

Applicability of Insider Trading Regulations on Fiduciaries/Intermediaries



SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

With the intent of maintaining the securities market **a level playing field** and maintaining **market integrity & fairness**, SEBI introduced SEBI (Prohibition of Insider Trading) Regulations, 2015 which came into force on May 15, 2015.

With closing of year 2018, SEBI further incorporated various provisions for strengthening the governance to curb insider trading and **further pronounced several amendments** over the past years to this effect.

The Regulations aims at **prohibiting trading by insiders on the basis of price sensitive information which are not available to the public.**



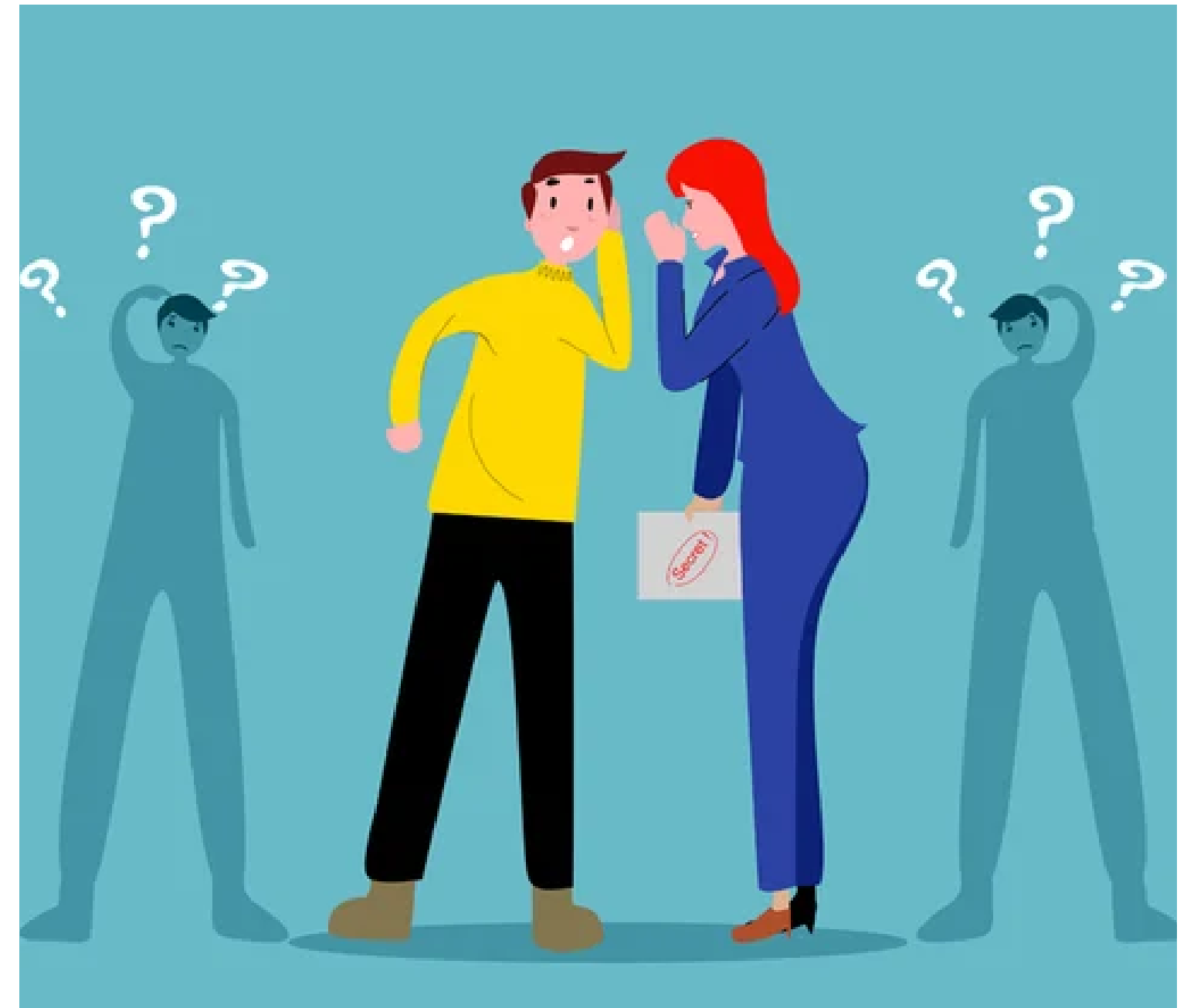
APPLICABILITY

Listed Company

Proposed to be Listed Company

Intermediaries

Fiduciaries



CORE TERMS

TRADING

- Subscribing (FPO, Rights Issue)
- Redeeming
- Switching
- Buying
- Selling
- Dealing (Gift, Participation in Open offer/ Buyback, Derivatives trade, etc.)
- Agreeing to subscribe, redeem, switch, buy, sell, deal
- Pledging of shares (any encumbrance)



INSIDER

- a connected person; or
- any person who is in Possession of or having Access to Unpublished Price Sensitive Information (“UPSI”)



Note: The SEBI (Prohibition of Insider Trading) Regulations, 2015 aims to regulate the following activities by Insider:

- **Possession of UPSI**
- **Sharing of UPSI**
- **Trading in securities on the basis of UPSI**

UNPUBLISHED PRICE SENSITIVE INFORMATION (‘UPSI’)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.

Mandatorily includes:

- financial results;
- dividends;
- change in capital structure;
- mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;
- changes in key managerial personnel

Note: UPSI generally originates within the company and circulates internally as well as externally (including to fiduciary and intermediaries).



NAVIGATING THE INFORMATION FLOW

EXAMPLE 1 – FINANCIAL ADUIT



FINANCIAL INFORMATION

Internal financial data concerning sales, expenses, capital expenditures, and revenue flows are compiled within the company.



UNAUDITED FINANCIALS

Based on the internal financial information, unaudited financial statements are prepared by the company's finance department.



AUDITORS

The unaudited financial statements are then provided to independent auditors for their statutory audit.

(Fiduciary)



BOARD/ AUDIT COMMITTEE

Following the audit, the audited financial statements are presented before the Audit Committee and the Board of Directors.



GENERALLY AVAILABLE

Upon approval by the Audit Committee and Board , the audited financial statements are disclosed to the relevant stock exchange, in compliance with regulatory obligations.

NAVIGATING THE INFORMATION FLOW

EXAMPLE 2- APPOINTMENT OF MANAGING DIRECTOR



TRANSACTION

Company decides to appoint a new Managing Director, triggering compliance requirements.



DRAFTS

Draft resolutions and compliance details are prepared.



RETAINERS/ ADVISORS

Retainer/Advisors are engaged to vet the drafts and advise on compliance.

(Fiduciary)



BOARD/ NRC COMMITTEE

Following the same, meeting of Board of Directors/NRC is held and the resolution for appointment of new managing director is duly passed.



GENERALLY AVAILABLE

Upon Board approval, the disclosures are made to the relevant stock exchange, in compliance with regulatory obligations.



**GENERAL MANAGER
SECRETARIAL DEPARTMENT**

**New Managing
Director
Incoming!!**



**SENIOR ASSOCIATE
RETAINER/ADVISOR**

**Oh!! XYZ Limited
appointing a new
Managing
Director!!**

- **Employees of both XYZ Limited (the "Company") and its Retainer/ Advisors possess identical unpublished price-sensitive information.**
- **Consequently, employees of Retainer/ Advisors bear an equal duty and responsibility to adhere to the SEBI (Prohibition of Insider Trading) Regulations and refrain from utilizing such information for unlawful gain, thereby upholding market integrity.**

FIDUCIARIES

A Fiduciary is someone who has a duty of loyalty and care towards another person or entity, and who must act in their best interest.

In the context of a listed company, fiduciaries may include professional firms such as **Auditors, Accountancy firms, Law firms, Analysts, Insolvency professional entities, Consultants, Banks, etc.,** assisting or advising listed companies.

Operating from a position of trust, these fiduciaries **routinely gain access to various UPSI** related to listed entities and their securities while rendering services to such entities.

INTERMEDIARIES

SEBI-registered intermediaries, **including Depository, Depository Participants, Brokers, Sub-brokers, Merchant Bankers, Portfolio Managers, Investment Advisors, Registrars and Share transfer agents, Clearing Corporations etc.** play vital roles in the securities market including **but not limited to facilitating transactions, managing portfolios, providing investment advice and participating in various financial activities.**

Owing to their crucial role in the securities market these Intermediaries often gains access to UPSI of various listed companies, therefore, such Intermediaries are expected to uphold high standards of professionalism, integrity and compliance with regulatory requirements.

COMPLIANCES

01 Code of Conduct to regulate, monitor, and report trading by designated person and their immediate relatives. **[Regulation 9(2)]**

03 Designation of a Compliance Officer **[Regulation 9(3)]**

05 Maintenance of Internal Controls **[Regulations 9A(1)/(2)]**

02 Restricted Lists, Preclearance requirements, Contra Trade and Chinese Wall. **[Schedule C]**

04 Specification of Designated Persons **[Regulation 9(4)]**

06 Maintenance of Structured Digital Database **[Regulation 3(5)]**



REGULATION 9(2) - Code of Conduct

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.



SCHEDULE C

Restricted List – refers to a curated list of securities, sometimes also known as ‘Grey List’, which shall be maintained confidentially and used by Compliance officer for approving or rejecting applications for pre-clearance of trades.

Pre-clearance – 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.

Contra Trade – 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.

Chinese Wall – Appropriate Chinese Wall procedures, and processes shall be in place for permitting any designated person to “Cross the wall”.



REGULATION 9(3) - Designation of Compliance Officer

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.

“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
- 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.



REGULATION 9(4) - Specifying Designated Persons

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 UPSI in addition to seniority and professional designation** and shall include:-

- (i) Employees of such intermediary or fiduciary designated on the basis of their functional role or access to UPSI in the organization by their board of directors or analogous body;
- (ii) All promoters who are individuals or investment companies for intermediaries or fiduciaries;
- (iii) Chief Executive Officer and employees upto two levels below Chief Executive Officer of such intermediary, fiduciary and its material subsidiaries irrespective of their functional role in the company or ability to have access to unpublished price sensitive information;
- (iv) Any support staff of intermediary or fiduciary such as IT staff or secretarial staff who have access to UPSI.

Note: Stated in parlance to Intermediaries and Fiduciaries only.



REGULATION 9A(1)/(2) - Internal Controls

(1) The Chief Executive Officer, Managing Director or such other analogous person of a 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 UPSI **are identified as designated person;**

(b). **all the UPSI 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 UPSI** as required by these regulations;

(d). **lists of all employees and other persons with whom UPSI 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 3(5) - Maintenance of Structured Digital Database

The board of directors or head(s) of the organisation of **every person required to handle UPSI shall ensure that a Structured Digital Database("SDD") is maintained** containing the –

- Nature of UPSI and
- The names of such persons who have shared the information and
- Also the names of such persons with whom information is shared,
- 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.

**The database must incorporate robust security measures and real-time timestamping, elements which are absent in conventional spreadsheet software or recording tools.*

Structured Digital Database - INSILYSIS

Tailored to suit the requirements of Intermediaries and Fiduciaries, our comprehensive tool offers a one-stop solution for all compliance needs.

KEY FEATURES–

- **Capturing the Sharing and receiving of the UPSI.**
- **Unlimited Project/ Events creation.**
- **Unlimited Maintaining of the Restrictive List.**
- **Disclosures are available like – Annually, quarterly and monthly.**
- **UPSI Audit Log**
(Format on next slide)



Insilysis



Structured Digital Database - **INSILYSIS**

S.NO	Restricted list of securities	Name/ Nature of the Project to which UPSI Relate	Sender Name	Sender Pan Number	Recipient Name	Recipient Pan Number	Name of the Insider Organization	Initial Time of UPSI Sharing	UPSI Shared From Date	UPSI Shared To Date	UPSI Shared	Purpose of Sharing	Mode of Sharing	Project Start Date	Project End Date	Project Status	Remarks	Date and time of entry Created On	Non Disclosure Agreement (NDA) executed (Yes/no)
1																			

SEBI ADJUDICATION ORDER IN THE MATTER OF **ABC BEARINGS LIMITED**

The case involves an investigation by SEBI into suspected insider trading **regarding the merger of ABC Bearings Ltd with Timken India Ltd.** The UPSI period began on January 25, 2017, and corporate announcements were made on July 05, 2017. **Himanshu K. Desai, a partner at Parikh & Shah and the statutory auditor of ABC Bearings Ltd, was found to have attended meetings related to the merger and passed on UPSI to others, leading to unauthorized trades.**

Key Points

- Communication of UPSI by one partner to another (By Himanshu K Desai to Anirudh R Parikh)
- Communication of UPSI by Anirudh R Parikh to his mother (By AnirudhR Parikh to Menal Parikh)
- Trade executed by Menal Parikh while in possession of such Unpublished Price Sensitive Information (UPSI).
- The profit earned through aforesaid trading was Rs. 4.01 Lakh
- Penalty imposed on partners of Statutory Auditor ('Fiduciary') for illegitimate communication of UPSI and on Menal Parikh for trading while in possession of UPSI.

SEBI ADJUDICATION ORDER IN THE MATTER OF **ABC BEARINGS LIMITED**

SEBI IMPOSED PENALTY ON THE FOLLOWING INDIVIDUALS :-

- Himanshu K. Desai (10 Lakhs) (Partner) (Parikh & Shah)
- Anirudh R. Parikh (10 Lakhs) (Partner) (Parikh & Shah)
- Menal R. Parikh (15 Lakhs) (Mother of Anirudh R. Parikh)
- SudhirKumar Choudhary (10 Lakhs) (CFO of the Company)
- J.S. Choudhary (20 Lakhs) (Son of Sudhir Kumar Choudhary)

LIST OF INTERMEDIARIES

- Merchant Bankers
- Stock Brokers
- Registrars and Share Transfer Agents
- Recognised Stock Exchanges
- Clearing Corporations
- Custodians
- Depository and Depository Participants
- Debenture Trustees
- Trusts for AIFs / Mutual Funds
- Credit Rating Agencies
- Mutual Funds
- Alternative Investment Funds (AIFs)
- Asset Management Companies of Mutual Funds / AIFs
- Portfolio Managers
- Investment Advisers
- Research Analysts
- Foreign Institutional Investors
- Bankers to an Issue

LIST OF FIDUCIARIES

- Statutory Auditors
- Secretarial Auditors
- Internal Auditors
- Accountancy firms
- Law firms
- Analysts
- Insolvency professional entities
- Consultants
- Banks
- Registered Valuers
- Practicing Company Secretaries
- Practicing Chartered Accountants
- Suppliers/Distributors
- Any other specific purpose auditor
- Any other professional firm advising and assisting listed company

Thank You

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