDUSTRIES LIMITED

MOB – 9967651570 / 8149499099

SUDHAKARCACS@OUTLOOK.COM

2

Individual Competence win only Battles, its collective
Brilliance that wins the War

3

Prohibition of Insider trading **is a complex subject** and **requires thorough knowledge, deep understanding and intense diligence** from the Board of Directors, Compliance Officer, KMPs and other connected persons to ensure the effective implementation of these Regulations and compliances thereof

4

Any trading in the securities of the company based on **Unpublished Price Sensitive Information (UPSI) is illegal and unethical**, as it is unfair to the other investors who doesn't have access to such information

Certain Key Definitions

6

CERTAIN KEY DEFINITIONS

- Unpublished Price Sensitive Information (UPSI)
- Generally available information
- Designated Persons
- Immediate Relatives
- Connected Persons
- Insider
- Trading & Dealing

7

Unpublished Price Sensitive Information

8

UNPUBLISHED PRICE SENSITIVE INFORMATION

- "unpublished price sensitive information" means any information,
 - relating to your 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**
- **What is relevant to be seen is that**
 - whether the information directly or indirectly related to the company and
 - whether such information, if published, is likely to affect price of the securities of the company

9

INFORMATION CONSIDERED AS UPSI

- UPSI shall, ordinarily include but not restricted to, information relating to the following: –
 - financial results;
 - dividends;
 - change in capital structure;
 - mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;
 - changes in key managerial personnel

10

DETERMINATION OF UPSI

- To identify the UPSI certain guidelines on the materiality thresholds may be provided in the code of conduct
- There are a **host of factors that determines** the existence of UPSI
 - Nature of the transactions, progress of discussions, outcome of various stages of negotiations, increase in probability of transaction going through etc help in determining UPSI



GENERALLY AVAILABLE INFORMATION

- Generally available information means information that is **available in the public domain**
- **Information that is accessible to the public** on an un-discriminatory basis
- Information published on the website of a stock exchange would ordinarily be considered as generally available information
- **Once the information is available on the public domain it will no more be considered as UPSI**
- **Speculative reports** in print or electronic media **shall not be considered as published information**

12

Insider

13

INSIDER

- “Insider” means any person who is:
 - i) a connected person; or
 - ii) in possession of or having access to unpublished price sensitive information
- Anyone who is in possession of or having access to unpublished price sensitive information should be considered as an “insider” **regardless of how one came into possession of or had access** to such information.

14

ONUS TO SHOW AN INSIDER

- The **onus of showing** that a certain person was in possession of or had access to UPSI at the time of trading would, **be on the person leveling the charge**
- Even though the 'insider' is **not a designated person still he is prohibited** to trade while in possession of UPSI
- However, the company need not regulate the 'insider', they are responsible to regulate only the designated person

15

NOTICE TO THE INSIDER

- Any person in receipt of UPSI pursuant to a legitimate purpose shall be considered as an 'insider'
- Due notice to be given to such person to maintain confidentiality of such UPSI

Connected Person

17

Connected person

In simple words to say a connected person is the one who has some connection with your company that is expected to put him in possession of unpublished price sensitive information

18

CONNECTED PERSON

- Any person who is or has **during six months prior to** the concerned act
 - been associated with your company directly or indirectly, in any capacity including by reason of frequent communication with its officers or
 - by being in any contractual, fiduciary or employment relationship or
 - by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent,
- **That allows** such person, directly or indirectly, **access to unpublished price sensitive information** or is reasonably expected to allow such access.

19

CONNECTED PERSON

- A connected person is one **who has a connection with your company** that is expected to put him in possession of unpublished price sensitive information
- **Immediate relatives** and other categories of persons are also **presumed to be connected** persons unless the contrary is established
- Persons who may not occupy any position in your company but are in regular touch with your company and its officers and are involved in the know of your company's operations
- Persons who would have access to or could access unpublished price sensitive information by virtue of any connection

20

IMMEDIATE RELATIVE

- “**immediate relative**” means spouse, parents, siblings, and children, any of whom is either **dependent financially** on the designated person, or **consults such designated person** in taking decisions relating to trading in securities;
- Immediate relatives of a “connected person” become connected persons and this is a rebuttable presumption
- Immediate relatives may be financially independent and does not consult the insider, even then they are presumed to be connected persons but this presumption is rebuttable

21

OTHER CATEGORY OF PERSONS

- The persons falling within the following categories shall be **deemed to be connected persons unless the contrary is established**
 - an immediate relative of connected persons or
 - a holding company or associate company –or subsidiary company or a parent company or
 - an intermediary or an employee or director thereof; or
 - an official of a stock exchange or of clearing house or corporation; or
 - a banker of the company – **primarily the representatives of the bankers who deal with the company** ; or
 - 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;

Designated Person

23

WHO ARE THE DESIGNATED PERSONS?

- **Employees of your company, its intermediaries or fiduciaries (auditors, consultants etc)** designated on the basis of their functional role or access to unpublished price sensitive information
- **Employees of material subsidiaries** of your company designated on the basis of their functional role or access to unpublished price sensitive information
- All promoters
- **The Managing Director (MD) and employees up to two levels below MD** of your company, intermediary, fiduciary and its material subsidiaries **irrespective of their functional role** in the company or ability to have access to unpublished price sensitive information
- **Any support staff** of your company, intermediary or fiduciary such as IT staff or secretarial or accounts staff who have access to unpublished price sensitive information

Duties & Responsibilities of
Designated Persons

25

DISCLOSURES BY DESIGNATED PERSONS

- Designated persons shall be required to **disclose the following on an annual basis** or as and when there is a change
- Names and Permanent Account Number or any other identifier authorized by law of
 - 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
- The names of educational institutions from which designated persons have graduated **on a one time basis or as and when there is a change** and
- Names of their past employers shall also be disclosed **on a one time basis**

26

DUTIES & RESPONSIBILITIES OF DESIGNATED PERSONS

- The **primary responsibility** of designated persons is to **comply with the code** of conduct
- To **ensure** that their **immediate relatives comply** with the code of conduct
- **Not to trade** while in possession of UPSI
- **Not to trade** in the securities of the company during the **window closure** period
- To **obtain pre-clearance** from the compliance officer for dealing in securities of the company as per the code and to report trades in excess of Rs 10 lakhs
- **Not to indulge in contra trade** of securities of the company
- To **furnish the necessary information** to the **compliance officer normally its the Company Secretary** about their own and of their immediate relatives

Compliance Officer

28

COMPLIANCE OFFICER

- “compliance officer” means any senior officer, designated so and reporting to the board of directors
- Should be financially literate and is **capable of appreciating requirements for legal and regulatory compliance** under these regulations
- Shall be **responsible for the following** under the overall supervision of the board of directors
 - compliance of policies, procedures, maintenance of records,
 - monitoring adherence to the rules for the preservation of unpublished price sensitive information
 - monitoring of trades and the implementation of the codes specified in these regulations

Trading & Dealing

30

TRADING & DEALING

- “Trading” means and includes subscribing, redeeming, switching, buying, selling, dealing, or agreeing to subscribe, redeem, switch, buy, sell, deal in any securities, and “trade” shall be construed accordingly
- The action of buying, selling, subscribing to securities where direct consideration is involved can be collectively referred to as ‘Trading’
- Activities such as pledging, gifting or transmission of securities do not involve direct consideration for the relevant securities and hence referred as ‘dealing’

Restriction on Communication or Procurement of
UPSI

32

COMMUNICATION OR PROCUREMENT OF UPSI

- No insider **shall communicate**, provide or allow access to any Unpublished Price Sensitive Information (UPSI) relating to the company or securities listed or proposed to be listed
- No person **shall procure** from or cause the communication by any insider of UPSI relating to the company or securities listed or proposed to be listed
- However such information may be communicated or procured **for furtherance of legitimate purposes**, performance of duties or discharge of legal obligations
- This provision casts an obligation on all insiders who are in possession of UPSI to handle such information with care and to deal with such information strictly on **need to know basis**
- **Inducement and procurement** of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations **would be illegal**

33

LEGITIMATE PURPOSE

- The term 'legitimate purpose' is not defined in the PIT Regulations and is open to various interpretations
- 'What is legitimate purpose', is largely subjective and can only be determined after having examined circumstances under which the information was dealt
- Once the information is shared the company loses control over further use of that information
- Hence it would be prudent to have a physical or digital trail of information flows of such legitimately shared information

34

NOTICE & CONFIDENTIALITY AGREEMENT

- Whenever UPSI is shared with any person for a legitimate purpose, a **notice shall be given** intimating the persons with whom the UPSI is shared of their obligations with respect to handling of such unpublished price sensitive information
- A **confidentiality non-disclosure agreement may have to be entered** which would address any possible misuse or leakage of such UPSI

Structured Digital Database

‘Structured Digital Database’ means a secured database maintained digitally containing the nature of USPI and with whom all such information was shared, alongwith the details of their PAN or any other such identifier

37

STRUCTURAL DIGITAL DATABASE

- The Board or the heads of the organisation shall ensure that a structured digital database is maintained
- Such data base shall contain nature of UPSI, the names of such persons who have shared and of the persons with whom such information was shared shall be entered
- PAN of such persons or any other identifier atuhorised by law shall be entered
- Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails shall be available
- Non-tampering of database, shall be ensured

38

PRESERVATION OF DATABASE

- Such data shall be preserved for a period of **not less than eight years after completion of relevant transactions**
- In case **any investigation or enforcement proceedings** are pending such database shall be preserved **till the completion of such proceedings**

Trading Plan

40

TRADING PLAN

- This option is available to persons who may be **perpetually in possession of unpublished price sensitive information** and enabling them to trade in securities in a compliant manner
- **Pre-clearance, trading window norms and restrictions on contra trade shall not be applicable**
- The trading plan once approved **shall be irrevocable** and the insider shall **mandatorily have to implement the plan**, without being entitled to deviate
- Despite the submission of trading plan during the possession of any UPSI no trading can take place

Disclosures

42

INITIAL DISCLOSURES

- **Every person** on appointment as a **key managerial personnel or a director** of the company or upon **becoming a promoter or member of the promoter group** shall disclose his holding of securities of the company
- Such disclosure shall be made **within seven days**
- On such appointment even if they don't hold any shares **a NIL declaration shall be given**

43

CONTINUAL DISCLOSURES

- Where the traded value of the securities **exceeds rupees ten lakh** over any calendar quarter in one or more transactions disclosures shall be made to the company
- After the disclosure every incremental transaction crossing the threshold of Rs ten lakhs shall be disclosed
- Such disclosures shall be made **within two trading days** of such transaction
- Every promoter, member of the promoter group, designated person and director of every company shall make such disclosures to the company

DISCLOSURES REQUIRED FROM DESIGNATED PERSONS

- **Periodical declarations:**
 - At the time of appointment in the Company as Key Managerial Personnel / Director / Promoter / Sr. Managerial Personnel / in Finance and controlling department
 - Annual and Quarterly Declaration by all Designated Persons
 - Nil declarations are required even if Insiders don't hold any shares.
- **Event based Declarations:**
 - On real time basis of sharing any UPSI internally/externally
 - Within 2 trading days from dealing in shares by any designated persons or immediate relative
 - All Declarations shall be as per formats circulated by the compliance officer to all designated persons from time to time

45

SOME FAQs

- Whether bonus / right / merger related allotments shall be disclosed when they cross threshold limit of rupees ten lakhs?
 - No, not required, one reason is that the person getting allotment has no role in such trade
- In case designated person is a foreign national who does not possess demat or PAN how to give system driven disclosures?
 - If a foreign national doesn't have demat or PAN he can't trade in the Indian securities market and hence system driven disclosure will not trigger

46

SOME FAQS

- Whether transactions like transfer, transposition, transmission, gift of shares, shall be intimated when the threshold of rupees ten lakhs crossed?
 - Number of securities acquired or disposed shall be intimated once the threshold limit is crossed **irrespective of the mode of acquisition or disposal**
 - All the above transactions fall under the definition of 'dealing in securities of the company' and hence in all the above cases **intimation is required**
- In case there is no consideration is involved in the above cases how the threshold value is to be determined
 - Prevailing market value of such securities shall be taken

Key matters of code of conduct

48

TRADING WINDOW

- Compliance officer to use a notional trading window to monitor the trades of the designated persons
- Closure of trading window can be **periodical or event based**
- **Periodical trading** window closure shall be **for the purpose** of financial results
- It shall be from the end of every quarter till **48** hours after the declaration of financial results
- **Event based** trading window closure inter-alia shall be for the purposes of declaration of dividends, changes in capital structure, merger, demergers, acquisitions and delisting of securities

49

PRE-CLEARANCE

- Trading by designated persons shall be subject to pre-clearance by the compliance officer
- Code of conduct to propose the **threshold limits** to obtain pre-clearance by the designated persons to trade beyond the threshold limits
- The **validity of pre-clearance** shall not be for more than seven trading days
- Pre-clearance for compliance officer shall be given by the board of directors or by any person authorized by them
- Pre-clearance is required for both online or offline trades

50

CONTRA TRADE

- Any buy/sell trade, undertaken by a Designated Person and their immediate relatives, within 6 months of an earlier sell/buy trade, respectively, where both the trades have been done in open market, will tantamount to contra trade
- Code of conduct shall specify the period which **shall not be less than six months**, within which a designated person shall not execute a contra trade
- The code of conduct may empower the compliance officer to **grant relaxation** from contra restrictions without violating the PIT Regulations
- Non-compliance of contra trade may lead to **disgorgement of profits** in addition to penal consequences

Institutional Mechanism for prevention of
Insider Trading

52

INTERNAL CONTROLS

- The MD of a listed company shall **put in place an adequate and effective system of internal controls**
- **Internal controls shall include the following**
 - All employees who have access to UPSI to be identified as designated persons
 - UPSI shall be identified and its confidentiality shall be maintained
 - Adequate restrictions with regard to communication or procurement of UPSI
 - List of persons with whom UPSI was shared shall be maintained
 - Confidentiality agreements shall be signed with them or notice shall be served on them
 - Periodic review of such internal controls by the audit committee

Penal Provisions

SEBI DIRECTIONS FOR VIOLATION OF REGULATIONS

- SEBI may also issue following directions
 - **Disgorgement of profits** and may impose **significant fines**
 - Direct the offender not to deal in the securities market for a period of time
 - May declare the transactions null and void
 - Direct the persons to deliver the securities back to the seller
 - **Imprisonment** of persons involved in insider trading
 - **Suspend the Company from trading** its shares in the market
 - Give such other directions as it may deem fit

55

PENAL PROVISIONS

- If any insider who,—
 - (i) either on his own behalf or on behalf of any other person, **deals in securities on the basis of any UPSI**; or
 - (ii) **communicates any UPSI** to any person, except as required in the ordinary course of business or under any law; or
 - (iii) counsels, or procures any UPSI,
- shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher

56



THANK YOU