



#KPMG *joSh*

Voices on Reporting

8 August 2019

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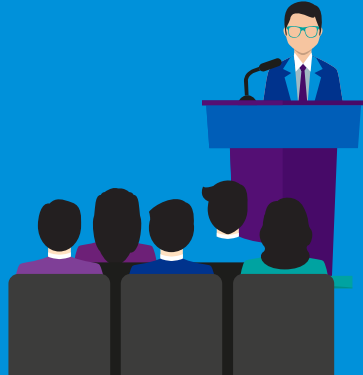


Welcome



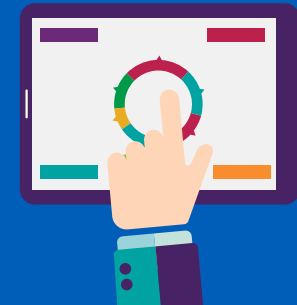
01

Series of knowledge sharing calls



02

Covering current and emerging reporting issues



03

Scheduled towards the end of each month



04

Look out for our Accounting and Auditing Update, First Notes and Voices on Reporting publications



Speakers for the call



Karan Marwah

Partner

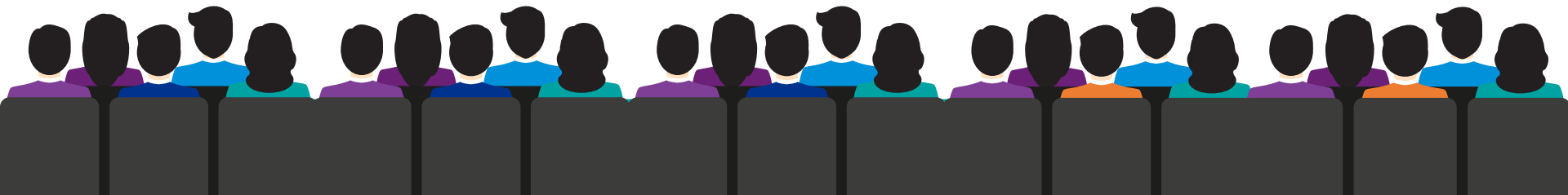
Capital Markets
KPMG in India



Ruchi Rastogi

Partner

Assurance
KPMG in India



Agenda

01

**Prevention of
insider trading and
safeguarding UPSI**

02

Issuance of
Differential Voting
Rights (DVR) shares

03

Revised formats for
compliance report on
corporate governance

SEBI PIT (Amendment) Regulations 2018



The Securities and Exchange Board of India (SEBI) brought transparency, objectivity and consistency in the securities market by amending the SEBI (Prohibition of Insider Trading) (PIT) Regulations, 2015. SEBI incorporated most of the recommendations made by the Committee on Fair Market Conduct and issued the SEBI PIT (Amendment) Regulations, 2018.



Issue date: 31 December 2018

Effective date: 1 April 2019

Key strokes of amended regulations

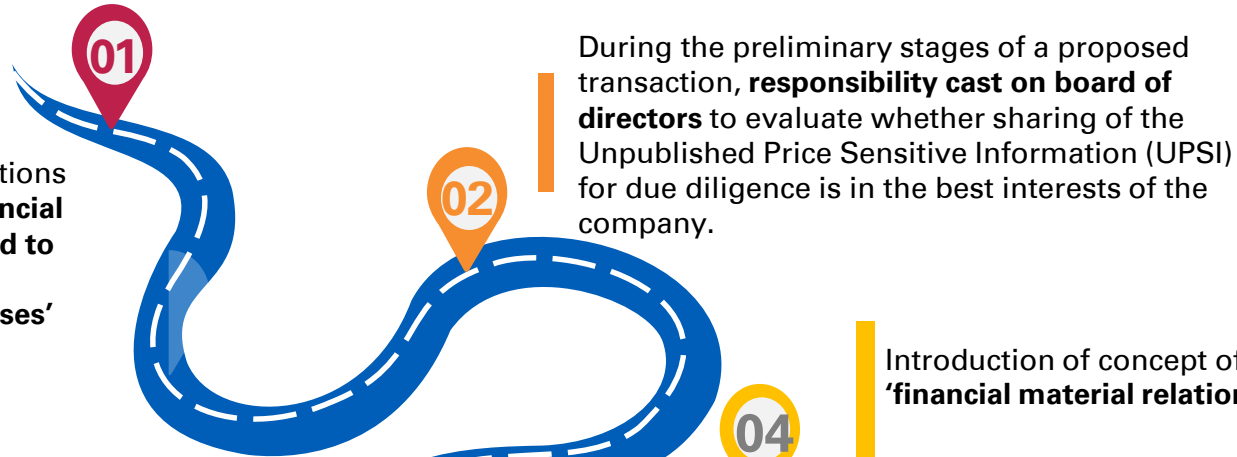
Clarity in concept

Strengthened internal controls and compliance

Enhanced responsibility on insiders*

*Insider means any person who is a connected person or in possession of or having access to unpublished price sensitive information.

Enhanced provisions in the new regulation regime



01 Inclusion of definitions for the terms '**financial literacy**', '**proposed to be listed**'. '**Legitimate purposes**' explained.

02 During the preliminary stages of a proposed transaction, **responsibility cast on board of directors** to evaluate whether sharing of the Unpublished Price Sensitive Information (UPSI) for due diligence is in the best interests of the company.

04 Introduction of concept of '**financial material relationship**'.

03 Board of directors approved policies and procedures for inquiries on leak or suspected leak of UPSI. Whistle-blower policies for employees to report instances of leak of UPSI.

05 Code of conduct applicable only to '**designated person(s)**'. Two separate codes of conduct required; one for listed companies and the other for intermediaries and fiduciaries.

06 Maintenance of electronic details of designated persons and others with whom UPSI is shared.

Additional defences for insiders.



Legitimate purpose



Legitimate purpose includes sharing of UPSI in the ordinary course of business by an insider with:



Partners and collaborators

Lenders

Merchant bankers

Customers and suppliers

Legal advisors

Auditors

Insolvency professionals

Other advisors or consultants

Persons with whom the UPSI is shared pursuant to a legitimate purpose will be treated as insiders and due notice should be given to such persons to maintain confidentiality of the same.

Structured digital database



Board of directors to ensure that structured digital database is maintained

Of persons who receive UPSI

With names of persons or entities (along with the PAN or any other identifier authorised by law)

Such databases should be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

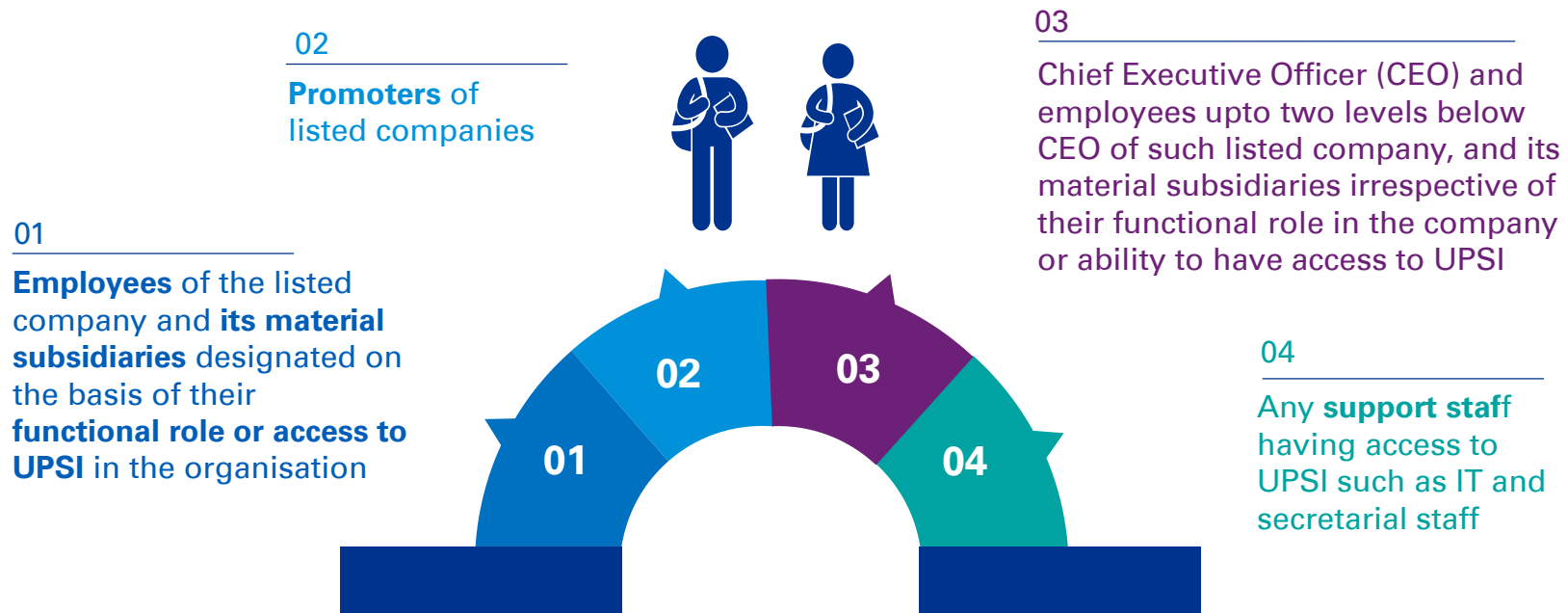


The revised guidance note on SEBI (PIT) Regulations, 2015 clarified that the requirement to maintain structured digital database is applicable to listed companies, intermediaries and fiduciaries who handle UPSI of a listed company in the course of business operations.

Designated person

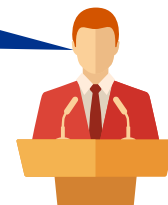


To be designated as such by the Board of directors in consultation with Compliance Officer.



Designated persons will be required to follow the code of conduct formulated by the company to regulate, monitor and report trading

Material Financial Relationship (MFR)



A relationship

with a designated person

In which one person receives any kind of payment such as by way of a loan or gift from a designated person

during immediately preceding 12 months

Equivalent to at least 25 per cent of the annual income of such designated person

excluding relationships based on payment as per arm's length transactions

Designated persons shall be required to disclose names and Permanent Account Number (PAN) of persons with whom they share MFR.

SEBI PIT (Second Amendment) Regulations, 2019 issued a clarification that MFR should be construed only when any kind of payment arises from a designated person to another person; equivalent to at least 25 per cent of such designated person's annual income.

Additional responsibilities



Internal Controls

CEO, MD shall put in place adequate and effective system of internal controls.



UPSI and sharing

- Identification of employees who have access to UPSI as a designated persons
- Identify all UPSI and maintain its confidentiality
- Restrictions on communication or procurement of UPSI
- List all employees and other persons with whom UPSI is shared
- Confidentiality agreements /notices.



Review

- Audit Committee should review compliance with this institutional mechanism **at least once in a financial year**, and
- Verify that the systems for internal control are adequate and are operating effectively.



Policies and procedures

- Formulate written policies and procedures for inquiry in case of leak of UPSI or suspected leak of UPSI
- Policy to be approved by Board of directors
- Initiate appropriate inquiries on becoming aware of leak of UPSI or suspected leak of UPSI.



Whistle blower

- A whistle-blower policy for employees to report instances of leak of UPSI
- Drive awareness amongst employees to report instances of leakage of UPSI.

Code of conduct



- Two separate codes of conduct, one for listed companies and the other for intermediaries, fiduciaries and every other person required to handle UPSI in the course of business operations.
- The code of conduct would be framed to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons.



Auditors



Accountancy firms



Law firms



Analysts

Fiduciaries: Professional firms advising listed companies



Insolvency professionals



Consultants



Banks

Financial results declaration



Trading restriction period imposed:

- From the **end of every quarter**
- **Till 48 hours after the declaration of financial results.**

Exceptions to trading window restrictions:

- Off-market inter-se transfer between insiders
- Transaction through block deal window mechanism between insiders
- Transaction due to statutory or regulatory obligations
- Exercise of stock options
- Transaction in respect of a pledge of shares for a bonafide purpose such as raising of funds
- Transactions which are undertaken in accordance with respective regulations made by SEBI.



SEBI PIT (Second Amendment) Regulations, 2019 issued a clarification relating to trading restriction period that it would be applicable from the end of every quarter and also brought certain exceptions to trading window restrictions.

Challenges posed by the Regulations



- Regulations are constantly evolving
- Enhanced compliance requirements
- Inadequate awareness
- Restricted trading window
- Accuracy of data for disclosures
- Applicability of these regulations to intermediaries and fiduciaries
- Informant mechanism (if comes into play).



Agenda

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Prevention of insider trading and safeguarding UPSI

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Issuance of Differential Voting Rights (DVR) shares

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Revised formats for compliance report on corporate governance

Differential Voting Rights (DVRs) in India



Requirements under the Companies Act, 2013

Issue of DVR shares should be authorised:

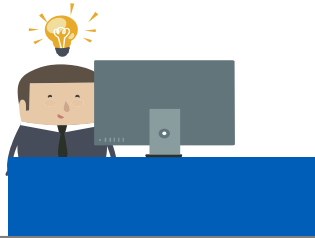
- By the articles of association of the company
- By a special resolution passed at a general meeting of the shareholders (for companies already listed) with notice of specific matters, including but not limited to, size of issuance, ratio of the difference in the voting rights, rights as to differential dividends, if any, sunset clause, coat-tail provisions, etc., as made applicable by SEBI Regulations.



SEBI Regulations

- Framework for issuance of DVR shares

Key highlights of the framework for issuance of DVRs



- ✓ A tech company, having Superior Voting Rights (SR) shares would be permitted to undertake an IPO of only ordinary shares (to be listed) subject to the fulfillment of the eligibility requirements.
- ✓ Post listing, SR shares would remain under lock-in until their conversion to ordinary shares.
- ✓ Companies having SR shareholders would be required to have Independent Directors (IDs) in Board (at least half of the board) and committees formed to comprise two-third of IDs (excluding Audit Committee as it should comprise of only IDs).
- ✓ SR shares would be treated at par with ordinary equity shares in all respects, including dividends, similar voting rights in specified cases, except in the case of voting on resolutions.
- ✓ SR shares would be converted into ordinary shares on the fifth anniversary of listing, or on loss of control by SR shareholder.

- ✗ Transfer of SR shares among promoters not permitted.
- ✗ Encumbrance over SR shares not permissible.
- ✗ The total voting rights of SR shareholders (including ordinary shares), post listing, should not exceed 74 per cent.
- ✗ Issue of fractional right shares disallowed for existing listed companies.

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Revised formats for compliance report on corporate governance

Revised formats for compliance report on corporate governance



On 16 July 2019, SEBI issued revised formats for compliance report on corporate governance. The modifications to the formats have been made on the basis of the recent changes made to the Listing Regulations pursuant to Kotak Committee and other amendments.

Key additions to compliance report to be submitted on a quarterly basis

Composition of board of directors



- Whether regular chairperson has been appointed.
- Whether chairperson is related to MD or CEO

Composition of committees



- Whether **regular** chairperson has been appointed
- Date of appointment and cessation of the term of the committee members

Meetings of board of directors and committees



- Whether the requirement of quorum has been met
- Number of directors and independent directors present in the meetings

The above details are to be furnished only for the current quarter's meetings

The revised formats have been made effective from the quarter ending 30 September 2019.

Revised formats for corporate governance (cont.)



Key additions to the compliance report to be submitted at the end of FY (for the whole of FY)

Disclosures on website



- Schedule of analyst or institutional investor meets and presentations made to analysts or institutional investors simultaneously with submission to stock exchange
- Credit rating or revision in credit rating for all its outstanding instruments
- Separate audited financial statements of each subsidiary in respect of a relevant FY
- Materiality policy
- Dividend distribution policy (if applicable).

Annual affirmations



- Disclosure of related party transactions on consolidated basis
- Compliance with norms relating to maximum number of directorships
- Declaration from independent directors
- Compliance with the number of meetings required for NRC¹, SRC² and RMC³ i.e. met at least once a year
- Requisite quorum has been maintained for the Board meetings and NRC.

¹Nomination and Remuneration Committee

²Stakeholders Relationship Committee

³Risk Management Committee

Revised formats for corporate governance (cont.)



Additions to the compliance report to be submitted at the end of six months after the end of FY

A listed entity is additionally required to affirm whether the chairperson of the SRC was present at the Annual General Meeting (AGM) to answer queries of the security holders.



Sign-off of the compliance report on corporate governance

Currently, the above reports can be signed either by the compliance officer or the CEO. As per the revised formats, they can now also be signed by the Chief Financial Officer (CFO) of the listed entity.



Q&A



Links to previous recordings of VOR



Month	Topics	Link
February 2019 (special session)	<ul style="list-style-type: none"> Impact of Ind AS 115 and IFRS 16 on healthcare sector 	Click here
February 2019 (special session)	<ul style="list-style-type: none"> Key Audit Matters and new standard on leases - Impact on technology sector 	Click here
April 2019	<ul style="list-style-type: none"> Key updates relating to the Companies Act, 2013 issued by MCA Supreme Court ruling on applicability of Provident Fund (PF) contribution on allowances SEBI amendments pursuant to Kotak Committee applicable from 1 April 2019 Ind AS 116, <i>Leases</i> and amendments to other Ind ASs New/revised Standards on Auditing (SAs). 	Click here
May 2019 (special session)	<ul style="list-style-type: none"> Uncertainty over income tax treatments and new standard on leases impact on life sciences sector 	Click here
July 2019	<ul style="list-style-type: none"> Brief overview of Ind AS 116, <i>Leases</i> transition options and considerations Prudential framework for resolution of stressed assets Over of the new guidance relating to uncertainty over income tax treatments Important Ind AS implementation issues provided in the Ind AS Technical Facilitation Group (ITFG) Bulletin 19 and 20 	Click here

For other archives of VOR webinars, visit home.kpmg/in

Our publications

Accounting and Auditing Update



First Notes



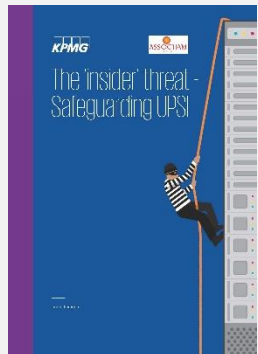
Coming up next

New issue of:

- Accounting and Auditing Update
- First Notes
- Voices on Reporting - publication

Download from home.kpmg/in/socialmedia

The 'insider' threat - Safeguarding UPSI



KPMG Trading Compliance Manager



DIGITAL DATABASE

Database for insiders and persons with whom UPSI is shared. With audit trail and time stamping.



ALERTS & NOTIFICATIONS

Regular alerts and notifications to employee for trading window, disclosures, contra-trade etc.



AUTOMATE WORKFLOW

Framework to capture pre-trading requests, approvals/rejections, disclosures, submission to stock exchanges.



INTELLIGENT TRACKING

Track insider trades basis shareholding information and generate reports.



MIS REPORTS

Generate Microsoft Excel compatible MIS reports for disclosures, pre-clearances, benpos – reconciliation.



OTHER DETAILS

Automating capturing of immediate relative, educational institute, past employers, phone nos., PAN, material financial relationship etc.



Thank you

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