SEBI (PROHIBITION OF INSIDER TRADING), REGULATIONS 2015

Objective

- With the object of bringing the basic framework governing the regime of insider trading practices in line with the dynamic global scenario and to tighten the gaps of existing norms, SEBI has notified the new PIT Regulation to be renowned as SEBI (Prohibition of insider trading) Regulation,2015 on 15th January, 2015. These regulations will be effective w.e.f 15th May 2015.

What is Insider Trading?

- Insider Trading is trading/ dealing of a company's stock by an insider/ connected person on the basis of Unpublished Price Sensitive Information.

Who is Insider?

CONNECTED PERSON	OR	PERSON IN THE POSSESSION OF UPSI (Unpublished price sensitive information)

- The Regulations also intend to bring in its ambit persons who may seemingly not occupy any position in a company but are in regular touch with the company & its officers & have access to its internal nitty gritties.

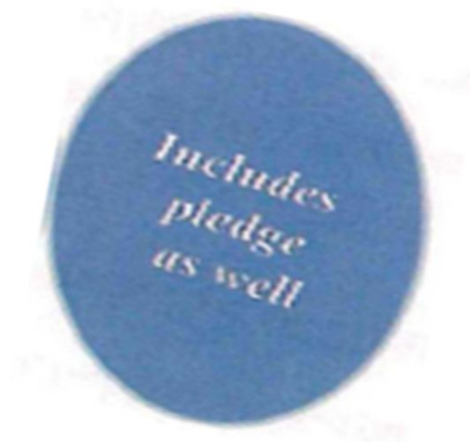
Connected Person

With Detailed Clarification...

Following shall be Connected/ Deemed to be connected with the Company:

- Any person who is or has been associated with company, in any manner, during the six months prior to the concerned act;
- An immediate relative of the connected person;
- A holding / associate/ subsidiary company;
- An official of stock exchange or of clearing corporation;
- A banker of the company;
- A concern, firm, trust, HUF, company or AOP wherein a director of a company/ immediate relative/ banker of company, has more than 10% of the holding or interest;

What includes Trading?



Trading means and includes:-

- Subscribing;
- Buying;
- Selling;
- Dealing;
- Agreeing to buy, sell, subscribe, deal in any securities;

Unpublished Price Sensitive Information (UPSI)

- Any information, relating to a company or its securities, that is not generally available, and is likely to materially affect the price of the securities is a UPSI

  It includes:-

- Financial results;
- Dividends;
- Change in capital structure;
- Mergers, de-mergers, acquisitions, delisting and such other transactions;
- Changes in KMPs;
- Material events in listing Regulations;

Who will Monitor ?

- The Regulations have casted major responsibility for monitoring & implementing the codes specified in these Regulations upon the **Compliance Officer;**
- Compliance Officer means any **senior officer,** designated so and **reporting to the Board of Director,** who is financially literate and well-versed with legal & regulatory compliances;
- He/she 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;

exceptions thereto...

No insider shall communicate, provide or allow access to any UPSI, to any person including other insiders, however, there are certain exceptions to this:

- **<u>Except for performance of duties, for legitimate business purposes & on a need to know basis.</u> :**
- **UPSI** may be communicated in connection with an open offer under the takeover regulations, where the Board of Director is of the view that the proposed transaction is in the best interest of the company;
- If the proposed transaction does not entail an open offer, then the Board of Directors shall disseminate the UPSI atleast 2 trading days prior to the proposed transaction;

Defences available to an Insider

- **THE ONUS OF PROVING THE INNOCENCE LIES ON THE INSIDER**
  - Contract confidentiality & Non-disclosure agreements has been executed;
  - The transaction is an off-market *inter-se* transfer between promoters;
- **In case of non-individual insiders:**
  - Individuals who were in possession of such UPSI were different from the individuals taking decisions;
  - Appropriate & adequate arrangements were in place to ensure that Regulations are not violated;
  - Trades were pursuant to a trading plan;

Code of conduct

CODE OF FAIR DISCLOSURE	CODE OF CONDUCT
formulated by: board of director of every listed company	Formulated by board of director of every listed companies, Market intermediaries & all other persons (Including Professional firms, auditor, consultants etc.) who are essentially in possession of UPSI
Policies shall be framed in accordance with schedule A & published on its website	Policy shall be framed in accordance with schedule B

Code of Fair Disclosure, *Schedule A* *......a new concept*

- Some important contents of this Code are:
  - Uniform & universal dissemination of UPSI to avoid selective disclosure;
  - Designation of a senior officer as a chief investor relations officer to deal with dissemination of information & disclosure of UPSI;
  - Appropriate & fair response to queries on new reports & requests for verification of market rumours by regulatory authority;
  - Ensuring that information shared with analysts 84 research personnel is not UPSI *And **more.....***

Code of Conduct, *Schedule B*

- Code of Conduct carrying internal guidelines for trading by insiders has been approved and adopted by the Board of Directors at the Board Meeting held on 1st May, 2015 effective from 15th May, 2015.
- It regulates, monitors 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.
- Designated employees and Intermediaries are required to follow the Code of conduct framed by the company.

DISCLOSURES

Types of Disclosure	What	By	To	Time limit
INITIAL DISCLOSER	Holding in the company	Promotor, KMP, or Director of the listed company	Company	Within 30 days of these regulation taking effect
	Holding on the date of appointment	Promotor, KMP, or Director	Company	Within 7 days of such appointment
CONTINUAL DISCLOSURES	Value of securities traded in aggregate in a calendar quarter, exceeds traded value of Rs 10 Lac or any other value as may be prescribed	Promotor, Director, or Employee	Company	Within 2 days of such transaction
		Company	Stock exchange	Within 2 days of receipts of disclosure

DISCLOSURES

Types of Disclosure	What	By	To	Time limit
Disclosure by other connected person	As Required by the company	Connected person	Company	As specified by the company

Penalties

- ***Any contravention of these Regulations shall be dealt with by SEBI in accordance with the SEBI and companies Act 2013.***
- MONETARY PENALTY: Section 15G of the Act imposes penalty of atleast Rs10 Lacs, which may extend to Rs. 25 Crore or three times of profits made out of insider trading, whichever is higher.
- IMPRISONMENT: Section 24 of SEBI Act even goes to the extent of imprisonment upto 10 years or fine upto Rs. 25 Crore, or both, for any offences pertaining to contravention of the provisions of the Act.

Case Law

- In the case of Hindustan Lever Ltd. (HLL) and Brooke Bond Lipton India Ltd. (BBLIL) were companies controlled by Uniliver Inc. **On appeal by HLL to the Appellate Authority,** UPSI involved since prior to the announcement of the merger, leading financial newspapers had reported and so it could not allege that the information was undisclosed and As a fall out of this case SEBI amended its Regulations in speculative reports in the media would not be treated as publication of price sensitive information, as referred to in definition 2(k) of amended regulations 2002.

- In the case of Manappuram Finance V SEBI, Charges form the director of Rs 10 lakh for violation of insider trading due to not obtaining the Pre-clearance.

Case Law

- Industry leader and biocon chief kiran Mazumdar shaw today said these rules have “draconian intent” and will kill the ESOPs.
- SEBI has charged A vellayan, a chairman of Murugappa Group, one of india’s leading business conglomerates and three other individual with insider trading
- SEBI orders impounding of Rs. 2.15 Cr in insider trading case and SEBI found that Gopalkrishan C and V Karuppiah had allegedly traded in the script of sabero organic Gujarat on the basis of UPSI