

## Frequently Asked Questions (FAQs)

### Structured Digital Database (SDD) under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015

#### Background

SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “PIT Regulations, 2015”) came into effect from May 15, 2015. Subsequently amendments were made to put in place a framework for prohibition of insider trading in securities and to strengthen the legal framework to cater to changing dynamics of the market. SEBI, vide the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018, introduced the concept of Structured Digital Database (hereinafter referred to as “SDD” or the “Database”) which came into effect from April 01, 2019. Considering the requirement to bring clarity on the maintenance of SDD, SEBI introduced further amendments in the year 2020 and issued FAQs in April 2021 on the same.

The below FAQs are provided with a view to provide guidance and ease of reference regarding the concept of SDD. These FAQs are in the nature of providing guidance and any explanation/ clarification provided herein should neither be regarded as an interpretation of law nor be treated as a binding opinion/decision of the Securities and Exchange Board of India. Different facts or conditions may entail different interpretations. For full particulars of laws governing insider trading, please refer to actual text of the Acts/Regulations/Circulars appearing under the legal framework section on the SEBI website.

#### **FAQs on Structured Digital Database under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015**

##### **1. Who are required to maintain SDD?**

A: As per Regulation 3(5) of SEBI (PIT) Regulations, 2015, “*The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information*” (UPSI) is required to maintain SDD. Accordingly, every entity, which has issued securities which are listed/ proposed to be listed (as defined under Regulation 2(1)(hb) of the PIT Regulations, 2015) are required to maintain SDD, in case, such securities fulfil the definition of “Securities” under the Securities Contracts (Regulation) Act, 1956 as amended from time to time and subject to any such modification thereof.

##### **2. Whether an intermediary / fiduciary have to maintain SDD?**

A: An intermediary/ fiduciary /other entity referred to under the Explanation to Regulation 3(2A) of the PIT Regulations, 2015, shall maintain a separate SDD internally, for recording details of:

- ✓ The UPSI shared and persons with whom such UPSI is shared
- ✓ The UPSI shared and the persons who have shared such UPSI with the intermediary/ fiduciary / entity.

in accordance with Regulation 9A (2)(d) of the PIT Regulations, 2015 and as required under Schedule C of the said Regulations. SDD shall also be maintained by the intermediary/ fiduciary / entity for unlisted companies for which securities are proposed to be listed.

**3. What shall be the trigger point for inserting a record in the SDD?**

A: Sharing of an unpublished price sensitive information internally or externally is the trigger for recording the same in the SDD.

**4. What is UPSI?**

A: Regulation 2(1)(n) of the PIT Regulations, 2015 defines UPSI. The list provided in the definition of UPSI is illustrative. However, in order to determine whether an information is a UPSI, the following needs to be seen:

- ✓ The information is not publicly available; and
- ✓ Irrespective of magnitude of the contract/ transaction/ information, if the information on becoming publicly available is likely to materially affect the price of the securities

**5. When is UPSI Germinated?**

A: When the information starts taking shape of a price-sensitive information i.e. where the probability of going ahead with the information/concerned event is higher than not going ahead and such information is likely to “materially” affect the prices of the securities of the company when published, sharing of such information shall be recorded in the Database.

**6. Whether sharing of UPSI internally be recorded in SDD or records shall be maintained only when it is shared outside organisation.**

A: Irrespective of whether an UPSI is shared internally or externally, necessary recording should be made in SDD.

The intent of maintaining SDD is that the flow of sharing of UPSI is recorded. SDD needs to contain the names of the person(s) with whom UPSI has been shared. This means that entry should be made upon sharing the information so as to ensure that the same is not missed subsequently and captures the event.

For e.g.: while finalising financial results for say quarter ended September 2022, one entry can be made for the persons in the accounts department at the start of the finalisation process. Additionally, if UPSI is shared with Auditors, then the details of the audit firm, the senior partner and other entities of audit firm with whom UPSI is shared, need to be recorded. The audit firm, in turn, must maintain SDD accordingly.

**7. What are the requirements for maintaining the SDD?**

A: The Database shall not be outsourced and shall be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database. The same is prerequisite for compliance with Regulation 3(5) & 3(6) of PIT Regulations, 2015.

Entries once made in SDD, cannot be altered or modified and should be non-tampered. Any modification/alteration of entries once made is not permitted. If any entry made needs to be altered, then a separate entry can be made citing reference to the earlier one with full corrected details and the reasons for correction.

**8. Who shall have access to insert the details of UPSI in the Database?**

A: Regulation 3(5) and 3(6) of PIT Regulations, 2015 mandates that the Board of Directors or the head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that the Database is maintained as per the requirements of the PIT Regulations, 2015.

Therefore, putting a system in place to capture and record the SDD, in terms of the PIT Regulations, 2015 is to be implemented by the Board of Directors or the head(s) of the organisation of every such person. Further, the Board of Directors or the head(s) of the organisation of every such person is also required to determine who is to be given access to the same.

One important aspect of the SDD is that knowledge of UPSI should be available to a person only on 'need to know' basis. Further, the identity of the person accessing the database is required to be established for the purpose of audit trail.

**9. In case of multiple group companies, whether the SDD should be maintained separately?**

A: As per Regulation 3(5) of the PIT Regulations, 2015, the company shall maintain the SDD internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database. It is understood that every company shall maintain an independent SDD to comply with these prerequisites as prescribed by the PIT Regulations.

**10. What are the implications of non- availability of PAN?**

A: The Database shall be maintained with such details as sought under provisions of Regulation 3(5) of the PIT Regulations, 2015. Therefore, it is imperative to capture the PAN details wherever available, else any other identifier of such person shall be captured.

**11. Can external software be purchased for maintenance of SDD?**

A: Yes, A software can be used to maintain the SDD. However, the same has to be maintained internally.

**12. Are companies under Corporate Insolvency Resolution Process (CIRP) required to maintain SDD?**

A: Yes, for additional clarity please refer answer to para 1 above. Further, Circular No. IP/002/2018 dated January 03, 2018 issued by IBBI makes it mandatory on the Resolution Professional to ensure compliance with all applicable laws.

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