

## Ch-13 Prohibition Of Insider Trading

⇒ Important Definitions :-

① Insider - means any person  
i) who is connected person.  
ii) in possession of or having access to unpublished price sensitive information. (UPSI)

② connected person :-

- any person who is or has during six months prior to the concern Act has been associated with a company, directly or indirectly
- in any capacity (including by reason of freq. communication with its officer or by being in any contractual, fiduciary or employment relation. or
- is a director, officer or employee of the co. or hold any position including a professional or business relationship between himself and the company, whether temp. or permanent.
- that allow such person directly or indirectly access to unpublished price-sensitive information or reasonably expected to allow such access.

③ Deemed to be connected person :-

- a) an immediate relative.
- b) Holding / associate / subsidiary co.
- c) an intermediary specified in sec. 12 of the SEBI Act or an ee / director thereof.
- d) an investment co, trustee company asset management co or an empee or director thereof.
- e) an official of SE or clearing house or corporation.

f) member of board of trustee of mutual fund or mem of BOD of AMC of MF

g) member of BOD of PFI

h) official or an employee of self regulatory organization.

i) Banker of the company.

j) a concern, firm, trust, HUF, co. or association of persons where in D.limm. relative or bankers of the co. has more than 10% of holding.

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④ Unpublished Price-Sensitive info.

→ Unpublished Price sensitive info means any information, relating to a company or its securities directly or indirectly, that is not generally available which upon becoming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 security and shall, ordinarily including but not restricted to

- a) Financial results
- b) Dividends.
- c) change in capital structure.
- d) Merger, Demerger, acquisitions delisting, disposal and expansion of business.
- e) changes in Kmp.

⑤ Informant -

→ means an individual who voluntarily submits to the board a voluntary info. 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 regulation.

### Regulation - 3.

→ No person shall communicate, provide, or allow access to any UPSI relating to a company or securities listed or proposed to be listed to →

↓ other

any person. (incl. insiders) except such communication is for →

[MT:- LP, PD, DL]

BOD shall make a policy →

legitimate purpose.

performance of duties

Discharge of legal Fun<sup>n</sup>

Sharing info with Partner, collaborator, lenders, customers, suppliers etc] provided that such sharing has not been carried out to evade or prohibition of these regulation.

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shall be considered as insider for the purpose of these regulation. and

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Due Notice shall be given to such persons to maintain confidentiality.

→ To handle the UPSI the BOD shall ensure that structured digital database is maintain cont. →

- Nature of UPSI
- Name of person who have shared the info.
- Name of such person with whom info is shared along with PAN.

→ such database shall not be outsourced and shall be maintained internally with adequate internal control + audit trail to ensure non tampering of database.

→ Structured digital database is preserved for a period of not less than 8 yrs after completion of transaction.

→ in the event of receipt of any info. from the Board regarding any investigation or enforcement proceeding → relevant info shall be preserved till the completion of such proceeding.

### Exceptions :-

① If transaction entail an obligation to make an open offer under the takeover regulation where BOD is of informed opinion that sharing of info. is the best int. of the co.

② Not attract the obligation to make an open offer under a takeover regulation but BOD is of the informed opinion that sharing info is the best interest of the public co.

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Info. that constitute UPSI is disseminate to be made generally available at least 2 trading days prior to the proposed transaction.

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For the purpose of above BOD shall require the parties to execute confidentiality agreement.

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## ⇒ Regulation :- 4

### → Trading when in possession of UPSI

• An insider shall not trade in sec. which are listed or proposed to be listed on SE when in possession of UPSI except →

→ there is an off-market inter-se transfer between insiders who were in possession of UPSI.

→ transaction was carried out through the block deal mech. bet<sup>n</sup> persons who were in the possession of UPSI, provided →

→ There should be no breach of Reg. 3

→ Both parties had made a conscious and informed trade decision.

→ UPSI should not have been obtained under Reg. 3

→ off-market trade shall be reported within 2 WD to co. further within 2 WD → SE from receipt of disclosure or becoming aware of such info.

→ transaction undertaken persu. to the exercise of stock option

→ In the case of non-individual insiders - Individual taking the trade decision and the I possessing the UPSI are diff. and while taking trade decision individual were not in possession of such UPSI.

→ Trade were in accordance with trading plan - Reg. 5.

## ⇒ Regulation :- 5

→ An insider shall be entitled to formulate a trading plan in advance and present it to the compliance officer for approval

→ compliance officer shall review the trading plan

→ Pre-clearance of trade shall not be required for trade executed as per approved trading plan.

→ The trading plan once approved shall be irrevocable

→ Trading plan shall not be commenced if any UPSI in possession of insider at the time of formulation of plan has not become generally available at the time of commencement of implementation.

conditions attach to T.P.

⇒ overlapping of T.P. not permitted

⇒ T.P. specify the value of trade / No. of securities to be traded. date

⇒ T.P. shall not entail trading in securities for market abuse.

⇒ T.P. not entail trading for a reasonable period around the declaration of financial results.

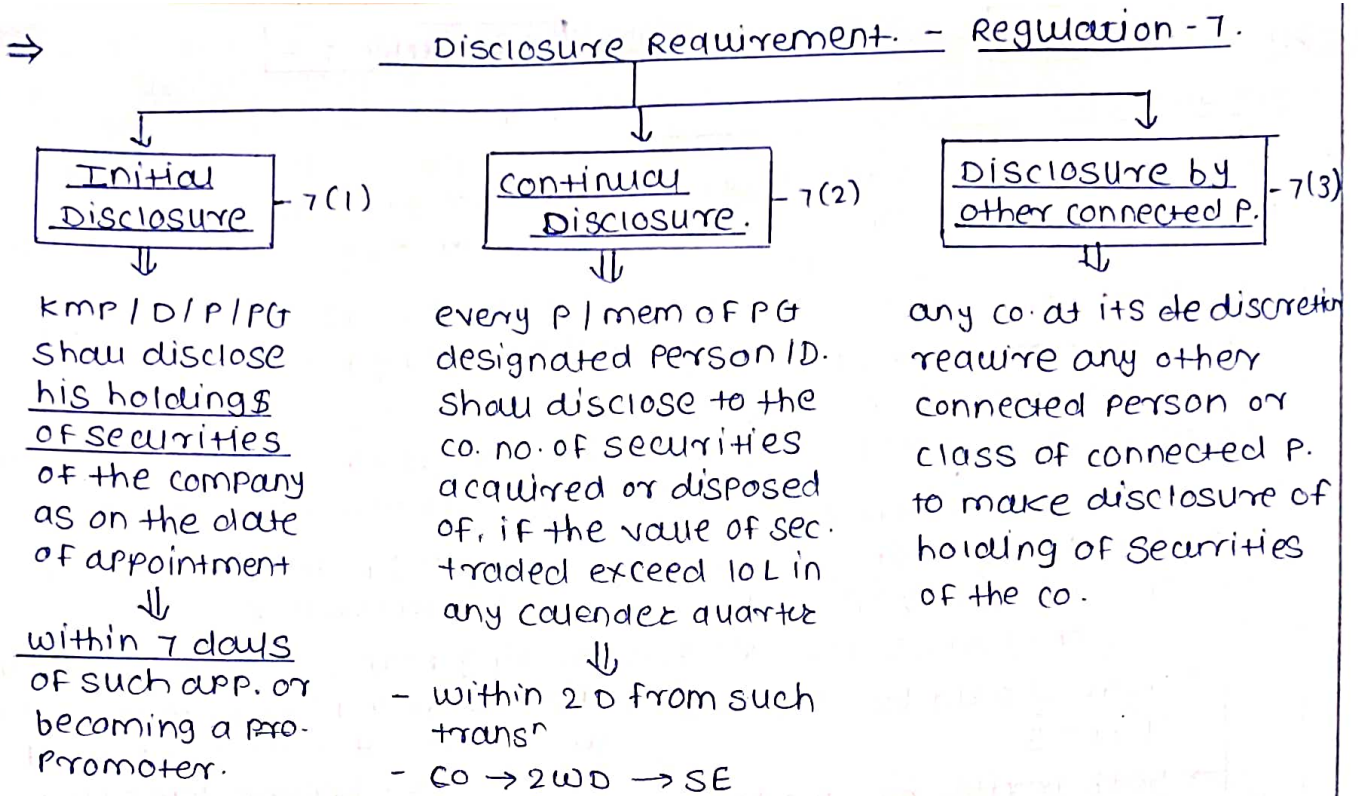
⇒ compliance officer to review, approve and notify the T.P. → SE.

⇒ Trading plan once approved shall not be revoked.

⇒ commencement of trading not earlier than 6m. from public disclosure of plan.

⇒ UPSI not in possession from formulation of plan to implementation

⇒ Trading plan shall entail → T.P. not less than 12m.



⇒ Codes of Fair Disclosures and conduct. [Regulation 8 and 9]

→ Schedule - A :-

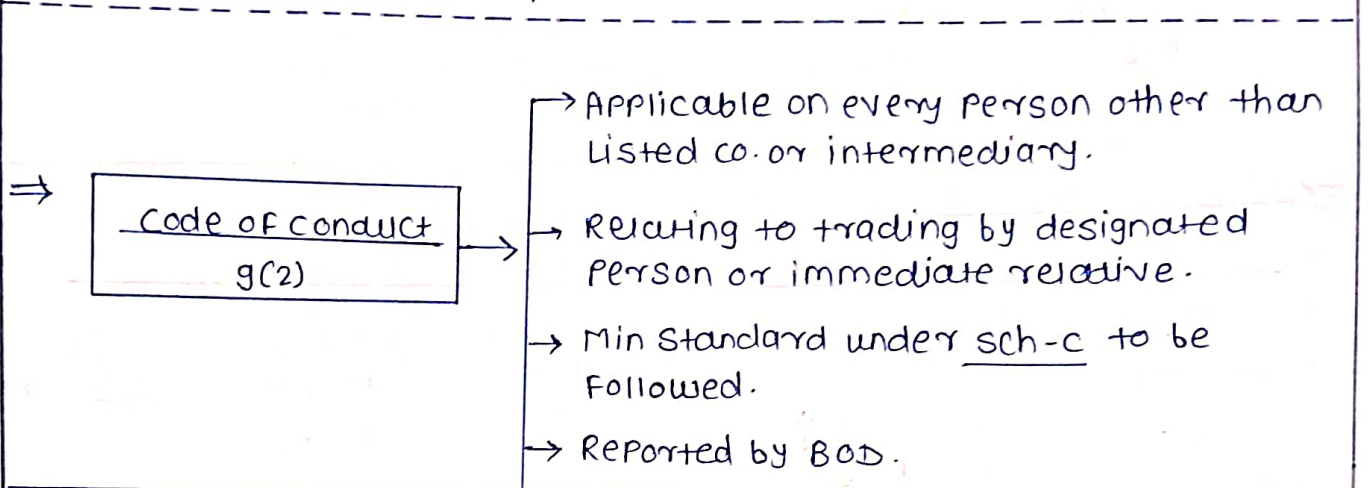
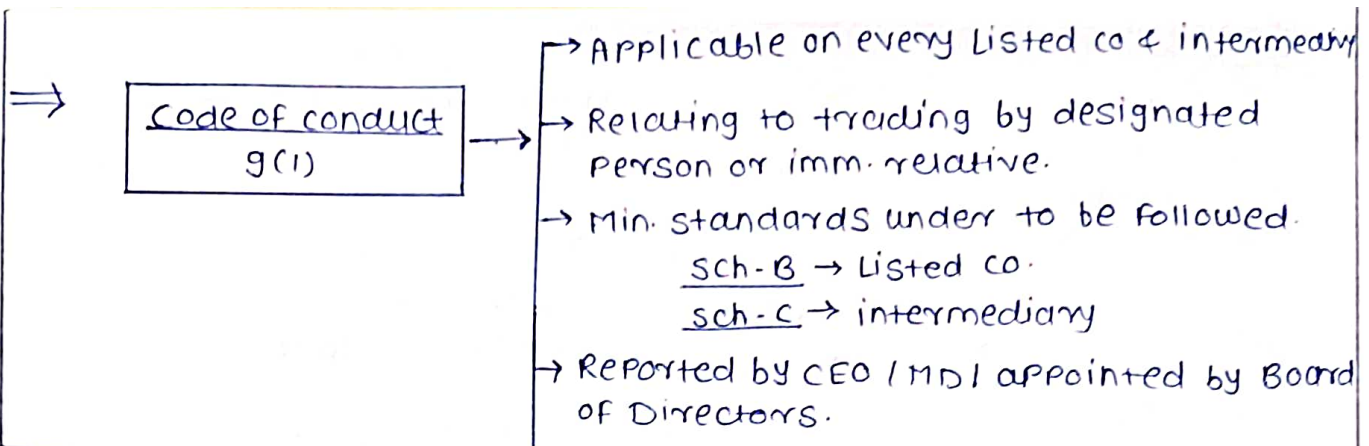
Principles of Fair Disclosure :-

- Prompt public disclosure of UPSI.
- Prompt dissemination of UPSI
- ensuring that info. shared with analyst and research personnel is not UPSI.
- Developing best practice to make transcripts or records of proceedings of meetings with analyst and other investor relation conferences.
- Designation of senior officer as a chief investor relations officer (CIRO) to deal with dissemination of info. and disclosure of UPSI.
- appropriate and fair response to queries on news reports & req. for verific<sup>n</sup> of market rum.
- uniform and universal dissemin<sup>n</sup> of UPSI
- Handling UPSI → need to know basis.

Regulation - 8 :-

code of fair Disclosure :-

- BOD of every listed company shall formulate and publish on its official website code of practice and procedures for fair disclosure of UPSI followed by principle set out in Sch-A
- every code of practices and and procedures and amendments thereto (UPSI) shall be promptly intimate to SE
- BOD of a LE shall make a policy for determination of legitimate purposes as a part of code of fair disclosure and conduct.



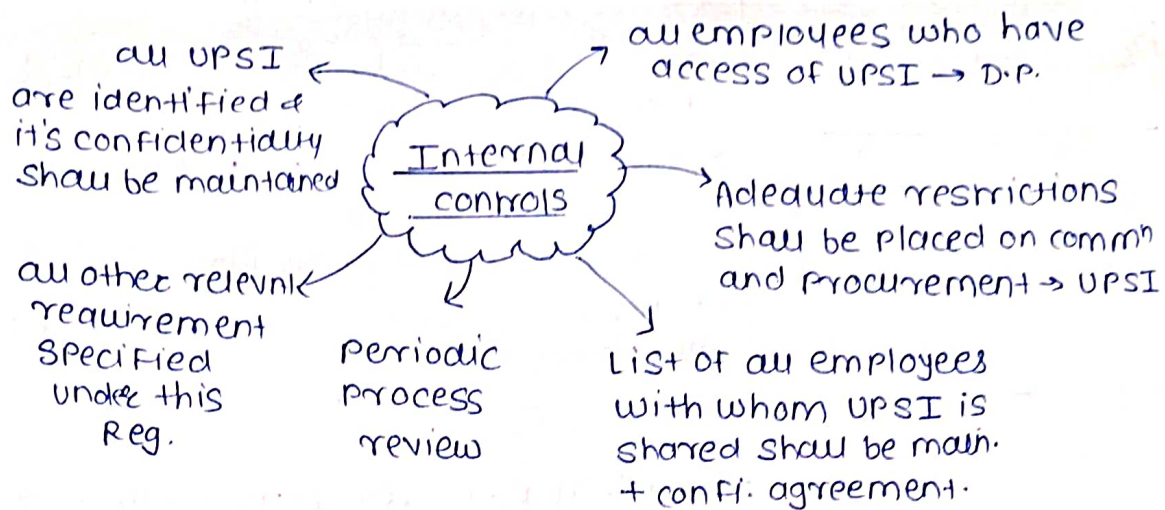
- The BOD or such other analogous authority shall in consultation with compliance officer specify the designated persons :-
- employees of such LE, intermediary or fiduciary designated on the basis of their functional role or access to UPSI
- employees of material subsidiaries of LE [Listed entity]
- all promoters of the LE and promoters who are individuals or investment companies for interm. or fiduciaries.
- CEO / employees up to 2 level below CEO of such listed co. & its mat. subsidiaries.
- any support staff of listed company.

⇒ Institutional Mechanism [Reg. 9A]

Ⓐ Internal Control.

- BOD → MD / CEO → regulation complied.
- Audi Comm. → review once a year ↙
- Leak of UPSI / Suspected leak of UPSI → inquiry → Report → SEBI
- Leak / suspected leak → inquiry → intermediary / fidu. → co operation (Policy / procedure writer)
- Whistle Blower Policy.

(A) →



### ⇒ Penalty Provision :-

#### → Under 15G (SEBI Act, 1992)

- Minimum - 10 L
- Maximum - 25 cr or 3 x Profit. } ↑

#### → Under sec 24 (SEBI Act, 1992)

- For offence → imp. up to 10 yrs or abet Fine up to 25 cr or Both.
- Fails to pay → imp. min - 1m Penalty or up to - 10 yrs
- Fails to comply with order. Fine - up to 25 cr or Both.

### ⇒ Appeal to SAT - within 45D

### ⇒ Role of CS :-

- Ensure compliance with SEBI (Prohibition of insider trading) Reg. 2015 incl. maintenance of various documents.
- Frame a code of fair disclosure with model code specified in sch-A of the Reg. get the same approved by BoD.
- Frame code of conduct of listed entity to regulate, monitor, report trading in accordance with min std → sch-B
- Pre clear the trade pursuant to the requests received from the designated persons & also monitor trading
- ensure that no trading bet<sup>n</sup> 20<sup>th</sup> day prior to closure of fin P. and 2<sup>nd</sup> trading day after disclosure of fin. results.
- Maintain records as a compliance officer, of all the declaration given by directors / designated employees → for min period → 3 yrs
- Take additional undertaking as compliance officer from the insiders for the approval of trading plan.
- receive initial disclosure from every P / Kmp / DP on appointment as Kmp / D its shareholding.