

GUIDANCE NOTE
ON
PREVENTION OF INSIDER TRADING
(Revised Edition)



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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PREFACE TO REVISED EDITION

Transparency increases credibility and accountability.

~ Park Won Soon

Corporate Governance, and even more good corporate governance thrive on the founding principles of transparency and accountability. Interestingly, the relationship between both these, or rather the trine seems to be symbiotic. Enhanced transparency leads to increase in accountability and vice versa; and heightened transparency and accountability is what paves the way for good governance.

However, akin to all aspects of human activities, ensuring accountability in action and transparency in conduct in the corporate arena especially the securities trading needs to be inculcated through dedicated laws and regulations. The same is essential to instil confidence amongst investors, and it is for this reason that the Securities and Exchange Board of India (SEBI) has taken various initiatives that ensure integrity of the securities markets in line with the mandate conferred upon it. The SEBI (Prohibition of Insider Trading) Regulations, 2015 are an attempt of the Regulatory Authority to strengthen the legal framework for prevention of insider trading.

Under these Regulations, the Compliance Officers shoulder onerous responsibility to ensure applicable compliances and the same requires deep understanding of various aspects covered under the Regulations. Considering the complexities of the subject and being a topic of utmost importance for the professionals, the Institute of Company Secretaries of India (ICSI) issued a comprehensive Guidance Note on Prevention of Insider Trading primarily based on the PIT Regulations, guidance note and FAQs thereon and informal guidances issued by the SEBI from time to time.

Subsequent to the release of the Guidance Note on Prevention of Insider Trading major amendments were introduced in the PIT Regulations by SEBI during the year 2020 and 2021. These amendments have significantly evolved the legal framework on the subject, which essentially have led to revision of the Guidance Note on Prevention of Insider Trading with an objective to provide updated guidance on the subject to all stakeholders.

The revised edition of the Guidance Note on Prevention of Insider Trading besides covering updated regulatory provisions of the PIT Regulations, also includes relevant circulars, specimen format of disclosures, important case laws and informal guidance issued by the SEBI on the subject to facilitate easy understanding and compliance of the PIT Regulations both in letter and spirit.

I place on record my sincere thanks to all the members of Secretarial Standards Committee (SSC) and Expert Group on Secretarial Standards, for their valuable contribution in finalising this revised edition of the Guidance Note on Prevention of Insider Trading, under the leadership of CS B. Narasimhan, Chairman-SSC and CS Satwinder Singh. My special thanks to CS Makarand Joshi (Group Convener) for his immense contribution during this exercise. I also commend the dedicated efforts put in by CS Rakesh Kumar, Assistant Director under the guidance of CS Saurabh Jain, Joint Director in bringing out this revised edition of the Guidance Note on Prevention of Insider Trading under the stewardship of CS Asish Mohan, Secretary, ICSI.

I am sure that this revised edition of the Guidance Note on Prevention of Insider Trading will be immensely useful for all stakeholders and will be of practical value to those entrusted with the compliance of provisions of the PIT Regulations.

Improvement is a continuous process and equally applicable to this Guidance Note. I would personally be grateful to the readers for offering their suggestions/ comments for further advancement of this Guidance Note.

Place: Bengaluru

Date: 06.01.2022

CS Nagendra D. Rao

President

The Institute of Company Secretaries of India

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FOREWORD

Prohibition of Insider Trading is a complex subject and requires intense diligence from the compliance officer, key managerial personnel (KMPs) and other connected persons to ensure the effective implementation of PIT Regulations.

The existence of a fair, transparent and efficient securities market is one of the essential ingredients for economic growth of a country. To instill confidence, trust and integrity in the securities market, SEBI has taken various initiatives to ensure fair market conduct and promulgated the SEBI (Prohibition of Insider Trading) Regulations (“PIT Regulations”) 2015 to replace the earlier 1992 PIT Regulations.

I am happy to learn that the Secretarial Standards Board (SSB) of the ICSI, in its effort to promote good corporate governance is bringing out this Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, which aims to provide necessary guidance and detailing on the PIT Regulations, wherever necessary.

I note that this Guidance Note on PIT Regulations comprises, *inter-alia*,

- *informal guidance issued by SEBI on various aspects of PIT Regulations,*
- *FAQs issued by SEBI from time to time on PIT Regulations,*
- *important case laws, and*
- *specimen formats of disclosures under PIT Regulations.*

It is a good reference guide for a person who wishes to comprehend the PIT Regulations and related interpretation.

I wish to congratulate the ICSI, the members of SSB of ICSI and all those who have contributed to bring out a well-researched document on the PIT Regulations. This, I believe, will surely help in understanding the concept and evolution of the PIT Regulations, perhaps even serve the larger goal of orderly conduct in the securities market.

This Guidance Note will surely be a rich resource for all the stakeholders and professionals for ensuring compliance of the PIT Regulations in both letter and spirit.

I wish the endeavor all the very best.

V S Sundaresan
Executive Director
Securities and Exchange Board of India

PREFACE

The act of Insider Trading does not only shake the capital markets, but also impacts the genuine Investors and the country's economic growth. Various committees constituted by the Government have recommended measures to prohibit the practice of insider trading and the need to regulate the same. To deal with market abuse related to "insider trading", the Securities and Exchange Board of India (SEBI) had promulgated the Prohibition of Insider Trading Regulations, 1992.

To curb the malpractice of Insider Trading more effectively, the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") were introduced with effect from 15th May, 2015, by repealing the erstwhile SEBI (Prohibition of Insider Trading) Regulations 1992.

Prevention of Insider Trading requires deep understanding of PIT Regulations by those who are entrusted with the responsibility to ensure compliance thereof. Being a topic of utmost importance for the professionals, the ICSI decided to bring out a comprehensive Guidance Note on Prevention of Insider Trading primarily based on the PIT Regulations, guidance note and FAQs thereon and informal guidances issued by the SEBI from time to time.

The Guidance Note is supplemented with specimen format of disclosures required under the PIT Regulations, important case laws on the subject and recent amendments introduced pursuant to recommendations of the Viswanathan Committee.

I place on record my sincere thanks to CS Satwinder Singh, Chairman-Secretarial Standards Board (SSB), CS Makarand Joshi (Group Convener) and all Members of the SSB for their efforts and contribution made during the preparation and finalisation of this Guidance Note.

I commend the dedicated efforts put in by CS Rakesh Kumar, Assistant Director led by CS Banu Dandona, Joint Director under the overall guidance of

CS Ashok Kumar Dixit, Officiating Secretary of the ICSI, in bringing out this Guidance Note.

I am confident that this Guidance Note will be of immense help to all the stakeholders and the professionals entrusted with the compliance of PIT Regulations.

I urge upon the Corporates as well as all my professional colleagues to ensure compliance of PIT Regulations in the light of this Guidance Note so as to promote good Corporate Governance.

Readers' suggestions on this Guidance Note are most welcome.

Place: New Delhi

Date: 10th January, 2020

CS Ranjeet Pandey

President, ICSI

PRELUDE

To decipher the essence of the provisions of the PIT Regulations and to better understand the pertinent issues, the Secretarial Standards Board (“SSB”) of ICSI had decided to bring out an all encompass guidance note on the PIT Regulations. Accordingly, this Guidance Note is formulated after detailed deliberations on all pertinent issues on PIT Regulations.

This Guidance Note is an attempt to provide a comprehensive guidance on the PIT Regulations, by incorporating PIT Regulations, informal guidance(s) issued by SEBI from time to time, relevant judicial pronouncements relating to Insider Trading and to set out explanations, illustrations, procedures and practical aspects in order to facilitate compliance of PIT Regulations by the stakeholders. The recommendations of Viswanathan Committee have also been suitably incorporated in this Guidance Note for better understanding of the amendments introduced.

I am sure that this Guidance Note will be a rich resource for all the promoters, directors, professionals, intermediaries, connected persons and other stakeholders and will be an aid to comply with the provisions of the PIT Regulations. This Guidance Note will be subject to periodical review, as and when required. Constructive feedback for improvements in this Guidance Note will always be treated as source of inspiration to excel further.

As Chairman-SSB, I gratefully acknowledge the immense and valuable contribution made by all the members of SSB and in particular by the members of the sub-group.

I also acknowledge the Council of ICSI for extending excellent and much vital support to SSB.

(CS Satwinder Singh)

Chairman SSB

CONTENTS

	Pg. No.
INTRODUCTION	2
SCOPE	4
DEFINITIONS	5
GUIDANCE NOTE	41
1. COMMUNICATION OR PROCUREMENT OF UNPUBLISHED PRICE SENSITIVE INFORMATION	41
2. TRADING WHEN IN POSSESSION OF UNPUBLISHED PRICE SENSITIVE INFORMATION AND EXCEPTIONAL CIRCUMSTANCES	51
3. TRADING PLANS	68
4. DISCLOSURES OF TRADING BY INSIDERS	80
5. INITIAL AND CONTINUAL DISCLOSURES	81
6. SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) (THIRD AMENDMENT) REGULATIONS, 2019	90
7. CODE OF FAIR DISCLOSURE	103
8. CODE OF CONDUCT	107
9. INSTITUTIONAL MECHANISM FOR PREVENTION OF INSIDER TRADING	168
10. SANCTION FOR VIOLATION	171
11. POWERS OF SEBI	173
12. STANDARDISED REPORTING OF VIOLATIONS	173
13. CHECKLISTS UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015	175

ANNEXURES

<i>ANNEXURE I</i>	Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons (Schedule B of PIT Regulations)	184
<i>ANNEXURE II</i>	Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries to Regulate, Monitor and Report Trading by Designated Persons (Schedule C of PIT Regulations)	189
<i>ANNEXURE III</i>	Specimen Policy for determination of Legitimate Purposes	192
<i>ANNEXURE IV</i>	Specimen Code of Fair Disclosures of UPSI (with reference to Schedule A of PIT Regulations)	193
<i>ANNEXURE V</i>	Specimen of Initial and Continual Disclosures	196
<i>ANNEXURE VI</i>	Formats of Application for pre-clearance and Trading Plan	202
<i>ANNEXURE VII</i>	Code of Conduct to Regulate, Monitor and Report Trading in Securities of the Company	206
<i>ANNEXURE VIII</i>	Specimen Code of Conduct for Intermediaries and Fiduciaries	218
<i>ANNEXURE IX</i>	Specimen of Structured Digital Database	222
<i>ANNEXURE X</i>	Specimen of Confidentiality Agreement / Intimation with Persons to whom UPSI is disclosed for Legitimate Purpose	223
<i>ANNEXURE XI</i>	Specimen Policy and Procedures for Inquiry in case of leak or suspected leak of UPSI	228
<i>ANNEXURE XII</i>	Specimen Confidentiality Intimation for Designated Persons	231
<i>ANNEXURE-XIII</i>	Format for Reporting of Violations related to Code of Conduct	232
<i>ANNEXURE-XIV</i>	Voluntary Information Disclosure Form to the Office of the Informant Protection of SEBI	234

GUIDANCE NOTE ON PREVENTION OF INSIDER TRADING

Insider trading in normal parlance is known as trading in the securities of a company by persons who are in the management of the company or have close proximity to them on the basis of knowledge of an Unpublished or Undisclosed Price Sensitive Information (UPSI) which is not available in the public domain.

Insider trading, based on UPSI, is illegal and unethical as it is unfair to the other investors who do not have access to such information.

The rules governing insider trading are complex and vary significantly from country to country. The extent of enforcement also varies from one country to another.

NEED FOR REGULATION OF INSIDER TRADING

The existence of a fair, vibrant and efficient securities market is one of the essential ingredients for economic growth of a country. To instil confidence, trust and integrity in the securities market, the market regulator needs to ensure fair market conduct. Fair market conduct can be ensured by prohibiting, preventing, detecting and punishing such market conduct which leads to 'market abuse'. Market abuse is generally understood to include market manipulation and insider trading, as such an activity which erodes investor confidence and impairs economic growth.

Various committees constituted by the Government have recommended measures to prohibit the practice of insider trading and the need to regulate the same. To deal with market abuse related to "insider trading", the Securities and Exchange Board of India (SEBI) had promulgated the Prohibition of Insider Trading Regulations, 1992. The Regulations were amended in 2002 to strengthen it further and usher in the concept of code of conduct for prevention of insider trading, as well as a code for corporate disclosure practices.

As part of a periodic review of Regulations and to address challenges in bringing

to closure cases of Insider Trading, the entire regulations were reviewed by the committee chaired by former Chief Justice Mr. N.K. Sodhi and consequently these were replaced by the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations").

In August 2017, SEBI constituted a committee on fair market conduct under the chairmanship of Dr. T K Viswanathan, Ex-Secretary General, Lok Sabha and Ex-Law Secretary ("the Viswanathan Committee"). The committee was mandated to review the existing legal framework to deal with market abuse to ensure fair market conduct in the securities market. The committee was also mandated to review the surveillance, investigation and enforcement mechanisms being undertaken by SEBI to make them more effective in protecting market integrity and the interest of investors from market abuse.

The committee submitted its report to SEBI on 8th August, 2018 wherein it, *inter-alia*, recommended amendments to PIT Regulations. The amendments introduced and the background recommendations have been discussed later in this Guidance Note.

Another high level committee was constituted by SEBI in December 2017 under the chairmanship of Justice Anil R. Dave, Retired Judge, Supreme Court of India for review of (Settlement of Administrative and Civil Proceedings) Regulations, 2014, to review the enforcement mechanism of SEBI, in particular, the recovery mechanism under the securities laws and to explore means of legislating a methodology for quantification of the factors indicated in section 15J of the SEBI Act, 1992, section 19I of the Depositories Act, 1996 and section 23J of the Securities Contracts (Regulation) Act, 1956. This committee submitted its report on 16th June, 2020. However as of now no amendments have been carried out in the PIT Regulations pursuant to these recommendations.

INTRODUCTION

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

SEBI (Prohibition of Insider Trading) Regulations, 2015 were made effective from 15th May, 2015, by repealing the erstwhile SEBI (Prohibition of Insider Trading) Regulations 1992. On 31st December, 2018, SEBI introduced certain amendments to PIT Regulations pursuant to the recommendations made by the Viswanathan Committee. These amendments have become effective from 1st April, 2019.

In addition, SEBI has introduced few amendments vide its notifications dated 21st January, 2019 and 25th July, 2019 having immediate effect and vide notification dated 17th September, 2019 which is effective from 26th December 2019.

During the years 2020 and 2021, series of amendments were introduced in the PIT Regulations and circulars dealing with the subject were issued as listed below:

Year	Amendment/Circular	Effective Date
2020	SEBI (PIT) (Amendment) Regulations, 2020	17 th July, 2020
2020	Shifting of reporting authority for violation of PIT Regulations – from SEBI to stock exchanges [SEBI circular dated 23 rd July, 2020]	23 rd July, 2020
2020	Inclusion of offer for sale and rights entitlement under clause 4(3)(b) of Schedule B [SEBI Circular dated 23 rd July, 2020]	23 rd July, 2020
2020	SEBI (PIT) (Second Amendment) Regulations, 2020	29 th October, 2020
2020	System driven disclosures implementation for equity listed companies [SEBI circular dated 9 th September, 2020]	1 st October, 2020
2021	Changes in formats of disclosures [SEBI circular dated 9 th February, 2021]	9 th February, 2021
2021	SEBI (PIT) (Amendment) Regulations, 2021	26 th April, 2021
2021	Extension of system driven disclosures implementation for debt securities of equity listed companies [SEBI circular dated 16 th June, 2021]	16 th June, 2021
2021	SEBI (PIT) (Second Amendment) Regulations, 2021	5 th August, 2021
2021	Exemption for physical disclosures pursuant to system driven disclosures [SEBI circular dated 13 th August, 2021]	13 th August, 2021

It may be noted that chapter-II of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 deals with principles governing disclosures and obligations of listed company. Regulation 4(2)(c)(iv) of the said chapter provides that the listed company shall devise a framework to avoid insider trading and abusive self-dealing.

SCOPE

This Guidance Note aims to provide the following:

- (i) Guidance on various aspects of Prevention of Insider Trading and explains the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations), as amended, where required;
- (ii) Guidance on ensuring the compliance of the PIT Regulations by the listed companies, intermediaries, fiduciaries etc.;
- (iii) Guidance on best governance practices for implementation of the PIT Regulations;
- (iv) Guidance to the Audit Committee and the board of directors to ensure a proper system for monitoring and reviewing the compliances, as stipulated in the PIT Regulations;
- (v) Various checklists as an effective tool to ensure and monitor compliance as envisaged in the PIT Regulations including various disclosures.

Scope of this Guidance Note is limited to explaining various aspects pertaining to prevention of insider trading as covered under the SEBI (Prohibition of Insider Trading) Regulations, 2015, as amended and matters related thereto as stated above.

In this Guidance Note the text of SEBI (Prohibition of Insider Trading) Regulations, 2015 is reproduced and supplemented with illustrations, guidance and background information to facilitate the compliance of the PIT Regulations. Specimen formats/policy have also been provided where necessary in the annexures thereto.

Informal guidance is also provided by the SEBI by way of interpretative letters on case to case basis under the SEBI (Informal Guidance) Scheme, 2003. It is pertinent to note that the informal guidances provided by SEBI are case specific and rebuttable in other cases based on the surrounding circumstances/facts.

In this Guidance Note:

- (i) Extracts from PIT Regulations have been set in normal font and note given under respective Regulations are referred to as Legislative Note.
- (ii) The background recommendations of Viswanathan Committee, illustrations, guidance text, SEBI Informal guidance, SEBI FAQs, various judgements/ orders and annexures are set in "*italics*" henceforth.

This Guidance Note is prepared on the basis of the relevant provisions of the PIT Regulations as amended and the circulars, guidance notes, etc., issued by the SEBI from time to time. If due to subsequent changes, any part of the Guidance Note becomes inconsistent with the PIT Regulations, the PIT Regulations shall prevail.

DEFINITIONS

The following terms are used in this Guidance Note with the meanings specified:

"Act" means the Securities and Exchange Board of India Act, 1992;

"Board" means the Securities and Exchange Board of India;

"Compliance Officer" means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for 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 under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.

Explanation – For the purpose of this definition, "financially literate" shall mean a person who has the ability to read and understand basic financial statements, i.e., balance sheet, profit and loss account, and statement of cash flows;

Extracts from interpretive letter dated 21st October, 2015 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Mindtree Ltd.

Query:

Can a senior person, say a Chief Financial Officer (CFO) or a company Secretary (CS), who is not reporting to the board of directors, act as compliance officer and update the board on the transactions related to insider trading quarterly. Can the company appoint more than one person as the Compliance Officer under the Code? In the current scenario, can CS as well as CFO be appointed as a Compliance Officer, so that one can sign and submit the documents if the other person is on travel?

Guidance from SEBI:

Regulation 2(1)(c) of SEBI (PIT) Regulations, 2015 defines Compliance Officer as any senior officer, designated so and reporting to the board of directors or head of the organisation in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of UPSI, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of the organisation, as the case may be¹.

The functions and responsibility of the Compliance Officer are specified in Regulation 2(1)(c) of the SEBI (PIT) Regulations, 2015. The company may at its discretion appoint any senior officer as the Compliance Officer, necessarily report to the board of directors or head of the organization as the case may be. Appointing any other person shall not be in accordance with the Regulations. In case of appointing more than one person as Compliance Officer they shall be held jointly and severally responsible.

¹ **ICSI's View:** As on the date of issuance of this Guidance Note, an Explanation has been added in the definition of Compliance Officer, which inter-alia states that "For the purpose of this regulation, "financially literate" shall mean a person who has the ability to read and understand basic financial statements, i.e., balance sheet, profit and loss account, and statement of cash flows". Hence, this Informal Guidance issued by SEBI prior to the date of this amendment must be read accordingly.

Regardless of the internal reporting structure in the company, the position of the Compliance Officer vis-à-vis the PIT Regulations reports to the board of directors.

“Connected Person” means, –

- (i) any person who is or has during the six months prior to the concerned act been associated with a 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.

Extracts from Supreme Court order dated 14th May, 2018 in the matter of Chintalapati Srinivasa Raju v/s SEBI [Order under PIT Regulations 1992]

Under PIT Regulations 1992, with regard to the particular UPSI in question, i.e., that the books were manipulated, the Supreme Court held that non-executive directors are persons who are not involved in the day- to-day affairs of the running of the company and are not in charge of and not responsible for the conduct of the business of the company, and hence they could not be reasonably expected to be aware about this UPSI of manipulation of books.

Being part of the promoter group cannot be stated to be foundational facts from which an inference of reasonably being expected to be in the knowledge of confidential information can be formed.

Extracts from order given by SEBI’s Whole Time Member bearing No. SEBI/WTM/MPB/IVD/ID-6/162/2018 dated 16th April, 2018 against Rupeshbhai Kantilal Savla, Sujay Ajitkumar Hamlai and V-Techweb India Private Limited in the matter of Deep Industries Limited

In this case, the directors/their immediate relatives and the person traded were connected on Facebook and they had ‘liked’ several photos of each other. SEBI held that the definition of connected person provides for the yardstick for insiders by stipulating that insider can be by way of their association in any capacity or it can be by way of frequent communication with its officers which can also be in their social capacity as evident in this case by frequent interactions including likes on the social media.

Extracts from SEBI Adjudication Order bearing No. PM/AN/2021-22/12320 dated 24th June, 2021 in respect of Mr. Pirani Ameen Abdul Aziz in the matter of Palred Technologies Limited [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, SEBI Adjudication officer noted that the person alleged to have traded on the basis of UPSI and the person who had business relations with Chairman & Managing Director of listed entity were not direct friends and they were connected through mutual friends. Therefore, in this context the Facebook connection allegedly arising out of mutual connection cannot be the sole justification for inferring possession of UPSI. While the use of social media network service providers such as Facebook contains public information and can be used in investigations, as in this instant case, the chain of friends' friend cannot itself lead to a conclusion of mutual connection.

The above two cases show that SEBI considers social media connection for investigation purposes and based on the activities on social media and other supporting evidences, a person may or may not be considered as a connected person, on a case-to-case basis.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/MB/IVD/ID-2/13175/2021-22 dated 27th August, 2021 in respect of E-City Hi-Tech Projects LLP and Mr. Atul Goel in the matter of Zee Entertainment Enterprises Limited

In this case, it was noted by SEBI that "cousin brother" does not fall within the definition of immediate relative and if there is no evidence to show that he is either dependent financially or consults a connected person of the listed entity for matters related to trading in securities, he will not be considered as immediate relative of connected person and hence shall not be a deemed connected person. SEBI said that in this context, weightage has to be given for trading pattern also as circumstantial evidence for establishing the fact of whether the Noticees (cousin brothers) are "connected person" among other circumstances such as their relationship and frequent communication. Hence, SEBI analysed the trading pattern of the cousin brothers of connected persons and found that the trading pattern during UPSI period and post UPSI period (on 3 instances) were same in the scrip of particular listed entity. Accordingly SEBI's Whole Time Member held that these trades were not executed on the basis of UPSI but off-used trading strategy.

Extracts from SEBI Adjudication Order No. EAD-7/BD /NR/2020-21/7794-95 dated 29th May, 2020 in respect of Mr. Shreejesh Harindranath and Mr. Sandeep A C in the matter of SpiceJet Ltd.

In this case, a connected person (who was also a designated person) and his brother (who was not associated with listed entity in any capacity) had traded during UPSI period. Brother claimed he is neither financially dependent on the brother who was connected person and designated person nor consulted him while taking trading decisions as they lived in different cities, and so he does not get covered under the definition of immediate relative and hence he is not a deemed connected person. There was no evidence of communication of UPSI between both of them. Hence SEBI examined trading patterns of both of them, wherein it was found that brother had bought shares on same days when the designated person had bought shares, and the brother did not hold any shares of that listed entity earlier. Hence, SEBI held that they both traded in aid and advice of each other and it was not pure investment decision of brother.

In both the above cases, it may be seen that the persons who had traded argued that they were not connected persons as per the definition. However, on the basis of trading patterns SEBI can establish on a case-to-case basis that whether a person will be considered as a connected person or not.

Extracts from SAT order dated 19th January, 2021 in the matter of Mr. Amalendu Mukherjee vs SEBI [Appeal No. 211 of 2020]

In this case, it was found that the Appellant had advanced personal favours to KMPs such as payment of tuition fees of foreign education of KMP's daughter and sponsoring of several trips and hotel bookings of their families in India and abroad. SAT held that given the nature and extent of connection which the appellant had with Ricoh (listed entity) and its KMPs in terms of his ability to influence orders by even providing editable invoices, parties routing Ricoh orders through the Appellant's company which traded in Ricoh's shares, cross directorships in various entities in the game, ability to even influence decision relating to appointment of auditors are sufficient to conclude that appellant had an extraordinary nature of connection/ influence with Ricoh and its KMPs for him to fall squarely within the meaning/definition of "connected person".

It may be noted that this case was of the year 2014-2015. The kind of influential relationships which are seen in this particular case appear to have been the

background, based on which the concept of 'Material Financial Relationship' has been introduced in PIT Regulations vide amendment dated 31st December, 2018 effective from 1st April, 2019.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/MB/IVD/ID16/04/2021-22 dated 27th April, 2021 in respect of Affluence Fincon Service Pvt. Ltd. in the matter of Infibeam Avenues Ltd.

In this case, SEBI noted that a significant amount was invested by the owner of a stock broker firm named Affluence Fincon Service Pvt. Ltd. and other persons related to that owner in the Pre-IPO preferential allotment made by a listed entity - Infibeam Avenues Ltd. and they continued to hold those shares even after listing. This fact coupled with the fact that Affluence was acting as the stock broker for the trades of a promoter company in shares of Infibeam Avenues Ltd. leads to a prima facie inference that the owner of that stock broker and all their related persons were connected to the promoters/director/KMPs of Infibeam Avenues Ltd. and had access to the UPSI. This along with the trading pattern of the entities, i.e., buying significantly during the UPSI period and not trading in any other scrip during the period, led to a reasonable presumption that the broker and related entities had traded in the scrip while in possession of the UPSI.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/AB/IVD/ID3/23/2020-21 dated 3rd February, 2021 in respect of Future Corporate Resources Private Limited in the matter of Future Retail Limited

It was noted by SEBI's Whole Time Member that Regulation 2(1)(d)(i) envisages certain associations with the company, in the ways mentioned in the definition, as allowing access or reasonable expected to allow access, to UPSI. Here, it is worth to mention that ways of association mentioned in Regulation 2(1)(d)(i) are only illustrative and not exhaustive of the ways of association, as the word used in Regulation 2(1)(d)(i) is "including" which shows it is inclusive. Association with the company that allow or reasonably expected to allow access to UPSI, is the underlying fundamental principle, under Regulation 2(1)(d)(i), for terming a person as connected person. In this case, the entity which traded in listed entity's shares was promoter of listed entity and was owned by 7 LLPs whose partners were members of promoter family. As per clause (j) of Regulation 2(1)(d)(ii), 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 10% of the holding or interest, is deemed to be a connected person. Although any director of listed entity did not hold direct shareholding in the entity which traded, but the Chairman and Managing Director of listed entity was a director and held beneficial interest to the extent of 32% shares of the entity which traded in listed entity's shares during UPSI period. Hence, this entity was considered to be a connected person.

- (ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, -
- (a) an immediate relative of connected persons specified in clause (i); or
 - (b) a holding company or associate company or subsidiary company; or
 - (c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or
 - (d) an investment company, trustee company, asset management company or an employee or director thereof; or
 - (e) an official of a stock exchange or of clearing house or corporation; or
 - (f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
 - (g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
 - (h) an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
 - (i) a banker of the company; or
 - (j) 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;

Legislative Note: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.

The undernoted definition of "Fiduciaries" is not stated in Regulation 2(1), but mentioned in Regulation 9(2) of the PIT Regulations. However for ease of reference, the same has been inserted below.

"Fiduciaries" referred to in Regulation 9(2) of PIT Regulations as professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of the PIT Regulations.

It may be noted that the term "Fiduciaries" as given above is illustrative one and should therefore cover the registered valuers, practicing company secretary firms, cost audit firms, internal auditors, special auditors for specific projects, management auditors etc. associated with company from time to time.

Extracts from SAT order dated 12th June, 2020 in the matter of Utsav Pathak vs SEBI [Appeal No. 430 of 2019] [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, SAT held that persons working on assignment as a part of team of merchant banker are considered as insiders as both parts of the definition clause of "insider" are fully applicable, i.e., they are deemed to be connected persons too as per Regulation 2(h)(viii) of PIT Regulations 1992 [which corresponds to Regulation 2(1)(d)(iii)(c) of PIT Regulations 2015]. Further since the employee working with merchant banker, i.e., Intermediary is a connected person, his immediate relatives shall also be deemed to be connected persons. The argument that he was not in talking terms with his sister (as referred in relevant SEBI Adjudication Order) was not considered valid by SEBI as well as SAT looking at the trading pattern of the immediate relatives, i.e., on the basis of preponderance of probability.

“Generally available information” means information that is accessible to the public on a non-discriminatory basis;

Legislative Note: It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. Information published on the website of a stock exchange, would ordinarily be considered generally available.

Extracts from SAT order dated 12th July, 2019 in the matter of Mr. G. Bala Reddy vs SEBI [Appeal No. 509 of 2015]

In this case a company had secured work orders but the same were not disclosed to stock exchange as the contract was not yet issued to the company and the company was only found to be the lowest price bidder. During this period, certain entities had dealt in the shares of the company.

It was contended that being the lowest bidder of a contract became known on various dates and such information came in public domain. Hence it cannot be a UPSI.

SAT held that the opening of the bids by a third party does not amount to information being published by the company or its agent under PIT Regulations. Thus, the contention that the opening of the bids in which the company was found to be the lowest bidder came in the public domain is incorrect and cannot be construed as being published.

ICSI's View:

Under Regulation 2(k) of the 1992 Regulations, the old definition of UPSI was that “..... any information which is of concern, directly or indirectly, to a company, and is not generally known or published by such company for general information....” This meant that for particular information to be UPSI, it must be neither “generally known” nor “published by the company.” If any information is generally known but not published by the company, then it was not covered under the definition of UPSI, and the same was argued in this case.

However, this position was amended by SEBI vide an amendment in 2002 and thereafter, the definition of “unpublished” was substituted to read as “unpublished” means information which is not published by the company or its agents and is not specific in nature.

Explanation. – Speculative reports in print or electronic media shall not be considered as published information.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/MPB/EFD/129/2018 dated 31st January, 2018 in respect of Shreekant Javalekar and others in the matter of 63 Moons Technologies Ltd. (Erstwhile Financial Technologies (India) Ltd.) [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, a view was put forth by SEBI's Whole Time Member that an information which got covered in a widely distributed financial newspaper with details of majority of the contents of show cause notice sent by a regulator against subsidiary of a listed entity, allegations made and gist of reply given and possible consequences was not speculative in nature. Hence, it was held that this information became public on the date of publication of that article in newspaper.

Extracts from SEBI Adjudication Order bearing No. KS/AE/2020-21/9666 dated 25th November, 2020 in respect of Mr. Amit Ramesh Sawhney in the matter of Dewan Housing Finance Limited

In this case, a view was put forth by SEBI's Adjudicating Officer that mere newspaper article without any supporting evidence for its contents cannot be relied upon to be specific enough for the UPSI to be considered as becoming generally available. In this case, the newspaper article simply mentioned about upcoming story on the exposure of a scam without naming any particular company. The knowledge related to a scam to be announced in a press conference by few select invitees and volunteers/ employees organizing the press conference cannot by any stretch be construed as being "generally available", more so when the whole market was unaware of the UPSI.

From the above two cases, it can be seen that if publicly available information is speculative, then it is not generally available information. If it is specific, then it may be considered as generally available information.

Extracts from SEBI Adjudication Order bearing No. VV/JR/2019-20/7331 dated 26th March, 2020 in respect of IDFC Asset Management Company Ltd. in the matter of selective disclosure of UPSI by Manappuram Finance Ltd. [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, Manappuram Finance Ltd. which was going to post losses in a particular quarter due to regulatory changes, had met Ambit Capital's officials to seek market guidance about quarterly results and

future outlook. Based on this meeting, Ambit Capital published a research report to its 2194 clients, one day before the declaration of results by Manappuram, where it had changed its advice from 'Buy' to 'Under Review'. Based on this research report, media channels like CNBC TV 18 etc., hosted this news about the losses to be published by Manappuram in the results. Based on this news, various mutual funds dealt in the shares of Manappuram before the declaration of its results, claiming that they had traded in fiduciary capacity and to avoid loss to its investors. SEBI held these mutual funds were not in a position to know that the information that was distributed in the research report or discussed in the meeting of Ambit Capital or being covered by media was UPSI and the mutual funds pleaded that bound by its fiduciary responsibility with the unit holders to act in their best interest in terms of the SEBI Mutual Funds Regulations. Hence, SEBI did not hold these mutual funds guilty of insider trading.

Extracts from SEBI Adjudication Order bearing No. BD/VS/2020-21/7823-7824 dated 29th May, 2020 in respect of Mr. Parthiv Dalal and Ms. Shruti Vora in the matter of circulation of UPSI through WhatsApp messages with respect to Wipro Ltd. to be read along with SAT order dated 22nd March, 2021 in the matter of Shruti Vora vs SEBI [Appeal No. 308 of 2020]

In a series of cases of leak of UPSI about various listed entities through WhatsApp groups, it was held by SEBI that "This information was circulated between the closed groups of entities through WhatsApp messages which by its very nature make it a discriminatory access to the selected few." Hence, SEBI held that "information circulated on WhatsApp fails the test to be called generally available information." While deciding on appeal from these cases, SAT held that "The information can be branded as UPSI only when the person getting the information had a knowledge that it was UPSI. Though knowledge is a state of mind of a person, the same can be proved on preponderance of probabilities on attendant circumstances." While deciding on this case, SAT also quoted its earlier judgement in Samir Arora case [Samir Arora vs SEBI SCC Online SAT 90] that "this Tribunal had rejected the arguments of SEBI that there is no need for linkage between the potential source of the UPSI and the person allegedly in possession of the alleged UPSI."

Extracts from order of Whole Time Member of SEBI bearing No. WTM/AB/IVD/ID3/23/2020-21 dated 3rd February, 2021 in respect of Future Corporate Resources Pvt. Ltd. in the matter of Future Retail Ltd.

In this case, it was held that on the basis of the statements given by Chairman/Managing Director of listed entity in response to the questions posed by interviewer, such interviews and news reports based on such interviews cannot be equated with or said to be containing the concrete information required to be disclosed under Regulation 8 of PIT Regulations or Regulation 30 of LODR Regulations, and cannot be considered to be disclosed on non-discriminatory basis. One of the reasons why it was not considered to have become generally available as quoted by SEBI Adjudication Officer was because on the basis of this news article, clarifications were sought by stock exchanges. On this, the listed entity had replied that at that time, the board of directors of the listed entity had given the only in-principle approval that too for considering various options and there was no finality about the way in which it had to take shape and the listed entity had denied the existence of the transaction referred in news reports. Hence, it was held that the information published in news reports in this case was not generally available.

“Immediate Relative” means a spouse of a person, and includes 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;

Legislative Note: It is intended that the immediate relatives of a “connected person” too become connected persons for purposes of these regulations. Indeed, this is a rebuttable presumption.

Guidance from SEBI (dated 24th August, 2015)

Query: *If a spouse is financially independent and does not consult an insider while taking trading decisions, is that spouse exempted from the definition of ‘immediate relative’?*

Guidance: *A spouse is presumed to be an ‘immediate relative’, unless rebutted so.*

Illustration:

Mrs. Y is the wife of Mr. X and for the purpose of PIT Regulations, she will be presumed to be an "immediate relative" even if she is financially independent and does not consult Mr. X for trading decisions.

Other relatives such as parents, sibling of Mr. X and child of Mr. X or Mrs. Y will be considered "immediate relative" if they are either financially dependent on Mr. X or consult Mr. X for trading decisions.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/MPB/efd-I-DRA-IV/88/2020 dated 10th January, 2020 in respect of Poonam Haresh Jashnani, Haresh Parmanand Jashnani and Nishat Shailesh Gupte in the matter of United Spirits Ltd. [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, a question was on whether mother-in-law and father-in-law will be considered as relative? SEBI Adjudication Officer noted that "A perusal of the list and section 6(c) of Companies Act, 1956 shows that one person shall be deemed to be relative of another, if one is related to the other in the manner indicated in schedule IA." Accordingly, SEBI Adjudication Officer took a view that "the fact that one side of relationship is not mentioned in the list of relatives does not have any significance as relationships come in pairs." Hence, it was held that although mother-in-law and father-in-law were not covered in the list of relatives, but daughter's husband was covered in the list of relatives and hence they were considered to be relative of each other.

It may be noted that under PIT Regulations 2015, the term 'relative' has been changed to 'immediate relative', and instead of referring to the definition under Companies Act, 2013, the definition is already given in the Regulations itself. However, wordings 'spouse of a person, and includes parent, sibling, and child of such person or of the spouse' used in the definition of immediate relative, lead to an ambiguity that whether only child of the spouse will be considered as immediate relative or whether parent and sibling of spouse will be considered as immediate relative.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/AB/IVD/ID6/11662/2021-22 dated 11th May, 2021 in respect of Shivani Gupta and others in the matter of PC Jewellers Ltd.

This case is under the regime of PIT Regulations, 2015, wherein some relatives like son's wife, cousin's wife who were not covered under definition of 'immediate relative' had traded in securities of PC Jewellers during UPSI period. They all shared a common residential address (due to joint family of extended relatives), and Chairman's son's wife had authorized her husband and her husband's cousin (who was also the son of Managing Director of PC Jewellers) to trade on her behalf through different demat accounts. SEBI held that all of them were reasonably expected to have access to UPSI and hence were deemed to be connected persons.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/AB/IVD/ID2/6733/2019-20 dated 5th February, 2020 in respect of Ms. Pia Johnson and Mr. Mehul Johnson in the matter of Indiabulls Ventures Ltd.

In this case, SEBI's Whole Time Member noted that as per the provisions of regulation 2(1)(d)(iii)(a) read with regulation 2(1)(f) of the PIT Regulations, 2015, the spouse (immediate relative) of a "connected person" is also deemed to be a "connected person", unless the contrary is established.

It may be noted that the spouse is by default considered to be an immediate relative, irrespective of whether she is financially dependent on the connected person or not and irrespective of the fact that she consults the connected person in taking decisions relating to trading in securities or not.

"Insider" means any person who is a connected person or in possession of or having access to unpublished price sensitive information;

Legislative Note: Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain

person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

Extracts from SEBI's Adjudication Order No. ID-6/OCPL/VK/AO/DRK/AKS/ EAD-3/301/67-11 dated 4th January, 2012 in the matter of Mr. V. K. Kaul

On a perusal of definition of "insider" under PIT Regulations, it is seen that a person is an "Insider", if he is connected with the company and has received or has had access to UPSI or is reasonably expected to have access to UPSI in respect of securities of a company. The use of words "the company" in one place and "a company" at another place (in the definition of insider), makes it clear that the securities need not be of the same company with which the person is connected or is deemed to be connected. It is noted that vide an amendment the letter "the" was substituted for "a" from the said Regulation with effect from 20.02.2002.

This matter was referred to SAT [Appeal No. 55 of 2012], where vide order dated 8th October, 2012, the decision of SEBI's Adjudication Officer was upheld by SAT which further laid down that when the definition of "insider" refers to 'the company', the reference is to the company whose board of directors is taking a decision and when it refers to 'a company', the reference is to a company to which the decision pertains.

Guidance from SEBI (dated 29th April, 2021)

Query: *Whether trading on the basis of UPSI is prohibited even for persons not falling under the definition of 'designated persons' under the PIT Regulations?*

Guidance: *Regulation 2(1) (g) of SEBI (PIT) Regulations, 2015 defines "insider" as any person who is:*

- i) a connected person; or*
- ii) in possession of or having access to UPSI.*

Therefore, even if a person is not classified as a designated person, having access to UPSI would make such a person an 'insider'. As per Regulation 4(1) of SEBI (PIT) Regulations, 2015, an insider is prohibited to trade while in possession of UPSI.

The definition of "Intermediary" and "Listing Regulations" given below are not mentioned in PIT Regulations. However for clarity, the same have been provided here.

"Intermediary" includes stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other entity who may be associated with securities market and registered with the SEBI.

"Listing Regulations" means the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, including any amendment thereto.

The undernoted definition of "Material Financial Relationship" is not stated in Regulation 2(1), but mentioned in Schedule B and Schedule C of the PIT Regulations. However for reader's convenience, the same has been inserted here.

"Material Financial Relationship" as stated in Schedule B and Schedule C of PIT Regulations refers to a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift from a designated person during the immediately preceding twelve months, equivalent to at least 25% of the annual income of such designated person, but shall exclude relationships in which the payment is based on arm's length transactions.

Extracts from interpretive letter dated 3rd January, 2020 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Gujarat State Petronet Ltd.

As per the amended SEBI (Prohibition of Insider Trading) Regulations, 2015, Material Financial Relationship has been explained as "a relationship in which one person is a recipient of any kind of payment such as loan or gift during 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."

Queries:

Query 1: *Whether only monetary transactions would construe to establish the Material Financial Relationship or even the non-monetary transactions would create a Material Financial Relationship?*

Query 2: *Pursuant to the said amendment Regulations, a designated person is required to provide details of their immediate relatives. If a designated person has Material Financial Relationship with one of his immediate relatives, then in that case whether the same is required to be disclosed separately in the category of person with whom the designated person has a Material Financial Relationship as well?*

Query 3: *Recently, the company has received requests from the various designated person(s) of the company seeking clarification if they should disclose the name of the person with whom they have entered in to certain nature of transactions during previous year (the list of transaction which the company feels requires a SEBI interpretation/guidance to ensure the compliance requirement of disclosure of name of the person with whom the designated person shares a Material Financial Relationship) as "a person with whom such designated person shares the Material Financial Relationship".*

Query 3 (i): *A designated person of a company is making the payment of fees of his granddaughter by directly depositing such amount of fees to the account of the University and such amount of fees is exceeding 25% of the designated person's annual income. [The designated person is claiming that the fees are paid directly to the account of the University and such transaction is to ensure the granddaughter gets the good education and hence should not be termed as transaction which can attract the relationship with the granddaughter as a Material Financial Relationship. Further, the designated person has enquired that if he is required to provide disclosure in relation to the said transaction, the details of which person should be disclosed, i.e., with whom the designated person is sharing Material Financial Relationship, the granddaughter (who is a minor) or parents of such granddaughter.]*

Query 3 (ii): *A designated person of a company has gifted a small piece of land to her daughter on her birthday, the cost of which constitutes to be more than 25% of designated person's annual income. [The designated*

person is claiming that as a parent the designated person gifts such things to their children on their birthday which will build a wealth for their children and hence should not be termed as transaction which will create a Material Financial Relationship as such transactions were made even prior to he became the designated person.]

Query 3 (iii): *A designated person has credited his daughter's account with a sum of Rs. 2 lakhs as a gift on her birthday which exceeds 25% of designated person's annual income.*

Query 3 (iv): *A designated person has deposited an amount to the account of her niece for payment by her of the fees of the University for higher management studies and such amount of fees is exceeding 25% of the designated person's annual income. The niece will return such amount (without interest) gradually once she starts earning the money after completing her education.*

Query 3 (v): *A designated person's maternal uncle has sponsored foreign country trip of designated person which constitutes to be more than 25% of such person's annual income. [The designated person has informed that the maternal uncle sponsors such trip frequently and this was done in past also when the person was not the designated person of the company and hence should not be termed as transaction creating the Material Financial Relationship with the maternal uncle.]*

Query 3 (vi): *A designated person undertakes to repay financial obligations of a person exceeding 25% of his annual income in a year, wherein, the actual payment takes place in piecemeal over a period of more than two years.*

Guidance from SEBI:

a. Query 1: *The explanation to Clause 14 of Schedule B of the PIT Regulations explicitly states that Material Financial Relationship shall mean a relationship in which " ... one person is a recipient of any kind of payment such as by way of a loan or gift... . ", therefore, even non-monetary transactions would be construed to establish a Material Financial Relationship.*

b. Query 2: *As an immediate relative may rebut connectedness with the designated person, a designated person is also required to disclose the names of immediate relatives with whom he has a Material Financial Relationship in the category of persons with whom the designated person has a material financial relationship.*

c. Query 3: The term Material Financial Relationship under Clause 14 of Schedule B to the PIT Regulations is explained as: “a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift from a designated person during the immediately preceding twelve months, equivalent to at least 25% of the annual income of such designated person.” Accordingly, reply to each sub-query is as follows:

i. Query 3 (i): The designated person shall be required to disclose the name of the granddaughter and in case the grand daughter is a minor, the name of both the parents and guardian, if any, in addition to the minor granddaughter.

ii. Query 3 (ii) and 3 (iii): The designated person is required to disclose the name of his daughter when disclosing the name of persons with whom he has a Material Financial Relationship.

iii. Query 3 (iv): The designated person is required to disclose the name of his niece when disclosing the name of persons with whom he has a Material Financial Relationship.

iv. Query 3 (v): The designated person is not required to disclose the name of his maternal uncle who sponsors his trip when disclosing the name of persons with whom he has a Material Financial Relationship.

v. Query 3 (vi): The designated person is required to disclose the name of the person to whom the designated person makes payment for repaying his financial obligations.

ICSI's View: To determine the arm's length transactions as stated in the definition of material financial relationship, the explanation to sub-section (1) of Section 188 of the Companies Act, 2013 may be referred which defines the term 'arm's length transaction' as a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

For detailed guidance on arm's length transactions, please refer the “Guidance Note on Related Party Transactions” issued by the ICSI.

The definition of “PIT Regulations” given below is not mentioned in PIT Regulations. However for clarity, the same has been provided here.

“PIT Regulations” means SEBI (Prohibition of Insider Trading) Regulations, 2015.

"Promoter" shall have the meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 or any modification thereof;

The term "promoter" is defined under Regulation 2(1)(oo) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 as under:

"promoter" shall include a person:

- (i) who has been named as such in a draft offer document or offer document or is identified by the issuer in the annual return referred to in section 92 of the Companies Act, 2013; or*
- (ii) who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise; or*
- (iii) in accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act:*

Provided that nothing in sub-clause (iii) shall apply to a person who is acting merely in a professional capacity;

Provided further that a financial institution, scheduled commercial bank, foreign portfolio investor other than Category III foreign portfolio investor, mutual fund, venture capital fund, alternative investment fund, foreign venture capital investor, insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by the Board from time to time, shall not be deemed to be a promoter merely by virtue of the fact that twenty per cent. or more of the equity share capital of the issuer is held by such person unless such person satisfy other requirements prescribed under these regulations;

"Promoter Group" shall have the meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 or any modification thereof;

The term "promoter group" is defined under Regulation 2(1)(pp) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 as under:

"promoter group" includes:

- (i) the promoter;*
- (ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and*

(iii) in case promoter is a body corporate:

- (A) a subsidiary or holding company of such body corporate;*
- (B) any body corporate in which the promoter holds twenty per cent. or more of the equity share capital; and/or any body corporate which holds twenty per cent. or more of the equity share capital of the promoter; and*

(iv) in case the promoter is an individual:

- (A) any body corporate in which twenty per cent. or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of their relative is a member;*
- (B) any body corporate in which a body corporate as provided in (A) above holds twenty per cent. or more, of the equity share capital; and*
- (C) any Hindu Undivided Family or firm in which the aggregate share of the promoter and their relatives is equal to or more than twenty per cent. of the total capital;*

(v) all persons whose shareholding is aggregated under the heading "shareholding of the promoter group":

Provided that a financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor, mutual fund, venture capital fund, alternative investment fund, foreign venture capital investor, insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by the Board from time to time, shall not be deemed to be promoter group merely by virtue of the fact that twenty per cent. or more of the equity share capital of the promoter is held by such person or entity:

Provided further that such financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor, mutual fund, venture capital fund, alternative investment fund and foreign venture capital investor insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by the Board from time to time shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;

"Proposed to be listed" shall include securities of an unlisted company:

- (i) if such unlisted company has filed offer documents or other documents, as the case may be, with the Board, stock exchange(s) or registrar of companies in connection with the listing; or
- (ii) if such unlisted company is getting listed pursuant to any merger or amalgamation and has filed a copy of such scheme of merger or amalgamation under the Companies Act, 2013;

Background: *PIT Regulations apply to securities that are listed and "proposed to be listed". However, previously these Regulations did not clearly specify as to the time when a security is "proposed to be listed". Hence in the absence of clarity, different interpretations may be made as to the time when the securities are to be considered as "proposed to be listed" and may include the securities of a company from the time commencing from the date of:*

- (a) *board resolution approving the IPO;*
- (b) *appointment of merchant bankers; and*
- (c) *filing the draft red herring prospectus or red herring prospectus with SEBI.*

Further, since the definition of UPSI under the PIT Regulations is linked to information which upon becoming generally available would affect the market price of securities, it is pertinent to determine the point of time at which information relating to a company, which proposes to have its securities listed, will be regarded as UPSI. It is pertinent to note that prior to the filing of the draft red herring prospectus with SEBI, it is difficult to state with certainty as to whether there is any definite intention on the part of the company to have the proposed securities listed on the stock exchange(s).

Considering the ramifications arising from the above, the Viswanathan Committee recommended to include the definition of the term "Proposed to be listed" in the PIT Regulations.

"Securities" shall have the meaning assigned to it under the Securities Contracts (Regulation) Act, 1956 or any modification thereof except units of a mutual fund;

The term "securities" is defined under section 2(h) of Securities Contracts (Regulation) Act, 1956 as under:

(h) "securities" – include

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or a pooled investment vehicle or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

Explanation. – For the removal of doubts, it is hereby declared that "securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938;

(ida) units or any other instrument issued by any pooled investment vehicle;

(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities.

Issue: Since PIT Regulations are applicable to any company whose securities are listed or proposed to be listed, whether these Regulations shall be applicable to companies which have listed their debt securities but their equity shares are unlisted?

ICSI's View: Yes, since the definition of "securities" as provided under PIT Regulations is to have the meaning assigned to it under the Securities Contracts (Regulation) Act, 1956 or any modification thereof except units of a mutual fund.

Even for private limited companies which have their debt securities listed, PIT Regulations are applicable and such companies have to ensure compliance with all applicable provisions.

In the Report of the High Level Committee formed in 2013 to review the SEBI (PIT) Regulations, 1992 under the Chairmanship of Mr. N.K. Sodhi, Former Chief Justice, the following was noted:

- The committee is of the view that any security listed on any public platform for price discovery would come within the scope and reach of the provisions of the proposed PIT Regulations.

Hence all the provisions of these Regulations are applicable even to debt securities which are listed. However the same may not be applicable to equity shares which are not listed, considering that price discovery mechanism does not apply in such cases.

(Reference may also be made on the above to the Report of the High Level Committee formed in 2013 to review the SEBI (PIT) Regulations, 1992 under the Chairmanship of Mr. N.K. Sodhi, Former Chief Justice)

Guidance from SEBI (dated 29th April, 2021)

Query: Whether trading only in equity shares is in violation of PIT Regulations while in possession of UPSI or it also includes trading in other form of securities?

Guidance: Trading in securities while in possession of UPSI is prohibited as per the regulations. For the applicability of SEBI (PIT) Regulations, securities shall have the same meaning assigned to it under the Securities Contracts (Regulation) Act, 1956, which inter-alia covers shares, scrips, stocks, bonds, debentures, derivative, etc. except units of mutual funds.

Guidance from SEBI (dated 4th November, 2019)

Query: *Whether trading in ADRs and GDRs by employees of Indian companies who are foreign nationals is covered under provisions of PIT Regulations on code of conduct?*

Guidance: *Yes, trading in ADRs and GDRs of listed companies is covered under relevant provisions of PIT Regulations. Employees of such companies, including foreign nationals, who are designated persons, shall be required to follow the code of conduct for trading in ADRs and GDRs. For disclosures by such designated persons, a unique identifier analogous to PAN may be used.*

“Specified” means specified by the Board in writing;

“Takeover Regulations” means the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and any amendments thereto;

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

Legislative Note: Under the parliamentary mandate, since the Section 12A(e) and Section 15G of the Act employs the term ‘dealing in securities’, it is intended to widely define the term “trading” to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc. when in possession of unpublished price sensitive information.

ICSI’s view: *On reading the above legislative note, a distinction can be made in the plain meaning of the terms ‘trading’ and ‘dealing’. The actions of buying, selling or subscribing to securities, where direct consideration is involved for those relevant securities, can be collectively referred to as ‘trading’ (in plain language). However, actions such as pledging, gifting or transmission of securities do not involve direct consideration for those relevant securities, and hence they may not be referred as ‘trading’ (in plain language), but definitely these actions can be referred to as ‘dealing’ in plain language. As per this Legislative note, this definition is intended to define the term ‘trading’ widely and not to restrict the term ‘trading’ to its plain meaning. Hence, the word ‘dealing’ has been included in this definition, so as to cover those actions also which are covered under the plain meaning of ‘dealing’ and may not be covered under the plain meaning of ‘trading’.*

Extracts from interpretive letter dated 5th October, 2018 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of HDFC Securities Ltd. (HSL) regarding transactions done under the Securities Lending and Borrowing Scheme (SLBS)

Facts of the case:

- a) Securities lending is a temporary lending of securities by a lender to the borrower. NSE platform, through NSCCL, offers SLB. It offers an anonymous trading platform and gives the players the advantage of settlement guarantees.*
- b) The lender gets risk-free income on securities lying idle in demat account. The reasons to borrow securities may vary among borrowers and include securities required to support a trading strategy, financing strategy or fulfilling settlement obligations.*
- c) HSL approached certain clients who are senior employees (designated persons) of few companies for lending their shares allotted to them under ESOP under SLB mechanism. These clients raised queries regarding applicability of the SEBI (PIT) Regulations, 2015 for such SLB transactions.*
- d) These clients/ designated persons by virtue of their employment could be considered as insider and may be in possession of unpublished price sensitive information (UPSI) of their employer company whose shares they intend to lend in SLB mechanism.*
- e) As per subsection (xv) of section 47, transactions done in SLB segment shall not be regarded as transfer under section 45 of the Income Tax Act.*
- f) Hence, ownership of securities remains with the lender and does not get passed on to the borrower at any point. The lender gets lending fees and gets back all the securities on a pre-defined settlement date irrespective of price movement of those securities during intervening period.*
- g) Quotes of securities which are available on SLB platform have no correlation to market price of the underlying securities. The lending/ borrowing fee is not determined by the price movement of the underlying securities and it depends on demand and supply.*

- h) With the introduction of physical settlement of derivatives by Exchanges, SLB activity is likely to surge. However, due to apprehension of attracting provision of the PIT Regulations, owners of securities are not willing to lend their securities through SLB mechanism.*

In light of the above submissions, HSL sought interpretive letter from SEBI with respect to whether transactions of lending and borrowing of securities done under SLBS fall within the definition of 'trading/ trade' as defined in the PIT Regulations and attract the provisions of the PIT Regulations.

Guidance from SEBI:

- a) SLB is a mechanism for lending and borrowing of securities (i.e., equity shares) in the form of contracts, which are traded on an automated screen based order-matching platform. The price of such contracts is lending fee, which may derive its value from the underlying securities.*
- b) It is seen that in SLB mechanism, the title of the securities lent vests with the borrower during lending period, the borrower is entitled to deal with or dispose of the securities borrowed and there is an agreement to return (as per terms of the SLB contracts) the underlying securities to lender at the end of the contract.*
- c) Further, in the instant matter, the underlying securities are amenable for price discovery on an exchange platform.*
- d) Regulation 2(1)(l) of the PIT Regulations defines trading to mean and include subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and 'trade' shall be construed accordingly. Further, explanatory note to the said regulation, inter-alia, states that '...it is intended to widely define the term "trading" to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc. when in possession of unpublished price sensitive information.'*
- e) Considering the contents of regulation 2(1)(l) and the nature of the SLB mechanism, the transactions of borrowing/lending done under SLB mechanism constitute trade for the purpose of PIT Regulations.*

- f) Further, as per Regulation 4(1) of the PIT Regulations, no insider shall trade in securities that are listed or proposed to be listed on stock exchange when in possession of UPSI.¹
- g) Accordingly, borrowing or lending of securities by an insider while in possession of UPSI with respect to underlying securities shall result in insider trading in terms of Regulation 4(1) of the PIT Regulations provided that the insider may prove his innocence by demonstrating the circumstances as stated therein.

Guidance from SEBI (29th April, 2021)

Query: Whether creation of pledge, invocation of pledge and revocation of pledge can be deemed as trading?

Guidance: Trading as defined under Regulation 2(1)(l) means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly. The term trading is widely defined to include dealing in securities and intended to curb the activities based on unpublished price sensitive information (UPSI) which are strictly not buying, selling or subscribing, such as pledging etc. Hence, trading would include creation/invocation/revocation of pledge.

Query: Are PIT Regulations applicable on transmission of shares?

Guidance: Yes, PIT Regulations are applicable on transmission of shares. However, they are exempted from provisions of trading window closure, pre-clearance and contra trade, but the norms relating to disclosure requirements shall be applicable on transmission of shares.

Query: In case promoter gifts shares of the company to his niece who is not part of promoter group & not financially dependent on promoter:

- i. Is gift of shares to be considered as trading under SEBI (PIT) Regulations?
- ii. Whether it require compliance with disclosure, pre-clearance and contra trade restrictions?

1. **ICSI's View:** As on the date of issuance of this Guidance Note, an Explanation has been added in Regulation 4(1), which inter-alia states that "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". However, there is no impact on this Informal Guidance issued by SEBI prior to the date of this amendment.

Guidance: “Trading” means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and accordingly gifting shall be construed as dealing in shares. Thus, gift is a trade and the promoter shall be required to comply with requirement of disclosure, pre-clearance and contra trade restrictions.

As seen in the legislative note mentioned below the definition of ‘trading’, and as indicated in the Guidance from SEBI, it is clear that SEBI intends to include ‘pledge’ in the scope of ‘trading’.

However, there are exemptions from trading window restrictions if pledge is done for bona fide transactions subject to pre-clearance from Compliance Officer with effect from 25th July, 2019 (as explained later under the paragraph on Trading Window closure), and may be exempted from contra trade restriction on a case-to-case basis as explained in the Informal Guidance given to Geetanjali Trading & Investment Pvt. Ltd. dated 14th October, 2015 (explained later under the paragraph on Contra Trade).

Further, it appears from the above guidance that transmission of shares and gift of shares are looked at differently. In both cases, disclosure requirement is applicable, but the securities received in transmission will be exempt from provisions of trading window closure, pre-clearance and contra trade. However, gifting is being construed as dealing in shares, the designated person is required to comply with pre-clearance and contra trade restrictions. This FAQ is silent with regard to the trading window closure restrictions in case of gift of securities.

“Trading day” means a day on which the recognized stock exchanges are open for trading;

“Unpublished Price Sensitive Information” (UPSI) means 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 and shall, ordinarily including but not restricted to, information relating to the following: –

- (i) financial results;
- (ii) dividends;
- (iii) change in capital structure;
- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel.

Legislative Note: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.

Background: *The definition of UPSI under Regulation 2(1)(n) of the PIT Regulations is an inclusive definition and before the amendment "material events in accordance with the listing agreement" were deemed to be UPSI. Since, the definition of UPSI is inclusive, hence the Viswanathan Committee recommended the removal of explicit inclusion of "material events in accordance with the listing agreement" in definition of UPSI and the same was deleted accordingly.*

ICSI's View: *This may be noted that in the aforesaid definition of UPSI, the term "change in capital structure" may include change in the authorised, issued, subscribed and paid-up share capital; reclassification of the authorised share capital; sub-division of the face value of the shares; reduction of share capital or buy back of shares; change in the capital structure resulting from restructuring; and change in voting rights. However, this should not include change in the paid-up share capital pursuant to exercise of stock options under an ESOP scheme.*

Further under Regulation 9A(2)(b) of PIT Regulations, as a part of internal controls to be put in place by the Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary, all the UPSI pertaining to a company shall be identified. This identification of UPSI can be done by providing certain guidelines on materiality/thresholds in the Code of Conduct framed under Regulation 9 of PIT Regulations. These thresholds for identification of UPSI may be different than the thresholds prescribed under Regulation 30 of Listing Regulations for the purpose of disclosure to stock exchanges.

ICSI's View: *The issue may be raised as to how far variation can be considered as materially affecting the price. The term "materially affecting the price" is subjective and will depend upon the circumstances in each case. The company should consider the issue rationally depending upon the facts and circumstances.*

FOR DEBT LISTED COMPANY

ICSI's View: As explained earlier, the definition of "securities" under Regulation 2(1)(i) of PIT Regulations, 2015 includes listed debt securities and hence all provisions of PIT Regulations are applicable even to companies whose equity shares are not listed and debt securities are listed. Determining what is UPSI is of utmost importance for compliance by such companies.

To take guidance, under Regulation 30 of Listing Regulations, for equity listed companies, the events/information which are material must be disclosed to stock exchange as per Schedule III-Part A of Listing Regulations. However, for companies whose equity shares are not listed and debt securities are listed, there is no concept of determination of "materiality" for the purpose of disclosure to stock exchanges. For such companies, as per Schedule III-Part B of Listing Regulations, such events are to be disclosed which shall have a bearing on their performance/operation or is price sensitive or shall affect payment of interest on listed non-convertible securities.

Hence, it can be seen if certain information about a company having its equity shares listed can affect the price of its equity shares, similar information about a company whose equity shares are not listed and debt securities are listed may not necessarily affect the price of its debt securities. Hence, parameters for determining of UPSI may not be common for equity listed companies and companies having only their debt securities listed.

Extracts from SEBI's Adjudication Order No. ASK/AO/62-67/2014 dated 28th March, 2014 in the matter of Man Industries (India) Limited [Order under PIT Regulations 1992]

The definition of "Price sensitive information" is broad enough to cover within its ambit any information which if published is likely to materially affect the price of the securities of a company. In this regard, what is relevant to be seen is that –

- (i) Whether information directly or indirectly related to company, and
- (ii) Whether information, if published, is likely to materially affect price of securities of a company

If the answers to these questions are in the affirmative, then the information has to be construed as price sensitive information irrespective of actual price witnessed post disclosure of information.

This matter was appealed before SAT but the order made by SEBI Adjudication Officer was upheld by SAT.

Extracts from SAT order dated 16th December, 2011 in the matter of Mr. E. Sudhir Reddy vs SEBI [Appeal No. 138 of 2011] [Order under PIT Regulations 1992]

Tendering process is a long drawn procedure involving various stages and it would be difficult to lay down any parameter namely, at what stage the information in a tendering process would become price sensitive for the purpose of Insider Trading Regulations and that such information would depend on the facts and circumstances of each case.

Extracts from SAT order dated 12th July, 2019 in the matter of Mr. G. Bala Reddy vs SEBI [Appeal No. 509 of 2015] [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, a company had secured work orders but the same were not disclosed to stock exchange as the contract was not yet issued to the company and the company was only found to be the lowest price bidder. During this period, certain entities had dealt in the shares of the company with a contention that being the lowest bidder of a contract is a usual course of business and hence, does not amount to UPSI.

SAT held that considering that the promoter was aware that the company was L1 (lowest bidder), this information was UPSI and hence it was incumbent upon promoters not to deal in the scrips of the company directly or indirectly.

Extracts from order passed by Whole Time Member of SEBI bearing No. SEBI/WTM/MPB/IVD/ID-6/162/2018 dated 16th April, 2018 in respect of V-Techweb India Private Limited and others in the matter of Deep Industries Ltd.

In this case, the listed entity was not L1 bidder. Subsequently, it was requested to match Evaluated Day Rate (EDR) of L1 bidder. Accordingly, the listed entity submitted the revised bid matching EDR with that of L-1 bidder. SEBI Whole Time Member held that the date when company was called upon to match the lowest bid was the start date of UPSI.

Extracts from order passed by Whole Time Member of SEBI bearing No. WTM/ AB /EFD - I/DRA-1/ 25 /2018-19 dated 14th March, 2019 in the matter of Jagran Prakashan Ltd., to be read along with SEBI's Adjudication Order No. RA/JP/ 225 – 227/ 2017 dated 27th November, 2017 against Mr. Amit Jaiswal, Ms. Mansi Jaiswal and Kanchan Properties Limited (which was a promoter group company of Jagran Prakashan Ltd.) [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, though the number of shares traded by the promoter group was less than 2% of the paid up equity shares of the company, the volume traded was substantial as compared to the trading volume of the company in the relevant period. Hence, it was held in the given circumstances the sale of shares by the promoter group entity was UPSI.

ICSI's View: *This case amplifies the proposition that possession of information of any trade(s) being done in the securities of the company which will materially affect the price of the securities shall be UPSI. Further the threshold prescribed for disclosure under SEBI (SAST) Regulations/any other Regulations may not necessarily be the decisive factor to determine whether the trade is UPSI or not.*

Extracts from order passed by Whole Time Member of SEBI bearing No. WTM/AB/IVD/ID2/6733/2019-20 dated 5th February, 2020 in respect of Ms. Pia Johnson and Mr. Mehul Johnson in the matter of Indiabulls Ventures Ltd.

In this case, it was held that though definitive agreement for disposal of a step-down subsidiary to a group company was entered into at a later date, but when the CEO of the selling company and the purchasing company (both being group entities) met and discussed the modalities of the transaction, the UPSI came into existence on that date.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/MPB/EFD/129/2018 dated 31st January, 2018 in respect of Shreekant Javalgekar and others in the matter of 63 Moons Technologies Ltd. (Erstwhile Financial Technologies (India) Ltd.) [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, it was held that the notice received from Department of Consumer Affairs which further led to the closure of subsidiary of listed company was held to be unpublished price sensitive information for the listed company as that notice had a substantial impact on the operation of the subsidiary, and hence on the business and operations of the company too.

It may be noted that an information relating to subsidiary of a listed entity may be considered as UPSI for the holding listed entity, on a case-to-case basis, if it has all the features of UPSI as quoted in the case of 'Man Industries' above.

Extracts from impounding order passed by Whole Time Member of SEBI bearing No. WTM/GM/IVD/14/2020-21 dated 1st July, 2020 in respect of Mr. Praveen Lingamneni and others in the matter of Divi's Laboratories Ltd.

In this case, it was held that removing of sanctions by FDA on facility of pharma company is UPSI.

Extracts from settlement order bearing No. VV/JR/2020-21/8229 dated 8th July, 2020 in respect of Manappuram Finance Ltd. read with SEBI Adjudication Order bearing No. VV/JR/2019-20/7331 dated 26th March, 2020 in respect of IDFC Asset Management Company Ltd. in the matter of selective disclosure of UPSI by Manappuram Finance Ltd. [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, due to change in Reserve Bank of India (RBI)'s norms relating to Loan to Value Ratio for companies engaged in financing against gold jewellery, a one-time hit of Rs. 250 crores either by way of crystallised income not being received or expected to be not received was to be taken by Manappuram in its books, resulting in a loss up to Rs. 50 crores in the last quarter of 2012-13. This was considered to be UPSI as it was going to have a substantial impact on the financials of the company.

Extracts from SEBI Adjudication Order bearing No. AO/BJD/MAS/EAD/171-176/2018 dated 16th March, 2018 in respect of New Delhi Television Limited and others [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, it was held that a tax demand of Rs. 450 crores made by Income Tax Department during final assessment of Income Tax returns can be considered as an UPSI, if the amount of tax demand is substantial as compared to the revenue and profits of the company. In this case, the company had net sales of only Rs. 349 crores and a net loss of Rs. 53 crores. This was also upheld by SAT too.

It can be observed from above cases that if any Regulatory change is going to have substantial impact on the listed entity, then it shall be considered as UPSI.

Extracts from order passed by Whole Time Member of SEBI bearing No. WTM/AB/IVD/ID2/6733/2019-20 dated 5th February, 2020 in respect of Ms. Pia Johnson and Mr. Mehul Johnson in the matter of Indiabulls Ventures Ltd.

In this case, for disposing off a step-down subsidiary of a listed company, it had already taken shareholders approval under Section 180(1)(a) of the Companies Act, 2013 in July 2016 and the same was disclosed to stock exchange. However, that resolution did not mention about the buyer, valuation and price at which the shares of step down subsidiary shall be disposed off, etc., as those points were not yet finalised at the time of seeking shareholders' approval. Hence, after a period of more than 6 months, in January 2017 when discussions started between the CEO of the listed company and the CEO of another group company for pledging of shares of the step down subsidiary instead of disposal, but the final decision was taken of selling off the shares of step down subsidiary to the group company, it was held by SEBI that as the details of the transaction were finalised at a later date, a new UPSI came into existence on the date when the discussions between the two CEOs started.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/AB/IVD/ID6/11662/2021-22 dated 11th May, 2021 in respect of Shivani Gupta and others in the matter of PC Jewellers Ltd.

In this case, the board of directors had approved and announced to the stock exchanges, the decision of proposed buy back in May 2018. However, later on, the lender refused to grant no objection letter for the buyback on 7th July, 2018, which was disclosed to the stock exchanges after the board of directors withdrew the Buy Back on 13th July, 2018. It was held by SEBI that the date when the management got to information that the lender has refused to grant no objection letter for the buy back, a new UPSI came into existence.

The above two cases demonstrate that even after disclosure about a particular UPSI to stock exchanges, a related new UPSI may come into existence and it will have to be dealt appropriately, just like the earlier UPSI.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/MB/IVD/ID3/12407/2021-22 dated 30th June, 2021 in respect of Mr. Shreehas Tambe in the matter of Biocon Ltd.

In this case, the SEBI Whole Time Member put forth that there exists a distinction between the timelines when the parties to a transaction have opened discussions, UPSI period and the final signing. During the former, the parties are still exploring the possibilities of a potential transaction between them. Thus, the discussions are exploratory in nature and the information generated at this stage is imprecise in nature, without a reasonable probability of the transaction going through and without any specific details. Juxtapose this with the UPSI period. Discussions during UPSI period starts with high degree of crystallisation and proceeds towards a greater degree of crystallisation with a reasonable probability of the transaction going through. This is done in a structured way by resolving issues. In other words, during the UPSI period, with each passing day, the outcome of the transaction moves towards higher and higher degree of concreteness, as the discussions are centered around resolution of specific issues. It is noted that it cannot be said with 100% certainty what will be the outcome/information before the public announcement is actually made as there is still room for the parties to the transaction to change/modify their decision till the time the decision has been publicly announced. The certainty of information can only be measured in terms of probability/degree of crystallisation and concreteness.

Extracts from SEBI Adjudication Order bearing No. PM/NR/2021-22/13289 dated 1st September, 2021 in the matter of Essar Shipping Ltd.

In this case, the due date of Foreign Currency Convertible Bonds (FCCBs) conversion/redemption was mentioned in the annual report, which changed subsequently by way of extension of period and the change was also mentioned in subsequent annual reports. But on the extended due date of conversion/redemption, an intimation was made to stock exchange that these FCCBs shall be converted. Within few minutes after initial disclosure, another disclosure was made to stock exchange that the earlier disclosure given be considered as withdrawn. The Compliance Officer argued that date of conversion/redemption was already given in annual report, and hence did not consider initial decision of conversion of FCCBs as UPSI.

SEBI held that disclosures made in annual report about the outstanding FCCBs, due date of conversion and conversion rate were periodic/year end status about FCCBs issue and didn't gave immediate information of redemption of FCCBs. The disclosures of periodic affairs on status of FCCBs until resulted into a corporate action cannot be construed as publicly available information, even though a disclosure is made in the annual report.

Extracts from order of the Whole Time Member bearing No. WTM/MB/IVD/ID3/12494/2021-22 dated 8th July, 2021 in respect of Kunal Kashyap and M/s. Allegro Capital Pvt. Ltd. in the matter of Biocon Ltd.

In this case, in the context of Biocon's collaboration with Sandoz, the SEBI Whole Time Member noted the Sodhi Committee Report which mentions about the illustrations given in the definition of UPSI which would ordinarily be considered as UPSI. It mentioned that "The committee felt that some illustrative examples of what would ordinarily constitute UPSI should be set out to clearly understand the concept. It would be important to ensure that regardless of whether the information in question is price-sensitive, no piece of information should mandatorily be regarded as UPSI." Accordingly, the SEBI Whole Time Member noted that the illustrations given in the definition of UPSI are not mandatorily UPSI, if proven otherwise. There are a host of factors that determines the existence of UPSI viz., nature of the transaction, progress of the discussions, outcome of various stages of negotiations, increasing probability of transaction going through etc. Therefore, for each matter, the entire facts and circumstances of the matter must be examined without giving undue weightage to any one facet, before arriving at the conclusion of existence of UPSI.

Words and expressions used and not defined in this Guidance Note shall have the same meaning assigned to them under the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 or the Companies Act, 2013 and rules and regulations made thereunder.

GUIDANCE NOTE

1. COMMUNICATION OR PROCUREMENT OF UNPUBLISHED PRICE SENSITIVE INFORMATION (REGULATION 3)

Chapter II of SEBI (Prohibition of Insider Trading) Regulations, 2015 restricts communication or procurement of UPSI and trading by insiders while

in possession of UPSI. It also provides for exceptions with respect to communication/trading. This chapter also mandates execution of confidentiality agreement and intimation about confidential nature with respect to UPSI.

Specimen of confidentiality agreement and intimation to persons with whom UPSI is disclosed for legitimate purpose is placed at Annexure-X.

Regulation 3(1) of PIT Regulations provides that 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.

Legislative Note: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.

Regulation 3(2) of PIT Regulations provides that no person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

Legislative Note: This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.

Regulation 3(2A) provides that the board of directors of a listed company shall make a policy for determination of "legitimate purposes" as part of "Codes of Fair Disclosure and Conduct" formulated under regulation 8.

Explanation – For the purpose of illustration, the term "legitimate purpose" shall include sharing of unpublished price sensitive information 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.

A specimen policy for determination of legitimate purposes is placed at Annexure-III.

Regulation 3(2B) provides that any person in receipt of unpublished price sensitive information pursuant to a “legitimate purpose” shall be considered as an “insider” for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.

Background: *Regulation 3 of the PIT Regulations prohibits the communication and procurement of UPSI, unless such communication/procurement is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. Since the term legitimate purpose has not been defined under PIT Regulation, it is open to various interpretations. However, entities are expected to develop practices/policies for responsible treatment of UPSI.*

The Viswanathan Committee noted that legitimacy of any action under which UPSI is communicated/procured remains largely subjective and can only be determined after having examined circumstances under which the information was dealt. The committee was of the opinion that it may be difficult to unequivocally define such a term, whether by way of an inclusive definition or otherwise.

Once UPSI is shared for legitimate purposes, the company loses control over further use of that information by those who come into possession of such information. If such information is misused for insider trading, it becomes difficult to establish a connection between the company and the recipient of information. It would thus be prudent to have a physical and/ or digital trail of information flows of such legitimately shared information. It would also be prudent to intimate the persons receiving the UPSI of their obligations towards preventing misuse of such information for insider trading, by way of an advance notice.

The Viswanathan Committee felt that intimation by serving notice to or by entering into a confidentiality/ non-disclosure agreement with persons receiving UPSI would also address any possible sharing of UPSI in market gauging.

In view of the above, the Viswanathan Committee recommended that regulation 3(2) may be amended to mandate to the board of directors of the listed company or intermediaries to articulate their own policy relating to “legitimate purposes” (albeit, within the contours provided under the law). This will give freedom to the listed company/market participants (while at the same time ensuring responsibility since the directors would be required to justify the policy/definition) to decide what may or may not be considered as “legitimate purposes” based on its business/industry related needs.

ICSI's View: *It is pertinent to note that when companies share the financial results for publication in Newspapers post their quarterly meetings, the results are to be given to the press only after disclosure of the same to the stock exchanges. Only after the results appear on the exchange website(s) should companies share such results with the media. Similarly media releases and information on analyst meets should also be shared only after filing of the financial results with the exchange(s) and after the same have been displayed on the exchange website(s).*

Illustration:

In case of subsidiaries and holding companies, where one of them or both are listed, the "Policy for determination of Legitimate Purposes for sharing of UPSI" can specify that procuring /sharing of information in the ordinary course of business for the purpose of consolidation of accounts would be considered as Legitimate Purpose.

Issue: *Does it permit the listed subsidiary to share its accounts with the listed holding company before the subsidiary's board of directors approves the same?*

ICSI's View: *If holding company and subsidiary company (whichever is listed entity or both of them if both are listed) have similar clauses in their Legitimate Purpose Policy, then subsidiary can share its accounts and holding company can procure the accounts pursuant to this policy.*

If listed subsidiary does not have an equivalent clause in its policy, even then subsidiary can share its accounts pursuant to its duty to discharge of legal obligations as provided under Regulation 3(1) of PIT Regulations.

Similarly, if listed holding company does not have an equivalent clause in its policy, then receiving information for consolidation can also be considered towards discharge of legal obligation as provided under Regulation 3(1) of PIT Regulations, and hence holding company can procure the accounts of the subsidiary.

Exceptions

Regulation 3(3) provides the exceptions to the above by stating that an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:

- (i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company;

Legislative Note: It is intended to acknowledge the necessity of communicating, providing, allowing access to or procuring UPSI for substantial transactions such as takeovers, mergers and acquisitions involving trading in securities and change of control to assess a potential investment. In an open offer under the takeover regulations, not only would the same price be made available to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.

- (ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine to be adequate and fair to cover all relevant and material facts.

Legislative Note: It is intended to permit communicating, providing, allowing access to or procuring UPSI also in transactions that do not entail an open offer obligation under the takeover regulations when authorised by the board of directors if sharing of such information is in the best interests of the company. The board of directors, however, would cause public disclosures of such unpublished price sensitive information well before the proposed transaction to rule out any information asymmetry in the market.

Background: Regulation 3(3) of the PIT Regulations allows communication/ procurement of UPSI for purposes of facilitating due diligence exercises involved in transactions which (a) trigger an open offer and (b) do not trigger an open offer.

Based on the feedback from listed companies and market participants, the Viswanathan Committee noted that currently the board of directors of the target listed company is required to be of the informed opinion that

any such proposed transaction is in the best interests of such target listed company, before allowing the UPSI relating to such target listed company to be communicated/procured.

From a practical viewpoint, due diligence exercises are generally carried out at a very preliminary/nascent stage of the transaction with a view to determine the viability /compatibility of the proposed transaction in the company's future programmes/plans. The committee noted that at such preliminary/nascent stage, it is not only difficult but also impractical for the board of directors to gauge, evaluate and form an opinion as to whether the proposed transaction would be in the best interests of the target listed company. In such cases it may not be possible for the board of directors of the target listed company to opine, at the time when due diligence exercises are being conducted, that any such proposed transaction would be in the best interests of such target listed company. However, the committee felt that the board of directors may at least evaluate and opine on whether the sharing of the UPSI for due diligence would be in the best interests of the company. Accordingly, the committee has recommended necessary amendment in the regulation 3(3)(i) and (ii).

Such UPSI which is shared is also required to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine. The committee has recommended that the information which is made generally available prior to transaction should be adequate and fair to cover all relevant and material facts.

Regulation 3(4) of the PIT Regulations provides that to avail the exemptions listed under sub-regulation (3) above, the board of directors shall require the parties to execute agreements to ensure confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep the information so received confidential, except for the purpose of sub-regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

Structured digital database

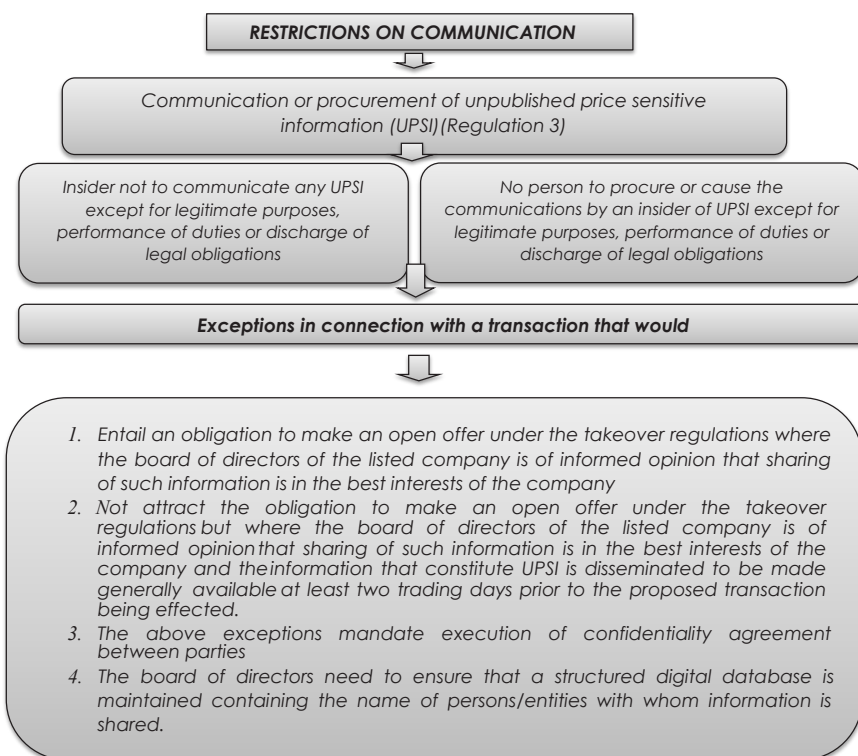
Regulation 3(5) provides that the board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom

information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

Further, **Regulation 3(6)** of the PIT Regulations provides that the board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings.

Specimen of structured digital database is placed at Annexure-IX.

A pictorial representation of restriction on communication/procurement of UPSI and the exception for the same is given below:



Guidance from SEBI (dated 5th July, 2019)

Query: *Whether the requirement to maintain structured digital database under Regulation 3(5) is applicable on intermediaries and fiduciaries?*

Guidance: *The requirement to maintain structured digital database under Regulation 3(5), containing the names of such persons or entities with whom UPSI is shared, is applicable to listed companies, and intermediaries and fiduciaries who handle UPSI of a listed company in the course of business operations.*

Guidance from SEBI (dated 4th November, 2019)

Query: *What information should a listed Company maintain in its structured digital database under Regulation 3(5), in case the designated person is a fiduciary or intermediary?*

Guidance: *Till 8th October, 2020, the following guidance was given by SEBI. Thereafter with effect from 8th October, 2020, this guidance was modified by SEBI as mentioned below.*

Guidance till 8th October, 2020:

The listed company should maintain the names of the fiduciary or intermediary with whom they have shared information along with the Permanent Account Number (PAN) or other unique identifier authorised by law, in case PAN is not available. The fiduciary/intermediary, shall at their end, be required to maintain details as required under Schedule C in respect of persons having access to UPSI.

For example: If the listed company has appointed a Law firm or Merchant Banker in respect of fund raising activity, it should obtain the name of the entity, so appointed, along with the PAN or other identifier, in case PAN is not available. The Law firm or the Merchant Banker would in turn maintain its list of persons alongwith PAN or other unique identifier (in case PAN is not available), in accordance with Regulation 9A(2)(d) and as required under Schedule C, with whom they have shared the unpublished price sensitive information.

Guidance post 8th October, 2020:

The listed company should maintain structured digital database internally, which shall contain information including the following:

- (i) Details of the Unpublished Price Sensitive Information (UPSI);
- (ii) Details of persons with whom such UPSI is shared (along with their PANs/other unique identifier) and details of persons who have shared the information.

Similarly, another structured digital database should be maintained internally by fiduciary or intermediary, capturing information as mentioned above at point (i) and (ii), in accordance with Regulation 9A(2)(d) and as required under Schedule C.

For example: The listed company (X) has appointed a Law firm or Merchant Banker (Y) in respect of fund raising activity and (A) from listed company has shared the said UPSI with (B) of Law firm or Merchant Banker.

The structured digital database of (X) should capture the nature of UPSI shared, details of (A), (Y) and (B), along with their PAN or other unique identifier (in case PAN is not available).

The Law firm or the Merchant Banker (Y) shall in turn maintain another structured digital database internally capturing the nature of UPSI received/shared, details of (X), (A) and (B) along with their PAN or other unique identifier (in case PAN is not available), in accordance with Regulation 9A(2)(d) and as required under Schedule C.

Guidance from SEBI (dated 29th April, 2021)

Query: For how long the company needs to maintain the data in its structured digital database?

Guidance: As per Regulation 3(6) of SEBI (PIT) Regulations, the structured digital database shall be preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from SEBI regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceeding.

Query: *If the structured digital database is maintained on Amazon, Google or cloud server hosted outside India, will it be considered as outsourced or internal?*

Guidance: *Databases/servers provided by third party vendors whether within India or outside India will be considered as outsourced.*

Query: *Regulation 3(5) requires structured digital database shall not be outsourced and shall be maintained internally with adequate internal controls and checks. Whether a listed company can use software provided by third party vendors, wherein the server is of the vendor but requisite entries are made by the employees of the company only.*

Guidance: *The third party vendors are providing the services/software on login basis, where the server is maintained by the vendor. Therefore, the vendor may have access to such records which would be contrary to the regulations with respect to maintenance of structured digital database.*

Query: *Does list of UPSI as prepared by the company in-house needs to be disseminated to public at large?*

Guidance: *No, there is no requirement to disseminate the list of UPSI on the website of the company.*

Query: *Are companies required to maintain this structured digital database even when the information is shared only within the company?*

Guidance: *Yes, irrespective of the fact that information is shared within or outside the company, requisite records shall be updated in structured digital database as and when the information gets transmitted.*

Query: *Nominee directors sharing information to their bank or financial institution for legitimate purpose, will it be covered as communication of UPSI?*

Guidance: *If the directors fall under the list of designated persons or as an insider, then sharing of UPSI by them for legitimate purpose with the Bank/FIs, would be considered as communication of UPSI. Accordingly, the same would be recorded in the structured digital database of the company.*

Issue: *During the closure of accounts for preparation of financial statements, particularly in case of large companies, information in the nature of UPSI is required to be shared with the statutory auditors in multiple phases to enable the auditors to continue their audit simultaneously. Should it be mandatory to record the required details in the structured digital database every time any such information is shared with the auditors?*

ICSI's View: *One-time recording of such details in the structured digital database would be sufficient with the period of sharing till the information becomes public, e.g., from dd/mm/yyyy till publication of results.*

2. TRADING WHEN IN POSSESSION OF UNPUBLISHED PRICE SENSITIVE INFORMATION AND EXCEPTIONAL CIRCUMSTANCES (REGULATION 4)

Regulation 4(1) of PIT Regulations provides that no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.

The explanation to aforesaid Regulation provides that when a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

However, the insider may prove his innocence by demonstrating the circumstances including the following:

- (i) the transaction is an off-market *inter-se* transfer between insiders who were in possession of the same UPSI without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

Provided that such UPSI was not obtained under sub-regulation (3) of regulation 3 of PIT Regulations.

Provided further that such off-market trades shall be reported by the insiders to the company within two working days and the company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.

ICSI's View: *The reference to "working days" in the aforesaid proviso pertains to disclosure of off-market trades by insiders to the company. Therefore, considering the context, it should be construed as working days of the company.*

- (ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the UPSI without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of PIT Regulations.

- (iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.
- (iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.
- (v) in the case of non-individual insiders:
 - (a) the individuals who were in possession of such UPSI were different from the individuals taking trading decisions and such decision making individuals were not in possession of such UPSI when they took the decision to trade; and
 - (b) appropriate and adequate arrangements were in place to ensure that PIT Regulations are not violated and no UPSI was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;
- (vi) the trades were pursuant to a trading plan set up in accordance with Regulation 5 of PIT Regulations.

Legislative Note: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

The legislative note says that if the insider fails to prove his innocence by demonstrating the circumstances mentioned in the proviso to Regulation 4(1), then he will be held to have violated the prohibition of insider trading under PIT Regulations. As per this statement, it seems that the insider can demonstrate his innocence by demonstrating any one or more of the six circumstances mentioned in this proviso only.

However, it is important to note that the proviso to Regulation 4(1) is an inclusive proviso, as it mentions as "Provided that the insider may prove his innocence by demonstrating the circumstances 'including' the following..." When a word is defined to 'mean' something, the definition is prima facie restrictive and exhaustive, whereas, where the word or provision is declared to 'include' such and such meaning, the definition is prima facie extensive or inclusive. Here it can be seen that the proviso to Regulation 4(1) is 'inclusive' and not 'exhaustive'.

Hence it appears that a view may be taken by the Courts/Adjudicating Authority that the insider may prove his innocence by demonstrating any legitimate circumstances, which can include the six circumstances mentioned in the proviso.

There have been various instances where insiders have put forth their innocence by demonstrating the circumstances under which they had traded, though they were in possession of UPSI at the time of trade, and these circumstances are different from the six circumstances mentioned in the proviso. Still this defence was accepted and the insider was relieved from the charge of insider trading. Some of these instances were seen in following cases:

Extracts from SAT order dated 31st January, 2012 in the matter of Chandrakala vs SEBI [Appeal No. 209 of 2011] [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, the person who traded was wife of brother of the chairman and managing director of the company, and she could establish that due to family arrangements, her husband had relinquished the interest in the company as promoter long back. This fact was substantiated on the basis of the announcement made by the company regarding this family arrangement and also the shareholding patterns filed by the company with stock exchanges and the annual disclosure of holding given by promoters under SEBI SAST Regulations. Accordingly, she claimed that her husband was only a shareholder in the company and had no information about the day to day working of the company and that she had been trading in this scrip even before UPSI period. Therefore, his wife cannot be said to be a deemed connected person. This view was accepted by SAT.

Extracts from SAT order dated 8th November, 2019 in respect of Abhijit Rajan vs SEBI [Appeal No. 232 of 2016] [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, the managing director of a listed company had to sell his shares in the company to infuse funding in the company and at the time of sale of his shares, he was in possession of UPSI. SAT held that the appellant was able to show his dire need to infuse fund in the entity under the master restructuring agreement to implement a CDR package. He was even required to sell his agricultural land and flat and the proceeds of the same were subsequently infused in the listed entity. In these circumstances he sold the shares. Hence, charges against him of insider trading were disposed off.

Extracts from SAT order dated 27th November, 2019 in the matter of Naishadh Desai vs SEBI [Appeal No. 404 of 2019] [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, SAT noted that the appellant had a long career of 28 years prior to the violation. He had undergone multiple angioplasties. He explained that due to a communication gap between him and the broker the violation had occurred which resulted into a meager profit of Rs.17,467/-. Taking into consideration these factors, SAT reduced the penalty to Rs. 2 lakhs instead of Rs.12 lakhs as imposed by the Adjudicating Officer and held it to be just and sufficient.

Extracts from SEBI Adjudication Order bearing No. KS/AA/2019-20/6517 dated 24th January, 2020 in respect of Mr. Abhishek Jalan in the matter of Pantaloon Retail (India) Limited [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, an employee of Pantaloon Retail (India) Ltd. (now known as Future Enterprises Limited) had inadvertently dealt in the company's futures during the trading window closure period due to human error/oversight while trading in the futures of some other company and soon after realizing it, within next three minutes, he entered into opposite transaction to undo the error and incurred a loss of Rs. 350/- and thereafter traded in the intended other company's futures. Looking at all the evidences produced which demonstrated this trail of events, SEBI took a lenient view and did not impose penalty in this regard.

Extracts from SEBI Adjudication Order bearing No. EAD-7/BD/NR/2019-20/6665 dated 31st January, 2020 in respect of Mr. K.R. Sasiprabhu in the matter of SpiceJet Limited

In this case, an independent director, being a connected person had traded in shares of company during UPSI period and he could prove that he was not in possession of UPSI on the date of his trade as the UPSI was financial results for a quarter and he had been appointed on the board of directors of the company just one month back not attended even one board meeting of the company, and he bought shares of the company one day after UPSI came into existence. As per the records of the company, the notice of the board meeting was sent to all the directors post the date of his trade. Accordingly, as per the records of the company, no UPSI was shared with that particular independent director prior to sending of notice. Hence, SEBI accepted that, though he was a connected person as on the date of trade, but he was not in possession of the UPSI on the date of trade, and hence, relieved him from the charge of insider trading.

Extracts from SEBI Adjudication Order bearing No. AA/MG/2019-20/6518 dated 24th January, 2020 in respect of and in the matter of Tricom Fruit Products Limited (TFPL)

In this case allegations levelled against the Noticees were that the Noticees had traded in the scrip of TFPL while being in possession of UPSI of financial results. In the backlight of the fact that the company has already been incurring losses, SEBI Adjudicating Officer (AO) did not find from records any justification for selecting one quarterly financial results as UPSI other than for two reasons viz., the impugned transactions had taken place before publication of the results for the said quarter and corporate results is a deemed UPSI. AO, thus, found it to be too naïve to hold that only the financial results pertaining to a particular quarter ended June 2012 alone served as a price sensitive information in disregard to the earlier financial results more so when the company had been consistently incurring and declaring losses. Therefore, the AO was not convinced that the financial results of one quarter could have served as an UPSI in the present circumstance. Further, it has been noted that 15,400 shares and 55,879 shares of the company were sold in the trading accounts of Noticees on August 13, 2012.

However, the Noticees had contended that the said sale transactions were executed by their stock brokers without informing them or without their permission in order to recover their outstanding dues as the Noticees were having debit balance with the brokers. The brokers in their turn could not prove that they had received any instructions on records from Noticees for executing such transactions. After considering all the facts and circumstances of the case, AO SEBI, on the ground of balance of probabilities, inclined to hold that the Noticees have not indulged in insider trading as the trading was apparently done by brokers, who were not alleged to be in possession of the said deemed UPSI, in the accounts of the Noticees.

Further, there have been such instances also where the insider tried to prove his innocence by putting forth circumstances other than those listed in the proviso to Regulation 4(1), but the same were not accepted by the Regulators due to lack of strong evidence. Some instances of such cases are as follows:

Extracts from SAT order dated 7th November, 2019 in the matter of Amit Arora and Others vs SEBI [Appeal No. 157 of 2018] [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, SAT noted that SEBI's findings that Noticee submitted that during the month of June 2012, he moved into a new house and needed some funds for its renovation over the period of next one year and therefore, he sold 830 shares on February 25, 2013. However, the Noticee could not produce any evidence in support of the said submissions. Moreover, it creates suspicion as to what compelled him to sell these shares on the very next day when he came to know about first warning letter (from Regulator). The pattern adopted by the Noticee itself suggests that the moment he came to know about such negative news which was in the nature of having impact upon the price of the scrip (and in fact price fluctuation took place), he immediately during UPSI sold the shares to avoid loss.

Extracts from SEBI Adjudication Order bearing No. GR/KG/2020-21/8743 dated 25th August, 2020 in respect of Mr. T.A.N. Murti in the matter of Satyam Computer Services Limited [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, the employee claimed that he had sold shares as he needed funds for purchase of flat. SEBI noted that the Noticee has not submitted any evidence with respect to his claim that he

was in talks to purchase an apartment. Since the Noticee supposedly actually sold shares to raise funds for the purchase, it can be presumed that if the submission of the Noticee is correct, if only the talks must have been at a very advanced stage. However, the Noticee has not been able to produce a single document that shows that he was in any kind of discussion for the purchase of an apartment. In view of the same, SEBI Adjudication Officer held that he cannot rely upon the mere ipse dixit of the Noticee.

Issue: Consequent to introduction of the SEBI (Share Based Employee Benefits) Regulations, 2014, companies are granting various kinds of share based benefits (other than stock options) to their employees such as Stock Appreciation Rights (SARs) etc. Is PIT Regulations applicable to such SARs?

ICSI's View: PIT Regulations may not apply in case of stock appreciation rights as these are merely appreciation rights and no securities are actually involved.

Extracts from interpretive letter dated 17th September, 2019 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of R.S. Software (India) Ltd.

Facts of the case:

- a. On 4th September, 2012, a trust in the name of 'R S Software Employee Welfare Trust' ("the Trust") was instituted with the objective of providing assistance to the employees in form of medical facilities, scholarships, housing and to reward performance besides attracting talent.
- b. The said Trust acquired 11,48,640 equity shares of R.S. Software (India) Ltd. ("the company") comprising of 4.47% of the total shareholding of the company during the period from October 2012 to January 2013.
- c. Regulation 3(12) of the SEBI (Share Based Employee Benefit) Regulations, 2014 [SEBI (SBEB) Regulations], inter-alia, requires the share inventory held by a company in Trust for providing benefits to its employees to be sold on the recognized stock exchange(s) where shares of the company are listed, within a period of five years from the date of Notification (28th October, 2014) of the SEBI (SBEB) Regulations subject to certain conditions.

- d. *The promoters/promoters group, the executive director and independent directors of the company are desirous of acquiring the shares held by the company's employee benefit trust through stock market offering from the Trust to enable the company and the Trust to be in compliance with the provision of SEBI (SBEB) Regulations.*
- e. *The current shareholding pattern of the promoters, directors and independent directors are as under.*

Name	Designation	% of total issued equity shares held
Rajnit Rai Jain	Promoter, ED, CMD	39.04
Sarita Jain	Promoter, Non-Executive Director	1.43
Rajasekhar Ramaraj	Non-Executive & Independent Director	0.27
Richard Launder	Non-Executive & Independent Director	0.19

Query:

Whether these shares can be purchased by the promoters & promoters group or independent directors by way of block deal through the stock exchange in compliance with the relevant Regulations as these are being acquired on grounds of regulatory requirement.

Guidance from SEBI:

- a. *Regulation 4(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) inter-alia states that no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of the UPSI. Clause (ii) of first proviso to Regulation 4(1) (ii) of PIT Regulations, inter-alia, provides for the circumstances under which the insider may prove his innocence if the transaction was carried out through the block deal window mechanism between persons who were in possession of the UPSI without being in breach of Regulation 3 and both parties had made a conscious and informed trade decision.*

- b. Regulation 3 of PIT Regulations which inter-alia prohibits the communication or procurement of UPSI to any person including other insiders except where such communication is used for legitimate purposes and for performance of duties or discharge of legal obligations. In view of the above provisions, the fact remains that a person will be treated as an insider for all the purposes and has to demonstrate his innocence in case he trades while in possession of UPSI.
- c. The SEBI (SBEB) Regulations do not indicate any regulatory requirement for promoters/promoter group to purchase shares sold by an Employee Trust. It only provides that inventory held by a company in Trust for providing benefits to its employees to be sold on the recognized stock exchange(s) where shares of the company are listed, within a period of five years from the date of notification (October 28, 2014) of the SEBI (SBEB) Regulations, subject to certain conditions.
- d. In view of the above, the shares held by the company's Employee Benefit Trust to be purchased by the promoters and promoters group by way of block deal cannot be regarded as regulatory compliance. Hence, all applicable legal requirements have to be complied with, if the trades are executed by way of block deal.

Extracts from interpretive letter dated 4th November, 2019 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Nimish Upendrabhai Patel

Facts of the case:

- (a) Shri Dinesh Mills Limited (SDM) is a company incorporated under the provisions of Vadodara State Companies Act Samvat 1975 (now subsumed under the Companies Act, 2013). The shares of the company are listed on BSE Limited.
- (b) SDM had allotted warrants (convertible at the option of holder within a period of 18 months from the date of allotment in one or more tranches) to its promoters/promoter group on preferential basis on February 20, 2019.

- (c) *As part of overall succession planning between the promoter families, it is desired by the promoters/promoter group to transfer their current shareholding as well as all the shares received pursuant to conversion of warrants to their respective trusts (collectively referred to as Acquirer Trusts). The promoters/members of promoter group are evaluating to migrate their shareholding in the company to Acquirer Trusts as per steps detailed in the application.*
- (d) *In terms of the PIT Regulations, the Code of Conduct of a company has to specify the period, which in any event shall not be less than 6 months, within which a designated person who is permitted to trade shall not execute a contra trade. Further, the compliance officer would be empowered under the Code of Conduct to grant relaxation from strict application of such contra trade restriction for reasons to be recorded in writing.*
- (e) *An inter-se transfer between promoters/members of the promoter group or transfer of shares to the Acquirer Trusts does not bring any change in the shareholding pattern of the promoters and public. We believe that the proposed inter-se transfer is done in good faith and will not give any undue advantage to the promoters/members of the promoter group or have any impact on the public shareholding pattern.*
- (f) *Off-market inter-se transfers between insiders who are in possession of the same unpublished price sensitive information and where both the parties had made a conscious and informed trade decision is a specific ground for demonstrating innocence, as per proviso to Regulation 4(1) of PIT Regulations. Therefore, there should not be any contravention of PIT Regulations on off-market inter-se transfer between insiders.*
- (g) *Transaction carried out through block deal window mechanism between persons who are in possession of the unpublished price sensitive information and where both the parties had made a conscious and informed trade decision is a specific ground for demonstrating innocence, as per proviso to Regulation 4(1) of PIT Regulations. Therefore, there should not be any contravention of PIT Regulations on transaction carried out through block deal window mechanism between persons in possession of unpublished price sensitive information.*

(h) *Considering the above, there should not be any contravention of provisions regarding contra trade as per PIT Regulations for shares received by promoters/members of the promoter group pursuant to conversion of warrants and the proposed off-market transfer of shares/transfer of shares through block deal window amongst insiders (i.e., promoters/members of the promoter group as well as the Acquirer Trusts) within six months or vice-versa specifically when compliance officer has granted relaxation to execute such transaction.*

Query:

- (i) *Whether the proposed inter-se off-market transfer of shares between insiders within a period of six months post receipt of shares by the same promoters/members of the promoter group pursuant to conversion of warrants will violate provisions regarding contra trade of the SEBI (Prohibition of Insider Trading) Regulations, 2015 and attract any penal provisions?*
- (ii) *If the promoters/members of the promoter group who had acquired shares through inter-se off-market transfer of shares or through block deal window mechanism between promoters/members of the promoter group, wants to transfer shares to the Acquirer Trusts within 6 months, whether the proposed transfer to the Acquirer Trusts within 6 months would violate the provisions regarding contra trade as provided in the SEBI (Prohibition of Insider Trading) Regulations, 2015?*

Guidance from SEBI:

In the instant case, the said promoters have option to convert warrants any time within 18 months from the date of allotment in one or more tranches. The subsequent sale within 6 months may attract the contra trade restrictions under the PIT Regulations. Likewise, if the promoters/members of the promoter group who had acquired shares through inter-se off-market transfer of shares or through block deal window mechanism between promoters/members of the promoter group want to transfer shares to the acquirer trusts within six months, the proposed transfer to the acquirer trusts within 6 months may also attract the contra trade restrictions specified under the PIT Regulations.

Few example of cases where defenses mentioned under proviso to Regulation 4(1) had been relied upon are given below:

Extracts from SEBI Adjudication Order bearing No. PG/AO/28/2013 dated 28th March, 2013 in respect of Axis Bank Ltd. in the matter of KSK Energy Venture Ltd. and Bombay Rayon Fashion Ltd. [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, Axis Bank was a merchant banker for the open offer of KSK Energy Venture Ltd. and Bombay Rayon Fashion Ltd. However, before public announcement for open offer was made, Axis Bank had dealt in the shares of these listed companies. SEBI had held that if the company could prove that it had put in place such systems and procedures which demarcate activities of the company in such a way that the person who enters into transactions in securities on behalf of the company cannot have access to UPSI which was in possession of another officer or employee of the company, it can avail the defense under regulation 3B of PIT Regulations, 1992. (This defense was in PIT Regulations 1992 and continues in PIT Regulations 2015 too).

Extracts from SEBI Adjudication Order bearing No. PM/VC/2020-21/9416-9419 dated 22nd October, 2020 in respect of Mr. Gopal Vittal, Bharti Telecom Ltd. and others in the matter of Bharti Airtel Ltd.

In this case, trade had happened in 2017 and SEBI Adjudication Order was passed in 2020, in which SEBI Adjudication Officer noted that though at the time of transaction the defense of transaction through block deal window mechanism was not available, nevertheless one cannot completely ignore the subsequent amendment of law as the same is based on the principle accepted by Sodhi Committee and subsequently SEBI had incorporated some of the defenses under proviso to the Regulation 4(1)(i) of PIT Regulations.

Few example of cases where although defenses mentioned under proviso to Regulation 4(1) was quoted, but it was not accepted by SEBI are given below:

Extracts from impounding order of Whole Time Member of SEBI bearing No. WTD/GM/IVD/24/2020-21 dated 24th August, 2020 in respect of Infinium Motors (Gujarat) Pvt. Ltd. in the matter of Infibeam Avenues Ltd.

In this case, the person who was authorized to trade on behalf of corporate entity was the immediate relative of the managing director of the listed entity and the managing director was in possession of UPSI. Hence, the defense of person trading on behalf of corporate entity and the person who had UPSI in his possession were different, was not accepted by SEBI.

Extracts from SEBI Adjudication Order bearing No. MC/DPS/ 2019-20/4612-4613 dated 26th September, 2019 in the matter of Hero Motocorp Limited [Order under PIT Regulations 1992]

In this case, SEBI held that the compliance officer, being a Karta/ managing member of the HUF, cannot absolve himself from its managerial obligation of responsibility for the trades in the HUF account by stating that the trades were carried out by his son, without his knowledge.

In the above two cases, it can be seen that although the defenses given under proviso to Regulation 4(1) are available to demonstrate that trade was not motivated because of knowledge of UPSI, whether it shall be accepted by Regulator or not will depend on the merits of each case.

Regulation 4(2) of PIT Regulations provides that in the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

Regulation 4(3) of PIT Regulations empowers the Board to specify such standards and requirements, from time to time, as it may deem necessary for the purpose of PIT Regulations.

Background: *Regulation 4 of the PIT Regulations prohibits trading by insiders while in possession of UPSI. However, the regulation allows the insider to prove his innocence by demonstrating the circumstances under which trading has been carried out. These constitute only limited defences which an insider charged with insider trading may rely on to prove his innocence.*

In this regard, the Viswanathan Committee deliberated on the adequacy of the defences and whether any legitimate transactions were getting covered within the ambit of insider trading such as exercise of employee stock options, trades by 'individual insiders' other than promoters who may transact while being in possession of the same UPSI.

The Viswanathan Committee also considered whether the principle of strict accountability, currently set out as a legislative note to regulation 4(1) of the PIT Regulations, may be read as subservient to the main regulations, thereby potentially diluting its regulatory sanctity.

The legislative note indicates that the burden of proof is on the insider to prove his innocence pursuant to the defence(s) under the regulation 4(1) of the PIT Regulations. However, since legislative notes may generally be read as

subservient to the main regulations, the enunciation of the strict accountability principle as part of the said regulation may, enhance the regulatory sanctity of the principle.

Extracts of interpretive letter dated 12th April, 2018 issued under SEBI (Informal Guidance) Scheme, 2003 in the matter of Star Cement Ltd.

Facts of the case:

- i. Star Cement Ltd. ("STAR") is a company incorporated in Meghalaya and listed on both NSE and BSE. The shares of the company are listed and traded with effect from June 16, 2017 after obtaining relaxation granted from rule 19(2)(b) of Securities Contract (Regulation) Rules, 1957 subsequent to the merger of Star Ferro and Cement Limited (a listed company) with Star Cement Ltd.*
- ii. The company has framed an internal code of conduct as per the requirement of PIT Regulations and also appointed a company Secretary to act as the Compliance Officer.*
- iii. Mr Sajjan Bhajanka a promoter has sold certain number of shares in the open market on 14th February, 2018 (first leg of the transaction). He proposes to acquire a certain number of shares from Rajendra Chamaria, another promoter through an inter-se transfer of shares to be executed on the stock exchange platform (second leg), instead of off-market inter-se transfer which is exempted. However the proposed acquisition shall be within 6 months of the sale. The proposed transfer of shares would be subject to applicable provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.*

Queries:

- i. Whether the proposed inter-se transfer on the stock exchange platform between the promoters by way of purchase of shares by the same promoter who had earlier sold shares within a prior period of six months in the open market will violate any provision of the PIT Regulations and attract any penal provisions.*

- ii. *After the inter-se transfer of shares between the promoters, if the same promoter who had acquired shares from another promoter wants to sell shares in the open market within six months of the inter-se transfer (third leg), will the same violate the provisions regarding contra trade as provided in the PIT Regulations.*
- iii. *Whether provisions of contra trade apply to promoters individually or whether the entire promoter group is considered the same. For example, if a single promoter has executed a trade, then whether the restrictions on contra trade apply to him individually or will it apply to the entire promoter group.*

Guidance from SEBI:

At the outset it may be pertinent to point out that PIT Regulations by nature are prohibitive in nature and the applicability of its provisions, is with respect to insiders and such concerned securities to which a UPSI might pertain so that there is no undue advantage accrued to such class of investors, on account of their access to UPSI; at the expense of other investors or general market participants.

With respect to the queries mentioned at (i) and (ii), attention may be drawn to Clause 10 of Schedule B of the PIT Regulations which states as under:

"10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations..."

Attention may also be drawn to Regulation 4(1) and 4(1) (i) of Chapter II of PIT Regulations which reads as under:

"4. (1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.

Provided that the insider may prove his innocence by demonstrating the circumstances including the following:

- i. *the transaction is an off-market inter-se transfer between 'promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision...'*

Thus, even if a transaction constitutes a contra trade, the compliance officer if empowered by the board of directors, may in appropriate cases, grant relaxation to the concerned designated person from the strict applicability of the provisions of contra trade provided that such grant of relaxation, does not result in the violation of the PIT Regulations in any other manner.

Upon a harmonious reading of the above provisions, it may be inferred that the proposed on-market inter-se transfer between the promoters by way of purchase of shares by the same promoter who had earlier sold shares within a prior period of six months in the open market, may not qualify to claim the defence as contemplated in clause (i) of the proviso to Regulation 4(1) of PIT Regulations, which otherwise would have been available in case of off-market inter-se transfer. Thus, as against an off-market inter-se transfer as contemplated in clause (i) of the proviso to Regulation 4(1), an on-market transaction as conceived at the second leg may not qualify for grant of relaxation from strict applicability of provisions of contra trade, from the Compliance Officer.

In view of the above since the second leg of the transaction itself would not sail through, the third leg of the transaction (i.e., the sale in open market, of those shares which are proposed to be acquired from the promoter in the second leg) becomes redundant and hence does not warrant a reply.

With respect to the third query, attention may be drawn to Regulation 9 of the PIT Regulations which states as under:

1. ICSI's View: *As on the date of issuance of this Guidance Note, an explanation has been added in Regulation 4(1), which inter-alia states that "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".*

Further, in Regulation 4(1)(i), the expression "inter-se transfer between the promoters" have been amended to "inter-se transfer between the insiders", and a proviso has been added in Regulation 4(1)(i) which inter-alia states as: "Provided that such UPSI was not obtained under sub-regulation (3) of regulation 3 of these regulations"

Hence, this Informal Guidance issued by SEBI prior to this amendment in Regulation 4(1) must be read in conjunction with the amended Regulation 4(1) and the proviso and explanations mentioned therein.

“The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.”

Further to the above, schedule B of PIT Regulations provides the minimum standards of Code of Conduct to Regulate, Monitor and Report Trading by Insiders. Reference may be made to Clause 3 of Schedule B of the PIT Regulations which states as under:

“3. Employees and connected persons designated on the basis of their functional role (“designated persons”) in the organisation shall be governed by an internal code of conduct governing dealing in securities. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation.”

Consequent to the above provisions, it may be inferred that, restrictions on contra trade as per clause 10 of Schedule B, do not apply to the promoter group per se. Such restrictions on contra trade apply individually to persons, including promoters, who are identified as ‘designated persons’^{1,2}

1. ICSI's View: As on the date of issuance of this Guidance Note, it may be noted that as per Regulation 9(4)(iii) of the PIT Regulations, all promoters of listed companies must be included in the list of designated persons to be specified by the board of directors in consultation with the compliance officer. Hence, the discretion whether to include promoters in the list of designated persons or not, as mentioned in the above Informal Guidance issued by SEBI, is no longer available with listed companies. Hence, all promoters are mandatorily required to comply with the restrictions of contra Trade as mentioned in the code of conduct.

2. ICSI's View: As on the date of issuance of this Guidance Note, the above mentioned provisions of PIT Regulations have been amended as mentioned below, But this will not have any impact on this informal guidance issued by SEBI prior to these amendments:

- earlier Regulation 9(1) has been amended to provide for Schedule B and Schedule C,
- the earlier Clause 3 of Schedule B corresponds to new Regulation 9(4) and new Clause 3 of Schedule B,
- the earlier Clause 10 of Schedule B corresponds to the new Clause 10 of Schedule B.

3. TRADING PLANS (REGULATION 5)

Regulation 5(1) of PIT Regulations provides that an insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.

Legislative Note: This provision intends to give an option to persons who may be perpetually in possession of unpublished price sensitive information and enabling them to trade in securities in a compliant manner. This provision would enable the formulation of a trading plan by an insider to enable him to plan for trades to be executed in future. By doing so, the possession of unpublished price sensitive information when a trade under a trading plan is actually executed would not prohibit the execution of such trades that he had pre-decided even before the unpublished price sensitive information came into being.

Regulation 5(2) of PIT Regulations provides that such trading plan shall:

- (i) not entail commencement of trading on behalf of the insider earlier than six months from the public disclosure of the plan;

Legislative Note: It is intended that to get the benefit of a trading plan, a cool-off period of six months is necessary. Such a period is considered reasonably long for unpublished price sensitive information that is in possession of the insider when formulating the trading plan, to become generally available. It is also considered to be a reasonable period for a time lag in which new unpublished price sensitive information may come into being without adversely affecting the trading plan formulated earlier. In any case, it should be remembered that this is only a statutory cool-off period and would not grant immunity from action if the insider were to be in possession of the same unpublished price sensitive information both at the time of formulation of the plan and implementation of the same.

- (ii) 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;

Legislative Note: Since the trading plan is envisaged to be an exception to the general rule prohibiting trading by insiders when in possession of unpublished price sensitive information, it is important that the trading plan does not entail trading for a reasonable period around

the declaration of financial results as that would generate unpublished price sensitive information.

- (iii) entail trading for a period of not less than twelve months;

Legislative Note: It is intended that it would be undesirable to have frequent announcements of trading plans for short periods of time rendering meaningless the defence of a reasonable time gap between the decision to trade and the actual trade. Hence it is felt that a reasonable time would be twelve months.

- (iv) not entail overlap of any period for which another trading plan is already in existence;

Legislative Note: It is intended that it would be undesirable to have multiple trading plans operating during the same time period. Since it would be possible for an insider to time the publication of the unpublished price sensitive information to make it generally available instead of timing the trades, it is important not to have the ability to initiate more than one plan covering the same time period.

- (v) set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and

Legislative Note: It is intended that while regulations should not be too prescriptive and rigid about what a trading plan should entail, they should stipulate certain basic parameters that a trading plan should conform to and within which, the plan may be formulated with full flexibility. The nature of the trades entailed in the trading plan, i.e., acquisition or disposal should be set out. The trading plan may set out the value of securities or the number of securities to be invested or divested. Specific dates or specific time intervals may be set out in the plan.

- (vi) not entail trading in securities for market abuse.

Legislative Note: Trading on the basis of such a trading plan would not grant absolute immunity from bringing proceedings for market abuse. For instance, in the event of manipulative timing of the release of unpublished price sensitive information to ensure that trading under a trading plan becomes lucrative in circumvention of regulation 4 being detected, it would be open to initiate proceedings for alleged breach of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003.

According to **Regulation 5(3)** of PIT Regulations, the compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.

However, pre-clearance of trades shall not be required for a trade executed as per an approved trading plan. Further, the trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan.

ICSI's View: *The requirement of closure of trading window is not linked to the period during which trading is not allowed under the trading plan, i.e., 20 days prior to the last day of the financial year or the relevant quarter/ half year till the 2nd trading day after the disclosure of financial results. The restriction is only with respect to trading under the plan.*

Since the date of publication of financial results may not be known in advance at the time of formulating the plan, however, as per listing regulations the maximum time within which the financial results are to be submitted to the stock exchange is 45 days in case of quarterly results (60 days in case of annual results), the period during which trading not to be envisaged under the trading plan can be determined as under:

- (i) In case of quarterly results: From end of quarter till two trading days after expiry of 45 days from the end of the quarter;*
- (ii) In case of annual results: From end of financial year till two trading days after expiry of 60 days from the end of the financial year.*

Illustration:

- (i) Mr. X traded in shares of company as per trading plan approved by the compliance officer. If at a later stage any unpublished price sensitive information comes to his knowledge, it will not affect the transaction, since Mr. X has already determined to make such transaction as per trading plan.*
- (ii) If Mr. X purchases some shares (say on August 01, 2019), acquires shares later under an ESOP (say on September 01, 2019) and subsequently sells/pledges (say on October 01, 2019) shares so acquired under ESOP, the sale will not be a contra trade but will be subject to other provisions of the Regulations,. However, he will not*

be able to sell the shares purchased on August 01, 2019 during the period of six months starting from August 01, 2019.

(iii) If Mr. X sells shares (say on August 01, 2019), acquires shares later under an ESOP (say on September 01, 2019) the acquisition under ESOP shall not be considered as a contra trade. Further, he can sell/pledge shares so acquired at any time thereafter without attracting contra trade restrictions. He, however, will not be able to purchase further shares during the period of six months from August 01, 2019 when he had sold shares.

Legislative Note: It is intended that the compliance officer would have to review and approve the plan. For doing so, he may need the insider to declare that he is not in possession of unpublished price sensitive information or that he would ensure that any unpublished price sensitive information in his possession becomes generally available before he commences executing his trades. Once satisfied, he may approve the trading plan, which would then have to be implemented in accordance with these regulations.

Regulation 5(4) of PIT Regulations provides that once approved the trading plan shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan.

However, the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of sub-regulation (1) of regulation 4.

Illustration:

Mr. A submitted his trading plan for approval after declaring the UPSI in his possession. The trading plan was approved subject to the condition that the UPSI in his possession would become generally available before commencement of trading.

If due to some reasons, the said UPSI has not become generally available till the date of trade indicated in the approved trading plan, the commencement of trading by Mr. A should be deferred until such UPSI becomes generally available information.

Legislative Note: It is intended that since the trading plan is an exception to the general rule that an insider should not trade when in possession of unpublished price sensitive information, changing the plan or trading outside the same would negate the intent behind the exception. Other investors in the market, too, would factor the impact of the trading plan on their own trading decisions and in price discovery. Therefore, it is not fair or desirable to permit the insider to deviate from the trading plan based on which others in the market have assessed their views on the securities.

The proviso is intended to address the prospect that despite the six-month gap between the formulation of the trading plan and its commencement, the unpublished price sensitive information in possession of the insider is still not generally available. In such a situation, commencement of the plan would conflict with the over-riding principle that trades should not be executed when in possession of such information. If the very same unpublished price sensitive information is still in the insider's possession, the commencement of execution of the trading plan ought to be deferred.

Guidance from SEBI (29th April, 2021)

Query: *At the time of trading as per the trading plan, if the designated person is in possession of an UPSI which was not existing at the time of formulation/submission of trading plan, would these trades be in violation of SEBI (PIT) Regulations?*

Guidance: *If an insider/designated person trades on the basis of earlier UPSI, which is still not generally available, then it will be in violation of SEBI (PIT) Regulations. However, if at the time of formulation of trading plan, there was no UPSI or later on a new UPSI was generated, then the trading can be carried out as per the trading plan, even if the new UPSI has not been made generally available.*

Regulation 5(5) of PIT Regulations provides that upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.

Legislative Note: It is intended that given the material exception to the prohibitory rule in regulation 4, a trading plan is required to be publicly disseminated. Investors in the market at large would also factor the potential pointers in the trading plan in their own assessment of the securities and price discovery for them on the premise of how the insiders perceive the prospects or approach the securities in their trading plan.

Specimen format of application for pre-clearance and trading plan is placed at Annexure-VI.

Background: *As per Regulation 5 of the PIT Regulations, an insider is entitled to formulate a trading plan, pursuant to which trades may be carried out on his behalf.*

The trading plan:

- (i) is required to cover a period of at least 12 (twelve) months;*
- (ii) is required to be disclosed to the stock exchanges prior to its implementation (i.e., actual trading);*
- (iii) can be executed only after 6 (six) months from its public disclosure;*
- (iv) is irrevocable; and*
- (v) cannot be deviated from once publicly disclosed.*

Thus, on the face of it, the implementation of a trading plan may end up being detrimental to the insider. Such restrictions coupled with the premature price movement issue, can lead to a scenario where the insider is forced to trade even if he is put into an economically disadvantageous position owing to vagaries such as change in market conditions and regulatory regime, etc.

Further, the disclosure to the stock exchanges and consequentially the public, can potentially (and in all likelihood) impact the price movement of the listed company's shares, as investors becoming privy to the publicly disclosed trading plan could start dealing in such shares, ahead of the actual implementation of the trading plan. Given these issues, trading plans under the PIT Regulations have remained unpopular.

It is also pertinent to note that trading plans were proposed under the Sodhi Committee Report on an experimental basis. The discussion under the Sodhi Committee Report explicitly stated that "...it would be in the fitness of things for India to test the concept of a "trading plan" that would enable compliant trading by insiders...".

The Sodhi Committee Report further stated that "...upon review of empirical evidence and feedback after the concept is introduced, it would always be open to SEBI to dilute or enhance the regulatory conditions attached to trading plans under the Proposed Regulations." The Sodhi Committee Report also mentioned that some of its Committee members were of the

view that trading plans should not be disclosed to the stock exchange(s) at all, while another view was that trading plans may be disclosed to the stock exchange(s) if the value of trades envisaged in the trading plan is beyond a certain threshold.

Promoters and perpetual insiders such as chief executive officers (CEOs), chief financial officers (CFOs) and active directors may not be able to modify/revoke their trading plans once submitted considering that they are always likely to be in possession of UPSI (in addition to not being able to implement trades envisaged under a trading plan while in possession of UPSI under the current Regulations). This may be against their interests. Trading plans may, thus, continue to remain unpopular as far as promoters and perpetual insiders are concerned.

The Viswanathan Committee could not arrive at a consensus on this issue and thus agreed to continue with the current provisions. However, the committee recommends the following clarifications with regard to those who file a trading plan:

- a. Pre-clearance of trade may not be required in case trading plan has been filed and approved.
- b. Adherence to trading window norms and restrictions on contra trade may not be applicable for trading done in accordance with the approved trading plan.

Both the above recommendations have been accepted and suitably incorporated in the PIT Regulations.

Extracts from SEBI's interpretive letter dated 9th October, 2018 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of M/s. Shreevatsaa Finance and Leasing Limited (Target Company), under SEBI (SAST) Regulations, 2011 and SEBI (PIT) Regulations, 2015

Facts of the case:

- a) Mr. Arora is a shareholder and promoter group entity of the target company and holding 65,25,700 shares constituting 64.61% of paid up equity share capital of the target company.
- b) The promoters' share in the target company's shareholding is 75% and consists of two entities, i.e., Mr. Arora and Agarni Leasing and Finance Pvt. Ltd.

- c) Mr. Arora is proposing to acquire 10.39% shareholding of the target company from the promoter namely, Agarni Leasing and Finance Pvt. Ltd. The entire shareholding of Agarni Leasing and Finance Pvt. Ltd., is held by the brother and sister in law of Mr. Arora.
- d) Pursuant to the transaction, shareholding of Mr. Arora will increase from 64.61% to 75% in the target company. However, there will not be any change in the aggregate shareholding of the promoter group and in control and management of the target company on account of inter-se transfers amongst promoter group entities.

Query:

Whether an off-market inter-se transfer of shares between the promoters of the company as enumerated above in the case of M/s. Shreevatsaa Finance and Leasing Limited would come under the exemption of Regulation 4(1)(i) of SEBI (PIT) Regulations, 2015 or are we mandated to furnish a trading plan as stated in provisions of Regulation 5 of the said Regulations.

Guidance from SEBI:

With respect to the guidance sought under the 'PIT Regulations' it may be noted that Regulation 4(1) of the PIT Regulations prohibits an insider to trade in securities that are listed or proposed to be listed on a stock exchange when in possession of the UPSI. However the provisos to the said regulation provide the insider an opportunity to prove his innocence by demonstrating the existence of certain circumstances at the time of execution of the said transactions.

As per proviso (i) to Regulation 4(1) of the PIT Regulations, one such circumstance is when the transaction is an off-market inter-se transfer between 'promoters' who were in possession of the same UPSI and that both the parties had made a conscious and informed trade decision.

1. **ICSI's View:** As on the date of issuance of this Guidance Note, an explanation has been added to Regulation 4(1), which inter-alia states that "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".

Further, in Regulation 4(1)(i), the words "inter-se transfer between the promoters" has been amended to "inter-se transfer between the insiders", and a proviso has been added in Regulation 4(1)(i) which inter-alia states as: "Provided that such UPSI was not obtained under sub-regulation (3) of regulation 3 of these regulations"

Hence, this Informal Guidance issued by SEBI prior to this amendment in Regulation 4(1) must be read in the context of the amended Regulation 4(1) and the proviso and explanations mentioned therein.

The said proviso is not an exemption from complying with the provisions of Regulation 4 of the PIT Regulations, but can only be used as a defense in case an insider is charged for violating Regulation 4(1) of PIT Regulations, 2015.

Further, Regulation 5 of the PIT Regulations states about 'trading plans' and the provisions related thereto. The said provision only provides for an option to the insiders to formulate a trading plan as the said persons are presumed to be perpetually in possession of UPSI. If an insider opts to have a trading plan as per the regulation, then it may act as a circumstance to prove an insider innocent for the trades executed in terms of the proviso (iii) to Regulation 4(1) of the PIT Regulations.

Extracts from SEBI's interpretive letter dated 19th July, 2018 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Hawkins Cookers Ltd. (HCL) regarding sale of shares by an Independent Director

Facts of the case:

- a) One of the company's independent directors wants to sell his equity shares of the company.*
- b) The sale shall be done as per a trading plan in accordance with regulation 4(iii) of the SEBI (PIT) Regulations, 2015.*
- c) As per para 8 of Schedule B to the PIT Regulations, while applying for pre-clearance, the said director will have to submit an undertaking to the company to the effect that he is not in possession of any Unpublished Price Sensitive Information (UPSI).*
- d) By virtue of participation in the board meetings and access to the information that is shared at such meetings, the said director is deemed to be perpetually in possession of UPSI. Therefore, the said undertaking is not possible.*

Queries:

- a) Whether the said director may submit a trading plan as required for a plan to trade shares above INR 20 lakh in value and proceed with executing the same without giving the said undertaking.*
- b) What procedure should be followed by the company and/ or the said director such that the said director may lawfully execute the trade?*

Guidance from SEBI:

- a) Regulation 5 of the PIT Regulations provides exception to the general rule that prohibits trading by insiders when in possession of UPSI. Further, regulation 5, inter-alia, states that the trading plan shall be approved by the compliance officer and shall not entail trading in securities for market abuse. In this regard, regulation 5 (3) especially states that the compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of PIT Regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.
- b) In the absence of an approved trading plan, designated persons are subject to the requirements of code of conduct formulated by the company in terms of regulation 9 read with schedule B to the PIT Regulations.

Extracts from interpretive letter dated 1st November, 2016 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Tide Water Oil Co. (India) Ltd.**Facts of the case:**

- a. M/s. Standard Greases and Specialties Pvt. Ltd. ("SGSPL") acquired through an open offer, the shares of M/s. Tide Water Oil Company (India) Limited ("TWOCIL") from the open market consequent to which the shareholding of SGSPL is 27.69% of the paid up share capital of TWOCIL. SGSPL has two nominees on the board of directors of TWOCIL and one of the said two nominees is also a director SGSPL. One of the aforesaid nominees who is not a director at SGSPL is the managing director of M/s. Tata Capital Limited. M/s. Tata Capital Limited has promoted a private equity fund named M/s. Tata Capital Growth Fund, which acted in concert with SGSPL in the aforesaid open offer.
- b. SGSPL is joint promoter of TWOCIL, pursuant to the relevant provision of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR").

- c. *SGSPL now proposes to acquire further shares of TWOCIL in pursuance of the provisions of Regulation 4(1)(iii) and Regulation 5 of the Securities and Exchange Board of India (Prohibition of Insider Trading), Regulations, 2015 ("PIT Regulations").*
- d. *Reference is drawn to Regulation 5(1) of PIT Regulations, which provides that "an insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan."*
- e. *Reference is also drawn to Regulation 5(2) of PIT Regulations, which inter-alia states under clause(v) that such trading plan shall set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected;*
- f. *SGSPL has formulated a draft trading plan which inter-alia specifies the number of shares of TWOCIL to be purchased during the trading period as proposed in the plan subject to maximum value per share. The instant application is for seeking guidance in respect of the aforesaid specification of number of shares to be purchased during the plan period subject to maximum value per share.*
- g. *Reference is drawn to Regulation 5(4) of PIT Regulations, which provides that "the trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan."*
- h. *Reference is also made to Regulation 5(2)(v) of PIT Regulations which, inter-alia, states that "it is intended that while Regulations should not be too prescriptive and rigid about what a trading plan should entail, they should stipulate certain basic parameters that a trading plan should conform to and within which, the plan may be formulated with full flexibility". It is further stated in the said note that the plan may set out the value of securities or the number of securities to be invested or divested. Therefore, it is inferred that subject to aggregate value of shares or aggregate number of shares to be traded during the plan period and subject to compliance with other applicable provisions of law, the relevant trading plan can be flexible.*

Query:

- i. Is there any scope under the Regulation 5(2)(v) of PIT Regulations or anywhere in PIT Regulations to add a condition of "maximum value per share not exceeding a certain amount" along with the specification of number of shares to be purchased during the trading plan period?
- ii. Can a plan include, inter-alia, that a certain number of shares would be purchased during the trading plan period subject to "maximum value per share not exceeding a certain amount"?
- iii. Regulation 5(4) of PIT Regulations provides, inter-alia, that the trading plan once approved cannot be deviated from. Would inclusion of the condition being "maximum value per share not exceeding a certain amount" along with the total number of shares to be purchased, defeat the aforesaid restriction from deviation of plan as referred in Regulation 5(4) of PIT Regulations?

Guidance from SEBI:

- a. Attention is drawn to Regulation 5(2)(v) of the SEBI PIT Regulations, which states as under:

"(2) Such trading plan shall: (v) set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected;

Note: It is intended that while regulations should not be too prescriptive and rigid about what a trading plan should entail, they should stipulate certain basic parameters that a trading plan should conform to and within which, the plan may be formulated with full flexibility. The nature of the trades entailed in the trading plan, i.e., acquisition or disposal should be set out. The trading plan may set out the value of securities or the number of securities to be invested or divested. Specific dates or specific time intervals may be set out in the plan".

- b. From a plain reading of Regulation 5(2)(v) of the PIT Regulations, it appears that the provision mandates setting out either the value of trades or the number of securities to be traded. From the letter of the person seeking informal guidance, it appears that he intends to include a certain number of shares in the trading plan subject to "maximum value per share not exceeding a certain amount".

- c. *It may be stated that such condition on the purchase of shares subject to a certain limit on the price of the shares, may lead to deviation from the number to shares that will be specified in the trading plan.*
- d. *It appears that the intention of the legislation is to make the parameters decided by the entity, mandatory in nature and the same has to be specific, so that eventually there is no room for ambiguity or scope for market abuse.*
- e. *Further, placing a condition of maximum price also induces uncertainty into the trading plan which may not be in compliance with Regulation 5(4) which requires that a trading plan once formulated cannot be deviated from. Hence, if an entity plans to include a certain number of shares to be purchased in a trading plan, it has to mandatorily confirm to the same.*

Further, it could also be construed that being an insider, the entity is providing hint or inducing the investors on the future pricing of its securities. Therefore, such disclosure of future pricing would entail market abuse and thus it may be construed as not being in the spirit of the regulations.

4. DISCLOSURES OF TRADING BY INSIDERS (REGULATION 6)

Chapter III of PIT Regulations deals with disclosures of trading by insiders.

Regulation 6(1) of the PIT Regulations provides that every public disclosure under this Chapter shall be made in such form as may be specified. Further, **Regulation 6(2)** of the PIT Regulations provides that the disclosures to be made by any person under this Chapter shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.

Legislative Note: It is intended that disclosure of trades would need to be not only of those executed by the person concerned but also by the immediate relatives and of other persons for whom the person concerned takes trading decisions. These regulations are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information and therefore, what matters is whether the person who takes trading decisions is in possession of such information rather than whether the person who has title to the trades is in such possession.

Regulations 6(3) of the PIT Regulations provides that the disclosures of trading in securities shall also include trading in derivatives of securities and the traded value of the derivatives shall be taken into account for purposes of this Chapter. Provided that trading in derivatives of securities is permitted by any law for the time being in force.

Regulation 6(4) of the PIT Regulations provides that the disclosures made under this Chapter shall be maintained by the company, for a minimum period of five years, in such form as may be specified.

5. INITIAL AND CONTINUAL DISCLOSURES (REGULATION 7)

Chapter III of PIT Regulations provides for disclosures by certain persons such as promoters, members of the promoter group, KMPs and directors etc. These disclosures are categorised under initial and continual disclosures as stated below:

Regulation 7(1) of PIT Regulations provides for initial disclosures by –

- (a) *Deleted*
- (b) 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 as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

ICSI's View: *It may be noted that even if such director, KMP and promoter does not hold any shares on the date of declaration, he has to declare his holdings in declaration as "NIL".*

Regulation 7(2) of PIT Regulations provides for continual disclosures by –

- (a) 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 two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;
- (b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

Explanation. – It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).

- (c) The above disclosures shall be made in such form and such manner as may be specified by the Board from time to time.

System Driven Disclosures

Clause (c) in Regulation 7(2) was inserted vide an amendment dated 17th July, 2020. Post this insertion, SEBI has, vide its circular dated 9th September, 2020 sought to automate the process of giving continual disclosures under Regulation 7(2).

Pursuant to this circular, the details of members of promoter group and designated persons and their demat account numbers and PAN was to be provided by all equity listed companies, to any one depository, to be considered as designated depository for the company [details of promoters and promoter group entities were already collated by the depositories under the first and second phases of system driven disclosures introduced by SEBI vide its circulars dated 1st December, 2015 and 28th May, 2018. Those details were collated through shareholding patterns filed by listed entities with stock exchanges].

The timeline for submission of PAN and demat account numbers of members of promoter group and designated persons was till 30th September, 2020. Thereafter any change in these disclosures will have to be intimated to the designated depositories on the same day of change. The SEBI circular dated 9th September, 2020 mentioned that these disclosures will run parallel to manual disclosures till 31st March, 2021. Further, SEBI had, vide its circular dated 16th June, 2021, extended the applicability of system driven disclosures to debt listed securities of equity listed companies too.

Thereafter, SEBI has, vide another circular dated 13th August, 2021, exempted the requirement of giving manual disclosures under Regulation 7(2)(a) and 7(2)(b) in case of those companies which are in compliance with the SEBI circular dated 9th September, 2020.

It must be noted that Regulation 7(2)(a) and 7(2)(b) are not completely deleted from PIT Regulations. Hence, in cases where the listed company is not in compliance with the SEBI circular dated 9th September, 2020, manual disclosures under Regulation 7(2)(a) and 7(2)(b) shall be warranted, i.e., in

case of those companies who might not have submitted the details of their promoters, members of promoter group, directors and designated persons to the designated depository or might not have intimated further change in the disclosures already made to the designated depository.

Transactions covered in Regulation 7(2) but are not getting mapped under system driven disclosures

Following transactions are covered under Regulation 7(2) but are probably not getting captured in the scheme of system driven disclosures:

- Acquisitions and disposals by immediate relatives and by persons for whom the designated persons, directors, promoters, members of promoter group takes trading decisions, as they are to be included in disclosures under Regulation 7 (as per Regulation 6(2)).

Guidance from SEBI (dated 29th April, 2021)

Query: Whether companies are required to provide the details of immediate relatives also along with the details of designated persons in terms of SEBI circular SEBI/HO/ISD/ISD/CIR/P/2020/ 168 dated 9th September, 2020 ("System Driven Disclosures").

Guidance: As per SEBI circular dated 9th September, 2020, SEBI has mandated system driven disclosure for members of promoter group and designated persons only in addition to promoters and directors of the company under Regulation 7(2) of SEBI (PIT) Regulations, 2015. Only details of designated persons are required to be given this time.

- Acquisitions and disposals by persons with whom designated persons shares Material Financial Relationship.
- Members of promoter group, which are covered under the definition of promoter group, but who may not be holding shares in listed company and hence not disclosed in shareholding pattern as per Listing Regulations.
- ESOP Trust/Trustees – As per as Regulation 3(16) of SEBI (ESPS) Regulations, an ESOP trust needs to comply with requirements applicable to insiders or promoters under PIT Regulations.
- Encumbrances by promoters other than by way of pledge/ hypothecation – which are not marked in demat A/cs of the promoters, because as

of now, it is not mandatory to mark such encumbrances in demat A/c of promoters.

Transactions which are not covered in Regulation 7(2) but are getting mapped under system driven disclosures

Following transactions are getting captured under the scheme of system driven disclosures, but they do not warrant disclosure under Regulation 7(2):

- *Each and every transaction in demat A/c will be available to depository – even where disclosure thresholds may not be crossed*
- *Acquisitions pursuant to Bonus issue/allotment pursuant to scheme of merger [for which disclosure is not needed]*

Guidance from SEBI (dated 29th April, 2021)

Query: *Regulation 7(2)(a) requires disclosure with respect to number of such securities acquired or disposed of within two trading days of such transaction if the traded value exceeds Rs. 10 Lakhs. Whether such disclosures are required in case of allotment of shares by way of bonus/rights/mergers?*

Guidance: *Yes, the number of securities acquired or disposed beyond the prescribed threshold, irrespective of the mode of acquisition or disposal, shall be disclosed except bonus issuance and shares received pursuant to a scheme.*

- *Details of encumbrances like NDU, etc., which are not in the nature of pledge, and where there is no actual acquisition or disposal of securities.*

Guidance from SEBI (dated 29th April, 2021)

Query: *In case a designated person is a foreign national/individual who do not possess PAN or a demat account number, whether system driven disclosures are required to be submitted?*

Guidance: *If a designated person does not have PAN or a demat account number, then such a person cannot trade in the Indian securities market. Hence, system driven disclosures will not trigger for such a person.*

Specimen of Initial and Continual Disclosures is placed at Annexure-V.

Extracts from interpretive letter dated 28th April, 2017 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Kotak Mahindra Bank Ltd.

Facts of the case:

- a. Regulation 7(2) of the SEBI PIT Regulations, 2015 requiring every promoter, employee and director of the company to disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to traded value in excess of ten lakh rupees or such other value as may be specified. Regulation 7(2)(b) of PIT Regulations require that the company has to notify the particulars of such trading to the stock exchanges on which the securities are listed within 2(two) trading days of receipt of the disclosure or from becoming aware of such information.

In explanation to Regulation 7(2)(b) – it is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).

- b. Further, there could be some transactions, e.g., bonus shares received pursuant to the scheme of amalgamation/demerger, gift or off-market transaction like transfer of shares to a family trust account, where the traded value is Nil and the same cannot be considered for computing the threshold limit of ten lakh rupees. The Regulations do not provide clarity with regard to the disclosure to be made in respect of such transactions in the prescribed Form C by the concerned promoter/employee/ director to the company and in turn by the company to the stock exchanges.

1. **ICSI's View:** As on the date of issuance of this Guidance Note, the parties who need to give disclosure under Regulation 7(2)(a) have been changed from "promoter, employee and director of the company" to "promoter, member of the promoter group, designated person and director of the company", and hence the above Informal Guidance issued by SEBI must be read accordingly.

Query:

- i. Whether disclosure in Form C pertaining to the change in the holdings of securities needs to be made in case of some transactions, e.g., bonus shares received pursuant to the scheme of amalgamation/ demerger, gift or off-market transaction like transfer of shares to a family trust account where there is no consideration amount involved, i.e., the traded value of securities is nil?
- ii. In case the answer to the above query is affirmative then at what value should the aforesaid transactions be disclosed?

Guidance from SEBI:

- i. Regulation 7(2)(a) of the said PIT Regulations, 2015 states that; Every 'promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.

From the above it is understood that number of securities acquired or disposed beyond the given threshold have to be disclosed, irrespective of the mode of acquisition or disposal. Therefore, with respect to the first query, disclosure pertaining to change in holdings of securities needs to be made; by the concerned promoter/ employee/ director to the company and in turn by the company to the stock exchanges.

At the same time, it may be pertinent to point out that the said SEBI PIT Regulations, 2015 are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information ("UPSI"). The same is, inter-alia, also mentioned in the explanatory note under Regulation 6(2) of PIT Regulations, in Chapter III covering disclosure of trading by insiders as well. Accordingly,

1. **ICSI's View:** As on the date of issuance of this Guidance Note, the parties who need to give disclosure under Regulation 7(2)(a) have been changed from "promoter, employee and director of the company" to "promoter, member of the promoter group, designated person and director of the company", and hence this Informal Guidance issued by SEBI must be read accordingly.

various provisions of PIT Regulations, including disclosures, are in respect of UPSI relating to a security or in respect of trading by persons who may have access to such UPSI. Therefore, any wilful trading by such insiders is either prohibited; when in possession of certain UPSI; or otherwise required to be disclosed beyond a certain threshold.

In cases, wherein the person getting allotment of shares has no role in the transaction in question and relevant information or disclosure of such transaction is already in the public domain, e.g., in case of bonus shares or shares received pursuant to scheme of amalgamation/ demerger etc., a separate disclosure may not be necessary. For all other instances as quoted in the request letter for informal guidance, like off-market transaction or gifts, disclosure must be made in accordance with provisions of PIT Regulations.

- ii. With respect to the second query, the term value of securities traded is interpreted as the prevailing market value of the securities on the day they were acquired or disposed off. The same may be used for the purpose of calculation of threshold value beyond which disclosure is required; and must also be disclosed in the referred form.*

Extract of Supreme Court order in the matter of Chairman SEBI v/s Shriram Mutual Fund & Anr. dated 23rd May, 2006

The Supreme Court held that mens rea is not an essential ingredient for contravention of the provisions of a civil Act. Since insider trading comes under Chapter VI-A of the SEBI Act, intention/mens rea is not a pre-requisite before SEBI levies any penalty for offences under PIT Regulations. Proceedings under Chapter VI-A of the SEBI Act being civil in nature, proving of mens rea/beyond any reasonable doubt, is not a pre-requisite before levying any penalty.

Regulation 7(3) of PIT Regulations deals with disclosures by other connected persons and provides that any company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and trading in securities

of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.

Legislative Note: This is an enabling provision for listed companies to seek information from those to whom it has to provide unpublished price sensitive information. This provision confers discretion on any company to seek such information. For example, a listed company may ask that a management consultant who would advise it on corporate strategy and would need to review unpublished price sensitive information, should make disclosures of his trades to the company.

Background: *Based on the feedback from listed companies and market participants, the Viswanathan Committee noted that Regulation 7(2) of the PIT Regulations requires every promoter, employee and director to make disclosures to the listed company (and onward by the listed company to the stock exchange(s)) if thresholds therein are met. Such requirement results in every employee of the listed company (including those who cannot be expected to be in possession of UPSI based on their role/function) to make disclosures under this Regulation. This puts undue burden on the listed company, its employee and compliance officers, particularly where the company has hundreds or thousands of employees.*

Accordingly, the committee recommended that the Regulation 7 may be suitably amended to restrict applicability of these regulations to promoters, directors and designated persons only.

Guidance from SEBI (dated 24th August, 2015)

Query:

- (a) *Whether SEBI's intent is to prohibit creation of pledge, revocation of pledge or invocation of pledge for enforcement of security while in possession of UPSI?*
- (b) *Whether creation of pledge, revocation of pledge or invocation of pledge is allowed when trading window is closed?*

Guidance: *Yes. However, the pledgor or pledgee may demonstrate that the creation/ revocation of pledge or invocation of pledge was bona fide and prove their innocence under proviso to sub-regulation (1) of regulation 4 of the Regulations.*

Query:

(c) What should be the value of the pledge/revoke transaction for the purpose of disclosure? Is it the market value on date of the pledge/revoke transaction or is it the value at which the transaction has been carried out between the pledgor and pledgee?

For instance, if the pledgor has availed a loan of Rs. 10 Lacs against which he has pledged shares worth Rs. 15 Lacs, would the transaction value be Rs. 10 Lacs or Rs. 15 Lacs.

Guidance: For the purpose of calculation of threshold for disclosures relating to pledge under Chapter III of the Regulations, the market value on the date of pledge/revoke transaction should be considered. In the above illustration, the value of transaction would be considered as Rs. 15 Lacs.

Guidance from SEBI (dated 29th April, 2021)

Query: If the lender sells the shares pledged by the designated person (shares acquired under ESOP by availing loan) to recover the loan then how to represent this transaction in Form C (i.e., invoke/revoke)?

Guidance: When the lender sells the shares pledged by designated person, the transaction can be represented as invocation in Form C.

Query: In case of trades exceeding Rs. 10 Lacs in a quarter, any subsequent trades need to be disclosed in Form C or should the next disclosure be only when the next Rs. 10 Lacs limit is breached?

Guidance: The explanation to Regulation 7(2)(b) states that the disclosure of the incremental transactions after any disclosure under this sub-regulation shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2). Hence, the next disclosure will be due when the next Rs. 10 lacs limit is breached.

Query: What must be the value that the designated person should mention while reporting trades to the company? Should it be the market rate or should it be by subtracting brokerage, commission, etc., i.e., net of taxes and all transaction charges?

Guidance: For the purpose of reporting trades, market rate should be considered.

Query: Whether disclosure requirement under Regulation 7(2) (a) of SEBI (PIT) Regulations would be applicable to designated person alone or it would include such person's immediate relatives?

Guidance: Regulation 6(2) of SEBI (PIT) Regulations specifies that disclosures to be made by any person under this Chapter (Disclosures of Trading by Insiders) shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions. Hence, disclosure requirement is applicable to designated person along with its immediate relatives.

Query: In case a designated person is taking financial assistance for acquiring the ESOPs shares, do Form C is required to be filed?

Guidance: The disclosures are required on receipt of shares pursuant to exercise of ESOPs.

Query: Whether transfer of shares from one demat account to another demat account of the same person will trigger the disclosure requirements?

Guidance: Since beneficiary ownership remains the same, the transfer of shares will not qualify as trading. Hence, disclosure requirements for the same will not be required.

Extracts from SAT order dated 12th June, 2014 in the matter of Mrs. Urvashi Ashok Kadakia [Appeal No. 125 of 2014] [Order under PIT Regulations 1992]

The obligation to make disclosure under PIT Regulations is irrespective of any loss caused to any of the public investors and irrespective of whether the insider gained any unfair advantage on account of such non-disclosure or not.

6. SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) (THIRD AMENDMENT) REGULATIONS, 2019

SEBI has vide a notification dated 17th September, 2019 amended the SEBI (Prohibition of Insider Trading) Regulations, 2015 by insertion of Chapter IIIA which deals with voluntary information disclosure by any person with regard to Insider Trading violations. This amendment is effective from 100th day from the date of notification, i.e., with effect from 26th December, 2019. It provides as follows:

Chapter IIIA DEFINITIONS

7A. (1) In this Chapter, unless the context otherwise requires:

- (a) 'Investor Protection and Education Fund' means the Investor Protection and Education Fund created by the Board under section 11 of the Act;
- (b) 'Informant' means an individual(s), who voluntarily submits to the Board a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur, in a manner provided under these regulations, regardless of whether such individual(s) satisfies the requirements, procedures and conditions to qualify for a reward;
- (c) 'Informant Incentive Committee' means the High Powered Advisory Committee constituted by the Board in the manner as may be specified under regulation 11 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018.
- (d) 'insider trading laws' means the following provisions of securities laws,-
 - i. Section 15G of the Act;
 - ii. regulation 3 of these regulations;
 - iii. regulation 4 of these regulations;
 - iv. regulation 5 of these regulations; and
 - v. regulation 9 or regulation 9A of these regulations, in so far as they pertain to trading or communication of unpublished price sensitive information.
- (e) 'irrelevant, vexatious and frivolous information' includes, reporting of information which in the opinion of the Board, -
 - (i) Does not constitute a violation of insider trading laws; or
 - (ii) Is rendered solely for the purposes of malicious prosecution; or
 - (iii) Is rendered intentionally in an effort to waste the time and resource of the Board.
- (f) 'Legal Representative' means a duly authorised individual who is admitted to the practice of law in India;

- (g) 'Monetary Sanctions' shall mean any non-monetary settlement terms or any direction of the Board, in the nature of disgorgement under securities laws aggregating to at least Rupees one crore arising from the same operative facts contained in the original information.
- (h) 'Original Information' means any relevant information submitted in accordance with these regulations pertaining to any violation of insider trading laws that is:
- (i) derived from the independent knowledge and analysis of the Informant;
 - (ii) not known to the Board from any other source, except where the Informant is the original source of the information;
 - (iii) is sufficiently specific, credible and timely to - (1) commence an examination or inquiry or audit, (2) assist in an ongoing examination or investigation or inquiry or audit, (3) open or re-open an investigation or inquiry, or (4) inquire into a different conduct as part of an ongoing examination or investigation or inquiry or audit directed by the Board;

Explanation. – Information shall be considered timely, only if as on the date of receipt of the duly completed Voluntary Information Disclosure Form by the Board, a period of not more than three years has elapsed since the date on which the first alleged trade constituting violation of insider trading laws was executed.

- (iv) not exclusively derived from an allegation made in a judicial or administrative hearing, in a Governmental report, hearing, audit, or investigation, or from the news media, except where the Informant is the original source of the information; and
- (v) not irrelevant or frivolous or vexatious.

Explanation. – Information which does not in the opinion of the Board add to the information already possessed by the Board is not original information.

- (i) 'own analysis' means the examination and evaluation of the relevant information by the Informant that may be publicly available, but which reveals analysis that is not known to SEBI:

Provided that such analysis is not derived from professional or

confidential communication protected under the Indian Evidence Act, 1872;

- (j) 'own knowledge' means relevant information in the possession of the Informant not derived from publicly available sources:

Provided that such knowledge is not derived from professional or confidential communications protected under the Indian Evidence Act, 1872;

- (k) 'Reward' means any gratuitous monetary amount for which an Informant is declared eligible as per the provisions of these regulations;

- (l) 'securities laws' means the Act, the Securities Contract (Regulations) Act, 1956, the Depositories Act, 1996, the relevant provisions of any other law to the extent it is administered by the Board and the relevant rules and regulations made thereunder;

- (m) 'voluntarily providing information' means providing the Board with information before receiving any request, inquiry, or demand from the Board, any other Central or State authorities or other statutory authority about a matter, to which the information is relevant;

(2) Words and expressions used but not defined in these regulations but defined in securities laws, shall have the same meanings respectively assigned to them in those laws or any statutory modification or re-enactment thereto.

Submission of Original Information to the Board

7B. (1) An Informant shall submit Original Information by furnishing the Voluntary Information Disclosure Form to the Office of Informant Protection of the Board in the format and manner set out in Schedule D. The Voluntary Information Disclosure Form may be submitted through informant's legal representative:

Provided that where the Informant does not submit the Voluntary Information Disclosure Form through a legal representative, the Board may require such Informant to appear in person to ascertain his/her identity and the veracity of the information so provided.

Explanation. – Where any information pertaining to any violation of the Securities Laws is received in a manner not in accordance with the manner provided under these regulations, the Board may require such information to be filed with it in accordance with these regulations or reject the same.

(2) The legal representative shall,—

- i. Verify the identity and contact details of the Informant;
- ii. Unless otherwise required by the Board, maintain confidentiality of the identity and existence of the Informant, including the original Voluntary Information Disclosure Form;
- iii. Undertake and certify that he/she,-
 - (a) Has reviewed the completed and signed Voluntary Information Disclosure Form for completeness and accuracy and that the information contained therein is true, correct and complete to the best of his/her knowledge;
 - (b) Has obtained a irrevocable consent from the Informant to provide to the Board with original Voluntary Information Disclosure Form whenever required by the Board; and
 - (c) Agrees to be legally obligated to provide the original Voluntary Information Disclosure Form within seven (7) calendar days of receiving such requests from the Board.
- iv. Submits to the Board, the copy of the Voluntary Information Disclosure Form in the manner provided in Schedule D of these regulations along with a signed certificate as required under clause (iii) of this sub-regulation (2).

(3) An Informant shall while submitting the Voluntary Information Disclosure Form shall expunge such information from the content of the information which could reasonably be expected to reveal his or her identity and in case where such information cannot be expunged, the Informant may identify such part of information or any document that the Informant believes could reasonably be expected to reveal his or her identity.

Receipt of Original Information by the Board

7C. (1) The Board may designate a division to function as the independent Office of Informant Protection.

(2) The Office of Informant Protection shall perform such functions as may be specified by the Board, including,-

- i. Receiving and registering the Voluntary Information Disclosure Form;
- ii. Making all necessary communications with the Informant;
- iii. Maintaining a hotline for the benefit of potential Informant;

- iv. Maintaining confidentiality of the legal representative of the Informant and act as an interface between the Informant and the officers of the Board;
- v. Interacting with the Informant Incentive Committee;
- vi. Issuing press releases and rewards relating to Informant; and
- vii. Submitting an annual report to the Board relating to the functioning of the Office of Informant Protection.

(3) On receipt of the Voluntary Information Disclosure Form, the Office of Informant Protection shall communicate the substance of the information along with the evidence submitted by the informant to the relevant department or division of the Board for examination and initiation of necessary action, if any.

(4) The Board shall not be required to send any intimation or acknowledgement to the Informant or any other person, of the examination or action initiated by the Board, if any, pursuant to receipt of the Voluntary Information Disclosure Form or information under these regulations, including rejection thereof.

Informant Reward

7D. (1) The Board may at its sole discretion, declare an Informant eligible for Reward and intimate the Informant or his or her legal representative to file an application in the format provided in Schedule-E for claiming such Reward:

Provided that the amount of Reward shall be ten percent of the monetary sanctions and shall not exceed Rupees ten crores or such higher amount as the Board may specify from time to time.

(1A) If the total reward payable is less than or equal to Rupees One Crore, the Board may grant the said reward upon the issuance of the final order by the Board:

Provided that in case the total reward payable is more than Rupees One Crore, the Board may grant an interim reward not exceeding Rupees One Crore upon the issuance of the final order by the Board and the remaining reward amount shall be paid only upon collection or recovery of the monetary sanctions amounting to at least twice the balance reward amount payable.

(2) In case of more than one Informant jointly providing the Original Information, the Reward, as specified in the intimation under sub-regulation (1), shall be divided equally amongst the total number of Informants.

(3) Any reward, whether interim or otherwise under these regulations shall be paid from the Investor Protection and Education Fund.

NOTE: An illustrative table of the reward payable under this provision is stated below:

Illustrative table of the reward payable

(Amount in crore rupees)

A.	Monetary Sanctions	≥100.00	20.00	10.00	5.00	1.00
B.	Total Reward Payable = 10% of Monetary Sanctions subject to maximum of Rupees 10.0 crores.	10.00	2.00	1.00	0.50	0.10
C.	Maximum Amount Payable as Interim Reward (on the issuance of final order by the Board against the person directed to disgorge) = Total Reward Payable (B) or Rupees 1.00 Crore, whichever is less.	1.00	1.00			
D.	Balance Amount of Reward Payable (B - C).	9.00	1.00	NIL because the entire reward was paid after passing of final order		
E.	Minimum Amount to be collected/recovered by SEBI, for balance amount of reward (D) to become payable = Twice the Balance Amount of Reward Payable (2 x D).	18.00	2.00	Not Applicable as the amount of interim reward itself is equal to total eligible reward	Not Applicable as the amount of interim reward itself is equal to total eligible reward	Not Applicable as the amount of interim reward itself is equal to total eligible reward

Determination of amount of Reward

7E. (1) The amount of the Reward, if payable, shall be determined by the Board.

(2) While determining the amount of Reward under sub-regulation (1), the Board may specify the factors that may be taken into consideration by the Informant Incentive Committee.

(3) An Informant may be eligible for a Reward whether or not he reported the matter to his organization as per its internal legal and compliance procedures and irrespective of such organization's compliance officer subsequently providing the same Information to the Board.

Application for Reward

7F. (1) Informants who are considered tentatively eligible for a Reward, shall submit the Informant Reward Claim Form set out in Schedule E to the Board within the period specified in the intimation sent by the Board.

(2) Prior to the payment of a Reward, an Informant shall directly or through his or her legal representative, disclose his or her identity and provide such other information as the Board may require.

Rejection of claim for Reward

7G. No Reward shall be made to an Informant:

- (1) who does not submit original information;
- (2) who has acquired the Original Information, through or as a member, officer, or an employee of:
 - (i) any regulatory agency constituted by or under any law in India or outside India, including the Board;
 - (ii) any self-regulatory organization;
 - (iii) the surveillance or investigation wings of any recognised stock exchange or clearing corporation; or
 - (iv) any law enforcement organization including the police or any central or state revenue authorities.
- (3) against whom the Board may initiate or has initiated criminal proceedings under securities laws;

- (4) who wilfully refused to cooperate with the Board during its course of investigation, inquiry, audit, examination or other proceedings under securities laws;
- (5) who:
- (i) knowingly makes any false, fictitious, or fraudulent statement or representation; or
 - (ii) uses any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry; or
 - (iii) fails to furnish the complete information available with him or accessible by him in relation to the alleged violation.
- (6) who is obligated, under any law or otherwise, to report such Original Information to the Board, including a compliance officer under securities laws.

Provided that the Board may if deemed fit, at its sole discretion, exempt a person from any of these disqualifications.

Informant confidentiality

7H. (1) Any information including Original Information may, at the discretion of the Board, be made available:

- (a) when it is required to be disclosed in connection with any legal proceedings in furtherance of the Board's legal position;
- (b) as permitted by these regulations; or
- (c) as may be otherwise required or permitted by law.

(2) Original Information may, at the discretion of the Board, be made available to –

- (i) any regulatory agency constituted by or under any law in India or outside India;
- (ii) any self-regulatory organization;
- (iii) the surveillance or investigation wings of any recognised stock exchange or clearing corporation; or
- (iv) any law enforcement organization including the police or any central or state revenue authorities; or

(v) a public prosecutor in connection with any criminal proceedings.

Provided that sharing of information shall be in accordance with such assurances of confidentiality as the Board determines appropriate.

Explanation - Nothing in these regulations is intended to limit, or shall be construed to limit, the ability of the public prosecutor to share such evidence with potential witnesses or accused in connection with any criminal proceedings.

(3) The Original Information and identity provided by an Informant shall be held in confidence and exempted from disclosure under clauses (g) and (h) of sub-section (1) of section 8 of the Right to Information Act, 2005.

(4) Subject to the law of evidence for the time being in force, nothing in these regulations shall prejudice the right of the Board to use or to rely on information received otherwise.

(5) No person shall have the right to compel disclosure of the identity, existence of an Informant or the information provided by an Informant, except to the extent relied upon in any proceeding initiated against such person by the Board.

Explanation 1. – The confidentiality in respect of the identity and existence of the Informant shall be maintained throughout the process of investigation, inquiry and examination as well as during any proceedings before the Board and save where the evidence of the Informant is required during such proceedings, advance notice of such evidence may be provided to the noticee at least seven (7) working days prior to the date of the scheduled hearing for evidence.

Explanation 2. – In proceedings before any authority other than the Board, the Board may request maintenance of confidentiality of the identity and existence of an Informant in such proceeding.

Protection against retaliation and victimisation

71. (1) Every person required to have a Code of Conduct under these regulations shall ensure that such a Code of Conduct provides for suitable protection against any discharge, termination, demotion, suspension, threats, harassment, directly or indirectly or discrimination against any employee who files a Voluntary Information Disclosure Form, irrespective of whether the information is considered or rejected by the Board or he or she is eligible for a Reward under these regulations, by reason of:

- (i) filing a Voluntary Information Disclosure Form under these regulations;
- (ii) testifying in, participating in, or otherwise assisting or aiding the Board in any investigation, inquiry, audit, examination or proceeding instituted or about to be instituted for an alleged violation of insider trading laws or in any manner aiding the enforcement action taken by the Board; or
- (iii) breaching any confidentiality agreement or provisions of any terms and conditions of employment or engagement solely to prevent any employee from cooperating with the Board in any manner.

Explanation 1.- For the purpose of this Chapter, "employee" means any individual who during employment may become privy to information relating to violation of insider trading laws and files a Voluntary Information Disclosure Form under these regulations and is a director, partner, regular or contractual employee, but does not include an advocate.

Explanation 2. - Nothing in this regulation shall require the employee to establish that, –

- (i) the Board has taken up any enforcement action in furtherance of information provided by such person; or
- (ii) the information provided fulfils the criteria of being considered as an Original Information under these regulations.

(2) Nothing in these regulations shall prohibit any Informant who believes that he or she has been subject to retaliation or victimisation by his or her employer, from approaching the competent court or tribunal for appropriate relief.

(3) Notwithstanding anything contained in sub-regulation (2), any employer who violates this Chapter may be liable for penalty, debarment, suspension, and/or criminal prosecution by the Board, as the case may be:

Provided that nothing in these regulations will require the Board to direct re-instatement or compensation by an employer.

(4) Nothing in these regulations shall diminish the rights and privileges of or remedies available to any Informant under any other law in force.

Void Agreements

7J. (1) Any term in an agreement (oral or written) or Code of Conduct, is void

in so far as it purports to preclude any person, other than an advocate, from submitting to the Board information relating to the violation of the securities laws that has occurred, is occurring or has a reasonable belief that it would occur.

(2) No person shall by way of any threat or act impede an individual from communicating with the Board, including enforcing or threatening to enforce, a confidentiality agreement (other than agreements related to legal representations of a client and communications there under) with respect to such communications.

Explanation. - No employer shall require an employee to notify him of any Voluntary Information Disclosure Form filed with the Board or to seek its prior permission or consent or guidance of any person engaged by the employer before or after such filing.

No Amnesty

7K. (1) Nothing in these regulations shall be deemed to provide any amnesty or immunity to an Informant for violation of securities law.

(2) Where an action against an Informant is deemed appropriate the Board may take into account the co-operation rendered in the final determination of any penalty, sanction, direction or settlement thereof, as the case may be.

(3) Where an action against an Informant is deemed appropriate, the Board while determining the value of monetary sanctions shall not take into account the monetary sanctions that the Informant is ordered to pay or that which any other person is ordered to pay if the liability of such other person is based substantially on the conduct that the Informant directed, planned, or initiated.

(4) An Informant who may be liable for enforcement action by the Board based on his or her conduct in connection with securities laws violations reported in the Voluntary Information Disclosure Form filed with the Board, may simultaneously or at any time thereafter file an application seeking settlement with confidentiality under Chapter IX of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018.

(5) Notwithstanding any action taken by the Board against an Informant, the Informant may, after payment of any monetary amounts be eligible for a Reward.

Functions of Informant Incentive Committee

7L. (1) The Informant Incentive Committee shall be assisted by the Office of Informant Protection.

(2) The Informant Incentive Committee shall give its recommendations to the Board on the following matters,-

- i. Eligibility of Informant for reward;
- ii. Determination under regulations 7E and 7G; and
- iii. Such other issues relating to Informant as the Board may require from time to time.

(3) The Informant Incentive Committee shall conduct its meetings in the manner specified by the Board in this regard.

Public dissemination and incentivisation of Informant.

7M. (1) The Board shall upload on its website the following,-

- i. Annual report of the Office of Informant Protection;
- ii. Press release informing the public that an intimation to the Informant has been issued under Regulation 7D;
- iii. Press release informing the public that a Reward has been paid under these regulations and the amount of Monetary Sanctions recovered pursuant to the information provided by the Informant;
- iv. The Order issuing the Reward;

Explanation. – Nothing in this regulation shall require the Board to disclose information that could identify the Informant or the information provided by the Informant.

The format in which any person can submit Voluntary Information Disclosure Form to the Office of the Informant Protection of SEBI is placed at Annexure XIV.

ICSI's View: Actions on the part of Listed companies

All listed companies need to amend their Code of Conduct to provide for suitable protection against any discharge, termination, demotion, suspension, threats, harassment, directly or indirectly or discrimination against any employee who files Voluntary Information Disclosure Form, irrespective of whether the information is rejected by SEBI or the person is Rewarded.

7. CODE OF FAIR DISCLOSURE (REGULATION 8)

Chapter IV of PIT Regulations deals with Codes of Fair Disclosure and Conduct.

Regulation 8(1) therein provides that the board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

Legislative Note: This provision intends to require every company whose securities are listed on stock exchanges to formulate a stated framework and policy for fair disclosure of events and occurrences that could impact price discovery in the market for its securities. Principles such as, equality of access to information, publication of policies such as those on dividend, inorganic growth pursuits, calls and meetings with analysts, publication of transcripts of such calls and meetings, and the like are set out in the schedule.

Regulation 8(2) of PIT Regulations provides that every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

Legislative Note: This provision is aimed at requiring transparent disclosure of the policy formulated in sub-regulation (1).

It may be noted that under the erstwhile PIT Regulations 1992, a specimen Code of Corporate Disclosure Practices was prescribed to be adopted by listed companies and everyone associated with securities market, i.e., the expected practices were already elaborated in that specimen Code. However, in the current Schedule A given under PIT Regulations 2015 principles of fair disclosure are listed down for purposes of Code of Practices and Procedures for Fair Disclosure of UPSI. It can also be seen that as per Regulation 12(2) of erstwhile PIT Regulations, 1992, the relevant entities had to simply abide by this Code, whereas under Regulation 8(1) of PIT Regulations, 2015, listed companies need to formulate their own customised Code consisting of 'practices and procedures' based on the principles set out in this Schedule A.

Hence, it appears that the Code formulated by listed companies under Regulation 8 should not only mention the principles mentioned in Schedule A, but also elaborate on the 'practices and procedures' which it shall follow

to achieve the principles laid down in Schedule A. Under the erstwhile Code, since specific practices were elaborated, the entities were obliged to follow those practices. However, now, the listed companies may adopt any such practices and procedures as they may deem fit. In the process of laying down such practices and procedures, they can refer to the elaborative guidance given under the erstwhile Code, as the practices given therein stand valid even now.

Issue: How to interpret the term 'promptly' for disclosure of information under Regulation 8?

ICSI's view: As per Regulation 30(6) of Listing Regulations, the events which require disclosure must be disclosed 'as soon as reasonably possible and not later than twenty-four hours from the occurrence of event or information', whereas under this clause of PIT Regulations, the disclosure must be made 'promptly'. The Black's Law Dictionary sixth edition defines the word "prompt" and "promptly" as: "Prompt": to act immediately, responding on the instant; "Promptly": adverbial form of the word "prompt", which means ready and quick to act as occasion demands. Hence it can be said that once information becomes concrete and credible, it needs to be disclosed to stock exchanges immediately, and not later than 24 hours in any case.

An example where a disclosure made within 24 hours has been penalized for not disclosing promptly is mentioned below.

Extracts from SEBI's Adjudication Order No. AA/AR/2019-20/4392 dated 12th September, 2019 in respect of ICICI Bank Ltd. and Mr. Sandeep Batra in the matter of Bank of Rajasthan Ltd. And Extracts from SAT order dated 8th July, 2020 in the matter of ICICI Bank vs SEBI [Appeal No. 583 of 2019] [Order under PIT Regulations 1992 and under Listing Agreement]

In this case under PIT Regulations 1992, the binding agreement for merger of Bank of Rajasthan with ICICI which was signed at 4:30 am was UPSI and the disclosure to stock exchanges was done at 5:12 pm and 5:25 pm, i.e., disclosure was made after 15 hours from the event/after completion of one trading day.

SEBI quoted SAT's order dated 7th August, 2019 in the matter of M/s. New Delhi Television Limited vs SEBI (Appeal No. 358 of 2015), wherein Hon'ble SAT has made following observation on the meaning of the words 'immediately' and 'prompt' with regard to the disclosures to be made under Clause 36 of the Listing Agreement:

"Clause 36 of the Listing Agreement read with the Guidance Note make it apparently clear that the company is required to intimate the stock exchange with regard to the material events immediately, which information is required to be made to the public immediately. The word "immediately" has to be construed accordingly...."

Further SEBI said that in a strict sense the word "immediately" means at once, forthwith, instantaneously or instantly and is also defined as meaning promptly, quickly, without delay, without interval or without lapse of time. However, in a broader relative sense, the term "immediately" means within a reasonable time, necessarily exclude all mesne time and is often construed to mean as soon as an act can be performed within a reasonable time.

In the context of this case, SEBI said that "the amalgamation had become a certainty at the time of signing of binding agreement, even though it was subject to the meeting of certain other conditions. Hence, it was required to be disclosed to stock exchanges immediately. Once a disclosure regarding signing of the binding agreement along with the pending conditions precedents is made to the general public, it is the call of the investing public to take further decisions pertaining to the investments in the scrip of ICICI Bank and Bank of Rajasthan on the basis of the terms of the binding agreement and the pending conditions precedent. However, by withholding such disclosure for one full trading day, ICICI created a situation of information asymmetry wherein the general public was not aware of any such agreement."

It was argued that Bank of Rajasthan and ICICI Bank had placed this agreement before their respective boards for approval at evening on that day, and hence, the disclosure to stock exchange was made in the evening. However, SAT held that "the contention that the binding agreement was premature for disclosure as it was only a contingent contract and not a certainty does not have any merit as the disclosure regulations and the provisions of the Contract Act stand on different footing. While certainty is paramount for a contract, materiality of an event is what is tested in disclosure; if the event does not fructify disclose that as well with reasons explained."

Disclosures regarding Analysts and Institutional investors meets

It may be noted that Clause 6 and 7 of Schedule A states as follows:

Clause 6 - Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.

Clause 7 - Developing best practices to make transcripts or records of

proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.

The clauses similar to Clause 7 are also covered in Regulation 46(2)(o) of Listing Regulations which provide that “a schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors must be hosted on the website of the company simultaneously with submission to stock exchange” as it is deemed to be a material information without application of any guidelines of materiality as per Regulation 30 read with Para A of Part A of Schedule III of Listing Regulations.

Now, pursuant to an amendment in SEBI Listing Regulations dated 5th May, 2021, it has been mandated from 1st April, 2022, for equity listed companies, to host on their websites as well as to disseminate to the stock exchanges the audio or video recordings and transcripts of post earnings/quarterly calls, conducted physically or through digital means, in the following manner:

- (a) the presentation and the audio/video recordings shall be promptly made available on the website and in any case, before the next trading day or within 24 hours from the conclusion of such calls, whichever is earlier [to be hosted on website for a minimum period of 5 years and thereafter as per archival policy of company];*
- (b) the transcripts of such calls shall be made available on the website within 5 working days of the conclusion of such calls [to be hosted on website and preserved permanently.]*

In this regard, a guidance note has been issued by BSE and NSE on 29th June, 2021, wherein it has been clarified that as a general rule, disclosure of transcripts and audio-video recording is mandatory (from 1st April, 2022) for group meetings with analysts or institutional investors, by whatever name called, irrespective of whether it is organised by the listed entity or not and this shall not apply for one-on-one meetings. However, in case UPSI gets shared in any of meeting with analysts or institutional investors or research personnel, by whatever name called, irrespective of whether it is organised by the listed entity or not, irrespective of whether it is a group meeting or one-on-one meeting, it is mandatory for the listed entity to disclose the audio recording or transcript, in the above-mentioned manner, in order to make that UPSI generally available.

This guidance is in line with Clause 2 and 4 of Schedule A which are mentioned below:

Clause 2 - Uniform and universal dissemination of unpublished price sensitive information to avoid selective disclosure.

Clause 4 - Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.

A specimen Code of Fair Disclosure of UPSI is placed at Annexure-IV.

8. CODE OF CONDUCT

Regulation 9(1) of PIT Regulations deals with Code of Conduct and provides that the board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule-B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

“Minimum Standards for Code of Conduct for listed companies” and “Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries” are placed at Annexure-I and Annexure-II respectively.

Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.

Legislative Note: It is intended that every company whose securities are listed on stock exchanges and every intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by designated persons and their immediate relatives. The standards set out in the schedules are required to be addressed by such code of conduct.

Guidance from SEBI (dated 24th August, 2015)

Query: Whether separate code of conduct can be adopted for listed company and each of intermediaries in a group?

Guidance: In case of a group, separate code may be adopted for listed company and each of intermediaries, as applicable to the concerned entity.

Regulation 9(2) of PIT Regulations provides that the board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their designated persons and immediate relative of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule C to these regulations, without diluting the provisions of these regulations in any manner.

Explanation - Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of these regulations.

Legislative Note: This provision is intended to mandate persons other than listed companies and intermediaries that are required to handle unpublished price sensitive information 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 firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct.

Extracts from interpretive letter dated 19th August, 2020 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of KP Capital Advisors Private Ltd.

Facts of the case:

A. With respect to monitoring trades in securities not in the restricted list

Applicants are of the opinion that, a listed company in respect of which KP Capital Advisors Private Limited (KPCA) is neither a connected person nor has any UPSI ("Unrestricted Securities"), provisions of SEBI PIT Regulations shall not apply. This implies that the designated persons of KPCA need not seek pre-approval of compliance officer to trade in such unrestricted securities and need not submit trade details or make any disclosures (initial or continuous) of their holdings of unrestricted securities.

The compliance officer of KPCA also is under no obligation to track, monitor and report trades of the designated persons in such unrestricted securities.

However, as and when any unrestricted security shall become a restricted security, any trade/dealing in such restricted securities by any designated persons shall be prospectively tracked, monitored and reported in accordance with the PIT Regulations.

B. With respect to maintaining confidentiality about the restricted list

- (i) *Schedule C of SEBI PIT Regulations mandates minimum standards for Code of Conduct for intermediaries and fiduciaries. Clause 5 of Schedule C reads as under:*

“The compliance officer shall confidentially maintain a list of such securities as a “restricted list” which shall be used as the basis for approving or rejecting applications for pre-clearance of trades”

- (ii) *Applicant believe that “restricted list” within the meaning of clause 5 of Schedule C does not contemplate only names of the restricted companies, but also other information as a whole list which ought to be maintained confidentially by the compliance officer.*
- (iii) *In case the “restricted list” referred above contains only names of restricted companies and no other information and the compliance officer himself/herself would maintain confidentiality of names of such client companies as per Clause 5 of Schedule C, the designated persons due to lack of information and awareness on client companies shall be required to intimate, report or seek pre-clearance of trade/dealing in securities of even unrestricted companies whose securities are not subject matter of Code of Conduct. This may also result in initial and continual disclosure by the designated persons/employees in respect of securities of unrestricted companies.*

Query:

- (i) *Is our understanding correct in terms of keeping the trades in unrestricted list outside the purview of compliance of PIT Regulations?*
- (ii) *Is our understanding correct that the compliance officer can share the restricted list with the designated persons so that the latter can know the permissibility of their proposed trade?*

Guidance from SEBI:

- a. Regulation 9(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations"), reads as follows-

"(1) The board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner."

- b. Schedule C read with sub-regulation (1) and sub-regulation (2) of Regulation 9 of PIT Regulations stipulates minimum standards for Code of Conduct for Intermediaries to regulate, monitor and report trading by designated persons.

- c. KPCA is SEBI registered category I merchant banker and is an intermediary within the meaning of Section 12 of the SEBI Act, 1992. Therefore, minimum standards for Code of Conduct under Schedule C of PIT Regulations would be applicable on KCPL.

- d. Clause 4 and 5 of aforesaid Schedule C, reads as follows -

"4. Designated persons may execute trades subject to compliance with these regulations. Trading by designated persons shall be subject to pre-clearance by the compliance officer(s), if the value of the proposed trades is above such thresholds as the board of directors or head(s) of the organisation may stipulate.

5. The compliance officer shall confidentially maintain a list of such securities as a "restricted list" which shall be used as the basis for approving or rejecting applications for pre-clearance of trades."

- e. With respect to query (i) above:

Regulation 9(1) read with Clause 4 of Schedule C of the PIT Regulations stipulates that every intermediary registered with SEBI shall formulate a code of conduct approved by board of directors/

head(s) of the intermediary to regulate, monitor and report trading by its designated persons and their immediate relatives. Such trading shall be subject to pre-clearance by the compliance officer(s) above a certain value threshold as decided by board of directors or head(s) of the organisation of the intermediary. Therefore, trading in all securities by the designated persons shall be subject to pre-clearance by the compliance officer if its value is above a certain threshold. The restricted list shall be used as a basis for approving or rejecting applications for pre-clearance of trades.

f. With respect to query (ii) above:

In terms of Clause 5 of Schedule C of PIT Regulations, compliance officer is responsible for maintaining restricted list on a confidential basis. Such restricted list shall be used by the compliance officer for approving or rejecting applications made for pre-clearance of trades. Such pre-clearance would decide the permissibility of proposed trade of designated employee for a given security. Therefore, sharing the restricted list with the designated persons would undermine the requirement of maintaining confidentiality of restricted list as stipulated in aforesaid Clause 5 of Schedule C of the PIT Regulations.

Regulation 9(3) of PIT Regulations provides that every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

Legislative Note: This provision is intended to designate a senior officer as the compliance officer with the responsibility to administer the code of conduct and monitor compliance with these regulations.

Extracts from SAT order dated 5th July, 2021 in the matter of Mr. Rajendra Kumar Dabriwala vs SEBI

As regards the violation of the Code of Conduct by non-closure of the trading window for a larger period, SAT observed that the arguments of the appellant being managing director, that only the Compliance Officer is liable, does not hold any water.

The Code of Conduct provides that the Compliance Officer shall report to the Chief Executive Officer, Managing Director etc. The Compliance Officer is responsible for implementation of the model Code of Conduct under the

overall supervision of the board of the company. In the circumstances, the enforcement of the Code of Conduct including closure of the trading window is not the responsibility solely of the Compliance Officer.

Extracts from order of the Whole Time Member of SEBI bearing No. WTM/MB/IVD/ID16/10770/2020-21 dated 5th March, 2021 in the matter of Marksans Pharma Ltd.

In this case, the Compliance Officer stated that RTA provides weekly BENPOS and BENPOS as at the end of every quarter. These reports run into hundreds of pages and it is quite impossible to track each and every employee's trading. Therefore, trading in the shares by Promoters, Directors and KMPs and employees upto Manager level and employees in the accounts, taxation, treasury, finance, legal and secretarial department in the corporate office are specifically tracked on weekly basis to ensure compliance of the company's Insider Trading Code of Conduct. Other employees including peons are excluded from weekly tracking. Additionally, transactions involving 1,00,000 shares or more are also specifically monitored on regular basis. On this SEBI Whole Time Member held that under the Code of Conduct of that company, although there was requirement on every employee to make continual disclosures of their trading in the company, this requirement does not absolve the Compliance Officer from his duty and responsibility of separately monitoring the trades of every employee. His duty to monitor the trades is independent of the disclosure requirements.

Extracts from SEBI Adjudication Order bearing No. PM/NR/2021-22/11339-11343 dated 16th April, 2021 in respect of Anjana Gupta and others in the matter of IFL Promoters Ltd. [Order under PIT Regulations 1992]

In this case under PIT Regulations 1992, in the Code of Conduct, the company had mentioned disclosure requirement for change in shareholding exceeding Rs. 5 lakh in value or 30,000 shares/securities or 1% of total shareholding or voting rights whichever is lower. However, the threshold in terms of number of shares was 25,000 in the Model Code prescribed under PIT Regulations 1992. Hence, SEBI Adjudication Officer held that the responsibility is casted upon the company and its directors to ensure that the Code of Conduct adopted by the company confirms to the Model Code of Conduct prescribed in SEBI (PIT) Regulations, 1992. In the instant case, it is noted that the Code of Conduct is not in conformity with that of prescribed in SEBI (PIT) Regulations, 1992 and hence, there is a violation of PIT Regulations.

Designated persons

Regulation 9(4) of the PIT Regulations provides that for the purpose of sub-regulation (1) and (2), the board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:

- (i) Employees of such listed company, intermediary or fiduciary designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors or analogous body;
- (ii) Employees of material subsidiaries of such listed companies designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors;

ICSI's View: *Since the term "material subsidiary" is not defined in the PIT Regulations, its meaning as provided under Regulation 16(1)(c) of the Listing Regulations may be used. The Listing Regulations define the term as under:*

Regulation 16(1)(c)- "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds ten percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

- (iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;

Guidance from SEBI (dated 5th July, 2019)

Query: *What is the scope of the term 'investment company' as mentioned in Regulation 9(4)(iii)?*

Guidance: *The Regulation 9(4)(iii) intends to include only those non-individual corporate promoters of intermediaries or fiduciaries as designated person, whose main object or principal activity, is investing in securities of other companies. For e.g., if the promoter of a broking entity is a Bank, then such promoter shall not be specified as designated person to be covered by the code of conduct of the intermediary. However, if the promoter of a broking entity is an*

investment company which holds investments in various companies, then such an entity shall be specified as designated person to be covered by the code of conduct of the intermediary.

- (iv) Chief Executive Officer and employees up to two levels below Chief Executive Officer of such listed 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;
- (v) Any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to unpublished price sensitive information.

Guidance from SEBI (4th November, 2019)

Query: *In case a designated person resigns, what information should be collected by the company/ intermediary/ fiduciary under PIT Regulations?*

Guidance: *All information which is required to be collected from designated persons, should be collected till date of service of such employees with the company. Upon resignation from service of designated person, a company/ intermediary/ fiduciary should maintain the updated address and contact details of such designated person. The company/intermediary/ fiduciary should make efforts to maintain updated address and contact details of such persons for one year after resignation from service. Such data should be preserved by the company/ intermediary/ fiduciary for a period of 5 years.*

Guidance from SEBI (29th April, 2021)

Query: *Is it mandatory to include all team members of support staff, i.e., IT, secretarial, finance etc. in the list of designated person or only manager & above to be included in the list?*

Guidance: *As per Regulation 9(4), designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to UPSI in addition to seniority and professional designation. Further, Regulation 9(4)(v) specify any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to unpublished price sensitive information shall be included in the list of designated person.*

Query: Should whole-time director/managing director of a holding company be added as designated person of the subsidiary company?

Guidance: The guiding principle for identifying designated person is role and function in the organisation and the access that such role and function would provide to UPSI. Since whole-time director/managing director of holding company may have access to UPSI of its subsidiary company, the same shall be added as designated person of the subsidiary company.

Query: As per regulation 9(4), whether the term “all promoters” cover promoter group under the ambit of designated person?

Guidance: Regulation 9(4)(iii) specifies that all promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries shall be included as designated person. Further, if promoter group is having access to UPSI then the same shall also be included under the ambit of designated person.

Monitoring of Trades

Issue: Does the compliance officer have to monitor trades of a designated person post his resignation?

ICSI's view: The compliance officer is duty bound to monitor trading by the designated persons only. Upon resignation, a “designated person” will no longer be a designated person and will be a “connected person” for a period of 6 months. The duty of monitoring trades is only vis-à-vis designated persons and not connected persons. However, as per the above mentioned Guidance in the form of Frequently Asked Questions (FAQs) issued by SEBI, the company should maintain the updated address and contact details of such designated person for a period of one year after resignation from service. Such data should be preserved by the company/ intermediary/ fiduciary for a period of 5 years. The term “resignation” shall include retirement from service of the company.

Issue: Should the compliance officer get a Non-Disclosure/No Trade Agreement (NDA) signed when a designated person is resigning as part of full and final settlement?

ICSI's view: Prior to the relieving of a designated person, the compliance officer should obtain a Non-Disclosure/No Trade Agreement (NDA) signed by such designated person covering a period of 6 months.

Issue: The language of Regulation 9(4)(iii) above suggests that all promoters, whether individuals or corporates or LLPs or any other persons, will be covered within the meaning of 'designated persons'. In other words, even corporate promoters would also be covered within the ambit of 'designated persons' and will have to comply with the restrictions prescribed under Schedule B of the PIT Regulations.

ICSI's View: The term 'person' is not restricted to individual or natural person only, hence, this may include the corporates.

ICSI's View: Companies may obtain yearly affirmations from the designated persons regarding compliance with the Code of Conduct by them as well as by their immediate relatives. The companies may also obtain an affirmation from the intermediaries regarding formulation of Code of Conduct and compliance thereof with respect to the securities of the company. Additionally, companies should have necessary systems to monitor compliance of the Regulations.

Background: The PIT Regulations prescribe that certain codes be followed by listed companies, market intermediaries and other entities. The Code of Fair Disclosure specified in Regulation 8 of the PIT Regulations deals with the practices and procedures to be followed by listed companies for ensuring fair disclosure of UPSI. The Code of Conduct specified in Regulation 9 is applicable to listed companies, SEBI-registered market intermediaries and other entities for regulating, monitoring and reporting trading by their employees and others.

The Viswanathan Committee had noted that SEBI-registered intermediaries are also required to follow Codes of Conduct under the respective regulations governing their activities. For instance mutual funds are registered under the SEBI (Mutual Funds) Regulations, 1996 and are required to follow the Code of Conduct laid down for them in the said regulations. Similarly, brokers are registered under the SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992 and are required to follow the code of conduct laid down under these regulations. This leads to multiplicity of Codes of Conduct to be followed by market intermediaries.

The committee explored whether it was possible to reduce multiplicity of Codes of Conduct in various Regulations and consolidate them so as to better delineate the responsibilities for compliance. The committee also examined the necessity of further refinements in Code(s) of Conduct for improving transparency and better compliance.

The Viswanathan Committee noted that the Codes of Conduct specified in the

respective Regulations governing the activity of a market intermediary fulfilled a different purpose and laid down conduct requirements which were specific to the role of the market intermediary, such as the fiduciary responsibility of an intermediary towards clients, maintaining high standards of fairness and integrity in their business etc. On the other hand, the Code of Conduct prescribed in the PIT Regulations dealt specifically with regulating trading in securities by persons who could have access to UPSI. Thus, the different codes of conduct had different roles and it would be prudent to retain them separately.

The committee reviewed the Code of Conduct and the Code of Fair Disclosure under the PIT Regulations from the perspective of bringing more clarity as well as making suggestions to have better prevention of insider trading. The Code of Conduct which regulates trading in securities is a means to ensuring that persons who have access to UPSI are aware of their responsibility to not trade in securities while in possession of UPSI. Hence, the codes provide for trading windows when such persons can trade, and require reporting of trades carried out. The committee also considered enhancing reporting requirements to help ease the challenges faced in investigating cases of insider trading.

Separate Code of Conduct for Listed Companies, Market Intermediaries and other entities

The erstwhile PIT Regulations specified a common Code of Conduct applicable to listed companies, intermediaries and other persons who were entrusted to handle UPSI during the course of their business operations, such as auditors, accountancy firms, law firms, analysts and consultants. From a practical viewpoint, all provisions of the Code of Conduct may not be applicable equally to listed companies, intermediaries and other entities like auditors, law firms etc.

For instance, the requirement of trading window in which employees can trade in the company stock is applicable only to listed companies. This is not applicable for intermediaries who may have access to UPSI related to multiple companies with which they have business dealings. Thus, intermediaries are required to use grey lists or restricted lists of securities in which trading is restricted.

For the purpose of convenience, a common term, "fiduciaries" may be used in the regulations for referring to other persons who are required to handle UPSI during the course of their business operations, such as auditors, accountancy firms, law firms, analysts and consultants.

Accordingly, in order to bring clarity on the requirements applicable to listed companies and others, the Viswanathan Committee recommended that

the PIT Regulations may be amended to prescribe two separate Codes of Conduct prescribing minimum standards for (1) Listed companies and (2) Other persons who are required to handle UPSI during the course of their business operations such as market intermediaries and fiduciaries which include auditors, accountancy firms, law firms, consultants etc.

The committee recommended that the code of conduct may be made applicable to "designated person(s)" and immediate relatives of the "designated person(s)" only. Under the PIT Regulations, the Code of Conduct is applicable to designated persons and immediate relatives of designated persons.

Extracts from interpretive letter dated 1st October, 2019 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Apollo Tricoat Tubes Ltd.

Facts of the case:

- a. *The shares of the company were earlier listed on Delhi Stock Exchange which subsequently got listed on the bourse of BSE Limited on 28th July, 2014.*
- b. *During the period, Mr. Manoj Gupta, Mr. Vijay Kumar, Mr. Kanav Gupta and Mr. Saurabh Jindal (hereinafter the 'Initial Promoters') were the then promoters of the company and were holding 30,97,900 equity shares representing 16.75% of the total shareholding of the company till March 2016.*
- c. *On 21st January, 2016, the Initial Promoters entered into a Share Purchase Agreement (SPA) with Mr. Saket Agarwal selling their entire shareholding of 30,97,900 fully paid-up equity shares (representing 16.75% of the then share capital of the company) transferring the control of the company to Mr. Saket Agarwal.*
- d. *Pursuant to this, Mr. Saket Agarwal made an open offer in terms of Regulation 3(1) and (4) of SEBI (SAST) Regulations, 2011. On completion of open offer, the shareholding of Mr. Saket Agarwal increased from 20.54% to 39.04%. Mr. Saket Agarwal was also appointed as the managing director on 27th August, 2016.*
- e. *Subsequently, the company was renamed as 'Best Steel Logistics Limited' and Mr. Saket Agarwal was shown as the promoter of the company in the shareholding pattern filed with BSE Limited for the quarter ending June 2016.*

- f. On 29th January, 2018, the board of directors of the company approved the preferential allotment of 72 lakh equity shares to Mr. Rahul Gupta which increased his shareholding from 4.49% to 31.25% of the paid-up share capital of the company. This triggered the obligation to make open offer in terms of Regulation 3(1) of SEBI (SAST) Regulations, 2011. Besides this, the company also allotted 43 lakh warrants convertible into equal number of equity shares to Mr. Rahul Gupta.
- g. On completion of the aforesaid open offer, the shareholding of Mr. Rahul Gupta along with Mr. Sameer Gupta; his person acting in concert, got increased to 31.25%. Subsequently, Mr. Rahul Gupta was appointed as the managing director and Ms. Megha Gupta was appointed as director. Simultaneously, Mr. Saket Agarwal tendered his resignation w.e.f. 2nd June, 2018. The new management of the company renamed the company to 'Apollo Tricoat Tubes Limited' (ATTL) on 21st August, 2018.
- h. Later, on 18th October, 2018, Mr. Rahul Gupta entered into a Share Purchase Agreement with Lakshmi Metal Udyog Limited (belonging to Rahul Gupta group) for selling 14.10% of the fully diluted share capital of the company. Due to increase in shareholding of Lakshmi Metal Udyog beyond 25%, another open offer was made by Lakshmi Metal Udyog with Mr. Rahul Gupta and others as PACs vide letter of offer dated 29th December, 2018.
- i. In the letter of offer dated 27th March, 2018 made by Mr. Rahul Gupta along with his PAC, it was clearly provided that Saket Agarwal is an erstwhile promoter and intends to be categorized in public category. On the said date, Mr. Saket Agarwal held 25.54% in the equity share capital of the company.
- j. In the letter of offer dated 29th December, 2018 made by Lakshmi Metal Udyog Ltd., it was reiterated that Saket Agarwal is an erstwhile promoter and intends to be categorized in public category. On the said date, Mr. Saket Agarwal held 17.94% in the equity share capital of the company.
- k. Mr. Saket Agarwal is not acting as a promoter and is not interested in the management and control of the company. This is also evident from the fact that he ceased to be director in the company ever since 12th June, 2018 and his shareholding has also declined over the period from 23.77% in June 2018 to 13.34% in June 2019. He has

no role in any decision making of the company or have access to any information pertaining to the business operations of the company.

- l. Even though he is not acting as a promoter of the company since May 2018 and is neither in the management of the company, (much more than six months), he is restrained to adhere to trading window closure requirements as he cannot be classified as a public shareholder due to the provisions of the SEBI (LODR) Regulations. Hence, he is restricted from freely dealing in the shares of the company.*
- m. Regulation 9(4) of the PIT Regulations lists the class of persons who shall be identified as designated persons. Further Regulation 31(A) of the SEBI (LODR) Regulations requires that all such promoters/persons belonging to the promoter group seeking re-classification of status as public shall not together, hold more than 10% of the total voting rights in the listed entity.*

Query:

- a. Whether a person who is merely continuing to be named as promoter owing to the provision of LODR but not acting as a promoter of the company and exercises no control, has no role in the management and not holding any position in the company will be identified as a 'non-designated persons' for the purpose of Regulation 9(4) of the PIT Regulations.*
- b. If this non-designated person executes trade during trading window closure, whether it will tantamount to violation of clause 4 of the Schedule B of the PIT Regulations.*

Guidance from SEBI:

- a. Regulation 9(4) of the PIT Regulations reads as follows:*

"The board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:

(i)

(ii)

(iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;

(iv)

(v)"

- b. The PIT Regulations identify promoters as designated persons. Hence, a person identified as a promoter is required to comply with the code of conduct requirements as required by other designated persons.
- c. Mr. Saket Agarwal, by virtue of being named as a promoter and on account of continuing to hold greater than 10% of the total voting rights in the company shall be identified as a designated person for the purpose of compliance with company's code of conduct.
- d. Resultantly, any trade by Mr. Saket Agarwal during trading window closure would tantamount to violation of clause 4 of the Schedule B of the PIT Regulations.

Extracts from interpretive letter dated 9th October, 2018 issued under SEBI (Informal Guidance) Scheme, 2003 regarding investment by the employees of SBI Funds Management Private Limited (SBIFM) in schemes of Alternative Investment Fund (AIF).

Facts of the case:

- a. In terms of the SEBI (Alternate Investment Fund) Regulations, 2012 (hereinafter referred as the AIF Regulations), SBIFM is the manager of SBI Alternative Equity Fund, a SEBI registered category III Alternative Investment Fund (AIF).
- b. SBIFM is also Asset Management Company (AMC) of SBI Mutual Fund (MF) and SBI Portfolio Management Services (PMS), both registered with SEBI.
- c. SBIFM has adopted an 'employee dealing policy' and code of conduct in line with SEBI Circular No. MFD/CIR/No.4/216/2001 dated 8th May, 2001 as amended from time to time and the SEBI (PIT) Regulations, 2015, respectively.

- d. *The said circular and the code of conduct do not specifically mention 'investment in the AIF schemes' within the ambit of securities to which the circular and the code apply.*
- e. *Some of SBIFM's employees including fund managers and research analysts are interested in investing in AIF schemes. AIF Regulations allow employees of the manager to make investments in the schemes of AIF. However, such employees of SBIFM or select employees of SBIFM who are interested in making such investment, by virtue of their employment with SBIFM, may be aware of the securities being bought and sold by SBIFM.*
- f. *Regulation 2(1)(i) of the PIT Regulations defines "securities" as having the same meaning as assigned to it under the Securities Contracts (Regulation) Act, 1956 [SCRA] or any modification thereof except units of a mutual fund (MF). Given the similarity between MFs and AIFs, the PIT Regulations should not apply to investment in AIFs as well.*
- g. *Further, AIF schemes raise funds from investors by way of issue of units to the investors and such units themselves are not listed or proposed to be listed.*
- h. *Investments in units of AIF schemes, by employees having information about securities being bought and sold by SBIFM, will not tantamount to indirect possession of UPSI and will not violate the provisions of Regulation 4(1) of the PIT Regulations in case employees makes investment in AIF schemes.*

Query:

- (1) *Whether employees of SBIFM can invest in units of AIF schemes.*
- (2) *Whether the code of conduct under the PIT Regulations shall be applicable to employees of SBIFM for investment in units of AIF schemes.*

Reply to Query No. 1:

Employees of AIF schemes can invest in the units of AIF subject to requirements specified in the AIF Regulations.

Reply to Query No. 2

- a. *It is stated in the letter seeking guidance that the intended employees of SBIMF who wish to invest in units of SBI AIF schemes would have access to the information about the potential buying and selling of securities by SBI Mutual Fund.*
- b. *As per AIF Regulations, AIF schemes can invest in both listed and unlisted securities. Further, such listed securities are amenable for insider trading.*
- c. *In this regard, Regulation 9 of the PIT Regulations states that the board of directors of every listed company and market intermediary shall formulate a code of conduct governing trading by their employees and other connected persons. The intent of such code is to set out the minimum standards required to achieve compliance with the provisions of the PIT Regulations, especially, for the purpose of dealing/trading in securities by the employees/other connected persons.*
- d. *Further, your attention is drawn to SEBI circular (dated 17/11/2016) regarding investment/trading in securities by employees of AMCs and Trustees of Mutual Funds. This circular is being followed by AMCs/Trustees of MFs for monitoring trading/investment by employees of AMC(s) and Trustees of MFs. As stated in the said circular, Trustees, AMCs, their employees and directors are required to follow the PIT Regulations.*
- e. *In view of the above, the code of conduct specified in Regulation 9 read with schedule B¹ to the PIT Regulations is applicable to trading/investment by employees of AIFs/AMC(s) in units of AIF schemes that invest in securities listed or proposed to be listed.*

KEY MATTERS COVERED UNDER CODE OF CONDUCT**A. TRADING WINDOW****1. Definition of Trading Window**

As per Clause 4 of Schedule B – Code of Conduct, a notional

1. ICSI's View: Reference to "Schedule B" must now be read as Schedule C pursuant to an amendment in Regulation 9(1) of the PIT Regulations. But it will not have any impact on the Informal Guidance issued by SEBI prior to the date of this amendment.

trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of UPSI. Such closure shall be imposed in relation to such securities to which such UPSI relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

There have been exemptions given in following circumstances wherein the restriction of trading window shall not apply:

- (a) transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 (i.e., the circumstances which can be demonstrated to prove innocence) and in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board;*
- (b) transactions which are undertaken in accordance with respective regulations made by SEBI such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer or transactions which are undertaken through such other mechanism as may be specified by SEBI from time to time.*

SEBI has, vide its circular dated 23rd July, 2020, stated that "Trading window restrictions shall not apply in respect of Offer for Sale (OFS) and Rights Entitlements (RE) transactions carried out in accordance with framework specified by SEBI from time to time."

2. Trading Window Closure

Trading Window closure can be periodical or event-based:

(a) Periodic Trading Window Closure

In case of declaration of financial results of a company, which must be done on a quarterly basis by every listed entity as per the provisions of Listing Regulations, the trading window must be closed on a quarterly basis.

Duration of Trading Window closure

Trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results (Clause 4(1) of Schedule B).

As per the amendment in PIT Regulations dated 31st December, 2018, this clause was read as "Trading restriction period can be made applicable from the end of every quarter till 48 hours after the declaration of financial results." Because of the word "can" it appeared that this requirement was voluntary.

The stock exchanges had, vide their circulars dated 2nd April 2019, stated that it is mandatory to close trading window from end of every quarter and keep it closed till 48 hour after declaration of financial results.

Thereafter, SEBI had, vide amendment dated 25th July, 2019 affirmed the view of stock exchanges. Post this amendment PIT Regulations have been brought in line with the above referred circulars by substitution of the word "can" in this clause to "shall".

(b) Event based Trading Window Closure

Other than trading window closure for quarterly financial results, there can be other event based situations during which the trading window must be closed.

In addition to financial results PIT Regulations envisage the following situations, which are UPSI (as per the definition of UPSI given in PIT Regulations), during which the Trading Window must be closed:

- (i) dividends;*
- (ii) change in capital structure;*
- (iii) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*
- (iv) changes in key managerial personnel.*

In the above cases, the trading window shall remain closed from the time this information being UPSI had originated till the time this event is disclosed by the company publicly and/or to the stock exchanges or this event is abandoned by the company. Other than the above mentioned events, there can be many other events which can be UPSI and trading window must be closed from the time UPSI had originated till such events are publicly disclosed by the company.

3. Need for Identification of UPSI

Under Regulation 9A(2)(b), as a part of internal controls to be put in place by the Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary, all the UPSI shall be identified. This identification of UPSI can be done by providing certain guidelines on materiality/ thresholds in the Code of Conduct framed under Regulation 9. These materiality thresholds for identification of UPSI may be different than the thresholds prescribed under Regulation 30 of Listing Regulations for the purpose of disclosure to stock exchanges.

Hence, in case of the above mentioned events (as defined in the definition of UPSI) and any other events which may be considered as UPSI as per the Code of Conduct of the company, there can be situations when only a particular set of employees may have the said information which is UPSI. In such situations, it shall be sufficient if the trading window is closed for such specific set of people only who are privy to such UPSI.

4. Actions linked to Trading Window Closure

Whenever any particular information about any event which is considered as UPSI as per the materiality thresholds laid down by the company, if any, for identification as UPSI, is shared with any such employee who is not already covered in the list of designated persons, then in addition to closure of trading window, following actions need to be taken by the company:

- a) Confidentiality agreement/notice to be given to these employees.*
- b) Intimation about closure of trading window – if not informed earlier.*

- c) *These employees shall be considered as designated persons (if not already covered in the list of designated persons) till the time such UPSI is published by the company or abandoned by the company.*
- d) *Data collation as mentioned in Clause 14 of Model Code of Conduct must be done by the Compliance Officer.*

SOME INFORMAL GUIDANCE GIVEN BY SEBI ON TRADING WINDOW CLOSURE

Extracts from interpretive letter dated 25th July, 2016 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of HDFC Bank Ltd.

Facts of the case:

- a. *Some employees of the HDFC Bank (the "Bank"), who may be in possession of UPSI of the Bank or of other listed companies with whom the Bank deals, are consequently restricted from dealing in securities of the Bank or such other listed companies. These employees may choose to invest their funds in securities market through portfolio management schemes. The portfolio managers, under the discretionary portfolio management scheme, deals in the securities with the funds of the investors (investor includes employees of the Bank and his relative), as per its own discretion and the investor has no direct/indirect control/influence over the investment making decisions.*
- b. *Under the discretionary portfolio management scheme, day to day investment discretion for the account(s) are fully delegated to portfolio manager and is not shared with the investor. The portfolio manager does not discuss any potential investment /disinvestment decisions with investor before any transaction. The investor does not make suggestions to portfolio manager regarding specific investments/ disinvestments and the portfolio manager does not advise the investor of trades prior to their execution.*
- c. *The portfolio manager does not accept specific orders to buy and sell of any security at the direction of its client. The portfolio is standard portfolio and is not altered specifically for an investor. Investments in securities of companies as a part of discretionary portfolio management scheme is identifiable and the securities in*

the portfolio are mandatorily held in a separate demat account with power of attorney in favour of the portfolio manager.

- d. The portfolio manager, while exercising his discretion, makes investment/ disinvestment in securities, which may include securities of the Bank or securities of a listed company, for which the employee or his relative may be in possession of UPSI by virtue of being employee of the Bank, but the employee of the bank or his relative has no control directly or indirectly, over investments making decisions of the portfolio manager.*
- e. The employees furnish a declaration to the effect that they do not have any direct or indirect influence or control over the specific securities selected for the discretionary portfolio management services from the portfolio manager or from the organization in which the portfolio manager is serving.*

Query:

Whether the deals under portfolio management scheme by the portfolio manager for the employee of the Bank or his relative is in compliance with the provisions of SEBI PIT Regulations under the following circumstances:

- i. When the employee of the bank or his relative has no control over the investment making decisions and is in possession of UPSI of the bank or listed companies with which the bank deals or*
- ii. When the trading window is closed of the bank or of the company with which the bank deals.*

Guidance from SEBI:

- i. Regulation 4(1) of PIT Regulations unambiguously states that no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of UPSI.*

Further, in the explanatory notes to Regulation 4 of PIT Regulations it is mentioned that 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.

It is therefore inferred from the above that dealing in securities, whether it is direct or indirect, is not relevant, but that any insider when in possession of UPSI should not deal in securities of the company to which the UPSI pertains. Even while dealing in such securities through a discretionary portfolio management scheme, the trades of insider shall be assumed to be motivated by the knowledge and awareness of UPSI.

- (ii) With respect to dealing in securities, when the trading window of the Bank is closed, it may be noted that clause 4 of Schedule B of the PIT Regulations mandates operation of a notional trading window as an instrument of monitoring trading by the designated person. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of UPSI. Thus, Regulation 4(1) read with clause 4 of Schedule B of the PIT Regulations, infers that dealings by the Bank or the company with which the Bank deals in securities through a discretionary portfolio management scheme, when the trading window is closed, shall be assumed to be motivated by the knowledge and awareness of UPSI.*

1. ICSI's View : As on the date of issuance of this Guidance Note, Schedule B of the PIT Regulations lays down the Minimum Standards for Code of Conduct for listed companies and Schedule C of the PIT Regulations lays down the Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries. In this case, HDFC Bank Ltd. had sought Informal Guidance from SEBI in its capacity as a Listed company as well as Intermediary.

It is to be noted that the concept of "notional trading window" is prescribed only in Schedule B and not in Schedule C, i.e., part (iii) of the above guidance will now be relevant only in case of dealings in shares of the listed company.

However, Regulation 4(1) of PIT Regulations provides that "No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of UPSI." Further Explanation under Regulation 4(1) states that "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." Therefore, Intermediaries and employees of Intermediaries must take cognizance of the above Regulation before trading.

SOME CASE LAWS ON TRADING WINDOW CLOSURE

Extracts from SEBI Adjudication Order No. EAD-2/DSR/KM/PU/73/2014 dated 7th March, 2014 in the matter of Shelter InfraProjects Ltd. [Order under PIT Regulations 1992]

Mere circulation of code of conduct to all the board members does not tantamount to a communication that the trading window had to be closed before a particular event. A formal communication indicating the trading window to be closed ought to have been made before the event by the compliance officer.

ICSI View: *The compliance officer has to explicitly close the trading window and communicate the same.*

Extracts from SAT order dated 24th December, 2013 in the matter of Mr. G. Jayaraman vs. SEBI [Appeal No. 182 of 2012] [Order under PIT Regulations 1992]

Compliance officer would be liable for penalty if he fails to close trading window when in possession of UPSI even if the transaction resulting from that UPSI was yet to be placed before the board of directors for approval or even if no employee has traded in shares of that company when in possession of UPSI.

ICSI View: *An argument that a proposal for acquisition of another company(ies) was being placed before the board of directors for first seeking in-principle approval and then again a proposal will be placed before the board of directors for seeking final approval, cannot be considered as a defence for not closing the trading window immediately when the UPSI was created and the compliance officer came to know about it. The trading window ought to have been closed from the time in principle approval of the board of directors was received.*

Extracts from SAT order dated 27th May, 2011 in the matter of Mr. Manmohan Shetty, a director of Adlabs Films Limited [Appeal No. 132 of 2010] [Order under PIT Regulations 1992]

The code of conduct as mandated by the PIT Regulations for all practical purposes is to be treated as a part of the PIT Regulations and any violation of the code of conduct can be dealt with by SEBI as violation of PIT Regulations framed by it.

ICSI's View: Pursuant to SEBI circular dated 19th July, 2019 amended vide SEBI circular dated 23rd July, 2020, any violation of the Code of Conduct has to be reported to stock exchanges in the format specified in the said circular dated 23rd July, 2020.

Extracts from SEBI Adjudication Order bearing No. AP/AS/2021-22/11955-11956 dated 21st May, 2021 in the matter of Indiabulls Ventures Ltd.

In this case, it was held that the compliance officer being a professional and integral part of compliance of all the events of a company is reasonably expected to have access to all the major events culminating in a company. Therefore, it will be too naïve to assume that the compliance officer is not aware of a material event in the company and taking the shield of 'discretion' in making the decision of not closing the trading window is against the professional acumen of an expert such as 'compliance officer'. Assuming that the compliance officer has discretion in deciding to close window, even then the said discretion has to be exercised reasonably and within the four corners of applicable laws.

Extracts from order given by SEBI's Whole Time Member bearing No. WTM/AB/IVD/ID3/23/2020-21 dated 3rd February, 2021 in respect of Future Corporate Resources Private Limited in the matter of Future Retail Limited

In this case, the compliance officer had not specifically closed trading window in view of a provision in their Code of Conduct in relation to inter-alia demergers, the 'designated persons' (i.e., the team of persons who would work on the proposed transaction) are required to execute an undertaking "not to trade in the securities of the company earlier than forty-eight hours after the UPSI regarding the activity/project becomes generally available or the activity/project is abandoned, and the trading window in respect of such 'designated persons' is regarded as closed for them." Taking view of this deemed closure of trading window, he gave pre-clearance to promoter company taking a view that this promoter company did not have any other connection with the listed entity. However, this promoter company was owned by 7 LLPs whose partners were members of promoter family and the chairman and managing director of listed entity was a director and held beneficial interest to the extent of 32% shares of the promoter company.

Hence, SEBI held that the compliance officer should have sought further clarifications from the applicant for pre-clearance so as to dispel the

apprehension which should have arisen in the mind of an ordinary reasonable man much less than the compliance officer of a listed company.

The code of conduct of the listed entity provided that before giving pre-clearance of trade, compliance officer shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate. SEBI held that since the compliance officer did not seek any further clarifications on the undertaking of non-possession of UPSI by the applicant of pre-clearance, the compliance officer violated the provisions of code of conduct.

Extracts from SEBI Adjudication Order bearing No. KS/VC/2020-21/8265 dated 16th July, 2020 in the matter of Edelweiss Financial Services Ltd. (EFSL) read with SAT order dated 24th March, 2021 [Appeal No. 272 of 2020]

In this case it was observed by SEBI that Ecap Equities Limited ('Ecap'), a wholly owned subsidiary of EFSL, had acquired Alternative Investment Market Advisors Private Limited ('AIMIN'), a fintech company, on 5th April, 2017 by entering into a share purchase agreement (SPA). The same was disclosed by EFSL to NSE and BSE on the same day. Before SPA, a Term Sheet in respect of the said transaction was signed between Ecap and AIMIN on 25th January, 2017.

It was alleged that such acquisition was a price sensitive information which had come into existence on 25th January, 2017 upon signing of Term Sheet and the same was published on 5th April, 2017. Therefore, in this case the period of UPSI has been considered as 25th January, 2017 to 5th April, 2017 and the Noticee, being the compliance officer of the company, failed to close the trading window during the said period.

It may be noted that in respect of SEBI (Prohibition of Insider Trading) Regulations, 1992 the responsibility of closing of trading window was on the company, whereas under PIT Regulations, 2015, the said responsibility has been vested on the compliance officer of a listed company. Hence, Adjudicating Officer observed that there was certainly a duty cast on the Noticee to close the trading window in view of the existence of UPSI which the Noticee had admittedly failed to comply with. It was upheld by SAT too that in this case, the compliance officer should have closed the trading window on 25th January, 2017 upon signing of Term Sheet.

Guidance from SEBI (29th April, 2021)

Query: *Whether designated person can trade during the trading window closure for which pre-clearance was earlier provided by the compliance officer when the trading window was opened?*

Guidance: *The designated person cannot trade when the trading window is closed by the compliance officer. Any earlier pre-clearance obtained when the trading window was open, would be invalid once the trading window is closed.*

Query: Can grant of ESOP be made in trading window closure period?

Guidance: *Grant of ESOP refers to a right but not an obligation to acquire the shares of the company as and when the options are vested and correspondingly exercised by the Employees. Hence, grant of ESOP per se is not trading and accordingly can be made during trading window closure.*

Query: *If the trading window is closed, whether the compliance officer is required to inform the designated person or rejecting their trades during pre-clearance would be sufficient?*

Guidance: *The compliance officer shall communicate the closure of trading window to the designated persons. Mere rejection of their trades during pre-clearance would not be sufficient.*

Query: *When should the trading window be closed by the company?*

Guidance: *The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information.*

Query: *Shall the trading window be closed for every UPSI?*

Guidance: *Yes.*

Query: *During trading window closure, whether trades pursuant to trading plan can be executed?*

Guidance: Clause 4(3) read with Regulation 4(1) (vi) provides that trading window restrictions shall not apply in respect of trades pursuant to a trading plan.

Query: Can insiders trade through block deal window mechanism during trading window closure?

Guidance: Clause 4(3) read with Regulation 4(1) (ii) provides that trading window restrictions shall not apply in respect of trades carried out through the block deal window mechanism between insiders without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

B. PRE-CLEARANCE

1. Meaning of Pre-Clearance

As per Clause 6 of Schedule B – Code of Conduct, when the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate.

Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any UPSI. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.

ICSI's View: It is suggested that prior to granting pre-clearance, the compliance officer should ensure that the applicant is not in possession of any UPSI as on the date of application for pre-clearance.

2. Validity of Pre-Clearance

As per Clause 9 of Schedule B – the code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.

Guidance from SEBI (dated 24th August, 2015)

Query: Who will be approving authority for trades done by the compliance officer or his immediate relatives, as Insiders?

Guidance: The board of directors of the company shall be the approving authority in such cases and may stipulate such procedures as are deemed necessary to ensure compliance with PIT Regulations.

Issue: Is it necessary that if the trade is to be executed by the compliance officer or his immediate relative, the same has to be approved by the board of directors only?

ICSI's View: While considering the aforesaid guidance issued by SEBI, it would be appropriate if the board of directors, either as part of the code or specifically, authorises the chairman, managing director, CEO etc. for granting trading permission to the compliance officer.

Guidance from SEBI (4th November, 2019)

Query: Whether requirement of pre-clearance is applicable for exercise of employee stock options?

Guidance: Since employee stock options are issued under SEBI (Share Based Employee Benefits) Regulations, 2014, the exercise of such stock options is covered under clause 4(3)(b) of Schedule B of the SEBI (PIT) Regulations, 2015. However, sale of shares by employees after exercise of options shall not be covered under the aforesaid clause. Thus, no pre-clearance is required for exercise of stock options.

Guidance from SEBI (29th April, 2021)

Query: Can a managing director trade in its own company's shares with pre-clearance alone or a trading plan is necessary?

Guidance: Yes, managing director can trade with pre-clearance alone, if not in possession of UPSI. However, if the code of conduct of the company mandates trading plan for persons who may be perpetually in possession of unpublished price sensitive information, such persons shall abide by such code of conduct.

Query: *Is pre-clearance required for cashless option of ESOP wherein employees avail sell-all/sell to cover option involving market sale of shares acquired under ESOP?*

Guidance: *Yes, pre-clearance is required for cashless options because exercise of options and sale of shares acquired under ESOP are taking place simultaneously. Further, only exercising of ESOP is exempted from taking pre-clearance.*

Query: *Does pre-clearance required in case of off-market transfer of securities?*

Guidance: *For the purpose of PIT Regulations, trade includes both on-market and off-market. Hence, off-market transfer of securities would require pre-clearance as per the code of conduct of the company.*

SOME INFORMAL GUIDANCE GIVEN BY SEBI ON PRE-CLEARANCE

Extracts from interpretive letter dated 3rd February, 2017 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Kirloskar Chillars Pvt. Ltd.

Facts of the case:

- a. Kirloskar Chillers Pvt. Ltd. ("KCPL") is a private limited company and Kirloskar Brothers Limited ("KBL") is a public limited company both having their respective registered offices in Pune. KCPL is a part of the promoter group of KBL since KCPL is closely held by certain promoters of KBL. The 'Promoter and Promoter Group' of KBL collectively hold 65.44% of the total paid-up capital of the KBL as on September 30, 2016. KCPL currently does not hold any equity shares in KBL.
- b. Being public listed company, KBL has issued a "Code of practice and procedures for fair disclosure of unpublished price sensitive information ("UPSI") and code of conduct to regulate monitor and report trading by insiders of KBL" ("CoC") in accordance with Schedule B of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations").
- c. KCPL intends to acquire 50,000 equity shares, constituting 0.06% of the paid up capital of KBL ("Proposed Acquisition"), Since KCPL qualifies as a promoter group entity of the KBL, as per Regulation 9

of PIT Regulations, it is required to adhere to requirements contained in the CoC. Among other requirements, the CoC stipulates as follows:

“All insiders and designated employee, auditors, consultants and other advisors who intend to deal in the securities should obtain a pre-clearance of such transactions. An application may be made in the prescribed form of Code of Conduct to the compliance officer indicating the estimated numbers of securities to be dealt in. All other details as prescribed in the form shall also be provided with an undertaking as prescribed in Code of Conduct.”

d. In terms of CoC, KCPL made an application dated September 6, 2016 in the format prescribed under the CoC seeking pre-clearance of the compliance officer of KBL for the proposed acquisition. KCPL had also attached a declaration/ undertaking from KCPL that it does not possess any unpublished price sensitive information.

e. The said application was rejected by the compliance officer vide his letter dated September 6, 2016, without any valid grounds either under the PIT Regulations or the CoC. Upon request for the grounds of rejection of the application vide letter dated September 7, 2016, vide his letter dated September 12, 2016, the compliance officer attempted to justify the said rejection by stating as follows:

“In this connection we would like to inform you that your request for purchase of 50,000 (Fifty Thousand) equity shares of KBL on September 6, 2016 was rejected, inter-alia, for the reason that there is already approved pre-clearance in place for promoters and there is no balance number of shares available for trade.”

f. In light of the above background, the applicant (KCPL) through this interpretive letter seek guidance from SEBI on legal provisions relating to requirement of pre-clearance from the compliance officer and the grounds on which pre-clearance can be rejected by the compliance officer.

Query:

i. Whether KCPL or any other entity that qualifies as a promoter group entity requires a pre-clearance from KBL merely because it is a promoter, even though it has no role in the management of KBL or have any access whatsoever to UPSI?

Guidance from SEBI:

With respect to the above query, attention may be drawn to clause 6 of Schedule B of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) which states as under-

"6. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. ¹No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed."

As per the above clause, it may be stated that pre-clearance is required to be obtained only by "designated persons" if the value of the proposed trades is above such thresholds as stipulated by the board of directors.

Thus ²a promoter, if designated as a "designated person" by the board of directors in consultation with the compliance officer, will be required to obtain pre-clearance for trading.

Query:

- ii. Under Regulation 9 and Schedule B of the Insider Trading Regulations, whether a compliance officer has the power to reject pre-clearance request for reasons extraneous to the CoC and PIT Regulations?*
- iii. Whether the compliance officer has discretionary powers under the PIT Regulations to reject pre-clearance request on any reason it deems fit, even if legal? Whether a compliance officer can use*

1. ICSI's View: *As on the date of issuance of this Guidance Note, the following sentence in Clause 6 of Schedule B referred to in above Informal Guidance issued by SEBI has been deleted, but it will not have any impact on this Informal Guidance issued by SEBI:*

"No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed."

2. ICSI's View: *As on the date of issuance of this Guidance Note, it may be noted that as per Regulation 9(4)(iii) of the PIT Regulations, all promoters of listed companies must be included in the list of designated persons to be specified by the board of directors in consultation with the compliance officer. Hence, the discretion to include promoters in the list of designated persons or not, as mentioned in the above Informal Guidance is no longer available with listed companies. Hence, all promoters are mandatorily required to obtain pre-clearance for trading, if their trades cross the thresholds mentioned in the Code of Conduct. However, if a person is not a promoter but only a part of promoter group, discretion on whether they would be considered as designated persons or not, based on facts available with the listed company.*

reasons such as “for the reason that there is already approved pre-clearance in place for promoters and there is no balance number of shares available for trade” whereas the Takeover Code provides no such restriction for promoter acquiring shares.

- iv. What are the factors that the compliance officer is permitted to consider while approving or rejecting an application seeking pre-clearance for a proposed transaction?*

Guidance from SEBI:

With respect to query at para (ii), (iii) and (iv) above, attention may be drawn to Regulation 9(1) of the PIT Regulations which states that –

“9(1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.”

It may be stated that the Code of Conduct framed by the board of directors of every listed company and ²market intermediary, has to be in line with the standards set out in Schedule B, without diluting the provisions of PIT Regulations.

Further, attention is drawn to Regulation 2(1)(c) of the PIT Regulations, which states that “compliance officer” means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for

1. ICSI's View: As on the date of issuance of this Guidance Note, Regulation 9(1) of the PIT Regulations has been amended to provide for Schedule B and Schedule C. However, this shall not have any impact on the above Informal Guidance issued by SEBI prior to the amendment in Regulation 9(1).

2. ICSI's View: As on the date of issuance of this Guidance Note, this provision has been amended to provide that the Code of Conduct to be framed by Intermediary has to be in line with the standards set out in Schedule C (and not Schedule B). However, this shall not have any impact on the above Informal Guidance issued by SEBI prior to this amendment.

the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be;

Further, it may be stated that Schedule B of the PIT Regulations casts certain obligations on the compliance officer which has to be complied accordingly.

The compliance officer may approve or reject a pre-clearance request after necessary assessment as per the PIT Regulations and the Code of Conduct.

Query:

(v) Under the above background, whether the compliance officer has the power to reject the application of KCPL based on the grounds stated in his communications, which are extraneous to requirements of CoC and PIT Regulations?

Guidance from SEBI:

With respect to query at para (v) above, attention may be drawn to clause 1 of Schedule B of PIT Regulations which states as under:

"1. The compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors¹."

In view of the above provision read with Regulation 2(1)(c) of the PIT Regulations mentioned above, it may be stated that the compliance officer acts under the overall supervision of the board of directors or the audit committee. Any question with respect to the act of compliance officer whether or not extraneous to the powers so conferred according to the PIT Regulations and the Code of Conduct, may be referred to the board of directors and the audit committee for examination in accordance with the extant laws and the relevant facts of the case.

1. ICSI's View: As on the date of issuance of this Guidance Note, it may be noted that in clause 1 of Schedule B of the PIT Regulations as mentioned above, the words "but not less than once in a year" have been added. However, this shall not have any impact on the above Informal Guidance issued by SEBI prior to the amendment in clause 1.

It is reiterated that the basic intent of PIT Regulations is that no undue advantage accrue to certain category of investors on account of their access to UPSI, and it is assumed that in this regard, any actions of compliance officer, board of directors or other entities entrusted with ensuring adherence to these Regulations, should be to ensure compliance in letter and spirit to the PIT Regulations and not for any ulterior motive.

Extracts from interpretive letter dated 8th February, 2021 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of KCP Ltd.

Facts of the case:

- a. The Liquidator of Jeypore Sugar Company Limited ("JSCL") has approached the company Secretary & Compliance officer of KCP Limited ("KCPL") for clarification of sale of shares to promoter and CMD of KCPL during the closure of trading window in accordance with exemption provided in sub-regulation 3 of Regulation 4 as off-market transfer and inter-se sale between insiders.*
- b. Both the companies' (JSCL and KCPL) managements are related to each other and form part of promoter group. The proposed share transaction is only about 0.22% of the share capital of KCPL. The promoters are presently holding 43.78% of shares KCPL and the proposed acquisition is not likely to make any major difference in the shareholding pattern of the company as it is only an inter-se transfer between the promoters.*
- c. JSCL is in liquidation and the Liquidator has initiated the sale procedure in November itself and the sale transaction was delayed due to procedural formalities.*
- d. The sale is as per the market price and both the parties have confirmed that they are well informed and they would not have any price sensitive information.*

Query:

- (i) Can Dr. V. L. Indira Dutt (Promoter and CMD of KCPL) acquire 2,78,370 shares from the Liquidator of JSCL at market price, during the closure of trading window as off-market sale as JSCL is also a promoter group company and both are considered as insiders and both of them have confirmed that there is no material information about the company and they are making a conscious and informed trade decision.*

- (ii) Can the compliance officer give clearance for sale of shares during the closing period of trading window?*
- (iii) Any other declarations/confirmations required to be obtained from the Liquidator of JSCL and promoter & CMD of KCPL for the sale.*

Guidance from SEBI:

1. *With respect to query at (i) above:*
 - 1.1 *It has been submitted that Dr. V. L. Indira Dutt (promoter and CMD of KCPL), agreed to buy/acquire shares (2,78,370 equity shares constituting 0.22% of the share capital) of KCPL from JSCL (JSCL being part of promoter group of KCPL) and that JSCL is under liquidation and that the said shares of KCPL were stated to have been released by the depository in favour of the Liquidator of JSCL.*
 - 1.2 *The proposed off-market transfer of shares is taking place between promoter & CMD of KCPL and JSCL (acting through the Liquidator). It has been further submitted that both the parties are insiders having no material information and are making a conscious and informed trade decision and that the sale is as per market price. Both parties have confirmed that they are well informed, indicating no information asymmetry.*
 - 1.3 *Since both Dr. V. L. Indira Dutt and JSCL are insiders in terms of Regulation 2(1)(g) of PIT Regulations, the transaction referred hereinbefore would be covered under Regulation 4(1)(i) of PIT Regulations amounting to inter-se transaction between insiders, who were/are in possession of the same information (indicating no information asymmetry) as long as it is not in breach of Regulation 3 of PIT Regulations. Further, this transaction would be exempted from the trading window restrictions as per clause 4(3) of Schedule B of the PIT Regulations.*
 - 1.4 *Hence, promoter and CMD of KCPL may buy/acquire equity shares of KCPL from the Liquidator of JSCL subject to pre-clearance by the compliance officer of KCPL in terms of Regulation 4(1) read with Clause 4(3) of Schedule B and Regulation 3 of the PIT Regulations.*

2. With respect to query at (ii) and (iii) above:

In terms of Clause 4(3) of Schedule B of PIT Regulations, the proposed transaction would be exempted from trading window restrictions subject to pre-clearance by the compliance officer taking into account facts of the case. The compliance officer of KCPL may seek necessary declarations/confirmations from the parties including a confirmation that the proposed transaction is in compliance with the provisions of the Insolvency and Bankruptcy Code, 2016. The compliance officer of KCPL may also ensure compliance with the applicable reporting requirements under the PIT Regulations.

Extracts from SEBI Adjudication Order bearing No. GR/KG/2020-21/8240 dated 10th July, 2020 in respect of Mr. Anil Mittal in the matter of Indiabulls Real Estate Ltd.

In this case, a designated person gave an undertaking that he did not possess UPSI and took pre-clearance for the trade, when he was in possession of UPSI. Thereafter when the case was being adjudicated by SEBI, it was argued that the trade was done based on pre-clearance from Compliance Officer. SEBI Adjudication Officer held that to this extent, the contents of the undertaking were factually incorrect and was a misrepresentation on the part of the Noticee before the compliance officer. The said clearance received on the basis of misrepresentation of a vital fact, is not a valid clearance and the Noticee cannot seek to defend its action on the basis of the said clearance.

Considering the factual position given in the above case, it is recommended that Compliance Officers should be very careful while giving pre-clearance and should obtain adequate declarations from the applicant and also cross check with the structured digital database as to whether the applicant's name is mentioned in the database or not.

C. CONTRA TRADE

1. Meaning of Contra Trade

As per Clause 10 of Schedule B – Code of Conduct, it shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade.

2. Applicability in case of ESOP

As per the amendment in PIT Regulations on 31st December, 2018, a proviso has been inserted in this clause stating that the restriction of contra trade shall not be applicable for trades pursuant to exercise of stock options.

Earlier this point was mentioned under the Guidance Note dated 24th August, 2015 issued by SEBI on PIT Regulations, wherein SEBI had mentioned as follows:

Exercise of ESOPs shall not be considered to be “trading” except for the purposes of Chapter III of the Regulations. However, other provisions of the Regulations shall apply to the sale of shares so acquired. An example was also given by SEBI as follows:

For Example:

- (i) If a designated person has sold/ purchased shares, he can subscribe and exercise ESOPs at any time after such sale/ purchase, without attracting contra trade restrictions.*
- (ii) Where a designated person acquires shares under an ESOP and subsequently sells/pledges those shares, such sale shall not be considered as contra trade, with respect to exercise of ESOPs.*
- (iii) Where a designated person purchases some shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) and subsequently sells/pledges (say on October 01, 2015) shares so acquired under ESOP, the sale will not be a contra trade but will be subject other provisions of the Regulations, however, he will not be able to sell the shares purchased on August 01, 2015 during the period of six months from August 01, 2015.*
- (iv) Where a designated person sells shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) the acquisition under ESOP shall not be a contra trade. Further, he can sell/pledge shares so acquired at any time thereafter without attracting contra trade restrictions. He, however, will not be able to purchase further shares during the period of six months from August 01, 2015 when he had sold shares.*

3. Applicability in case of Pledge

Since the definition of "trading" under PIT Regulations is wide enough to include "dealing" in shares also, the pledging of shares shall also be included in the definition of "trade."

Hence if a designated person pledges his shares, he cannot de-pledge the shares within a period of 6 months. Further, he cannot even change the banker with whom the shares are pledged as it will amount to de-pledge of shares and again pledge of shares.

4. Relaxation by Compliance Officer

As per Clause 10 of Schedule B – Code of Conduct, if the Code of Conduct specifies, the compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate the PIT Regulations.

5. Disgorgement of Profits

As per Clause 10 of Schedule B – Code of Conduct, if a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by SEBI under the SEBI Act.

Guidance from SEBI (dated 24th August, 2015)

Query: *Whether contra trade is allowed within the duration of the trading plan?*

Guidance: *Any trading opted by a person under trading plan can be done only to the extent and in the manner disclosed in the plan, save and except for pledging of securities.*

Query: *Whether the restriction on execution of contra trade in securities is applicable in case of buy back offers, open offers, rights issues FPOs etc., by listed companies?*

Guidance: *Buy back offers, open offers, rights issues, FPOs, bonus, exit offers etc. of a listed company are available to designated persons also, and restriction of 'contra trade' shall not apply in respect of such matters. Provided the initial transaction of buy/sell have been completed in accordance with PIT Regulations.*

Query: *Whether restriction on execution of contra trade is applicable only to designated persons of a listed company or whether it would also apply to the designated employees of market intermediaries and other persons who are required to handle UPSI in the course of business operations?*

Guidance: *The code prescribed by the Regulations is same for listed companies, market intermediaries and other persons who are required to handle UPSI in the course of business operations. Therefore, restrictions with regard to contra trade forming part of clause 10 of code of conduct¹ shall apply to all according to the Regulations.*

Query: *In case an employee or a director enters into Future & Option contract of Near/Mid/Far month contract, on expiry will it tantamount to contra trade? If the scrip of the company is part of any Index, does the exposure to that index of the employee or director also needs to be reported?*

Guidance: *Till 29th April, 2021, this was read as follows:*

Any derivative contract that is cash settled on expiry shall be considered to be a contra trade. Trading in index futures or such other derivatives where the scrip is part of such derivatives, need not be reported.

Post 29th April, 2021, this is read as follows:

Any derivative contract that is physically settled on expiry shall not be considered to be a contra trade. However, closing the contract before expiry (i.e., cash settled contract) would mean taking contra position. Trading in index futures or such other derivatives where the scrip is part of such derivatives, need not be reported.

Further on 29th April, 2021, below guidance with regard to derivatives was also given by SEBI:

Query: *Whether the immediate relative of the designated person can trade in the derivatives of the company?*

Guidance: *Yes. Designated person and his immediate relative can trade in derivatives when not in possession of UPSI and such trades are accordingly governed by the code of conduct.*

1. ICSI's View: *This Guidance was issued on 24th August, 2015 when there was a common Code applicable for listed companies, intermediaries and any other person required to handle UPSI in normal course. Now the Code is bifurcated into Schedule B and Schedule C. However, this FAQ remains unchanged and the restriction on contra trade is mentioned in Schedule C as well.*

Guidance from SEBI (29th April, 2021)

Query: In case shares are acquired pursuant to any corporate action by the company such as rights issue/FPO, whether the contra trade restrictions would apply if such shares are sold before completion of 6 months from the date of acquisition?

Guidance: If the first trade is an acquisition by way of rights issue/FPO, then subsequent sale of shares before 6 months from the date of acquisition would be considered as a contra trade.

Query: Whether the contra trade restrictions as prescribed in Schedule B and Schedule C of SEBI (PIT) Regulations, 2015 are applicable on designated person only or designated person and their immediate relatives?

Guidance: Clause 3 of Schedule B and Schedule C specifies designated persons and immediate relatives of designated persons in the organisation shall be governed by an internal code of conduct governing dealing in securities. Hence, contra trade restrictions (as mentioned in code of conduct) would be applicable to designated person and their immediate relatives collectively.

Query: Does contra trade restrictions apply on Share wise or Date wise.

Example: A designated person purchased 100 Shares on November 1, 2020 and then again 100 Shares on December 1, 2020. Whether the person can sell the 100 Shares acquired in November 2020 in May 2021? Or it will be treated as contra trade?

Guidance: Contra trade restrictions are applicable on date wise. Since shares are last bought on December 01, 2020, the person cannot trade for a period of 6 months from December 01, 2020.

Query: Does contra trade restrictions apply to debt securities of the company?

Guidance: For the applicability of SEBI (PIT) Regulations, securities shall have the same meaning assigned to it under the Securities Contracts (Regulation) Act, 1956, inter-alia, covers debt securities. Hence, contra trade restrictions would apply to debt securities.

Query: Can the compliance officer grant relaxation from contra trade restrictions?

Guidance: As per code of conduct, the compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations.

Query: Is Contra Trade restriction only applicable to trades under pre-clearance or on any transaction even if the trading does not exceed the threshold limit?

Guidance: Contra Trade restrictions are applicable on each and every trade irrespective of whether the trades are below or above the threshold limit of pre-clearance.

SOME INFORMAL GUIDANCE GIVEN BY SEBI ON CONTRA TRADE

Extracts from interpretive letter dated 9th November, 2015 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Geetanjali Trading and Investments Pvt. Ltd.

Facts of the case:

- a. The applicant (Geetanjali Trading and Investments Pvt. Ltd.) and its two wholly owned subsidiaries are promoter and promoter group entities of Asian Paints Limited (a listed company). They had been borrowing from financial institutions on an ongoing basis. Generally, the borrowing is in the form of term loans, with tenor of 2 to 3 years. The amount borrowed was secured by pledging the shares of the listed company in favour of the lenders (prior to PIT Regulations 2015 becoming effective). At the end of the tenure of the term loans, they are either rolled over with the same lender or shifted to other lenders, taking into consideration the commercial aspect of the term loans.
- b. At the time of maturity or put/call option of the term loans (including accrued interest thereon) the above entities would have to pledge and de-pledge the listed company shares in favour of the concerned lenders as per the loan agreements. This will result in pledging and simultaneously de-pledging of the listed company shares within a period of 6 months resulting in a "contra trade" in terms of clause 10 of schedule B of the SEBI PIT Regulations, and while in possession of UPSI relating to the listed company.

- c. *Similar to above, if the transaction as mentioned in previous point takes place when trading period of listed company is closed (i.e., maturity or put/call falling in a quiet period), concerned entity (borrower) would have to pledge and de-pledge listed company shares in favour of the concerned lenders as per the loan agreements.*
- d. *In case of a margin call being triggered by the pledge/lender under a term loan during the period when the trading period of listed company is open or closed, the borrower will have to pledge further shares of listed company in favour of the lender, as it is obligated to do so in terms of the respective loan agreements while in possession of UPSI relating to listed company, and such further pledge of shares may be during the period of six months during which a "contra trade" is prevented.*

Query:

The applicant had sought for a No-Action letter from SEBI.

Guidance from SEBI:

SEBI, vide guidance note dated August 24, 2015 ("SEBI Guidance Note"), has already clarified its position with respect to applicability of SEBI PIT Regulations in case of pledging of shares.

SEBI, through the above mentioned guidance note has stated that creation or invocation of pledge is prohibited while in possession of UPSI. However, the pledgor, or pledgee may demonstrate that the creation of pledge or invocation was bona fide and prove their innocence under proviso to sub-regulation (1) of Regulation 4 of the Regulations. This depends on the facts of each case.

In lines of the above, SEBI has informed the applicant seeking Informal Guidance that any pledge transaction as stated in your letter may be carried out. It is further stated that if and when any pledge transaction is carried out, it shall be expected to be within the spirit of the SEBI PIT Regulations and as has been brought out in the SEBI Guidance Note, the onus to demonstrate, bone fide intention behind such transactions shall lie with pledgor/pledgee.

It is presumed from the applicant's letter that the pledging of shares is for genuine business purposes and such pledges are created in accordance with provisions of the applicable laws with appropriate disclosures in compliance with various SEBI Regulations. In such a case, the defence provided in Regulation 4(1) of SEBI PIT Regulations will be available.

Extracts from interpretive letter dated 25th November, 2016 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of SBI Capital Markets Ltd.

Facts of the case:

- a. The PIT Regulations will become applicable to an intermediary when they are an insider, i.e., either they are in possession of Unpublished Price Sensitive Information (UPSI) or they are connected person in respect of a company whose shares are being traded by the intermediary. Therefore, all provisions stated in the Regulations would be applicable only when an intermediary is in possession of UPSI or they come under the definition of connected persons (as defined in Regulation 2(1)(d) in relation to the company whose shares are being traded by the intermediary).*
- b. Further, being an intermediary, a restricted list is maintained by the Applicant seeking informal guidance in compliance with the PIT Regulations. All the companies in which the applicant (SBICAP) is handling any assignment and is privy to any UPSI are put in this restricted list. Neither SBICAP nor any of its employees are allowed to trade in the shares of the companies which are in the restricted list. Trading is only allowed in the shares of the companies with which SBICAP is not connected in any way and about which it does not have any UPSI. It is also submitted by the applicant that since they are not trading in shares of companies which are in their restricted list, they are always abiding by Regulation 4, which restricts trade in securities when in possession of UPSI.*
- c. The definition of "insider" under Regulation 2(g) of PIT Regulations described as a connected person or a person in possession of or having access to UPSI. It is further contended that the Applicant is not a 'connected person' and do not have any UPSI of the companies which are not in its restricted list. Hence, the Applicant is not an "insider" as defined in the PIT Regulations in respect of the company.*
- d. Further, SBICAP is not a connected person for such company, neither SBICAP nor any of its employees are "designated persons" as per clause 3 of the schedule B (Code of conduct) of the PIT Regulations. Reference is then drawn to clause 10 of schedule B (Code of conduct) requiring the designated persons not to execute any contra trade within a period of six months and inference made that since SBICAP or its employees are not designated persons as stated above the contra trade restriction should not be applicable to SBICAP. The contra trade restriction is only applicable for trading in the shares of*

the companies in which SBICAP has UPSI, .i.e., the companies which are in the restricted list and not any other company. The same rule is applicable to SBICAP and all its employees.

Query:

Whether the restriction on SBICAP or any of its employees, of not executing a contra trade within six months as provided in clause 10 of Schedule B of PIT Regulations, is applicable on securities which are not in their restricted list?

Guidance from SEBI:

With regard to the above query, following provisions of the PIT Regulations may be applicable:

Regulation 9 of the PIT Regulations provides that-

"The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner."

Clause 3 of Schedule B of the PIT Regulations provides that-

"Employees and connected persons designated on the basis of their functional role ("designated persons") in the organization shall be governed by an internal code of conduct governing dealing in securities. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organization. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation."

Clause 4 of Schedule B of the PIT Regulations provides that –

"Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities

to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.”

Clause 7 of Schedule B of the PIT Regulations provides that-

“The compliance officer shall confidentially maintain a list of such securities as a “restricted list” which shall be used as the basis for approving or rejecting applications for pre-clearance of trades.”

Further Clause 8 of Schedule B of the PIT Regulations provides that-

“Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.”

Clause 10 of Schedule B of the PIT Regulations provides that:

“The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.”¹

1. ICSI's View : As on the date of Issuance of this Guidance Note , the above mentioned provisions of PIT Regulations have been amended as mentioned below, But this will not have any Impact on this Informal Guidance issued by SEBI prior to these amendments:

- earlier Regulation 9(1) has been amended to provide for Schedule B and Schedule C,
- the earlier Clause 3 of Schedule B corresponds to new Regulation 9(4) and new Clause 3 of Schedule B in the context of listed company itself and new Clause 3 of Schedule C in the context of Intermediary,
- the earlier Clause 4 and 7 of Schedule B corresponds to new Clause 4 of Schedule B in the context of listed company itself and new Clause 4 and 5 of Schedule C in the context of Intermediary,
- the earlier Clause 8 of Schedule B corresponds to new Clause 8 of Schedule B in the context of listed company itself and new Clause 6 of Schedule C in the context of Intermediary, and
- the earlier Clause 10 of Schedule B corresponds to the new Clause 10 of Schedule B in the context of listed company itself and new Clause 8 of Schedule C in the context of Intermediary.

Contra trades in those securities of which the designated persons are reasonably expected to have access to UPSI and such restriction is construed to be in respect of securities to which the UPSI pertains. It is noted from the Applicant's letter that being an intermediary, SBICAP is maintaining restricted list of all the companies in which SBICAP handling any new assignment and is privy to any UPSI. It is understood that restricted list maintained by SBICAP for pre-approval of trades in accordance with ¹Schedule B of PIT Regulations. However, contra trade restriction either on SBICAP or any of its employees for trading in securities of the listed companies which are not in the restricted list would depend on the connection that SBICAP or its ²designated employee has with the concerned listed company and subsequent possession of or access to UPSI.

If SBICAP or its employee is a connected person with a listed company and possess or have access to UPSI, such restriction shall be applicable, while on the other hand, for securities of the listed companies where no connection and possession or access to UPSI is envisaged, there may not be a need to impose the above restriction.

Extracts from interpretive letter dated 2nd November, 2016 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Kotak Mahindra Bank Ltd.

Facts of the case:

- a. *Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (the "PIT Regulations") require the board of directors of every listed company and market intermediary to formulate a code of conduct, adopting the minimum standards set out in Schedule B without diluting the provisions of the Regulations. As per Clause 10 of*

1. **ICSI's View:** Here the reference to "Schedule B" must now be read as Schedule C pursuant to an amendment in Regulation 9(1) of the PIT Regulations. But it will not have any impact on the Informal Guidance issued by SEBI prior to the date of this amendment.

2. **ICSI's View:** The word "employees and other connected persons" referred to in Regulation 9(1) has been amended to "designated persons and their immediate relatives." Further, as per newly inserted Regulation 9A(2)(a) in PIT Regulations, the internal controls put in place in the Intermediary must ensure that all employees who have access to UPSI are identified as designated person.

Hence, the impact of this Amendment on this Informal Guidance is that if any employee of the Intermediary possesses any UPSI with regard any other listed company with which the Intermediary deals, then such employee must be considered as a "designated person" and the restriction on trading in such securities will apply not only to him but also to his immediate relatives.

Schedule B, the code of conduct is required to specify a period (not being less than 6 months), within which a designated person who is permitted to trade shall not execute a contra trade. Clause 3 requires the designated persons to be defined as covering employees and connected persons designated on the basis of their functional role in the organization. Consequently, as per Applicant's interpretation all senior managers end up being defined as designated persons.

- b. Further, it is stated that PIT Regulations do not provide clarity on whether the restriction on contra trade is only in respect of the listed company's own securities or all listed securities. A plain reading of the clause suggests that it is applicable on all securities. However, it is contended that designated persons of a listed company may not be in possession of unpublished price sensitive information (the "UPSI") in respect of other listed securities and thus contra trade restrictions should not be applicable on them. It is also stated that even in case of intermediaries designated persons would not have UPSI of all companies.*
- c. Clause 4 of the Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, 2015 ("Guidance Note") exempts Buy Back offers, open offers, rights issues, FPOs, bonus, exit offers etc. of a listed company from the restriction of 'contra trade'. The applicant contends that similar clarity is required as regards applicability of restrictions on contra trade in case of securities acquired through subscription in IPOs. To further the argument, it is stated by the Applicant that in the earlier regulations the minimum holding period, in respect of subscription in the primary market (initial public offers), was 30 days.*

Query:

i. Whether the restriction on contra trade by designated persons is applicable only in respect of the listed company's own securities or for all listed securities?

Guidance from SEBI:

With regard to the above query, following provisions of the PIT Regulations may be applicable:

Regulation 9 of the PIT Regulations provides that- "The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner."

Clause 3 of Schedule B of the PIT Regulations provides that- "Employees and connected persons designated on the basis of their functional role ("designated persons") in the organisation shall be governed by an internal code of conduct governing dealing in securities. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation."

Clause 4 of Schedule B of the PIT Regulations provides that – "designated persons may execute trades subject to compliance with these regulations, towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed."

Clause 10 of Schedule B of the PIT Regulations provides that – "The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance

to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.”¹

From the reading of Clause 3 and 4 with Clause 10 of Schedule B of the PIT Regulations it is inferred that the code of conduct restricts contra trades in those securities of which the UPSI is available with the designated persons.

Query:

ii. Whether the guidance provided by SEBI exempting the applicability of restriction on contra trade in respect of buy back offers, open offers, rights issues, FPOs, bonus exit offers etc., will also be applicable in case of securities subscribed in an IPO?

Guidance from SEBI:

With regard to the above query, it may be stated that the neither PIT Regulations nor the guidance note dated August 24, 2015 exempts contra trades in cases of securities subscribed in an IPO.

Extracts from interpretive letter dated 23rd December, 2016 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Prabhudas Lilladher Pvt. Ltd.

Facts of the case:

- a. Regulation 2(1)(d)(iii) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) states as under –

1. **ICSI's View:** As on the date of Issuance of this Guidance Note, the above mentioned provisions of PIT Regulations have been amended as mentioned below, but this will not have any impact on this Informal Guidance issued by SEBI prior to these amendments:

- earlier Regulation 9(1) has been amended to provide for Schedule B and Schedule C,
- the earlier Clause 3 of Schedule B corresponds to new Regulation 9(4) and new Clause 3 of Schedule B in the context of listed company itself and new Clause 3 of Schedule C in the context of Intermediary,
- the earlier Clause 4 of Schedule B corresponds to new Clause 4 of Schedule B in the context of listed company itself and new Clause 4 and 5 of Schedule C in the context of Intermediary, and
- the earlier Clause 10 of Schedule B corresponds to the new Clause 10 of Schedule B in the context of listed company itself (which is same as earlier Clause 10 of Schedule B except that a new proviso is inserted) and new Clause 8 of Schedule C in the context of Intermediary.

“Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, –

- (j) 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.”*

The applicant has inferred that the above reference to a concern, firm, trust, HUF, company or association of persons is applicable to “director of a listed company” or immediate relative of the director of a listed company or banker of the listed company. The applicant has also inferred that the above definition shall not include directors of an unlisted market intermediary, his immediate relative or banker of the unlisted market intermediary.

- b. Regulation 2(1)(i) states that “securities” shall have the meaning assigned to it under the Securities Contracts (Regulation) Act, 1956 or any modification thereof except units of a mutual fund;*

The Applicant has also inferred that certain bonds can also be exempted from the definition subject to no UPSI is attracted inherently on such bonds.

- c. Regulation 9(1) of the PIT Regulations mandates the formulation of a code of conduct by listed company and market intermediary to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with PIT Regulations. The Applicant has also referred to para 3 of Schedule B of the PIT Regulations which states that “Employees and connected persons designated on the basis of their functional role (“designated*

1. ICSI's View: *As on the date of issuance of this Guidance Note, the above mentioned provisions of PIT Regulations are amended as mentioned below, but this will not have any impact on this Informal Guidance issued by SEBI prior to these amendments:*

- earlier Regulation 9(1) has been amended to provide for Schedule B and Schedule C,*
- the earlier Clause 3 of Schedule B corresponds to new Regulation 9(4) and new Clause 3 of Schedule B in the context of listed company itself and new Clause 3 of Schedule C in the context of Intermediary, and*
- the earlier Clause 10 of Schedule B corresponds to the new Clause 10 of Schedule B in the context of listed company itself and new Clause 8 of Schedule C in the context of Intermediary.*

persons”) in the organisation shall be governed by an internal code of conduct governing dealing in securities. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation.”

As per applicant, seniority and professional designation coupled with access to UPSI will make a person eligible to be identified as “designated person”. The code of conduct to be framed under the Regulation shall apply only to such “designated persons”. Monitoring trades/details of non-designated persons is purely optional.

- d. Additionally para 10 of schedule B specifies the restriction of no contra trade for six months, on a designated person permitted to trade and the section of subsequent guidance note dated August 24, 2015 issued by SEBI covering contra trade restriction regarding ESOPs and Derivatives. The said guidance note had, inter-alia, stated that restriction of ‘contra trade’ shall not apply in respect of buy back offers, open offers, rights issues, FPOs, bonus, exit offers etc.

With respect to the above, applicant has stated that “contra trade” is not defined under the Regulations and would mean (a) selling/pledging a security within 6 months of its purchase and (b) buy the same security within 6 months of its sale. Further the following 3 situations are interpreted as under by the applicant:

- (a) For a listed market intermediary, the restriction on contra trade is only with respect to deals/trades in securities of own company and not for other listed companies.
- (b) For holding/associate/subsidiary company of a listed market intermediary, the restriction on contra trade is in respect of deals/trades in securities of listed group companies and not for other listed companies.
- (c) For other market intermediaries, the restriction is not applicable in respect of any listed companies.

Query: i. Whether Regulation 2(1)(d)(iii)(j) [deemed connected person] is applicable to the directors of an unlisted market intermediary or his immediate relative or bankers of an unlisted market intermediary.

Guidance from SEBI:

With regard to the above query, it may be stated that any person, irrespective of being listed or unlisted, may be covered by the definition of "connected persons" if that person has a connection with the company that may put him in possession of UPSI. Attention is drawn to Section 2(1)(d)(ii)(j) of the PIT Regulations which states as under–

"(j) 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"

It may be stated that the term "company" in the phrase "director of company or his immediate relative or banker of the company" in the above mentioned regulation implies a listed company to which UPSI may pertain.

Query: ii. *Whether certain bonds can also be exempted from the definition of securities subject to no UPSI attracted inherently on such bonds.*

Guidance from SEBI:

With regard to the above query, it may be stated that the exclusion provided from the definition of securities in Regulation 2(1)(i) of the PIT Regulations, is with respect to Mutual funds units only.

Query: iii. *Whether contra trade would mean (a) selling a security within 6 months of its purchase and (b) buying the same security within 6 months of its sale. Whether applicant's interpretation with respect to restriction on contra trade for market intermediaries is correct. If yes, can it lead to a situation that the "contra trade" restriction is not applicable to a market intermediary who is not a listed company and may result in any dilution of the provisions of Regulation 9 (1) and item no. 3 & 10 of Schedule B.*

iv. *Whether the above interpretation can be applied to investment by "designated persons" in portfolio management scheme" also?*

Guidance from SEBI:

With respect to the query at (iii) and (iv) above, it may be stated that "contra trade" is not defined in the PIT Regulations. However, contra trade may be construed as opposite trading or reversal of the actual position. Attention may be drawn to Clause 10 of Schedule B of the PIT Regulations which states that-

"The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such a relaxation does not violate these regulations..."

From the above, it may be stated that the restriction to execute contra trades is construed to be only in respect of securities to which the UPSI pertains and will be applicable to designated persons as they are reasonably expected to have access to UPSI and thus insiders.

It may also be pointed out that in case of Intermediaries; a restricted list is maintained by the compliance officer for pre-approval of trades, in accordance with Schedule B of PIT Regulations.

Query: v. *Whether the "rebut" by a spouse of an "employee"/ "designated person" through written declaration, is sufficient enough for the market intermediary to exclude such spouse from the purview of code of conduct for employee trading?*

Guidance from SEBI:

With respect to the above query, it is noted that the guidance note on PIT Regulations dated August 24, 2015 states that a spouse is presumed to be an 'immediate relative', unless rebutted so. Further, whether a written declaration is sufficient or not is a hypothetical question and validity of the same can only be ascertained on case to case basis.

ICSI View: *With regard to the view given by SEBI for query (v) above, a reference can be made to SEBI order dated August 19, 2015 in the case of Mannapuram Finance Limited where it has been held that spouse of a director of a company shall be a person deemed to be connected to the company and economic dependency or otherwise of the spouse may not be of much relevance. The order also mentioned that it cannot be said that a spouse with independent income can trade without obtaining pre-clearance by the other spouse who is on the board of directors of the company and complying with other requirements under the Code of Conduct.*

Extracts from interpretive letter dated 25th November, 2019 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Arvind Ltd.

Facts of the case:

- a. *Arvind Limited is a company incorporated under the Indian Companies Act, 1913. The equity shares of Arvind Limited are listed on BSE and NSE.*
- b. *One of the promoters (say Mr. P) of Arvind Ltd. is also one of the successors of Lalbhai family. Over a period of time, due to inheritance, Mr. P has become the trustee in certain trusts where the shares of Arvind Ltd. are held under his PAN. He is also the executor of certain wills where he is required to distribute the proceeds of sale of shares of Arvind Ltd. to the legal heirs under the respective wills.*
- c. *Mr. P, who is a promoter and director of Arvind Ltd., is holding shares of Arvind Ltd. under his PAN in the following capacity:*
 - *in his personal capacity as an individual,*
 - *in the capacity of trustee for the benefit of Mr. P's family,*
 - *in the capacity of trustee for the benefit of the beneficiaries other than Mr. P's family, and*
 - *in the capacity of executor for various wills.*
- d. *Though these shares might be held in the same folio under the same PAN, since they are held for the benefit of different people and under different capacities, they will be accounted for under different entities and may be differentiated on the basis of utilization of their sale proceeds.*

Queries:

- i. *Whether Mr. P will be considered a designated person for the shares held by him under his personal capacity alone or for all the shares held under all the capacities.*
- ii. *In case he is considered a designated person for all the capacities, i.e., individual, trustee and executor, will the restrictions of contra-trade provided in Clause 10 of Schedule B of the PIT Regulations be applicable to all the shares held in all the capacities collectively or individually? For example, if Mr. P has sold shares in the capacity of executor of a will to distribute the assets to the legal heirs of the will, will he become barred from buying shares of Arvind Ltd. in his personal capacity?*

- iii. *Whether the restrictions of contra trade will be applicable to any shares held under a trust not under the PAN of Mr. P but under PAN of other trustees of the trust?*

Guidance from SEBI:

- a. *With respect to query (i) above, it may be stated that regulation 9(4) of the PIT Regulations, inter-alia, specifies the persons to be identified as 'designated person' on the basis of role and function in the organization and the access that such role and function would provide to the unpublished price sensitive information (UPSI). The term 'designated person' is wide enough to include any person having such role and function in the organization which would provide access to UPSI to such person in the opinion of the board of directors after consultation with the compliance officer.*
- b. *Once the determination of 'designated person' is done as per the provisions of regulation 9(4) of the PIT Regulations, the restrictions of contra trade given in Clause 10 of Schedule B and Clause 8 of Schedule C of the PIT Regulations would be applicable to the designated person irrespective of the capacities in which such person holds shares in the company.*
- c. *It may also be noted that as per SEBI's Circular MRD/DoP/Cir- 09/06 dated July 20, 2006, a person holding shares in different capacities is required to hold such shares under the PAN of respective entity.*
- d. *Thus with respect to query (i) and (ii) above, it is stated that if Mr. P is specified as a 'designated person' by the board of directors of Arvind Limited, the restrictions of contra trade would be applicable to all shares held under the PAN of Mr. P irrespective of the capacities in which Mr. P holds shares in the company.*
- e. *With respect to query (iii), it is reiterated that restrictions of contra trade given in Clause 10 of Schedule B and Clause 8 of Schedule C of the PIT Regulations will be applicable to shares held by any designated person. Thus, if a trustee holds shares under his own PAN, restrictions of contra trade will be applicable if such trustee is a 'designated person' in terms of Regulation 9 (4) of the PIT Regulations.*

Extracts from interpretive letter dated 9th September, 2021 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of KDDL Ltd.

Facts of the case:

- a. The company (KDDL Limited) had come out with a rights issue of 10,86,956 equity shares of Rs.10 each at an issue price of Rs.230 each and issue closed on May 07, 2021. The allotment of shares in the issue was completed on May 17, 2021.
- b. Dream Digital Technology Private Limited, member of the promoter group of the company (hereinafter referred to as 'Buyer') holds 17,615 (0.14%) fully paid up equity shares as on date (July 16, 2021) in the company. This includes 2000 shares allotted pursuant to rights issue on May 17, 2021.
- c. The Buyer made the following transactions in the shares of the company during last three years:

Date	Buy Qty.	Sale Qty.	Remarks
23-10-18	1000	0	Market
24-10-18	2	0	Market
23-11-18	15094	-	Conversion of warrants into shares
28-06-19	0	999	Market
24-06-19	0	1	Market
19-08-19	0	1000	Market
20-08-19	0	2150	Market
15-02-21	0	3640	Market
17-05-21	2000	-	Rights Issue

- d. Both Buyer and Seller are named in the shareholding pattern filed by the company for more than three years.
- e. Buyer proposes to buy equity shares of the company from seller through an Inter-se transfer of shares ("Proposed transaction") as per Regulation 10(1)(a)(ii) of the SAST Regulations, 2011.

Query:

- (i) *Whether the proposed inter-se transfer of shares between insiders (Buyer and Seller) within a period of six months post the allotment of shares under Rights Issue of the company will violate provisions regarding contra trade of the PIT Regulations and attract any penal provisions?*
- (ii) *Whether the Buyer who had sold shares of the company on 15th February, 2021 through market transaction, can buy shares from seller through inter-se transfer within 6 months from the above sale of shares?*
- (iii) *What will be the mode of such proposed transaction? Should it be off-market or on-market transaction?*
- (iv) *Whether closure of trading window restrictions would be applicable to the said proposed transaction?*
- (v) *How should the price be calculated for such proposed transaction?*

Guidance from SEBI:

1. *With respect to query at (i) above:*
 - 1.1 *In the instant matter, the Buyer intends to acquire shares of the company from the Seller and both parties are part of the promoter group. Clause 10 of Schedule B under Regulation 9 of PIT Regulations places a restriction on contra trades, if the same is executed during a period not less than six months. Hence, the issue under consideration is whether the proposed transaction, i.e., the inter-se transfer of shares from the Seller to the Buyer post the rights issue dated May 17, 2021, would amount to a contra trade.*
 - 1.2 *As clarified in the comprehensive FAQs on PIT Regulations available on the website of the SEBI (FAQ no.40), if the first trade is an acquisition by way of rights issue/FPO, then subsequent sale of shares before 6 months from date of acquisition would be considered as a contra trade.*
 - 1.3 *It has been submitted by the company in its letter that both the Buyer and Seller were allotted shares pursuant to Rights Issue on May 17, 2021 (1st leg) and subsequent to which they are planning to execute*

the proposed transaction. Therefore, sell transaction (2nd leg) post acquisition through rights issue will attract contra trade restrictions, i.e., the Seller in this case will attract contra trade restrictions.

1.4 That being said, Clause 10 of Schedule B under Regulation 9 of PIT Regulations also provides an avenue for relaxation from the restriction on contra trades. It states that the compliance officer of a company may be empowered to grant a relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations.

1.5 Accordingly, the proposed transaction will attract the restriction on contra trade. However, the compliance officer of the company may refer to the company's Code of Conduct framed under the PIT Regulations and act accordingly while ensuring the compliance with provisions of the PIT Regulations.

*2. With respect to query at **(ii) above**:*

2.1 As stated above, Clause 10 of Schedule B under Regulation 9 of PIT Regulations places a restriction on contra trades, if the same is executed during a period not less than six months. Further, as clarified by the FAQs on PIT Regulations (FAQ No. 43), these restrictions are applicable date wise.

2.2 It has been submitted by the company in its letter that the Buyer had sold shares of the company on 15th February, 2021 through a market transaction. In that scenario, the proposed inter-se transfer before the completion of 6 months from February 15, 2021 would attract contra trade restrictions in terms of the Code of Conduct framed by the company under the PIT Regulations.

*3. With respect to query at **(iv) above**:*

3.1 Clause 4(3)(a) of Schedule B under Regulation 9 of PIT Regulations states the following:

"The trading window restrictions mentioned in sub-clause (1) shall not apply in respect of —

(a) transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 and in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board;"

3.2 *In terms of clause 4(3)(a) of Schedule B under Regulation 9 of PIT Regulations, the proposed transaction would be exempted from trading window restrictions subject to pre-clearance by the compliance officer of the company and compliance with the respective regulations made by SEBI. Specifically, the parties will have to ensure that the applicable conditions mentioned in the proviso to Regulation 4(1) are complied with to avail this exemption. The compliance officer of the company may also ensure compliance with the applicable reporting requirements under PIT Regulations.*

4. *With respect to query at (iii) & (v) above:*

4.1 *Paragraph 8 of the SEBI (Informal Guidance) Scheme, 2003, inter-alia, states that SEBI does not respond to certain types of requests such as (i) requests which are general and those which do not completely and sufficiently describe the factual situation; or (ii) requests which involve hypothetical situations; or ... (iv) where the applicable legal provisions are not cited.*

4.2 *Considering that the company has not provided the complete details of the proposed transaction (details of number/percentage of shares to be transferred, date of transfer, etc.) and the applicable legal provisions no reply is warranted with respect to these queries.*

Extracts from interpretive letter dated 4th June, 2020 issued under the SEBI (Informal Guidance) Scheme, 2003 in the matter of Raghav Commercial Ltd.

Facts of the case:

- a) *The promoter & promoter group of HEG Ltd. consisting of Individuals/HUFs/Bodies Corporate holds 59.62% stake in the company.*
- b) *RSWM Limited and other members of the promoter & promoter group (hereinafter referred to as 'Erstwhile Selling Shareholders') traded/sold certain number of shares in the open market during the period 16th September, 2019 to 25th September, 2019.*
- c) *It is being proposed to undertake inter-se transfer of certain number of share of the company amongst the promoter & promoter group (i.e., between individual and non-individual insiders) by way of block deal executed on the stock exchange (hereinafter, referred to as*

the 'Proposed Transaction'). It is hereby clarified that the proposed inter-se transfer of shares amongst the promoter & promoter group shall not exceed 5%.

- d) To reiterate, acquirer(s) are the non-individual members of the promoter group.
- e) The erstwhile selling shareholders are not parties to the aforementioned proposed transaction.
- f) Post the proposed transaction amongst the promoter & promoter group, the overall shareholding of the promoter & promoter group remains the same, i.e., 59.62%.

Query:

- (i) Whether provision of contra trade apply to trades made by an individual promoter or whether the entire promoter & promoter group is considered for the same. For example, if a single promoter has executed a trade (RSWM Limited in this case), then whether the restrictions on contra trade apply to it separately or will it apply to the entire promoter & promoter group.
- (ii) Assuming the proposed transaction is undertaken during the period wherein trading window restrictions are applicable, then whether the trading restriction as stipulated in Clause 4 of Schedule B of PIT Regulations would apply in the aforesaid proposed transaction (i.e., between individual promoters and non-individual promoters by way of block deal executed on the stock exchange).

Guidance from SEBI:

- (a) Query 1:** Consequent to the provisions of Regulation 9 of the PIT Regulations and clause 3 of Schedule B to the PIT Regulations, the contra trade restrictions apply to trades made by promoters individually and not the entire promoter group.
- (b) Query 2:** In the proposed transaction, there is an inter-se transfer of shares from individual promoters to non-individual promoters through the block deal window mechanism while in possession of UPSI without being in breach of regulation 3 of the PIT Regulations and both parties make a conscious and informed trade decision. Hence, this proposed transaction shall be considered to fall within the meaning of transactions specified in Regulation 4(1)(ii) and the proposed transaction shall not

attract trading window restrictions subject to the proviso to Regulation 4(1) and pre-clearance by the compliance officer.

Nevertheless, it may be noted that the circumstances (i) to (vi) of Regulation 4(1) of the PIT Regulations are for demonstrating innocence and not an exemption from the applicability of Regulation 4 of the PIT Regulations.

9. INSTITUTIONAL MECHANISM FOR PREVENTION OF INSIDER TRADING (REGULATION 9A)

Regulation 9A has been newly inserted to PIT Regulations to establish an institutional mechanism for prevention of insider trading. **Regulation 9A(1)** provides that the Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.

Regulation 9A(2) provides that the internal controls shall include the following:

- (a) all employees who have access to unpublished price sensitive information are identified as designated person;
- (b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;
- (c) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;
- (d) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;
- (e) all other relevant requirements specified under these regulations shall be complied with;
- (f) periodic process review to evaluate effectiveness of such internal controls.

Regulation 9A(3) of PIT Regulations provides that the board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or

the managing director or such other analogous person ensures compliance with regulation 9 (deals with the code of conduct) and the sub-regulations (1) and (2) of this regulation as stated above.

Regulation 9A(4) of PIT Regulations provides that the Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.

The following matters may be reviewed by the Audit Committee:

- 1) Details of trading window closure such as period of closure, mode of communication of window closure to all concerned and the date of communication;*
- 2) Details of trading plans submitted by insiders;*
- 3) Details of pre-clearances given by the compliance officer and trades made as against them;*
- 4) Details of non-compliances, violation of the Regulations, contravention with the Code and Regulations such as trades without pre-clearances, contra trades, leakage of UPSI etc.; to impose penalties or take such penal action as the audit committee may feel suitable;*
- 5) Synopsis of amendments to the Regulations, if any;*
- 6) Proper maintenance of details of designated persons, their immediate relatives and persons with whom designated persons share Material Financial Relationship, one time and annual data collated from them, and also the details of trade executed by designated persons and their immediate relatives;*
- 7) Internal Committee to investigate the leakage of UPSI as a part of internal control process;*
- 8) Creation/Revocation/Release of pledge of securities;*
- 9) Proper maintenance of digital database in respect of information shared for legitimate purpose;*
- 10) Annual review of compliances under PIT Regulations;*
- 11) To monitor whistle blower mechanism to report instances of leak of UPSI;*

12) *To monitor whether the process of bringing people on sensitive transactions is being followed properly.*

(Note: The list given above is indicative and not exhaustive)

Regulation 9A(5) of PIT Regulations provides that every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.

Regulation 9A(6) of PIT Regulations provides that 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 unpublished price sensitive information.

Regulation 9A(7) of PIT Regulations provides that if an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

Specimen policy and procedures for inquiry in case of leak/suspected leak of UPSI is placed at Annexure-XI.

Background: *While the PIT Regulations provide for a preventive mechanism through the code of conduct and fair disclosure, sometimes, in the absence of proper implementation of the Codes, insider trading can still take place.*

To have better implementation of preventive measures prescribed under the PIT Regulations, there is need to have a mechanism for institutional responsibility to prevent the same. The regulations should clearly specify the persons who would be held responsible in the event of failure to properly implement the preventive measures, i.e., failure to formulate an effective code of conduct and put in place an adequate and effective system of internal control to ensure proper implementation of various requirements given in the PIT Regulations to prevent insider trading.

The Viswanathan Committee also noted recent cases of leak of UPSI related to listed companies on WhatsApp messages. Such information originates from within the company and affects the listed company in terms of its market price as well as reputation and investors/ financiers' confidence in the company. Leakage of UPSI from a company is a matter of serious concern not only for

the regulator but for the company as well, and listed companies should take responsibility to find out sources responsible for the leakage and plug loopholes in the internal control systems to prohibit reoccurrence of such leakage.

Market Intermediaries and other person/ entities who have access to UPSI should co-operate with the listed company for inquiry conducted by the company for leak of such UPSI. The listed company should also have whistle-blower policies that make it easy for employees to report instances of leakage of UPSI. Listed companies should make employees aware of policies and procedures for whistle blowing.

Persons with whom UPSI is shared as permissible under the PIT Regulations should be made aware of the duties and responsibilities attached to the receipt of UPSI and the liability that attaches to misuse or unwarranted use of such information. This can be achieved by signing confidentiality agreements or non-disclosure agreements or by serving of the notice. If it is not practical to sign confidentiality agreements, then a notice may be given to the person receiving UPSI containing necessary safeguards to be adopted by such person.

Accordingly, based on the recommendations of Viswanathan Committee, Regulation 9A has been added to PIT Regulations.

10. SANCTION FOR VIOLATION (REGULATION 10)

Regulation 10 of the PIT Regulations provides that any contravention of these regulations shall be dealt with by the Board in accordance with the Act.

Extract of SEBI's Adjudication Order No. ORDER/AO/GR/KG/2019-20/4924 dated 14th October, 2019 in the matter of Vikas Ecotech Ltd.

The Adjudicating Officer held that even if the profits made by designated person from the transactions executed by him which have resulted in violation of the Code of Conduct, have been transferred to the Investor Education and Protection Fund ("IEPF") still penalty can be imposed for contravention of Code.

Penalty for insider trading under Section 15G of the Act.

15G. *If any insider who,–*

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or*

- (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

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.

Section 15HB of the Act provides as under:

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Sri Tanuja Potluri Sritanuja.N vs. The State Of Andhra Pradesh on 2nd September, 2021 (Andhra Pradesh High Court – Amravati)

Offence of insider trading has absolutely nothing to do with the sale and purchase of private lands which is an immovable property which are private sale transactions between private individuals which are wholly unrelated to the affairs of the stock market business. Therefore, Sections 12-A and 15-G of the SEBI Act, 1992 cannot be read into or imported into the provisions of the Indian Penal Code much less into Section 420 of IPC.

The said offence of insider trading is totally alien to our criminal jurisprudence as per our Indian Penal Code. Insider trading is not at all made an offence under the provisions of the Indian Penal Code. It is not at all the intention of the Parliament to attribute any criminal liability to any person involved in such private sale transactions relating to immovable property in the guise of insider trading either under Section 420 of IPC or under any provisions in the scheme of IPC. Therefore, it is legally impermissible to prosecute the petitioners for the offence punishable under Sections 420 r/w.120-B of IPC by applying the said concept of insider trading even contextually or relatively in the guise of the concept of insider trading in the facts and circumstances of the case.

11. POWERS OF SEBI (REGULATION 11)

Regulation 11 of PIT Regulations provides that in order to remove any difficulties in the interpretation or application of the provisions of PIT Regulations, the Board shall have the power to issue directions through guidance notes or circulars. Where any direction is issued by the Board in a specific case relating to interpretation or application of any provision of these regulations, it shall be done only after affording a reasonable opportunity of being heard to the concerned persons and after recording reasons for the direction.

12. STANDARDISED REPORTING OF VIOLATIONS

*The SEBI vide its circular dated 19th July, 2019 issued the standardised format of reporting of violations related to Code of Conduct under the PIT Regulations. Thereafter vide an amendment in Schedule B and Schedule C dated 17th July, 2020, clause 13 of Schedule B and clause 11 of Schedule C was amended for shifting the reporting authority from SEBI to stock exchanges. Accordingly, the circular dated 19th July, 2019 was modified vide another circular dated 23rd July, 2020. The said format is placed at **Annexure-XIII**.*

In terms of Regulation 9(1) and 9(2) of PIT Regulations, the board of directors of every listed company and the board of directors or head(s) of the organization of every intermediary and fiduciary are required to formulate a Code of Conduct for designated persons and their immediate relatives and monitor its compliance and promptly inform SEBI about any violations of the Code of Conduct in accordance with Schedule B (in case of a company) or Schedule C (in case of an intermediary or fiduciary) of the PIT Regulations as applicable.

With an objective to standardize the process relating to dealing with such violations of the Code of Conduct, SEBI issued a circular on 19th July, 2019 modified vide circular dated 23rd July, 2020 to advise all listed companies, intermediaries and fiduciaries to:

- (i) Report such violations by the designated persons and immediate relatives of designated persons in the standardized format to SEBI, as placed at Annexure.*
- (ii) Maintain a database of the violation of code of conduct by designated persons and immediate relatives of designated persons that would entail initiation of appropriate action against them.*

The aforesaid circular also provides that the listed companies, intermediaries

and fiduciaries are empowered to take action against person for violations of the respective Code of Conduct and these entities shall ensure that appropriate action is taken whenever such violations are observed after recording reasons in writing.

Issue: Whether reporting to stock exchanges is to be done for violation of Code of Conduct or violation of any other provision of PIT Regulations too?

ICSI's view: The wordings used in Clause 12 of Schedule B and corresponding Clause 10 of Schedule C are '... for contravention of the code of conduct...'; whereas the wordings used in Clause 13 of Schedule B and corresponding Clause 11 of Schedule C are '... violation of these regulations...'

The Supreme Court had held in *Oriental Insurance* case that "if different words of different import are used in the same statute, there is a presumption that they are not used in the same sense." Further in *Tata Chemicals* case, the Supreme Court had held that "it is cardinal principle of interpretation of Statutes that the words of a Statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning unless such construction leads to some absurdity or unless there is something in the context or in the object of the Statute to the contrary."

Clause 13 of Schedule B/Clause 11 of Schedule C says 'violation of Regulations'. In *Manmohan Shetty-Adlabs* case, it was held by SAT that "The code of conduct as mandated by the PIT Regulations for all practical purposes is to be treated as a part of the PIT Regulations and any violation of the code of conduct can be dealt with by SEBI as violation of PIT Regulations framed by it." Hence, it is clear that Clause 13 of Schedule B/Clause 11 of Schedule C shall cover violation of Code of Conduct also.

However, Clause 12 of Schedule B/Clause 10 of Schedule C says 'contravention of Code of Conduct'. So will this term also cover violation of PIT Regulations? The Code of Conduct is a sub-set of the PIT Regulations and not synonymous as the PIT Regulations. Hence it appears that violation of any provision of PIT Regulations which is not mentioned in the Code of Conduct, but mentioned elsewhere might not get covered under the term 'contravention of Code of Conduct' mentioned in Clause 12 of Schedule B/Clause 10 of Schedule C. Hence, it appears that the sanctions and disciplinary actions which the listed

company/intermediary/fiduciary can impose for violation of Code of Conduct cannot be imposed by them for contravention of any provision which is mentioned elsewhere in the PIT Regulations. However, since the term 'violation of Regulations' is mentioned in Clause 13 of Schedule B/ Clause 11 of Schedule C, it will have to be reported to the stock exchanges by listed company/intermediary/fiduciary, i.e., the requirement to report to stock exchanges is not only limited to violation of Code of Conduct, but extends even to violation of any provision mentioned elsewhere in the PIT Regulations also.

13. CHECKLISTS UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

A. CHECKLIST FOR COMPLIANCE OFFICER

I. Compliance of policies and procedures

To ensure that:

- a) *the company has formulated code of fair disclosure of UPSI as per the principles set out in the Regulations.*
- b) *the code of fair disclosure is published on the website of the company.*
- c) *the code of fair disclosure and amendments thereof have been intimated to the stock exchanges including the amendments to such code, if any.*
- d) *the company has formulated code of conduct to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons.*
- e) *the company has designated a compliance officer for 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 PIT Regulations.*
- f) *the company has designated a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.*

- g) the employees are made aware of the principles of fair disclosure and code of conduct.*
- h) the company has a policy for determination of 'legitimate purposes' as a part of 'code for Fair Disclosure and Conduct'.*
- i) the company has formulated written policies and procedures for inquiry in case of leak of USPI or suspected leak of USPI.*
- j) the company has a whistle blower policy to report instances of leak of USPI.*
- k) there is a process for how and when people are brought 'inside' on sensitive transactions.*
- l) there is a process of tracking any new addition in the list of designated persons and intimation of the same to the designated depository on same day.*

II. Maintenance of records

- a) Ensure that disclosures made by directors, designated persons, promoters and members of the promoter group are maintained.*
- b) Maintain records of pre-clearance, closure of trading window and disclosures to the stock exchanges.*
- c) Maintenance of structured digital database.*
- d) Maintenance of list of all employees and other persons with whom unpublished price sensitive information is shared and ensure that the confidentiality agreements are signed or notice is served to all such employees and persons.*

III. Trading plans

- a. Approval of trading plans.*
- b. Monitoring implementation of trading plans.*

IV. Intimation to stock exchanges

- a. Tracking of whether the transactions requiring intimation to stock exchanges under Regulation 7(2) are getting covered under system driven disclosures or not, and if not, then*

to intimate the particulars of trading by every promoter/ member of promoter group/ designated person and director, in the event the trading crosses threshold limit of Rs. 10 Lakh in any calendar quarter as specified in the PIT Regulations.

- b. Intimation of trading plans.*
- c. The Code of Fair Disclosures and amendments therein.*
- d. Any violation of PIT Regulations*

B. CHECKLIST FOR PROMOTER, PROMOTER GROUP, DESIGNATED PERSONS, KEY MANAGERIAL PERSONS (KMPs), AS APPLICABLE.

- (i) To make initial, one-time, continual and event based disclosures as prescribed.*
- (ii) To adhere the company's code of fair disclosure and company's code of conduct.*
- (iii) Steps to take before sharing UPSI:*
 - a. Ascertain whether sharing of UPSI is as per the policy for determination of "Legitimate purposes" or not.*
 - b. Enter into confidentiality agreement/give confidentiality notice.*
- (iv) Steps to take after sharing UPSI.*

Enter the details of the person with whom UPSI is shared under regulation 3 of PIT Regulations in digital database.

C. CHECKLIST FOR BOARD OF DIRECTORS

- (i) To formulate Code of Fair disclosure and Conduct; To formulate Code of Conduct for Prohibition of Insider Trading; To formulate policy for determination of "legitimate purpose" as part of Code of Fair Disclosure and Conduct.*
- (ii) To formulate procedure and policies for inquiry in case of leak of UPSI.*
- (iii) Audit Committee to review compliance of Regulations once in a year and to verify system of internal controls in this regard.*

- (iv) *Intimation to the parties to whom the UPSI is communicated as given in Regulation 3(4).*
- (v) *To ensure that a structured digital database is maintained containing the name of persons/entities with whom information is shared for legitimate purpose.*
- (vi) *In consultation with the compliance officer, to specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation.*
- (vii) *To fix thresholds for pre-clearance.*

D. CHECKLIST FOR INTERMEDIARY AND FIDUCIARIES DEALING WITH LISTED COMPANIES

- a. *“Intermediary” and “Fiduciaries” should follow the prescribed Code of Conduct under PIT Regulations.*
- b. *Appointment of compliance officer.*
- c. *Identification of designated persons.*
- d. *Maintenance of structured digital database.*
- e. *One time and annual disclosures from designated persons, their immediate relatives and persons with whom designated persons share Material Financial Relationship.*
- f. *Maintenance of restricted list and to use it while giving pre-clearance to its designated employees.*
- g. *Mechanism for addition of employees to the list of designated persons (as and when any UPSI is shared with them) and one time and annual data collated from such newly added designated persons, their immediate relatives and persons with whom designated persons share Material Financial Relationship.*
- h. *Intimation to stock exchanges about any violation of PIT Regulations.*

E. CHECKLIST FOR SECRETARIAL AUDITORS

Sl. No.	Particulars	Remarks (Yes/No)
1.	<i>The company has appointed a compliance officer. [Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations. (Regulation 9)]</i>	
2.	<i>The company has appointed a Chief Investor Relation Officer to deal with dissemination of information and disclosure of UPSI, as per the principles set out in Schedule A of PIT Regulations.</i>	
3.	<i>The company or any of its promoters, director, Key Managerial Personnel, officer or employee has been convicted by SEBI with respect to Insider Trading in the past or present.</i>	
4.	<i>Any action has been initiated by SEBI against the company or any of its promoter, director, Key Managerial Personnel, officer or employee under the PIT Regulations in the past or present.</i>	
5.	<i>Any action against persons responsible for non-adherence with respect to formulation of Code of Conduct</i>	
6.	<i>Has the company maintained structured digital database for sharing UPSI for legitimate purpose as required under the PIT Regulations?</i>	
7.	<i>Whether the board of directors formulated a policy for determination of "legitimate purposes" and disclosures of UPSI for such purposes were made accordingly.</i>	
8.	<i>Whether the board of directors of every listed company has formulated a code of practices and procedures for fair disclosure of UPSI as per Schedule A to PIT Regulations.</i>	

Sl. No.	Particulars	Remarks (Yes/No)
9.	<i>Whether the code of practices and procedures for fair disclosure has been hosted on the website of the company and a copy of the same and any amendment thereto has been sent promptly to the stock exchange.</i>	
10.	<i>The company has formulated code of conduct to regulate, monitor and report trading by insiders as per Schedule B of PIT Regulations.</i>	
11.	<i>The compliance officer has put in place appropriate procedure for pre-clearance of trades by employees of the company.</i>	
12.	<i>The company follows Chinese wall procedures & processes as per the norms contained in the code of conduct, wherever applicable.</i>	
13.	<i>Any other prevention mode with respect to insider trading as adopted by the company.</i>	
14.	<i>Whether the CEO or MD has put in place adequate and effective system of internal controls to ensure compliance with the requirements given in the PIT Regulations to prevent insider trading.</i>	
15.	<i>Whether trading window was closed/re-opened by the compliance officer as per requirements of the PIT Regulations/Code of Conduct formulated by the company.</i>	
16.	<i>Whether the disclosures were taken from the insiders as required under Regulation 6 of PIT Regulations.</i>	
17.	<i>To check whether the disclosures of (initial) holding of securities of the company were made in compliance with PIT Regulations. (Regulation 7)</i>	
18.	<i>To check whether there is any change in the list of designated persons and their details and in case of changes, whether those are getting intimated to the designated depository on the same day of change or not?</i>	

Sl. No.	Particulars	Remarks (Yes/No)
19.	<i>Whether proper records as required under PIT Regulations were maintained.</i>	
20.	<i>Whether the Audit Committee is reviewing compliances of the PIT Regulations at least once in a financial year and verifying that the systems for internal control are adequate and are operating effectively.</i>	
21.	<i>The promoter, members of promoter group, directors, designated person and KMPs have not entered into any contra trade as per the specified period as mentioned in the code of conduct which shall be not less than six months from the date of trade in securities of the company.</i>	
22.	<i>Whether the trading plan has been formulated in compliance with Regulation 5? If yes, whether necessary compliances have been made.</i>	
23.	<i>The compliance officer has reviewed and monitored the trading plans, if any, submitted by any insider and approved the trading plan that it has not violated these regulations.</i>	
24.	<i>Whether the compliance officer has received undertaking or declaration from insider with respect to the trading plan, as the case may be.</i>	
25.	<i>The compliance officer has notified the trading plan to the stock exchange(s), if any.</i>	
26.	<i>The compliance officer has provided reports of trading and other details required under PIT Regulations to the chairman of Audit Committee, if any or to the chairman of the board of directors as per the frequency stipulated by the board of directors.</i>	
27.	<i>Whether any action has been sanctioned by the SEBI for the violation/ contravention of the provisions of PIT Regulations. (Regulation 10).</i>	

Sl. No.	Particulars	Remarks (Yes/No)
28.	<i>Whether the company has formulated written policies and procedures for inquiry in case of leak of UPSI or suspected leak of UPSI and accordingly proceedings/ inquiries were initiated on becoming aware of a leak of UPSI or suspected leak of UPSI.</i>	
Event Based Checklist		
29.	<i>Code of conduct adopted by the company</i>	
30.	<i>Compliance with the requirement of closure of trading window.</i>	
31.	<i>Compliance with applicable disclosures to the stock exchange for change in promoters' holding.</i>	
32.	<i>Compliance officer has obtained trading plan and compliance with respect to that is observed</i>	
Periodic Compliances Checklist		
33.	<i>Quarterly disclosure of statement of transaction.</i>	
34.	<i>Quarterly disclosure of statement of holding of securities.</i>	
35.	<i>Annual disclosure of statement of holding of securities</i>	
36.	<i>Quarterly disclosure of statement of transaction</i>	

(Note: Checklists given above are illustrative in nature. These should be read with detailed compliances as required under the PIT Regulations)

ANNEXURES

ANNEXURE I	<i>Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by designated persons (Schedule B of PIT Regulations)</i>
ANNEXURE II	<i>Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries to Regulate, Monitor and Report Trading by designated persons (Schedule C of PIT Regulations)</i>
ANNEXURE III	<i>Specimen Policy for determination of Legitimate Purposes</i>
ANNEXURE IV	<i>Specimen Code of Fair Disclosures of UPSI (with reference to Schedule A of PIT Regulations)</i>
ANNEXURE V	<i>Specimen of Initial and Continual Disclosures</i>
ANNEXURE VI	<i>Formats of Application for Pre-clearance and Trading Plan</i>
ANNEXURE VII	<i>Code of Conduct to Regulate, Monitor and Report Trading in Securities of the company</i>
ANNEXURE VIII	<i>Specimen Code of Conduct for Intermediaries and Fiduciaries</i>
ANNEXURE IX	<i>Specimen of Structured Digital Database</i>
ANNEXURE X	<i>Specimen of Confidentiality Agreement/Intimation with Persons to whom UPSI is disclosed for Legitimate Purpose</i>
ANNEXURE XI	<i>Specimen Policy and Procedures for Inquiry in case of leak/suspected leak of UPSI</i>
ANNEXURE XII	<i>Specimen Confidentiality Intimation for Designated Persons</i>
ANNEXURE-XIII	<i>Format for Reporting of Violations related to Code of Conduct</i>
ANNEXURE-XIV	<i>Voluntary Information Disclosure Form to the Office of the Informant Protection of SEBI</i>

ANNEXURE-I**SCHEDULE B**

[See sub-regulation (1) of Regulation 9]

Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by designated persons

1. The compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors, but not less than once in a year.

ICSI View: *The compliance officer should include following matters in his report:*

- a. *Details of trading plans submitted by insiders;*
- b. *Details of pre-clearances given by the compliance officer and trades made against them;*
- c. *Details of non-compliances, violation of the Regulations, contravention with the Code and Regulations such as trades without pre-clearances, contra trades, leakage of UPSI etc.;*
- d. *Synopsis of regulatory amendments to the Regulations, if any;*
- e. *Report on the functioning of Internal Committee to investigate the leakage of UPSI as a part of internal control process;*
- f. *Creation/Revocation/Release of pledge of Securities*
- g. *Changes made in the Code of Conduct/Fair Disclosures*
- h. *Any other matter, the compliance officer considers material to be brought to the Notice of the Audit Committee/ board of directors of the company.*
- i. *leakage of any UPSI and the results of investigations conducted, if any.*

2. All information shall be handled within the organisation on a need-to-know basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. The code of conduct shall contain norms for appropriate Chinese Wall procedures, and processes for permitting any designated person to "cross the wall".

3. Designated persons and immediate relatives of designated persons in the organisation shall be governed by an internal code of conduct governing dealing in securities.

Issue: *Schedule B requires internal code to govern designated persons and their immediate relatives only. So does it mean if the compliance officer has to seek compliance from connected persons there should be a separate code?*

ICSI's View: *There is no such requirement in respect of connected persons.*

4. (1) designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

(2) Trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results. 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.

ICSI's View: *The aforesaid provision regarding narrowing the gap between clearance of accounts by Audit Committee and board meeting, indicates that it is advisable to convene meetings of Audit Committee and board of directors preferably on the same day to avoid leakage of material information. However, where the situation so warrants, the board meeting, inter-alia, for adoption of the financial statements may be held next day to the audit committee meeting.*

SEBI Circular on Trading Restriction Period

The stock exchanges had, vide their circulars dated 2nd April, 2019, have stated that it is mandatory to close trading window from end of every quarter and keep it closed till 48 hour after declaration of financial results.

Thereafter, SEBI had, vide amendment dated 25th July, 2019 has affirmed the view of stock exchanges. Post this amendment PIT Regulations have been brought in line with above referred circulars.

(3) The trading window restrictions mentioned in sub-clause (1) shall not apply in respect of –

- a. transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of Regulation 4 and in respect of a pledge of shares for a bona fide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board;
- b. transactions which are undertaken in accordance with respective regulations made by the Board such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buyback offer, open offer, delisting offer or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time.

5. The timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available.

6. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate.

7. Deleted w.e.f 1st April, 2019

8. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.

9. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.

10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate

these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.

Provided that this shall not be applicable for trades pursuant to exercise of stock options.

11. The code of conduct shall stipulate such formats as the board of directors deems necessary for making applications for pre-clearance, reporting of trades executed, reporting of decisions not to trade after securing pre-clearance and for reporting level of holdings in securities at such intervals as may be determined as being necessary to monitor compliance with these regulations.

12. Without prejudice to the power of the Board under the Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, etc., that may be imposed, by the listed company required to formulate a code of conduct under sub-regulation (1) of Regulation 9, for the contravention of the code of conduct. Any amount collected under this clause shall be remitted to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.

13. The code of conduct shall specify that in case it is observed by the listed company required to formulate a code of conduct under sub-regulation (1) of Regulation 9, that there has been a violation of these regulations, it shall promptly inform the stock exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by the Board from time to time .

14. Designated persons shall be required to disclose names and Permanent Account Number or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes:

- 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

In addition, the names of educational institutions from which designated persons have graduated and names of their past employers shall also be disclosed on a one time basis.

Explanation – The term “Material Financial Relationship” shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift from a designated person during the immediately preceding twelve months, equivalent to at least 25% of the annual income of such designated person, but shall exclude relationships in which the payment is based on arm’s length transactions.

15. 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.

ICSI’s View: *For the purpose of clause 14 stated above, a non-disclosure agreement may be executed or an intimation regarding confidentiality of UPI may be given to the persons who are brought in on sensitive transactions. Such agreement/intimation should specify the duties and responsibilities associated with the receipt of inside information.*

ANNEXURE-II**SCHEDULE C**

[See sub-regulation (1) and sub-regulation (2) of Regulation 9]

Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries to Regulate, Monitor and Report Trading by designated persons

1. The compliance officer shall report to the board of directors or head(s) of the organisation (or committee constituted in this regard) and in particular, shall provide reports to the Chairman of the Audit Committee or other analogous body, if any, or to the Chairman of the board of directors or head(s) of the organisation at such frequency as may be stipulated by the board of directors or head(s) of the organization but not less than once in a year.
2. All information shall be handled within the organisation on a need-to-know basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. The code of conduct shall contain norms for appropriate Chinese Wall procedures, and processes for permitting any designated person to "cross the wall".
3. Designated persons and immediate relatives of designated persons in the organisation shall be governed by an internal code of conduct governing dealing in securities.
4. Designated persons may execute trades subject to compliance with these regulations. Trading by designated persons shall be subject to pre-clearance by the compliance officer(s), if the value of the proposed trades is above such thresholds as the board of directors or head(s) of the organisation may stipulate.
5. The compliance officer shall confidentially maintain a list of such securities as a "restricted list" which shall be used as the basis for approving or rejecting applications for pre-clearance of trades.
6. Prior to approving any trades, the compliance officer shall seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.
7. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have

been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.

8. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is a connected person of the listed company and is permitted to trade in the securities of such listed company, shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.

Provided that this shall not be applicable for trades pursuant to exercise of stock options.

9. The code of conduct shall stipulate such formats as the board of directors or head(s) of the organisation (or committee constituted in this regard) deems necessary for making applications for pre-clearance, reporting of trades executed, reporting of decisions not to trade after securing pre-clearance, and for reporting level of holdings in securities at such intervals as may be determined as being necessary to monitor compliance with these regulations.

10. Without prejudice to the power of the Board under the Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, etc., that may be imposed, by the intermediary or fiduciary required to formulate a code of conduct under sub-regulation (1) and sub-regulation (2) of Regulation 9, for the contravention of the code of conduct. Any amount collected under this clause shall be remitted to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.

11. The code of conduct shall specify that in case it is observed by the intermediary or fiduciary required to formulate a code of conduct under sub-regulation (1) or sub-regulation (2) of Regulation 9, respectively, that there has been a violation of these regulations, such intermediary or fiduciary shall promptly inform the stock exchange(s) where the concerned securities are traded, in such form and such manner as may be specified by the Board from time to time.

12. All designated persons shall be required to disclose name and Permanent Account Number or any other identifier authorized by law of the following to the intermediary or fiduciary on an annual basis and as and when the information changes:

- 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

In addition, names of educational institutions from which designated persons have graduated and names of their past employers shall also be disclosed on a one time basis.

Explanation – the term “Material Financial Relationship” shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift from a designated person during the immediately preceding twelve months, equivalent to at least 25% of the annual income of such designated person, but shall exclude relationships in which the payment is based on arm’s length transactions.

13. Intermediaries and fiduciaries 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.

ANNEXURE-III***Specimen Policy for determination of Legitimate Purposes***

“Legitimate purpose” shall include sharing of UPSI in the ordinary course of business on a need to know basis, with company’s collaborators, lenders including prospective lenders, customers, suppliers, merchant bankers, legal advisors, auditors, credit rating agencies, insolvency professionals, practicing company secretaries, registered valuers or other advisors, service providers or consultants, provided that such sharing has not been carried out with a view to evade or circumvent the prohibitions of the PIT Regulations.

Whether sharing of UPSI for a particular instance tantamount to ‘legitimate purpose’ would entirely depend on the specific facts and circumstances of each case. Primarily, the following factors should be considered while sharing the UPSI:

- i) whether sharing of such UPSI is in the ordinary course of business of the company;*
- ii) whether sharing of such UPSI is in the interests of the company or in furtherance of a genuine commercial purpose; and*
- iii) whether the nature of UPSI being shared is commensurate with the purpose for which access is sought to be provided to the recipient.*

Any person in receipt of UPSI pursuant to a legitimate purpose shall be considered as an insider for the purpose of the PIT Regulations and due notice shall be given to such person which would inter-alia include the following:

- The information shared is in the nature of UPSI, confidentiality of such UPSI must be maintained, and such UPSI must not be disclosed by the recipient in any manner except in compliance with the PIT Regulations.*
- The recipient must not trade in the securities of the company while in possession of UPSI.*

Additionally, structured digital database of recipients of UPSI shall be maintained by the company in compliance with the requirements of the PIT Regulations.

ANNEXURE-IV**Specimen Code of Fair Disclosure of UPSI**

The Securities and Exchange Board of India had promulgated the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations") on January 15, 2015. As per Regulation 8 read with Schedule A of the Regulations, every listed company is required to frame a Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information (hereinafter referred to as the 'Code') in order to make 'Unpublished Price Sensitive Information' (hereinafter referred to as 'UPSI') generally available.

The objective of this Code is to lay down the principles and practices to be followed by _____ Ltd. (the company) pertaining to disclosure of UPSI.

The following Code was adopted by the board of directors of the company, at its meeting held on _____ and the code is effective from _____.

1. Applicability

This Code shall apply in relation to disclosure of UPSI by the company. The scope, exceptions as given in PIT Regulations shall be applicable for the purpose of this Code as well.

2. Definitions

"Chief Investor Relations Officer" means such senior officer of the company appointed by the board of directors to deal with dissemination of information and disclosure of UPSI in a fair and unbiased manner.

3. Sharing of UPSI for legitimate purpose (refer Annexure-III)**4. Functions of Chief Investor Relations Officer**

This Chief Investor Relations Officer shall be responsible for dissemination of information to the stock exchange(s) and on the website of the company when it becomes concrete and credible in such format as may be prescribed by SEBI under Listing Regulations or PIT Regulations or any other regulations from time to time.

During the calls with Analysts or Institutional investors, if any information which is in the nature of UPSI gets leaked, then to make disclosure of such UPSI to the stock exchange(s) where the securities of the company are listed promptly.

Guidance from SEBI (24th August, 2015)

Query: *Whether chief investor relations officer will also be responsible along with compliance officer for not disseminating information or non-disclosure of UPSI?*

Guidance: *Regulation 2(1)(c) clearly provides the functions and responsibilities of the compliance officer. Specific responsibilities to deal with dissemination of information and disclosure of unpublished price sensitive information have been given to Chief Investor Relations Officer (CIRO) under clause 3 of Schedule A.*

It is the company's discretion to designate two separate persons as CIRO and Compliance Officer (CO), respectively for fulfilling specified responsibilities. In cases where both CIRO and CO have been designated for overlapping functions, they shall be jointly and severally responsible.

5. Disclosure Policy

The company shall ensure:

- *prompt public disclosure of UPSI that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.*
- *uniform and universal dissemination of UPSI to avoid selective disclosure.*
- *if an insider 'selectively' discloses any UPSI to any person including the selected group of persons then prompt disclosure of such information shall have to be made by the Chief Investor Relations Officer to the public. Such disclosure must be made not later than 48 hours after the Chief Investor Relations Officer learns that communication of such UPSI has taken place.*
- *that information shared with analysts and research personnel is not UPSI.*
- *to develop best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.*

6. Third Party Dealings

In order to avoid misrepresentation or misquoting, endeavour shall be made that at least two representatives of the company are present in the meetings or conference calls with analysts, brokers or institutional investors.

The presentation and audio/video recordings shall be promptly made available on the website and also be disseminated to the stock exchange(s) and in any case, before the next trading day or within twenty four hours from the conclusion of such calls, whichever is earlier.

The transcripts of such calls shall be made available on the website and also be disseminated to the stock exchange(s) within five working days of the conclusion of such calls.

The requirement for disclosure(s) of audio/video recordings and transcript shall be voluntary with effect from April 01, 2021 and mandatory with effect from April 01, 2022.

7. Response to Market Rumours and Queries

The Chief Investor Relations Officer shall provide appropriate and fair responses to queries in relation to UPSI including any news reports. A 'No Comment' policy must be maintained by the company and the Chief Investor Relations Officer on market rumours except when requested by regulatory authorities to verify such rumours.

8. Need to know handling of UPSI

The company shall handle UPSI only on a need to know basis. UPSI shall be provided only when needed for legitimate purposes, performance of duties or discharge of legal obligations.

9. Dissemination: *this Code shall be posted on the website of the company.*

10. Amendment: *any amendment to this Code shall be approved by the board of directors of the company.*

ANNEXURE-V**Specimen of Initial and Continual Disclosures****FORM B****SEBI (Prohibition of Insider Trading) Regulations, 2015 [Regulation 7(1)(b) read with Regulation 6(2) – Disclosure on becoming a director/ KMP/ Promoter/Member of Promoter Group]**

Name of the company: __

ISIN of the company: _____

Details of Securities held on appointment of Key Managerial Personnel (KMP) or Director or upon becoming a promoter or member of the promoter group of a listed company and immediate relatives of such persons and by other such persons as mentioned in Regulation 6(2).

Name, PAN, CIN/ DIN & address with contact nos.	Category of Person (Promoter/ KMP / Directors/ member of the promoter group/ immediate relative to/ others etc.	Date of appointment of KMP/ Director/ OR Date of becoming promoter/ member of the promoter group	Securities held at the time of appointment of KMP/Director or upon becoming promoter or member of the promoter group		% of Share-holding
			Type of securities (For e.g. – Shares, Warrants, Convertible Debentures, Rights entitlements, etc.)	No.	
1	2	3	4	5	6

Note: "Securities" shall have the meaning as defined under regulation 2(1)(i) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

Details of Open Interest (OI) in derivatives on the securities of the company held on appointment of Key Managerial Personnel (KMP) or Director or upon becoming a promoter or member of the promoter group of a listed company and immediate relatives of such persons and by other such persons as mentioned in Regulation 6(2).

Open Interest of the Future contracts held at the time of becoming Promoter/member of promoter group/ appointment of Director/KMP			Open Interest of the Option Contracts held at the time of becoming Promoter/member of promoter group/appointment of Director/ KMP		
<i>Contract specifications</i>	<i>Number of units (contracts * lot size)</i>	<i>Notional value in Rupee terms</i>	<i>Contract specifications</i>	<i>Number of units (contracts * lot size)</i>	<i>Notional value in Rupee terms</i>
7	8	9	10	11	12

Note: *In case of Options, notional value shall be calculated based on premium plus strike price of options*

Name & Signature:

Designation:

Date:

Place:

FORM C

SEBI (Prohibition of Insider Trading) Regulations, 2015 [Regulation 7(2) read with Regulation 6(2) – Continual disclosure]

Name of the company: _____

ISIN of the company: _____

Details of change in holding of Securities of Promoter, Member of Promoter Group, designated person or Director of a listed company and immediate relatives of such persons and other such persons as mentioned in Regulation 6(2).

Name, PAN, CIN/ DIN, & address with contact nos.	Category of Person (Promoter/ member of the promoter group/ designated person/ Directors/ immediate relative to/ others etc.)	Securities held prior to acquisition/disposal		Securities acquired/Disposed			Securities held post acquisition/disposal		Date of allotment advice/ acquisition of shares/ disposal of shares, specify	Date of information to company	Mode of acquisition/ disposal (on market/pub- lic/ rights/ preferen- tial offer/ off-market/ Inter-se transfer, ESOPs etc.)	Ex- change on which the trade was ex- ecuted		
		Type of securities (For eg. – Shares, Warrants, Convertible Debentures, Rights entitle- ments, etc.)	No. and % of share- holding	No.	Value	Transact ion Type (Purchase/ Sale/ Pledge/ Revocation/ Invocation/ others-please specify)	Type of securities (For eg. – Shares, Warrants, Convertible Debentures, Rights entitlements, etc.)	No. and % of share- holding						
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

Note: (i) "Securities" shall have the meaning as defined under regulation 2(11)(i) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

(ii) Value of transaction excludes taxes/brokerage/any other charges

Details of trading in derivatives on the securities of the company by Promoter, member of the promoter group, designated person or Director of a listed company and immediate relative of such person and other such persons as mentioned in Regulation 6(2).

Trading in derivatives (Specify type of contract, Futures or Options etc)						Exchange on which the trade was executed
Type of contract	Contract specifications	Buy		Sell		
		Notional Value	Number of units (contracts * lot size)	Notional Value	Number of units (contracts * lot size)	
16	17	18	19	20	21	22

Note: In case of Options, notional value shall be calculated based on premium plus strike price of options.

Name & Signature:

Designation:

Date:

Place:

FORM D (indicative format)**SEBI (Prohibition of Insider Trading) Regulations, 2015 [Regulation 7(3) – Transactions by Other connected persons as identified by the company]****Details of trading in securities by other connected persons as identified by the company**

Name, PAN, CIN/ DIN, & address with contact nos. of other connected persons as identified by the company	Connect- ion with company	Securities held prior to acquisition/ disposal		Securities acquired/Disposed		Securities held post acquisition/disposal		Date of allot- ment advice/ acquisition of shares/ disposal of shares specify	Date of in- formation to company	Mode of acquisition/ disposal (on market/ public/ rights/ preferen- tial offer/ off-market/ Inter-se transfer, ESOPs etc.)	Exchange on which the trade was exe- cuted			
		Type of securities (For eg. – Shares, Warrants, Convertible De- bentures, Rights en- titlement, etc.)	No. and % of share- holding	No.	Value	Transact ion Type (Pur- chase/ Sale/ Pledge/ Revocation/ Invocation/ others-please specify)	Type of securities (For eg. – Shares, Warrants, Convert- ible De- bentures, Rights entitle- ment, etc.)					No. and % of share- holding	From	To
1		3	4	5	6	7	8	9	10	11	12	13	14	15

Note: (i) "Securities" shall have the meaning as defined under regulation 2(11)(i) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

(ii) Value of transaction excludes taxes/brokerage/any other charges

Details of trading in derivatives on the securities of the company by other connected persons as identified by the company

Trading in derivatives (Specify type of contract, Futures or Options etc.)		Exchange on which the trade was executed				
Type of contract	Contract specifications	Buy		Sell		
		Notional Value	Number of units (contracts * lot size)			
16	17	18	19	20	21	22

Note: In case of Options, notional value shall be calculated based on premium plus strike price of options.

Name:

Signature:

Place:

ANNEXURE-VI**Specimen Formats of Application for Pre-clearance and Trading Plan
Application for Pre-clearance of Trades in Securities**

To

The Compliance Officer
XYZ Ltd.

Dear Sir,

Pursuant to the SEBI (Prohibition of Insider Trading) Regulations, 2015 and Code for Prevention of Insider Trading in Equity shares/securities of XYZ Ltd., I seek approval for purchase/sale/subscription of the securities (give description) of the company as per the details given below:

1.	Name of the applicant	
2.	Designation	
3.	Relationship with the Applicant (Self/ Immediate Relative)	
4.	Number of securities held as on date	
5.	Folio No./DP ID/Client ID No.	
6.	The proposal is for	(a) Purchase of securities (b) Subscription to securities (c) Sale of securities (d) Pledge of securities (e) Gift of securities (f) Any other purpose (please specify)
7.	Proposed date of trading in securities	
8.	Estimated number of securities proposed to be purchased/subscribed/sold/pledge/ gifted	
9.	Current market price (as on date of application)	

10.	Whether the proposed transaction will be through stock exchange or off-market trade	
11.	Folio No./DP ID/Client ID No. where the securities will be credited/debited	

I enclose herewith the Undertaking signed by me.

Date.....

Signature.....

Place.....

Name & Designation.....

UNDERTAKING

With reference to my application for pre-clearance of trades in securities, I solemnly confirm and declare:

- i) THAT I do not have access and /or have not received any "Unpublished Price Sensitive Information" up to the time of signing the undertaking.
- ii) THAT in case I have access to or receive "Unpublished Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction, I shall inform the compliance officer of any change in my position and THAT I shall refrain from dealing in the securities of the company till the time such information becomes public.
- iii) THAT I have not contravened the Code for Prevention of Insider Trading in XYZ Equity shares/securities, as notified by the company from time to time.
- iv) THAT I am aware that, I shall be liable to face penal consequences as set forth in the Code including disciplinary action under the Code of the company, in case the above declarations are found to be misleading or incorrect at any time.
- v) THAT I have made a full and true disclosure in this regard to the best of my knowledge and belief.
- vi) THAT I hereby undertake not to transact in securities in the sanctioned period in case trading window is declared closed subsequently.
- vii) THAT I hereby undertaken not to make contra trade transactions in the securities of the company.

Pre-clearance may kindly be accorded in terms of provisions of the Code for Prevention of Insider Trading of the company.

Date.....

Signature.....

Place.....

Name & Designation.....

FOR OFFICE USE

Serial number of the application received

Date & time of receipt of the Application

Date & time of communication of the pre-clearance or otherwise

Reasons for not giving pre-clearance

Signature of the Compliance Officer /Authorised Officer

Specimen Format for Trading Plan

To

The Compliance Officer
XYZ Ltd.

Dear Sir,

I, _____, in my capacity as _____ of the company hereby submit the trading plan with respect to dealing in securities of the company for a total period of 12 months from to _____.

DP ID/ Client ID/ Folio No.	Type of security	No. of Securities held (as on date)	Nature of Trade (Buy/ Sell)	Proposed Date/time period of trade	No. /total amount of securities proposed to be traded

With respect to the above trading plan, I hereby undertake that I shall:

- I. Not entail commencement of trading on behalf of the insider earlier than 6 months from the public disclosure of the plan.
- II. Not entail trading for the period between the 20th trading day prior to the last day of any financial period for which results are required to be announced by the company and the second trading day after the disclosure of financial results for the said period;
- III. Not commence the trading as per above plan if the Unpublished Price Sensitive Information which is in my possession at present, do not comes into public domain till the time of commencement of trading plan & shall defer the commencement of trading plan till such information becomes generally available.
- IV. Not tender any other trading plan for the period for which the above trading plan is already in force; and
- V. Not entail trading in securities for market abuse.

Date.....

Signature.....

Place.....

Name & Designation.....

ANNEXURE-VII**Code of Conduct to Regulate, Monitor and Report Trading in Securities of the company****1. INTRODUCTION**

The Code of Conduct to regulate, monitor and report trading in Securities of the company was initially formulated by the company in pursuance of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("Regulations") with effect from ____.

Pursuant to the amendments in the Regulations from time to time, this revised Code of Conduct to regulate, monitor and report trading in Securities of the company (hereinafter referred to as "Code") has been formulated by the board of directors of the company to regulate, monitor and report trading in Securities of the company by designated persons and their immediate relatives, effective from April 1, 2019.

2. DEFINITIONS

In this Code, unless the context otherwise requires:

- a) "Chinese Wall" means policies, procedures and physical arrangements designed to manage and safeguard UPSI (defined hereinafter) and prevent inadvertent transmission or communication thereof;
- b) "Code" shall have the meaning ascribed to such term in Article 1 hereof;
- c) "Company" means
- d) "Compliance Officer" means the Company Secretary and in his absence any other senior officer of the company appointed by the board of directors from time to time for the purpose of this Code in pursuance of the Regulations;
- e) "designated persons" means and includes:
 - (i) All Promoters, Directors and Key Managerial Personnel;
 - (ii) Personal secretaries of Key Managerial Personnel;
 - (iii) Employees of the company comprising the top 2 tiers of the company's management below the managing director of the company, i.e.;

- (iv) *All the employees not covered above, who are working at the level of or above in the following departments of the company:*
- (I) Finance & Accounts Department; and*
 - (II) Legal & Secretarial Department; and*
- (v) *Any other persons, including members of the support staff of the company (such as, Information Technology department, Corporate Communications Department) as may be decided by the managing director of the company in consultation with the compliance officer, from time to time;*
- f) *“Generally Available Information” means information that is accessible to the public on a non-discriminatory basis;*
- g) *“Immediate Relative” means a spouse of a person, and includes 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;*
- h) *“Key Managerial Personnel” shall mean the person holding any of the positions of Managing Director, Chief Financial Officer and Company Secretary of the company and any other officer designated as key managerial personnel by the board of directors as per the provisions of Section 2(51) of the Companies Act, 2013;*
- i) *“Material Financial Relationship” means a relationship in which one person is a recipient of any kind of payment, such as by way of a loan or gift from a designated person during the immediately preceding twelve months, equivalent to at least 25% of the annual income of such designated person, but excludes relationships in which the payment is based on arm’s length transactions;*
- j) *“Promoter” shall have the meaning assigned to it under the Regulations;*
- k) *“Regulations” shall have the meaning ascribed to such term in Article 1 hereof, which term shall include all amendments therein and replacements thereof;*
- l) *“SEBI” means Securities and Exchange Board of India;*
- m) *“SEBI Act” means Securities and Exchange Board of India Act, 1992;*
- n) *“Securities” shall have the meaning ascribed to such term in the Regulations;*

- o) "Stock Exchange(s)" means recognized stock exchange(s) on which the Securities of the company are listed;*
- p) "Takeover Code" means the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as amended from time to time;*
- q) "Threshold Limit" means the limit for Trading in Securities of the company in any calendar quarter, as decided by the board of directors of the company from time to time. For the time being, the Threshold Limit for Trading in Securities of the company in a calendar quarter is Rs. 10 Lakhs;*
- r) "Trading" means and includes subscribing, buying, selling, dealing, pledging or agreeing to subscribe, buy, sell or deal in or pledge any Securities of the company, and "Trade" shall be construed accordingly;*
- s) "Trading Day" means a day on which the Stock Exchange(s) are open for trading;*
- t) "Trading Window" means the period during which Trading in Company's Securities can be carried out; and*
- u) "Unpublished Price Sensitive Information" or "UPSI" means any information, relating to the 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 and shall, ordinarily including but not restricted to, information relating to the following:*
 - i) Financial results;*
 - ii) Dividends;*
 - iii) Change in capital structure;*
 - iv) Mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions; and*
 - v) Changes in Key Managerial Personnel.*

The words and expressions used but not defined herein shall have the meanings as ascribed to them under the Regulations.

3. RESPONSIBILITIES AND DUTIES OF COMPLIANCE OFFICER

- a) The compliance officer shall be responsible under the overall supervision of the board of directors of the company, for compliance of policies,*

procedures, maintenance of records, monitoring adherence to the rules for the preservation of UPSI, monitoring of Trades as per the Code and implementation of the Code, maintaining records of the designated persons and their immediate relatives and any changes made in the list of designated persons and their immediate relatives and providing guidance and clarifications sought by designated persons regarding the Regulations and the Code.

- b) The compliance officer shall report to the board of directors and shall provide reports to the Chairperson of the Audit Committee on a quarterly basis in respect of Trading in the Securities of the company by the designated persons and their immediate relatives, the trading plans and pre-clearance applications approved and rejected by the compliance officer.*
- c) The compliance officer shall discharge other functions and duties as prescribed in the Code and the Regulations.*

4. GENERAL RESTRICTIONS

- a) No designated person (including his/her immediate relatives) should trade in the Securities of the company at any time while in possession of, or having access to, any Unpublished Price Sensitive Information (UPSI).*
- b) designated persons are obliged to treat UPSI with due care and they have a duty to safeguard UPSI irrespective of the source of receipt of UPSI. Designated persons shall use UPSI for the specified purpose(s) only and it must not be used for any personal gain. No designated person shall communicate, provide, or allow access, or procure or cause communication of any Unpublished Price Sensitive Information, relating to the company or its Securities, to any person, except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.*

Determination of Legitimate Purpose

The term "legitimate purpose" includes sharing of UPSI in the ordinary course of business with Company's collaborators, lenders including prospective lenders, customers, suppliers, merchant bankers, legal advisors, auditors, credit rating agencies, insolvency professionals or other advisors, service providers or consultants; provided that such sharing of UPSI has not been carried out to evade or circumvent the prohibitions of the Regulations.

Whether sharing of UPSI for a particular instance tantamount to 'legitimate purpose' would entirely depend on the specific facts and circumstances of each case. Primarily, the following factors should be considered while sharing the UPSI:

- (i) whether sharing of such UPSI is in the ordinary course of business of the company;*
- (ii) whether sharing of such UPSI is in the interests of the company or in furtherance of a genuine commercial purpose; and*
- (iii) whether the nature of UPSI being shared is commensurate with the purpose for which access is sought to be provided to the recipient.*

Any person who is in receipt of UPSI pursuant to a "legitimate purpose" shall be considered as an Insider for the purpose of these Regulations and due notice shall be given to such persons to maintain confidentiality of such UPSI in compliance with the Regulations.

5. PRESERVATION OF UPSI AND CHINESE WALL PROCEDURES

- a) UPSI should be maintained within the Chinese Walls at all times. In the event any person (who is not a designated person) is required to be wall-crossed, i.e., brought over the Chinese Wall in order to obtain access to the UPSI for a specific purpose, prior approval of the managing director must be sought. The managing director shall consider whether such person being wall-crossed, is being provided UPSI on a need-to-know basis. Further, information shared with such wall-crosser should be limited to the specific transaction or purpose for which their assistance is required.*
- b) All persons who have wall-crossed should be notified that he would be considered to be a designated person under this Code and consequently, required to comply with all applicable provisions of the Code and Regulations, till such information remains UPSI.*
- c) UPSI is to be handled on a "need to know" basis. It should be disclosed only to those who need the information to discharge their duties and possession of UPSI by them will not give rise to a conflict of interest or misuse of UPSI.*
- d) Files containing UPSI shall be kept secured with restricted access and computer files containing UPSI should be protected with the help of login, passwords, etc.*

- e) *In case of any transaction(s) involving UPSI, the managing director shall identify the designated person(s) who shall have access to any inside information relating to such sensitive transaction(s). While dealing with such inside information, these designated persons shall, to the extent applicable, adhere to the provisions of this Clause 5.*

6. PREVENTION OF MISUSE OF UPSI

All designated persons and their immediate relatives shall be subject to trading restrictions as stated below:

a) Trading Window

The designated persons and their immediate relatives shall trade in the Securities of the company only when the Trading Window is open; provided that the Trading Window norms shall not be applicable for trades carried out in accordance with a trading plan approved under clause 9 hereof.

b) Prohibition on Trading in Securities of the company

designated persons and their immediate relatives shall not Trade in the Securities of the company: (i) during the Prohibited Period (as defined below) or (ii) at any time (even when the Trading Window is open) if in possession of UPSI.

c) "Prohibited Period" means

- (i) a period from the end of every financial year till 48 hours after declaration of unaudited/ audited annual financial results;*
- (ii) a period from the end of every quarter till 48 hours after declaration of unaudited/ audited quarterly financial results; and*
- (iii) any period when the compliance officer otherwise has reasons to believe that designated persons can reasonably be expected to have possession of UPSI; Provided that where such UPSI is proposed to be considered at a meeting of the board of directors of the company, such period shall, as far as practicable, commence at least 7 days before such meeting of the board of directors. The compliance officer shall determine the timing for re-opening the Trading Window taking into account various factors including UPSI in question becoming Generally Available Information and being capable of assimilation by the market, which in any event shall not be earlier than 48 hours after the information becomes Generally Available Information.*

- d) *The intimation about the Prohibited Period shall be given by the compliance officer, wherever required, through e-mail, circular and/ or posting on the website of the company, etc.*

7. PRE-CLEARANCE OF TRADES

All designated persons including their immediate relatives intending to Trade in the Securities of the company up to the Threshold Limit fixed as aforesaid may do so without any clearance from the compliance officer.

While calculating the Threshold Limit, the cumulative value of the Securities of the Company Traded, whether in one transaction or series of transactions, during a calendar quarter by the designated person and his/her immediate relatives shall be taken into account.

Where the Trading Window of the company is open, the designated persons including their immediate relatives intending to Trade in the Securities of the company in excess of the Threshold Limit, shall pre-clear the transactions; provided that the pre-clearance of Trade is not required for a Trade executed as per a trading plan which has been approved under clause 9 hereof.

The procedure for pre-clearance of Trades is stated hereunder:

- a) *The designated person should make an application in the prescribed form, as per Annexure - __, to the compliance officer indicating the estimated number and value of Securities of the company that such designated person (or his/her Immediate Relative) intends to Trade in and such other details as may be required in this behalf. The application is to be filed along with statement of holding in Securities of the company at the time of pre-clearance as per Annexure -__.*
- b) *The designated person shall execute an undertaking in favour of the company incorporating therein inter-alia, the following clauses, as may be applicable:*
- (i) that such designated person (including his/her immediate relatives) does not have any access to or has not received and is not in possession of any Unpublished Price Sensitive Information upto the time of signing the undertaking;*
 - (ii) that in case such designated person (including his/her immediate relatives) has access to or receives Unpublished Price Sensitive Information after the signing of the undertaking but before the execution of the transaction such designated person shall inform*

the compliance officer of the change in the position and that such designated person (including his/her immediate relatives) would completely refrain from Trading in the Securities of the company till the time such information becomes Generally Available Information;

- (iii) that the designated person (including his/her immediate relatives) has not contravened the Code; and*
 - (iv) that the designated person has made a full and true disclosure in the matter.*
- c) Prior to approving any Trades, the compliance officer shall have regard to whether the declaration given by the designated person, to the effect that he/she is not in possession of any Unpublished Price Sensitive Information, is reasonably capable of being rendered inaccurate.*
 - d) The designated persons and their immediate relatives shall execute their transactions in respect of Securities of the company within 7 Trading Days from the date of pre-clearance after which pre-clearance will lapse. Thereafter, a fresh pre-clearance will be needed for the Trades to be executed.*
 - e) Where a Trade is not executed after obtaining pre-clearance from the compliance officer, the concerned person shall intimate the same to the compliance officer within 2 (two) Trading Days after the expiry of 7 (seven) Trading Days from the date of pre-clearance by the compliance officer, as per Annexure.*
 - f) In case the compliance officer or his/her immediate relatives intend to Trade in the Securities of the company in excess of the Threshold Limit, he/she shall obtain pre-clearance for the same from the managing director of the company, as per the pre-clearance procedure under this Code.*
 - g) Such pre-clearance shall not in any way be deemed to be confirmation of compliance with the Takeover Code, if applicable. The person seeking pre-clearance shall be solely responsible for compliance with the provisions of the Takeover Code, if applicable.*

8. RESTRICTIONS ON CONTRA TRADE AND DERIVATIVE TRANSACTIONS

- (a) The designated persons and their immediate relatives shall not enter into a contra Trade during the next six months following a Trade;*

provided that the contra Trade restrictions shall not be applicable to the following:

- (i) Trades pursuant to exercise of stock options; and*
- (ii) Trades carried out in accordance with a trading plan approved under clause 9 hereof.*

Example: If 'X' or any of his immediate relatives buy Securities of the company on January 1, 2019, then 'X' and his immediate relatives shall not sell any Securities of the company until July 1, 2019 and vice versa.

The compliance officer may grant relaxation from strict application of such restriction on an application made in this behalf by the concerned designated person and after recording in writing the reasons in this regard; provided that such relaxation does not violate the Regulations.

In case a contra trade is executed, inadvertently or otherwise, in violation of the aforesaid restriction, the profits from such trade shall be liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by SEBI under the SEBI Act.

- b) The designated persons and their immediate relatives shall not take any positions in derivative transactions in the Securities of the company at any time.*

9. TRADING PLANS

- a) A designated person who may be perpetually in possession of UPSI, and his/her immediate relatives shall have an option to formulate a trading plan as per Annexure – ___ and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on their behalf in the Securities of the company.*
- b) Such trading plan shall:
 - (i) not entail commencement of Trading in Securities of the company on behalf of the designated person and/or his/her immediate relatives earlier than 6 months from the public disclosure of the trading plan;*
 - (ii) not entail Trading in Securities of the company for the period between the 20th Trading Day prior to the last day of any financial period for which results are required to be announced by the company and the 2nd Trading Day after the disclosure of such financial results;**

- (iii) entail Trading in Securities of the company for a minimum period of 12 months;*
 - (iv) not entail overlap of any period for which another trading plan is already in existence;*
 - (v) set out either the value of Trades to be effected in the Securities of the company or the number of Securities of the company to be traded along with the nature of the Trade and the intervals at, or dates on which such Trades in the Securities of the company shall be effected; and*
 - (vi) not entail Trading in Securities of the company for market abuse.*
- c) The compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of the Code or the Regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor implementation of the trading plan.*
- d) Upon approval of a trading plan, the compliance officer shall notify the trading plan to the Stock Exchanges.*
- e) The trading plan once approved shall be irrevocable and the designated person (including his/her immediate relatives) shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any Trade in the Securities of the company outside the scope of the trading plan;*

Provided that the implementation of the trading plan shall not be commenced if any UPSI in possession of the designated person and/or immediate relatives at the time of formulation of the plan has not become Generally Available Information at the time of commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such UPSI becomes Generally Available Information, in compliance with the Regulations.

10. DISCLOSURES AND REPORTING REQUIREMENTS

The disclosures required to be made by a person under this provision shall include details of Trades by such person's immediate relatives, wherever applicable.

I) Initial Disclosure

The designated persons shall make following disclosures to the compliance officer:

- a) *Within 21 days from the date on which the Code come into force, one time disclosure about Educational Qualification, Past Employers, etc., wherever applicable, as per Annexure – .*
- b) *Within 7 days of his/her appointment as or becoming a designated person:*
 - (i) *the details of Securities of the company held by them and their immediate relatives, as per Annexure –;*
 - (ii) *One time disclosure about Educational Qualification, Past Employers, etc., wherever applicable, as per Annexure –.*
- c) *The designated persons shall provide a one – time declaration containing the details of the names of educational institutions from which the designated persons have graduated and names of their past employers, if applicable.*

II) Continual Disclosure

- a) *Every designated person shall disclose to the compliance officer, the number of Securities of the company acquired or disposed of by his/ her immediate relative or persons for whom he/she takes trading decisions, within 2 Trading Days of such transaction, if the aggregate value of Securities of the company Traded, whether in one transaction or a series of transactions over any calendar quarter, exceeds Rs. 10 lakhs or such other value as may be specified by SEBI in this regard. Such disclosure shall be made as per Annexure -*
- b) *The designated persons shall forward to the compliance officer,*
 - (i) *Quarterly statement of transactions in Securities of the company as per Annexure – within a period of 15 days from the end of a calendar quarter. If there is no transaction in a particular quarter, the “Nil” statement is not required to be submitted.*
 - (ii) *An Annual statement of holdings in the Securities of the company within 30 days of the close of financial year as per Annexure –.*
 - (iii) *The details of immediate relatives and persons with whom such designated person shares a Material Financial Relationship, within*

30 days of close of every financial year and within 15 days of any change in such information as submitted to the company, as per Annexure-.

11. PENALTIES/PUNISHMENTS

- a) Any designated person who Trades in Securities of the company or communicates any UPSI in contravention of this Code will be penalised and appropriate action will be taken against such designated person by the company after giving reasonable opportunity of being heard in the matter. Such designated person shall also be subject to disciplinary action by the company including wage freeze, suspension, recovery, clawback, in-eligibility for future participation in ESOPs, etc.*
- b) In case any violation of Regulations is observed, the compliance officer shall promptly inform the same to the stock exchange(s) where the concerned securities are traded.*
- c) In addition to the aforesaid penalties/punishments, the persons violating the Regulations will also be subject to any other action by SEBI as per SEBI Act.*

12. MISCELLANEOUS

- a) The gap between clearance of financial results by the Audit Committee and board of directors meeting for approval of such financial results should be as narrow as possible and preferably on the same day to avoid leakage of UPSI.*
- b) The board of directors of the company shall have power to modify or replace this Code in part or full as may be thought fit from time to time in its absolute discretion.*
- c) The decision of the board of directors with regard to all matters relating to this Code will be final and binding on all concerned.*
- d) In case any provisions of this Code are contrary to or inconsistent with the provisions under the Regulations, the provisions of Regulations shall prevail.*

ANNEXURE-VIII**Specimen Code of Conduct for Intermediaries and Fiduciaries****1. Preamble**

This Code is framed under the SEBI (Prohibition of Insider Trading) Regulation, 2015 and approved by the board of directors of XYZ Ltd. ("the company") effective from 1st April, 2019.

2. "Client Company" shall mean a company where XYZ Ltd. renders any advisory services or provided any financial assistance and is in fiduciary relationship with such a company.

3. Applicability: *This Code applies in respect of trading in Securities of Client Company.*

4. Regulating & monitoring of the Trades to be executed by designated persons

- 4.1. *designated persons and immediate relatives of the designated persons in the company shall be governed by this Code of Conduct governing dealing in Securities of the client company (ies) where XYZ Ltd. is in fiduciary relationship.*
- 4.2. *designated persons or their immediate relatives may execute trades in Securities of the client company(ies) subject to compliance with the SEBI (Prohibition of Insider Trading) Regulations, 2015.*
- 4.3. *The compliance officer shall confidentially maintain a list of such companies which qualifies to be client companies of XYZ Ltd. where the company is in fiduciary relationship.*

5. Execution of Trade by designated persons

- 5.1 *Trading by designated persons shall be subject to the pre-clearance by the compliance officer, if the value of the proposed transaction or series of transactions in the client companies aggregates to Rs._____ or above. The Form for applying for pre-clearance of trade is enclosed at Annexure_____.*
- 5.2 *Prior to granting of pre-clearance of trade to the designated person, the compliance officer shall be entitled to seek declaration to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information relating to such client company.*

The compliance officer shall also have regard to whether any such

declaration is reasonably capable of being rendered inaccurate. Once the trade is executed, the designated person shall report such execution of Trade to the compliance officer in the format enclosed at Annexure.

- 5.3. The window for executing the trade by designated person pursuant to having obtained the pre-clearance shall be 7 trading days. In case the trade is not executed within 7 trading days, the pre-clearance shall elapse and the designated person will have to obtain fresh pre-clearance for executing such trade. In case the designated person has not executed the proposed trade after obtaining of pre-clearance shall report the same to the compliance officer in the format enclosed at Annexure_____.*
- 5.4. Once a trade is executed by the designated person, he/shall not be allowed to execute any contra trade for a period of not less than 6 months. In case such contra trade is executed inadvertently or otherwise, in violation of the restriction, the profits from such trade shall be liable to be disgorged for remittance to The Securities and Exchange Board of India for credit to the Investor Education and Protection Fund administered by SEBI. However, the restriction for contra trade shall not be applicable for trades pursuant to the exercise of Stock Options.*
- 5.5. In case the designated person has to enter into a contra trade within a period of 6 months of the execution of the initial trade, an application seeking relaxation shall be made to the compliance officer. The compliance officer on ensuring that the designated person is not in possession of any unpublished price sensitive information and that the proposed trade is not in contravention to the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015 may grant such permission.*
- 5.6. The compliance officer may from time to time seek declaration of the Securities of the company by the designated person and their immediate relatives in the format enclosed at Annexure-*

6. Disclosure by designated person

The designated person is required to disclose Name and PAN or any other identifier authorised by Law of the following persons:

- (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;*
- (d) *Names of the Educational Institutions from which designated persons have graduated and names of their past employers shall also be disclosed on a one time basis.*

7. Reporting on Trades by the compliance officer

The compliance officer shall submit to the board of directors a Report on the trades by the designated persons pursuant to this Code and as per the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015. Further, a consolidated Report shall also be provided to the Chairman of the Audit Committee on annual basis.

8. Chinese Wall and Crossing over the Chinese Wall

To Prevent the misuse of confidential information, the company shall adopt a "Chinese Wall policy" which separate those areas of the company which routinely have access to confidential information, considered "inside areas" from those areas which deal with sale/marketing/investment advise or other departments providing support services, considered "Public Areas".

The employees in the inside area shall not communicate any price sensitive information to anyone in public area. The employees in inside area may be physically segregated from employees in public area. Demarcation of the various departments as inside areas may be implemented by the company.

However, in exceptional circumstances employees from the public areas may be brought "over the walls" and given confidential information on the basis of "need to Know" criteria, under intimation to the compliance officer.

In case any designated person has to cross over the wall and seek any information from the inside area, he/she shall apply for such access in writing providing reasons as to why such access is being sought.

The Approving Authority shall assess such request and after recording justifications in writing may grant such approval to the designated person to seek requisite information from the inside area.

9. Penalties for Non-Compliance and Policy & Procedures for Inquiry in case of leak of Unpublished Price Sensitive Information

In the event of any non-compliance being observed of these Regulations, the same shall be disclosed to the stock exchange(s) where the concerned securities are traded duly intimating the nature of violations.

In case of any non-compliance observed/reported under this Code, the same shall attract sanctions and disciplinary actions/punishment as may be deemed fit by the board of directors. The penalties/punishment imposed by the board of directors under this Code shall be independent of the penalties/fines/punishment as may be imposed by the Securities and Exchange Board of India.

ANNEXURE-IX**Specimen of Structured Digital Database***(To be maintained by the compliance officer)*

<i>Date of Entry:</i>	<i>UPSI Disclosure Number:</i>
<i>Shared by</i>	<i>Name of person sharing UPSI</i>
<i>Details of UPSI</i>	<i>[Insert Details]</i>
<i>Shared with: (Drop down options)</i> <i>Collaborators/Auditors/Lenders including Prospective Lenders//Customers/Suppliers/Merchant Bankers/Legal Advisors/Credit Rating Agencies/Insolvency professionals/Service providers/Consultant</i>	<i>Name of Entity:</i>
	<i>Name of Person:</i>
	<i>PAN Number:</i>
	<i>Other identifier:</i>
<i>Type of Sharing: (Drop down options)</i> <i>One Time</i> <i>On-going</i>	
<i>Date of Sharing:</i>	<i>Period of Sharing: (In case of ongoing sharing)</i>
<i>Mode of Sharing:</i>	
<i>Confidentiality Agreement: (Yes/No)</i>	<i>Date of Agreement:</i>
<i>Description of Agreement:</i>	
<i>Confidentiality Intimation date:</i>	
<i>Purpose of Sharing:</i>	
<i>Information description:</i>	
<i>Remarks</i>	

ANNEXURE-X

(Note: There are two requirements, i.e., intimation about confidential nature of the information and confidentiality agreement in case of disclosure for open offer.)

The specimen confidentiality letter is as under:

To

Date:

Kind Attn:

Dear Sir,

This has reference to ("Purpose"). As you are aware, the information being shared with ("Recipient") and/or its partners, employees, representatives or agents ("Representatives") in connection with the Purpose includes Unpublished Price Sensitive Information.

In pursuance of the provisions of Regulation 3(2B) and other applicable provisions of Securities and Exchange Board of India (Prohibition of Insider Trading Regulations), 2015 ("PIT Regulations"), we hereby advise you that the confidentiality of the information shared/to be shared by the company or its employees with Recipient or your Representatives or otherwise obtained by Recipient and/or Representatives in connection with the Purpose, shall be maintained in compliance with the PIT Regulations.

Kindly sign and return a copy of this letter in confirmation of your acceptance of the terms hereof.

This letter is in addition to the confidentiality agreement/undertaking executed by you on and/or any other confidentiality undertaking/agreement executed by you in favour of the company in this regard.

Thanking You,

Yours' Sincerely,

For

Agreed and Accepted

For -

Signed

Specimen of Confidentiality Agreement with Persons to whom UPSI is disclosed for Legitimate Purpose

THIS CONFIDENTIALITY AGREEMENT ("Agreement") is executed at
(name of the city) on this_(day) of_(month) of _____(year) .

BY AND BETWEEN:

XYZ Ltd., a company incorporated with CIN and having its registered office at (hereinafter referred to as the "Disclosing Party"), which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns);

AND

Mr./Mrs., aged __, having permanent account number _____ and residing at _____ (hereinafter referred to as the "Recipient") (which expression shall unless it be repugnant to the context or meaning thereof deemed to mean and include his or her legal heirs and authorised representatives.)

The Disclosing Party and the Recipient shall individually be referred to as a "Party" and collectively be referred to as the "Parties".

RECITALS

- A. The Disclosing Party is a limited company whose securities are listed.
- B. The Recipient is _____ (indicate the relationship of the Recipient with the Disclosing Party)
- C. In connection with _____ (indicate the legitimate purpose for which the UPSI is being provided).
- D. Pursuant to the legitimate Purpose, the Parties are entering into this Agreement in order to record the terms and conditions on the basis of which the Disclosing Party will provide the Confidential Information to the Recipient for ensuring the confidentiality thereof.

NOW THEREFORE, IN CONSIDERATION OF THE BELOW MENTIONED CONDITIONS AND COVENANTS, THE ADEQUACY OF WHICH THE PARTIES ACKNOWLEDGE, IT IS AGREED AS FOLLOWS:

1. "Confidential Information" shall mean all confidential and proprietary, technical, financial, business information, and processes or methodologies of the Disclosing Party or of _____ If information is being shared in respect of a party other than the Disclosing Party, please

specify the name of such entity.], disclosed by the Disclosing Party to the Recipient on or after the date of this Agreement in connection with the legitimate Purpose in whether verbal, written, graphics, visual or electronic mode, which is or may be related in any way to the business or any material or non-material fact not publicly released, whether marked as confidential or not.

2. *The Recipient:*

- (i) shall hold in strict confidence and shall not disclose any Confidential Information to any person whatsoever. The Recipient shall use such Confidential Information only for the evaluation and/or the legitimate purpose and shall not use or exploit such Confidential Information solely for its own benefit or the benefit of another without the prior written consent of the Disclosing Party.*
- (ii) and the spouse of such Recipient and parents, siblings and children of such Recipient or of the spouse, who are either financially dependent on the Recipient or consult the Recipient in taking decisions relating to trading in securities its ("immediate relatives") shall take all measures to protect the confidentiality and avoid the unauthorized use, disclosure, publication, or dissemination of Confidential Information.*
- (iii) at any time upon the Disclosing Party's written request, shall promptly destroy all documents (or copies thereof) containing Confidential Information provided to it or created by it during the term of this Agreement without retaining any copies thereof.*
- (iv) agree not to (without obtaining the Disclosing Party's prior written consent) disclose the Disclosing Party's interest, participation or involvement in the evaluation of, discussions or negotiations undertaken in connection with the legitimate purpose in any manner whatsoever.*
- (v) agrees not to disclose any Confidential Information to its immediate relatives unless such relative has also executed a similar agreement with the company.*

3. *Limitation*

The Recipient shall have no further obligations, if such Confidential Information:

- (a) *is already in the public domain at the time of the Disclosing Party's communication thereof to the Recipient; or*
 - (b) *has entered the public domain through no fault of or breach by the Recipient, of any contractual obligation, subsequent to the time of the Disclosing Party's communication thereof to the Recipient; or*
 - (c) *is required to be disclosed by the Recipient to comply with applicable laws or government regulations, order of a court or judicial/regulatory authority; provided that the Recipient seeks the consent of the Disclosing Party for such disclosure and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.*
4. *The Recipient agrees that the Disclosing Party shall remain the exclusive owner of the Confidential Information.*
5. *The Recipient acknowledge that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of the Confidential Information and the Disclosing Party shall be entitled, without waiving any other rights or remedies, to seek such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.*
6. *The Recipient acknowledges that some or all of the Confidential Information disclosed under this Agreement may constitute "unpublished price sensitive information" under applicable law. Consequently, each of the Recipient and its representatives that have had access to the Confidential Information may be deemed to be an "Insider" under applicable law. The Recipient agrees and acknowledges that it is obligated to and shall ensure that its Representatives are compliant with applicable law in respect of the Confidential Information disclosed by the Disclosing Party to the Recipient.*
7. *The Recipient shall indemnify and hold harmless the Disclosing Party for and against any and all claims, actions, demands, proceedings, damages, losses, fees, penalties, expenses, costs (including attorneys' and advisors costs) and liabilities arising out of or in connection with any breach of this Agreement by the Recipient.*
8. *The obligations under this Agreement shall survive in perpetuity.*
9. *Miscellaneous:*

- (a) *This Agreement supersedes all prior agreements, (if any) written or oral, between the Disclosing Party and the Recipient relating to the Legitimate Purpose or subject matter of this Agreement.*
- (b) *No change, modification, or termination of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialled by all the signatories to this Agreement.*
- (c) *If any clause of this Agreement or the application of such clause is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected.*
- (d) *This Agreement shall be construed and interpreted in accordance with the laws of India and courts in__shall have exclusive jurisdiction to resolve or adjudicate in respect of any differences/ disputes that may arise from or under this Agreement.*

IN WITNESS WHEREOF, the signatories have executed this Agreement as on the day and the year first hereinbefore written.

Signed Sealed and Delivered

For and on behalf of

XYZ Limited

Name:

Authorised Signatory

In presence of

Signed Sealed and Delivered By

Name:

In presence of

ANNEXURE-XI**Specimen Policy and Procedures for inquiry in case of leak or suspected leak of Unpublished Price Sensitive Information**

*(Under Regulation 9A(5) of Securities and Exchange Board of India
(Prevention of Insider Trading) Regulations, 2015)*

1. INTRODUCTION

This Policy and Procedure for Inquiry in case of Leak or Suspected Leak of Unpublished Price Sensitive Information ("Policy") has been formulated by ("Company") in pursuance of Regulation 9A(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 as amended ("Regulations") and shall be effective from

2. PURPOSE

The Policy aims to provide a framework for inquiry in case of leak or suspected leak of Unpublished Price Sensitive Information. However, any instances of leak or suspected leak of Unpublished Price Sensitive Information reported under the Whistle Blower Policy of the company shall be dealt with as per and under the Whistle Blower Policy of the company.

3. DEFINITIONS

In this Policy, the following words and expressions, unless inconsistent with the context, shall bear the meanings assigned hereto:

"Competent Authority" means:

- (i) the managing director, in case of leak or suspected leak of UPSI involving any person other than the director(s) of the company;*
- (ii) the Chairperson of the Audit Committee of the company, in case of leak or suspected leak of UPSI involving any Director of the company other than the Chairperson of the Audit Committee of the company; and*
- (iii) Chairperson of the board of directors of the company, in case of leak or suspected leak of UPSI involving Chairperson of the Audit Committee of the company;*

"Unpublished Price Sensitive Information" or "UPSI" means any information, relating to the 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 and shall, ordinarily including but not restricted to, information relating to the following:

- i) Financial results;*
- ii) Dividends;*
- iii) Change in capital structure;*
- iv) Mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions; and*
- v) Changes in key managerial personnel.*

The words and expressions used but not defined herein shall have the meanings as ascribed to them in the Regulations.

4. INQUIRY PROCEDURE

- i) The information/complaint(s) regarding leak or suspected leak of UPSI will be reviewed by the Competent Authority. If an initial review by the Competent Authority indicates that the said information/complaint has no basis or it is not a matter to be investigated under this Policy, it may be dismissed at initial stage and the decision shall be documented. All such cases shall be reported to the Audit Committee in its next meeting.*
- ii) The managing director of the company or the Chairperson of the Audit Committee or Chairperson of the board of directors may suo-moto initiate an inquiry under this Policy.*
- iii) Where initial inquiry indicates that further investigation is necessary, the Competent Authority shall make further investigation in such matter and may, where necessary, provide an update to the board of directors in this regard. The Competent Authority may appoint one or more person(s)/entity(ies) (including external consultant(s)) to investigate or assist in the investigation of any instance of leak or suspected leak of UPSI and such person(s)/entity(ies) shall submit his/her/their report to the Competent Authority. During the course of investigation, the Competent Authority or the person(s)/entity(ies) appointed by the Competent Authority, as the case may be, may collect documents, evidences and record statements of the person(s) concerned.*
- iv) The investigation shall be a neutral fact-finding process. The Competent Authority shall endeavor to complete the investigation within 45 days of the receipt of the information/complaint of leak or suspected leak of*

UPSI or such instance coming to the knowledge of Competent Authority, as the case may be. Where the Competent Authority requires additional time to complete the inquiry, it may, where necessary, provide an interim update to the board of directors.

5. DOCUMENTATION AND REPORTING

The Competent Authority will make a detailed written record of investigation of each instance of leak or suspected leak of UPSI. The record will include:

- a) Facts of the matter*
- b) Findings of the investigation.*
- c) Disciplinary/other action(s) to be taken against any person.*
- d) Any corrective actions required to be taken.*

The details of inquiries made in these cases and results of such inquiries shall be informed to the Audit Committee and board of directors of the company.

Further, the company shall inform Securities and Exchange Board of India promptly of such leaks, inquiries and results of such inquiries.

6. AMENDMENT

The board of directors of the company reserves the right to amend or modify this Policy in whole or in part, as it may deem appropriate.

ANNEXURE-XII

Specimen of Confidentiality Intimation for designated persons

Date:

Mr.

.....

[Designation]

Notice under the provisions of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

This has reference to the "Code of Conduct to Regulate, Monitor and Report Trading in Securities of the company" ("Code") circulated to you and the provisions of Securities and Exchange Board of India (Prohibition of Insider Trading Regulations), 2015 ("Regulations"). You being a designated person under the Code, we hereby advise you to abide by the Code and keep the Unpublished Price Sensitive Information (as defined in Code and Regulations) which comes in your possession or knowledge, as strictly confidential and handle it in accordance with the requirements of the Code and Regulations.

Kindly sign and return a copy of this letter in confirmation of your acceptance of the terms hereof.

This letter is in addition to any confidentiality agreement/undertaking executed by you in favour of the company.

Thanking You,

Yours' Sincerely,

for

Agreed and Accepted

Signed

Name of Employee:

Annexure-XIII

**Report by (Name of the Listed company/Intermediary/Fiduciary)
for violations related to Code of Conduct under SEBI (Prohibition of
Insider Trading) Regulations, 2015**

(For listed company: Schedule B read with Regulation 9(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015

For Intermediary/Fiduciary: Schedule C read with Regulation 9(1) and 9(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015)

Sr. No.	Particulars	Details
1	Name of the Listed company/intermediary/Fiduciary	
2	Please tick appropriate checkbox Reporting in the capacity of : Listed Company Intermediary Fiduciary	
3	A. Details of designated person (DP) i. Name of the DP ii. PAN of the DP iii. Designation of DP iv. Functional role of DP v. Whether DP is Promoter or belongs to Promoter Group	
	B. If Reporting is for immediate relative of DP i. Name of the immediate relative of DP ii. PAN of the immediate relative of DP	
	C. Details of transaction(s) i. Name of the scrip ii. No. of shares traded and value (Rs.) (Date-wise)	
	D. In case value of trade(s) is more than Rs. 10 lacs in a calendar quarter i. Date of intimation of trade(s) by concerned DP/director/promoter/promoter group to Company under regulation 7 of SEBI (PIT) Regulations, 2015	

	<i>ii. Date of intimation of trade(s) by Company to stock exchanges under regulation 7 of SEBI (PIT) Regulations, 2015</i>																							
4	<i>Details of violations observed under Code of Conduct</i>																							
5	<i>Action taken by Listed company /Intermediary/Fiduciary</i>																							
6	<i>Reasons recorded in writing for taking action stated above</i>																							
7	<i>Details of the previous instances of violations, if any, since last financial year</i>																							
8	<p><i>If any amount collected for Code of Conduct violation(s)</i></p> <p><i>i. Mode of transfer to SEBI - IPEF (Online/Demand Draft)</i></p> <p><i>ii. Details of transfer/payment</i></p> <p><i>In case of Online:</i></p> <table border="1"> <thead> <tr> <th>Particulars</th> <th>Details</th> </tr> </thead> <tbody> <tr> <td><i>Name of the Transferor</i></td> <td></td> </tr> <tr> <td><i>Bank Name, Branch and Account number</i></td> <td></td> </tr> <tr> <td><i>UTR/Transaction reference number</i></td> <td></td> </tr> <tr> <td><i>Transaction Date</i></td> <td></td> </tr> <tr> <td><i>Transaction Amount (in Rs.)</i></td> <td></td> </tr> </tbody> </table> <p><i>In case of Demand Draft (DD):</i></p> <table border="1"> <thead> <tr> <th>Particulars</th> <th>Details</th> </tr> </thead> <tbody> <tr> <td><i>Bank Name and Branch</i></td> <td></td> </tr> <tr> <td><i>DD number</i></td> <td></td> </tr> <tr> <td><i>DD date</i></td> <td></td> </tr> <tr> <td><i>DD Amount (in Rs.)</i></td> <td></td> </tr> </tbody> </table>	Particulars	Details	<i>Name of the Transferor</i>		<i>Bank Name, Branch and Account number</i>		<i>UTR/Transaction reference number</i>		<i>Transaction Date</i>		<i>Transaction Amount (in Rs.)</i>		Particulars	Details	<i>Bank Name and Branch</i>		<i>DD number</i>		<i>DD date</i>		<i>DD Amount (in Rs.)</i>		
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<i>DD Amount (in Rs.)</i>																								
9	<i>Any other relevant information</i>																							

Yours faithfully

Date:

Name and signature of Compliance Officer

Place:

PAN:

Email ID:

ANNEXURE-XIV**SCHEDULE D***[See regulation 7B]***Form for Informant's Voluntary Information Disclosure to be submitted to the Board.**

Note: For submission of information through a legal representative, the redacted copy of the Form expunging information that may identify the Informant shall be submitted by the legal representative without expunging any information relating to the legal representative and the details relating to the violation of insider trading laws.

*Indicates that the required field is non-mandatorily, remaining fields are mandatory.

I. PERSONAL INFORMATION OF THE INFORMANT		
A. INDIVIDUAL 1:		
Last Name :	First Name :	Title:.....
Address:	City/State:	PIN:
Telephone (with State Code):	Mobile:	E-Mail address:
Employment Details*:	Permanent Account Number, if available:	
II. LEGAL REPRESENTATIVE (where applicable)		
Last Name:.....	First Name :	Title:.....
Firm Name (if not self-employed):		
Contact address :	City/State:	PIN:
Residence address:	City/State:	PIN:
Telephone (with State Code):	Mobile:	E-Mail address:
Bar Council Enrolment Number:		
III SUBMISSION OF ORIGINAL INFORMATION		
1. Is it a violation of insider trading laws? Yes/No		
2. If yes to question (1), please describe the type of violation:		

3. Has the violation: Occurred/Occurring/Potential to occur in future
4. If the violation has occurred, date of occurrence: dd/mm/yy (in case exact date is not known, an approximate period may be entered)
5. Have the individual(s) or their representatives had any prior communication(s) or representations with the Board concerning this matter? Yes (Details thereof)/No
6. Does this violation relate to an entity of which the individual is or was an officer, director, counsel, employee, consultant or contractor? Yes (Details thereof)/No
7. If yes to question (6), was the original information submitted first to your Head or internal legal and compliance office? Yes/No
8. If yes question (7), then please provide, Date of submission of original information: dd/mm/yy
9. Please describe in detail how the information submitted by you constitutes a violation of insider trading laws? The details must include specific information with respect to: (i) details of the securities in which insider trading is alleged; (ii) the unpublished price sensitive information based on which insider trading is alleged; (iii) date on which the unpublished price sensitive information was made public; (iv) details of circumstances/evidence leading to possession of unpublished price sensitive information by the alleged violator(s); (v) details of insiders/suspects and their trades (i.e., purchase/sale and quantity purchased/sold) along with dates/period of trades.
10. What facts or supporting material is your allegation based on? Please include self-certified copies of all the relevant documents. Please attach any additional documents to this form, if necessary.
11. Identify any documents or other information in your submission that you believe could reasonably be expected to reveal your identity and explain the basis for your belief that your identity would be revealed if the documents were disclosed to a third party.

12. Provide details of connection amongst the Informant, the company whose securities are involved and the person against whom information is being provided:

IV. DECLARATION

I/we hereby declare that,-

- A. I/we have read and understood the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;
 - B. I/we accept that mere furnishing of information by me/us does not by itself confer on me/us right to get reward and that I/we may not get any Reward at all. I/we would be bound by the decisions that the authority competent to grant reward may take;
 - C. I/we accept that the Securities and Exchange Board of India is under no obligation to enter into any correspondence regarding action or inaction taken as a result of my/our information.
 - D. I/we accept that the reward would be an ex-gratia payment which, subject to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, shall be granted at the absolute discretion of the competent authority. The decision of the authority shall be acceptable to me/us and I/we shall not challenge it in any litigation, appeal, adjudication, etc.
 - E. In the event of my/our death before the reward paid to me/us, it may be paid to (Details of nominee)
 - F. I/we declare that the information contained herein is true, correct and complete to the best of my/our knowledge and belief and not obtained from the categories of persons indicated in sub-regulation (2) and sub-regulation (6) of Regulation 7G of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 and agree to indemnify the Board in case it is not so found.
- I/we fully understand that I/we may be subject to action under securities laws as well as Section 182 of the Indian Penal Code, 1860 and ineligible for Reward if, in my/our submission of information or in any other dealings with the Board, I/we knowingly and wilfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement.

Signature:..... Date: dd/mm/yy

Place:

V. CERTIFICATE BY LEGAL REPRESENTATIVE (where the information is submitted through legal representative)

I hereby certify as follows,-

- (a) I have reviewed the completed and signed Voluntary Information Disclosure Form for completeness and accuracy and the information contained therein is true, correct and complete to the best of my knowledge;
- (b) I have irrevocable consent from the Declarant, to provide to the Securities and Exchange Board of India, the original Voluntary Information Disclosure Form in the event of a request for it from the Securities and Exchange Board of India due to concerns that the Informant has not complied with these regulations or where the Securities and Exchange Board of India requires the said information for the purpose of verification for declaring any gratuitous reward to the Informant or where the Securities and Exchange Board of India determines that it is necessary to seek such information to accomplish the purpose of the Securities and Exchange Board of India Act including for the protection of investors, sharing with foreign securities regulators and foreign and Indian law enforcement agencies, etc.;
- (c) I am and shall continue to be legally obligated to provide the original Voluntary Information Disclosure Form without demur within seven (7) calendar days of receiving such request from the Securities and Exchange Board of India.

Signature:.....

Date: dd/mm/yy

Place:

