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# Changing plains of public market deals: Here is a close look at insider trading regulation amendments

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- > The PIT Regulations now require the adoption of an effective institutional mechanism to ensure maintenance of confidentiality of UPSI.
- > The PIT Regulations have also clarified certain key concepts with respect to insider trading.



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**T**he SEBI (Prohibition of Insider Trading) Regulations 2015 (PIT Regulations) have been equipped with its recent round of amendments to play an increasing role in public M&A transactions. Based on the recommendations of the

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M&A transactions. Based on the recommendations of the Committee on Fair Market Conduct chaired by TK Viswanathan, the amended PIT Regulations (which came into effect on April 1, 2019) have lent much required clarity to various aspects of deal making. In this context, certain key changes are briefly discussed below:

**Sharing of UPSI for due diligence**

Share

The PIT Regulations now permit sharing of unpublished price sensitive information (UPSI) by a listed company for M&A deals, if its board of directors is of the informed opinion that sharing of such information is in the best interest of the company. This marks a welcome departure from the earlier position of an informed opinion that the proposed transaction (instead of sharing of information) was in the best interest of the company – a view, difficult for any board to take at such preliminary stages, with various commercial (and legal) benchmarks typically remaining open till the conclusion of the diligence exercise.

The PIT Regulations also seek to increase accountability, by requiring the board of the listed company to ensure maintenance of a secured and structured digital database (containing names and identity details) of persons with whom UPSI is shared in connection with a public markets transaction.

**Plugging the leak**

In an effort to prevent leaks of UPSI (a phenomenon becoming increasingly troublesome in public market deals), the PIT Regulations now require the adoption of an effective institutional mechanism to ensure, amongst other things, maintenance of confidentiality of UPSI. To this end, for a proposed transaction, the listed company would be required, amongst other things, to (i) identify the UPSI, (ii) place adequate restrictions on communication or procurement of UPSI, (iii) maintain lists of and enter into confidentiality agreements with (or serve confidentiality notices to) employees and other persons with whom the UPSI is shared. The obligation to ensure such compliance by a listed company has been placed on its board of directors and audit committee. Listed companies are also required to formulate policies and procedures for inquiry in case of any leak of UPSI, together with a complementary whistle blower policy.

**Expanded black out period**

Through an innocuous looking but crucial amendment, the PIT Regulations have enabled trading restrictions on designated persons (including promoters, key employees) for the period commencing at the end of every quarter till 48 hours after the



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declaration of financial results. While a plain reading of the relevant provisions in the PIT Regulations suggests this to be an optional embargo (on account of usage of the term 'can'), the NSE and BSE have, through separate circulars clarified such trading restriction period as mandatory. The intent of preventing insider trading closer to finalization and approval of financial results, though well founded, in its current form would lead to unnecessary deal complications.

For instance, secondary legs of public market transactions (involving transfer of securities by designated persons) would be significantly impacted, and may require (otherwise avoidable) structuring to factor-in an extended trading blackouts. Based on market representations, and in an important step towards addressing deal concerns, SEBI in its board meeting of June 27, 2019 approved fresh amendments to the PIT Regulations. While the actual amendments are yet to be notified, they are intended to clarify: (A) the mandate of the above blackout period, and (B) non applicability of the blackout to certain trades, such as (i) off-market inter-se transfers between insiders, (ii) block deals between insiders, (iii) exercise of stock options, (iv) acquisition of shares by preferential issue, (v) tendering shares under open offer, delisting, etc. Such amendments will bring much needed clarity in structuring deals which may close during the blackout period.

### **Other amendments**

The PIT Regulations have also clarified certain key concepts with respect to insider trading, such as (i) streamlining the definition of UPSI (to clarify that all material events may not fall within its trappings), (ii) illustrating the scope of 'legitimate purpose' as a ground for communication of UPSI, and (iii) inclusion of additional defenses to insider trading (like off-market inter-se transfers between insiders having the same UPSI (previously accessible only to promoters), block deals between persons in possession of UPSI, etc).

### **Looking ahead**

A robust insider trading regime is a cornerstone for development of public market transactions in India. With a slew of relevant amendments, and its increased monitoring activities, SEBI appears to be actively signaling at strengthening this often unheeded regulation. It will be interesting to gauge the market response to SEBI's approach, but for now, this appears in most parts, to be a step in the right direction.

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