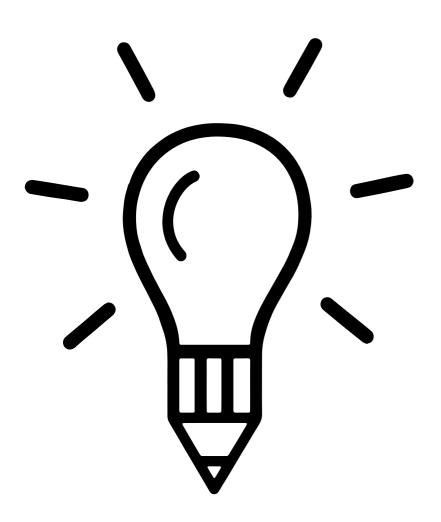


OVERVIEW OF THE SESSION



Brief of existing Insider Trading regulations

Amendments in Insider Trading Regulations effective from April 1st, 2019

Brief of existing PFUTP Regulations

Amendments in PFUTP Regulations effective from February 1st, 2019



Insider Trading..

- Trading/ dealing in company's stock by an insider/ connected person on the basis of Unpublished Price Sensitive Information (UPSI).
- Tt is breach of a fiduciary duty or other relationship of trust, and confidence.
- Figure 1 It gives traders an unfair advantage over others and strikes at the very root of market integrity. Thus considered as Illegal.







"Insider""



Connected Person

Who is in possession of or having access to "UPSI"

*No amendment

Connected Person*

CONNECTED PERSONS

Any Person associated with the Company in any manner, during the 6 months prior to the concerned act and has access to <u>UPSI directly or indirectly or is reasonably expected to allow such access.</u>

DEEMED TO BE CONNECTED PERSONS

- a) an immediate relative of connected persons.
- b) a holding company or associate company or subsidiary company; or
- c) an intermediary 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.
- h) an official or an employee of a self regulatory organization recognised or authorized by the Board;
- 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;

"Unpublished Price Sensitive Information"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. —

- Information, including but not restricted to following shall be held as UPSI:
- financial results;
- dividends;
- change in capital structure; mergers, de-mergers, acquisitions, delisting's, disposals and expansion of business and such other transactions;
- changes in key managerial personnel; and
- material events in accordance with the listing agreement.

All material events as per LODR Regulations may not be a "UPSI" per-se.

Hence, the same have been removed from the definition of "UPSI"

Insertion of New Definition "Proposed to be listed"

2(ha)- "Proposed to be listed" shall include securities of an unlisted company:

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

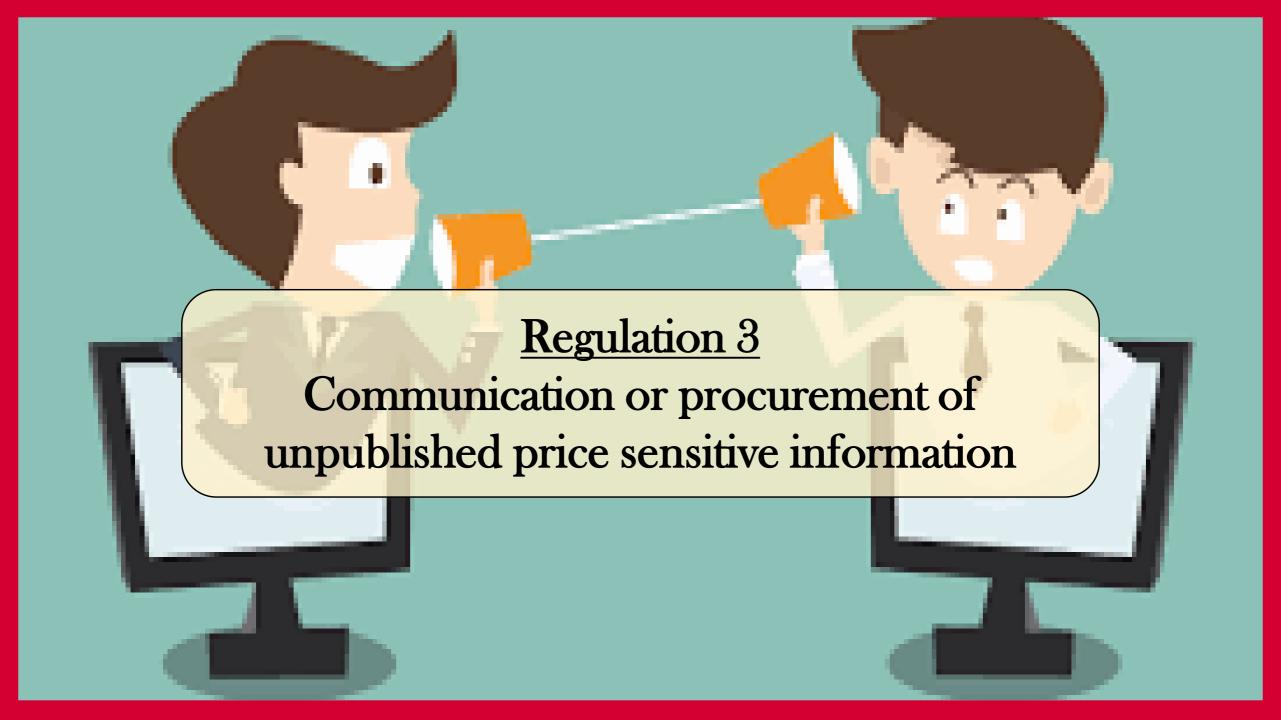
if such unlisted company is getting listed pursuant to any merger or amalgamation and has filed a copy of such scheme of merger or amalgamation under the Companies Act, 2013;

This amendments now clarify the "Point in time" w.r.t. applicability of PIT Regulations on "Proposed to be listed" company and when the information pertaining such to companies will be regarded as UPSI.

Addition of Explanation "Financially literate"

The definition of "Compliance Officer" under Regulation 2(1) (c), requires that such compliance officer should be "financially literate" to carry out his duties effectively.

"Explanation-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."



Insertion of New Sub-Regulation for "Legitimate Purposes"

Regulation 3(1) and 3(2) provided that no Insider shall communicate UPSI for other the "Legitimate Purposes". Now additional provisions have been made in this respect

Regulation 3(2A)- "The board of directors of a listed company <u>shall</u> make a policy for determination of "legitimate purposes" as a part of "Codes of Fair Disclosure and Conduct" formulated under regulation 8.

Regulation 3(2B)- "Any person in receipt of unpublished price sensitive information pursuant to a "legitimate purpose" shall be considered 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."

Explanation as to what constitute "Legitimate Purposes"

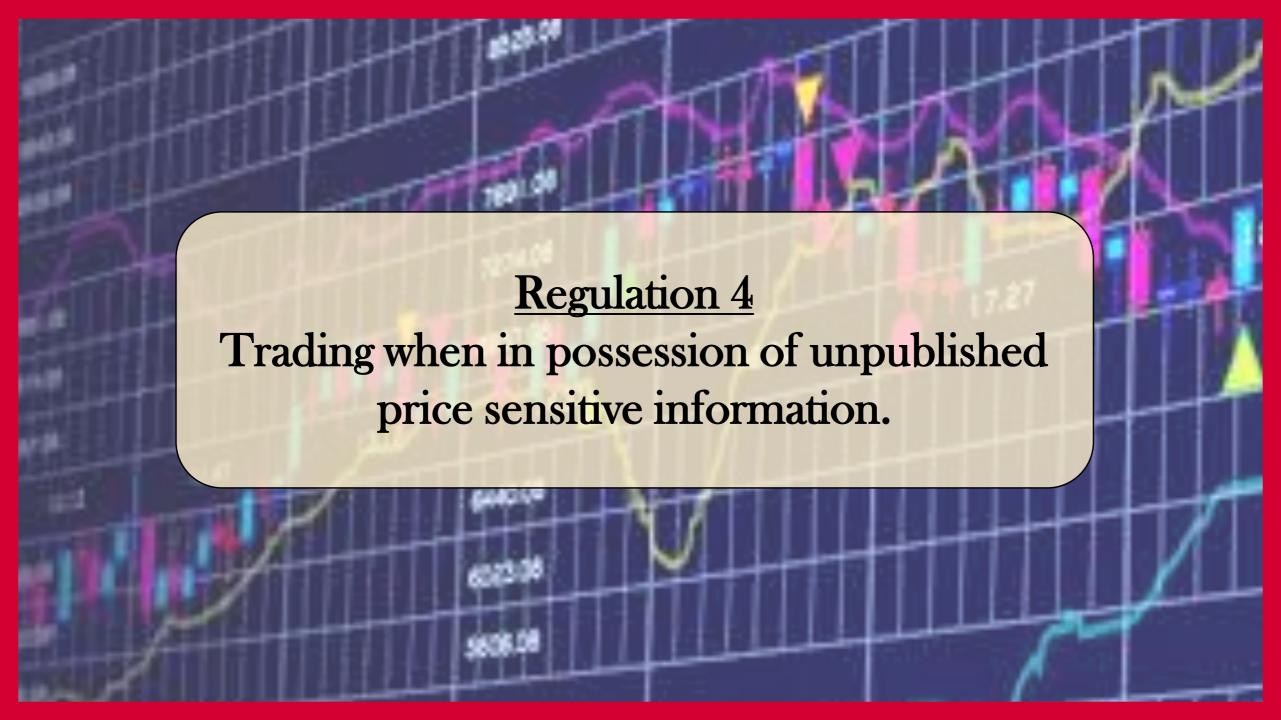
Explanation -

"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."

Insertion of New Sub-Regulation "Digital Database"

Regulation 3(5): The board of directors shall ensure that a <u>structured</u> digital database is maintained containing the names of such persons or entities as the case may be 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 databases shall be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database

The BOD of listed companies are now required to set up and <u>maintain a digital</u> <u>database of the persons with whom the UPSI is shared</u>.



Insertion of Explanation to Regulation 4(1)

The existing Regulation4(1) provided 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"

Explanation –

When a person who has traded in securities has been in possession of unpublished price sensitive information, <u>his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession</u>.

Thus, <u>onus</u> to prove that trades were executed otherwise is <u>shifted on the</u> <u>person trading</u> and <u>SEBI is not under the obligation</u> to <u>prove beyond</u> <u>doubt</u> that trades were executed with UPSI

Expanding the ambit of <u>exclusions</u> pertaining to trading while in possession of UPSI

The following amendment has been made in Proviso to Regulation 4(1):

The scope of events that can be excluded from the ambit of "Insider Trading":

- ➤Off- Market inter-se transfer between promoters Insiders possessing same UPSI.
- ➤In case of non-individual insider, the person in possession of UPSI and person taking trading decisions are different.
- Trading pursuant a trading plan.
- Transfer through Block deal mechanism between insiders who were in possession of the same UPSI(not obtained pursuant to regulation 3 of existing insider law).
- > Trading pursuant to fulfillment of a statutory or regulatory obligations.
- Exercise of stock options (where exercise price was pre-determined in compliance with SEBI (SBEB) Regulations, 2014.

Regulation 5 **Trading Plans** 56666

Clarifying aspects of an approved "Trading Plan"

Regulation 5(3)-The compliance officer shall review the <u>Trading Plan</u> 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.

<u>Provided that pre-clearance of trades shall not be required for a trade executed as per an approved trading plan.</u>

<u>Provided further</u> that trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan

Thus trades executed pursuant to an approved Trading Plan would be <u>exempted</u> from provisions of <u>Pre-clearance</u>, <u>Trading window</u> and <u>Contra Trade</u>.

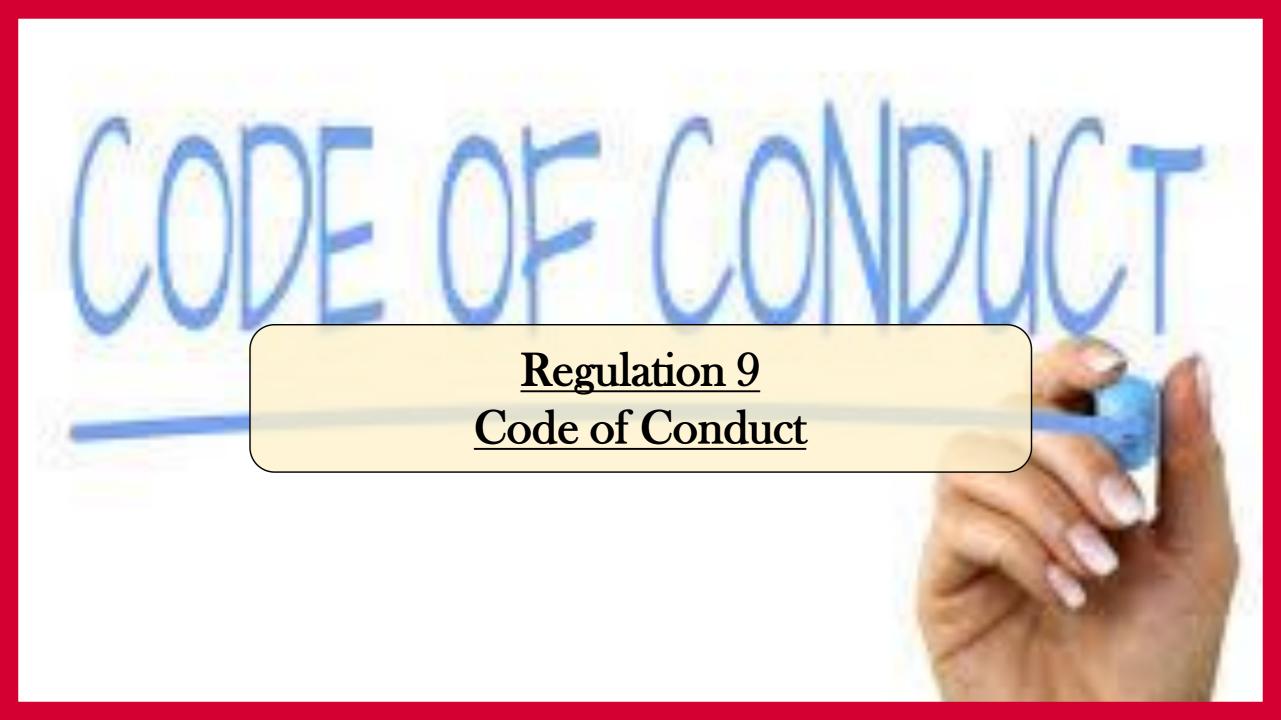


Minor Clarification w.r.t. filing continual disclosures from employee to designated persons

Regulation 7(2)(a)- Every promoter, employee 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;

Clears the ambiguity and made more specific;

Designated Person also defined now.



Formulation of Separate Code of Conduct by listed Companies and Intermediaries & Fiduciaries

Regulation 9(1) is amended as follows:

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 employee and connected persons 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.

BOD approval mandatory to the Code of Conduct; Intermediaries to have Code of Conduct as per Schedule C now.

Formulation of Separate Code of Conduct by listed Companies and Intermediaries & Feduciaries

Explanation added:

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.

Listed Intermediaries require to formulate both code of Conducts i.e. as per Schedule B and Schedule C

Insertion of new Regulation 9(2)

Regulation 9(2) is as follows:

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.

All "fiduciaries" require to have code of conduct as per schedule C

Explanation & Note Added to Regulation 9(2)

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

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.

"Fiduciaries" defined; Notes explains the need of having code of conduct by fiduciaries

Formulation of Code of Conduct by listed Companies, Intermediaries and Fiduciaries

Entity	Schedule B (w.r.t. trading in their own securities)	Schedule C (w.r.t. trading in other securities)
Listed Company	✓	${f X}$
Intermediaries/Fiduciaries	${f X}$	✓
Listed Intermediaries	✓	√

Now, the intermediaries/fiduciaries has to formulate a separate code of conduct that from the listed companies.

Difference between Code of Conduct specified under Schedule B and C

By and large the provisions are same under both the Schedules; except certain intermediaries/fiduciaries related provisions are removed from schedule B and certain additional /alternate provisions added under Schedule C. Significant changes are dealt hereunder:

Provision	Schedule B	Schedule C
Trading Window	Listed Company shall close the trading window as per the norms of Code of Conduct.	No provision of Trading window.
Restricted List	Not required	Maintenance of list of such securities as a Restricted list to be used as a basis for approval/rejection of pre-clearance of trades.
Contra Trade	Designated person shall not execute contra trade.	Designated persons (Connected Person of the listed Company) shall not execute contra trade in such listed Company.
Reporting of Non-compliance	Non-compliance to be reported to the Board but the code of conduct also to specify the disciplinary actions that can be taken by Company	Intermediary or Fiduciary to inform Board of the non-compliance

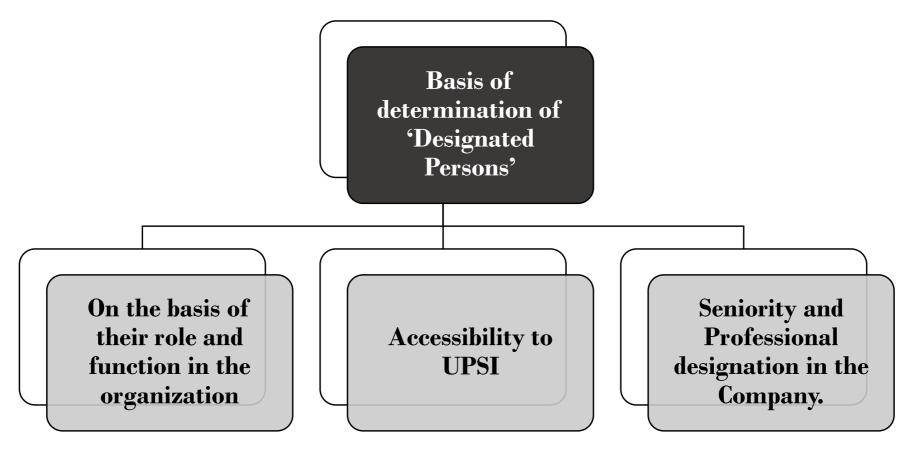
Under both schedules, the entities need to have a process for how and when people are brought "insider" on sensitive transactions.

Insertion of new Regulation 9(4) - Designated Persons Defined

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;
- iii. All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;
- iv. Chief Executive Officer and employees upto 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.

"DESIGNATED PERSONS"



Earlier, it was purely at the discretion of the Company to specify the person as the "Designated Persons"

MANDATORY PERSONS TO BE SPECIFIED AS

"DESIGNATED PERSONS"

Listed Companies

Promoter, CEO and Employees two level below CEO (Irrespective of their functional role)

CEO & Employees two level below CEO of material subsidiaries

Employees of material subsidiaries of such listed companies (Designated on the basis of their functional role.

Any support staff like IT Staff or Secretarial Staff (having access to UPSI)

Intermediaries/Fiduciaries

Promoters(Only Individuals or Investment Companies) & CEO and employees two level below CEO

Any other Employee designated on the basis of their functional role.

Any support staff like IT Staff or Secretarial Staff (having access to UPSI)

Insertion of New Regulation 9A: Institutional Mechanism for Prevention of Insider trading

Institutional Mechanism for Prevention of Insider trading.

- 9A. (1) 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.
- (2) The internal controls shall include the following:
- (a). all employees who have access to unpublished price sensitive information are identified as designated employee;
- (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.

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Insertion of New Regulation 9A: Institutional Mechanism for Prevention of Insider trading

- (3) 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 and subregulations (1) and (2) of this regulation.
- (4) 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.
- (5) 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.
- (6) The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.
- (7) 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

Regulation 9A: Institutional Mechanism for Prevention of Insider trading

Applicability

Listed Companies, Intermediaries and Fiduciaries

Responsibility

CEO or Managing Director or such other Analogous body

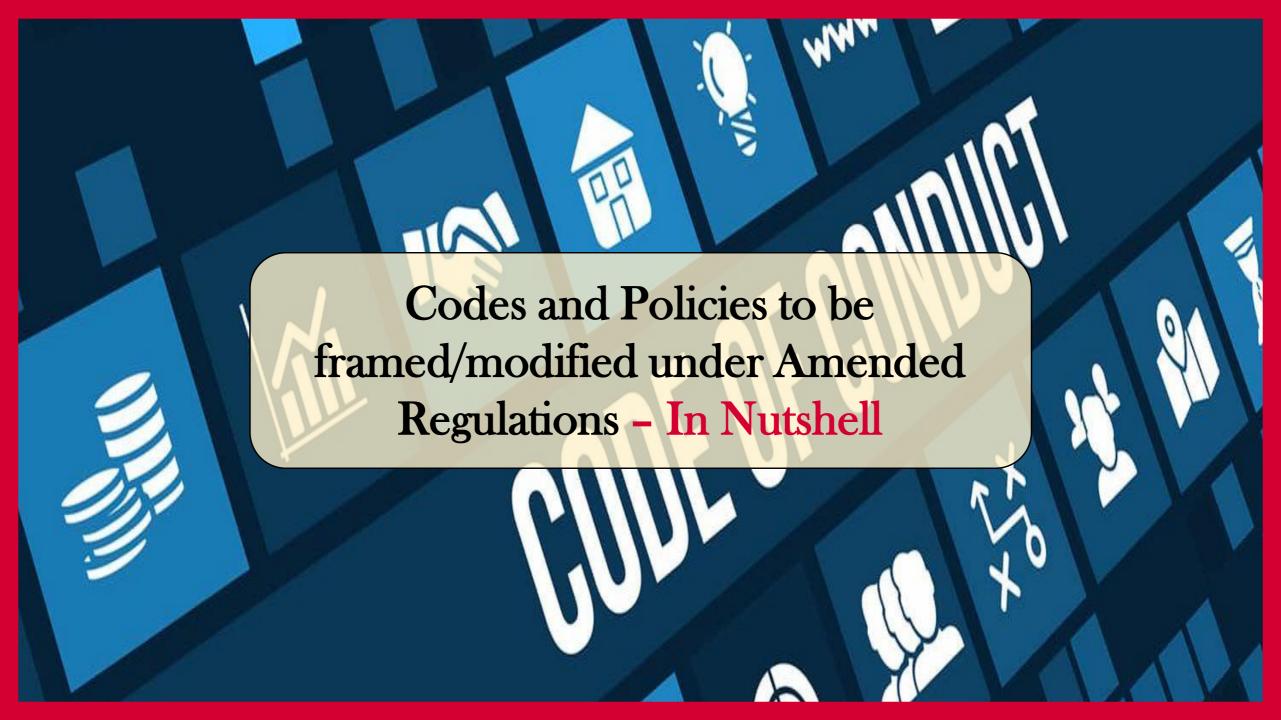
Internal Controls shall include:

- a) Employees having access to UPSI shall be identified as Designated Employee.
- b) Confidentiality of UPSI shall be as per these Regulations.
- c) Maintenance of database of Employees/persons in possession of UPSI. Confidentiality Agreement to be signed or notice to be served to such employees/persons.
- d) Compliance with other requirements under these regulations.
- e) Periodic process review of the Internal Control.

Audit committee/analogous body to review compliance at least once in financial year.

Every listed Company to formulate the following written policies:

- i. Prevention of leak of UPSI
- ii. Whistle Blower Policy



Codes and Policies	New/Modification	Applicable on
Policy for "Legitimate Purposes"	Included in existing "Code of Fair Disclosure and Conduct"	Listed Company
Databank of Persons having UPSI for "Legitimate Purpose"	New	Listed Company
Code of Conduct -Schedule B	Existing	Listed Company
Code of Conduct -Schedule C	C- New	Intermediaries/Fiduciaries
Institutional Mechanism for Prevention of Insider Trading	New	Listed Company/Intermediaries/Fiduciaries
Policy to prevent of leak of UPSI	New	Listed Company
Whistle Blower Policy	New	Listed Company/Intermediaries/Fiduciaries
To bring 'inside' on sensitive transaction	New	Listed Company/Intermediaries/Fiduciaries





Deepika Vijay Sawhney
Partner – Securities Law &
Transaction Advisory

M: +91 9818316936

T: +91 11 40622229

deepika@indiacp.com

www.corporateprofessionals.com