



# **Balancing Power and Accountability: An evaluation of SEBI's Adjudication of Insider Trading**

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## The growing salience of insider trading enforcement

- Increase in regulatory investigations: 17 in 2021-22 to 175 in 2023-24
- Since April 2023, 7 consultation papers, and 5 amendments
- Significant investments in technological infrastructure
- In 2022, 5,000 insider trading alerts generated against 3,588 unique entities
- Expanding enforcement actions should prompt a deeper examination of how effectively SEBI is performing this function vis-a-vis the rule of law

# Research questions

1. What are the statistics regarding SEBI's enforcement actions against insider trading?
2. Are SEBI's orders consistent with procedural and substantive rule-of-law requirements?
3. How do SEBI orders perform at SAT?

## Measures of rule of law

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## Measures of procedural rule-of-law

- Based on principles of natural justice
- Needed to establish fair, time-bound procedure
- These require that orders mention information such as:
  - Date of show cause notice
  - Period of investigation
  - Period of UPSI
  - Time period of payment of penalty

## Measures of substantive rule-of-law

- Based on requirements of SEBI Act and PIT Regulations
- Needed to establish legitimacy of regulatory decision under applicable law
- These include:
  - Existence of violation must be based on identification of ingredients of violation set out in the law
  - All sanctions must be based on a clear violation and a clear establishment of the insider relationship
  - Sanctions, and quantum of sanctions should be based on factors mentioned in 15J
  - Where they are not required to be based on 15J, they should be clearly stated, and should be specific to the case.

## Data collection

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## Data extraction: SEBI

- Orders scraped from SEBI website: Sep 2009 to July 2023
- 333 orders shortlisted based on keyword matches
- An order may have multiple violators. Each violator is treated as a "case"
- 56 rule of law indicators
- Orders read by team of lawyers, findings recorded only against explicit statements
- Findings reviewed through multiple error checks



## Data extraction: SAT

- Orders scraped from SEBI and SAT websites: Sep 2007 to Nov 2023
- 426 orders shortlisted based on keyword matches; 191 orders mapped to SEBI
- Indicators on disposition status, modification of sanctions and reasons for order modification
- Data collection by LLMs, findings recorded only against explicit statements
- Findings reviewed through multiple error checks:
  - Logical: For ex. findings for indicators on “appeal allowed” and “appeal dismissed” cannot both be “yes”
  - Flag for review: For ex. if appeal has been “fully allowed”, then indicator on “sanctions modified” should be “yes”

## Lifecycle analysis

- Mapped the orders (and cases) in the SAT dataset to the one's in the SEBI dataset. This gives us a life-cycle of each order (case).
- Parameters:
  - Party names: names of alleged violators in SEBI orders to the names of appellants in SAT orders
  - Company name: the name of the company concerned in SEBI orders with the name of the company concerned in SAT orders
  - Date and number of impugned order: the date and number of the impugned order in SAT orders against the dates of SEBI orders
- 201 mapped instances

**Q1: What are the statistics regarding SEBI's enforcement actions against insider trading?**

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# Overview

- Unique Orders: 333
- Total alleged violators (cases): 912

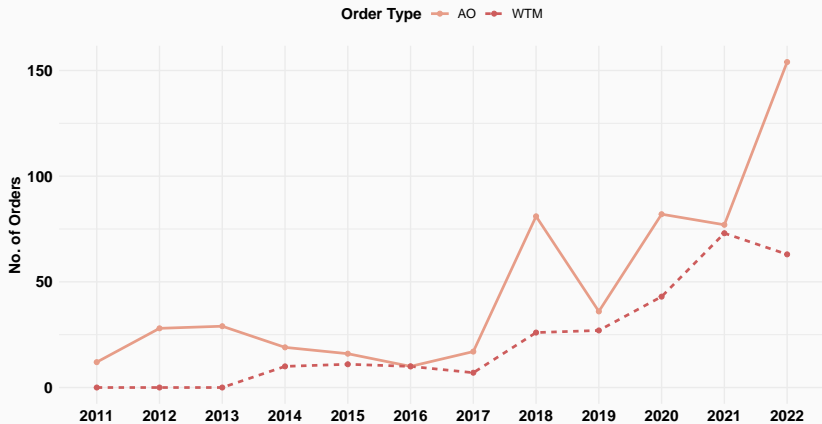
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	<b>AO</b>	<b>WTM</b>
Total alleged violators	598	314
Total orders	268	65
Alleged violators with at least one sanction	336	229
Orders with at least one sanction	164	51

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- AO order has approximately 2 alleged violators per order
- WTM order has approximately 4 to 5 alleged violators per order

# Orders over the years



Year 2009 & 2023 not shown in graph

## Tally of sanctions

Sanctions	AO	WTM	Total
Penalty	336	82	418
Debarment from capital markets	NA	192	192
Disgorgement	NA	144	144
Restricted from dealing in securities	NA	71	71
Prohibition on disposal of assets	NA	24	24

- Total cases: 912
- For 565 (62%) cases (AO: 336 (56%), WTM: 229 (73%)), at least one sanction was imposed
- For 418 (46%) cases, a penalty was imposed
- Sanctions imposed commonly: penalty, disgorgement and debarment from capital markets

## Statistics on sanctions

Sanction	Statistic	AO	WTM
<b>Penalty</b>	N	336	82
	N joint & several	86	0
	N (> Rs. 10 lakhs)	128	48
	N (< Rs. 1 Cr.)	297	76
	Average (in Rs. lakhs)	48.5	22.2
	Median (in Rs. lakhs)	7.8	15.0
<b>Disgorgement</b>	N	-	144
	N joint & several	-	48
	Average (in Rs. crores)	-	46.4
	Median (in Rs. crores)	-	1
<b>Debarment</b>	N	-	192
	Average (in years)	-	3
	Median (in years)	-	1

## Multiple sanctions imposition

	<b>N</b>
At least one sanction - WTM	229
Disgorgement and debarment	122
Debarment and penalty	71
Disgorgement and penalty	64
Disgorgement, debarment and penalty	60



## Average monetary outflow by violation

	<b>Violation type</b>	<b>N</b>	<b>Mean Monetary Outflow (in Rs.)</b>
1	None	52	44,82,53,744
2	Only UTIS	184	21,72,83,435
3	Only UPSI	63	4,79,10,559
4	UTIS and other	57	2,76,22,136
5	Only UPSI and UTIS	30	2,08,37,120
6	All	6	43,93,247
7	UPSI and other	3	10,83,333
8	Only other	170	6,37,321

Monetary Outflow refers to the sum of penalty amount and disgorgement amount sanctioned by SEBI against alleged violator

None violations refers to no explicit mention of any violation

UTIS: Unlawful trading in securities

UPSI: Communication of unpublished price sensitive information

**Q2: Are SEBI's orders consistent with rule-of-law requirements?**

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## **Procedural rule-of-law measures**

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## Summarising procedural rule-of-law measures

<b>Factual indicators</b>	<b>N</b>	<b>%</b>
Date of show cause notice not mentioned	65/912	7.1
Period of investigation not mentioned	154/912	16.9
Period of UPSI not mentioned	244/912	26.7
No description of UPSI	173/912	20
Cites prior AO orders	45/912	4.9
Cites prior WTM orders	79/912	8.6
No AO or WTM orders cited	791/912	86.7
Penalty imposed but time period for payment not specified	12/418	2.9
Penalty ordered but interest rate not specified	264/418	63.2
Disgorgement ordered but time period for payment not specified	18/144	12.5
Disgorgement ordered but interest rate not discussed	15/144	10.4

## **Substantial rule-of-law measures**

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## Definition: Insider

- Is a connected person or
- Deemed to be connected person or
- Has access to UPSI (unpublished price sensitive information)

## Is connection specified in cases with sanctions?

	<b>AO</b>	<b>WTM</b>	<b>Total</b>
Yes	170	165	335
No	166	64	230
Connections described?	131	21	152

- In 335 (59%) cases connection have been specified
- In 487 (86%) cases connection is specified or the description regarding connection is provided

## Definition: Insider trading

- Unlawfully trading in securities (UTIS)
- Communication of Unpublished price sensitive information (UPSI)
- Non compliance of Prevention of insider trading (PIT) Code
- Non compliance of other PIT regulations (other PIT)



## Tally of violations

	<b>AO</b>	<b>WTM</b>
UTIS	134	143
Did not comply other PIT reg.	137	20
Did not comply PIT code	133	18
Comm. UPSI	53	49

- Violation appearing most: Unlawfully trading in securities (UTIS)

## Penalty and its ingredients

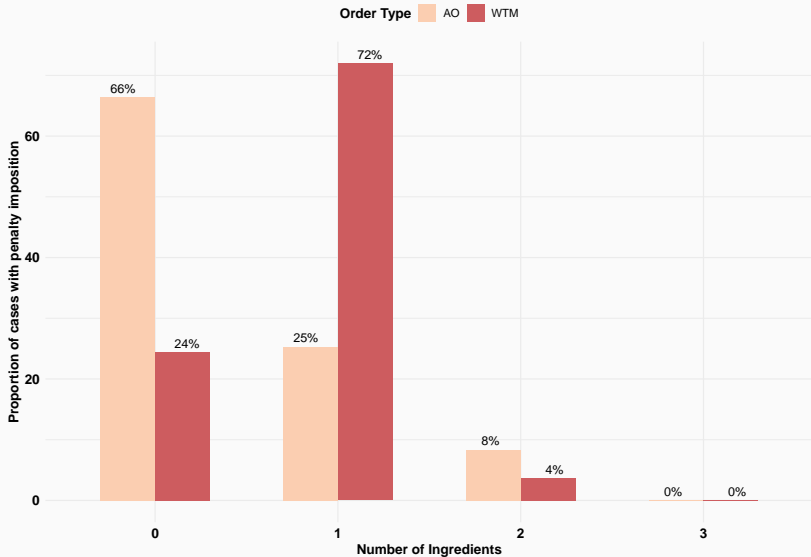
According to 15J, penalty should be related to:

- Amount gain/loss avoided by violator
- Loss to investors
- Default is repetitive in nature

	<b>AO</b>	<b>WTM</b>
Total cases	336	82
Amount gain/loss	67	62
Loss to investors	31	0
Default is repetitive	43	3
Loss to investors not quantifiable	155	17

- No penalty-ingredient is present in 58% cases

# Penalty and 15J factors



## Penalty higher than the statutory minimum

- Focus on 30 instances where both UTIS and UPSI found (these could be considered most serious instances)
  - In 23 of these, penalty imposed was higher than S. 15G minimum (Rs. 10 lakhs)
  - Average penalty in these 23 instances was Rs. 1.88 crores
  - S. 15J factor identified in only 11 of these 23 instances
  - Gain or loss avoided quantified in these 11 (S. 15J (a))
  - Repetitive nature of default identified in 1 of the 11 (S. 15J (c))
  - Some correlation between loss or gain quantified and penalty amount
  - Non-15J factor identified in 17 instances, of these 6 instances have only non-15J
  - Non-15J factors not unique to actions of violator - equally applicable to other instances
  - General comments on insider trading and perceived impact on markets and investors

## Summarising substantial rule-of-law measures

	N	%
Violation mentioned, connection established, and mention of a 15J factor	250/565	44
No violation mentioned, connection not established, no mention of a 15J factor	32/565	6
Either violation or connection or ingredients of penalty not mentioned	283/565	50

**Q3: How do SEBI orders perform at SAT?**

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- Out of 565 instances with a sanction, 183 (32%) were appealed at SAT.
- Of which
  - 97/ 183 (53%) were allowed or remanded.
  - 86/ 183 (47%) were dismissed.

## Grounds for allowing an appeal

	N	%
Reasons for fully allowed/ partly allowed/ remanded provided	89/97	92
Information was not UPSI	24/89	27
Appellant was not insider	3/89	3
No communication of UPSI	10/89	11
Pre-trade clearance secured or not required	2/89	2
No CoC violation	16/89	18
No trading on basis of UPSI/ when UPSI was in existence	24/89	27
Any other reason*	55/89	62
No reasons provided for appeal fully/partly allowed/remanded	8/97	8

\*Includes reasons such as the violation was merely technical in nature, there was an inordinate delay by SEBI in initiating action, SEBI did not demonstrate application of mind.



# Conclusion

- There are several gaps in SEBI's enforcement of insider trading
- These relate to both procedural and substantive rule of law measures
- Analysis of SAT orders suggests that there are also gaps in application of mind by SEBI
- This raises questions on:
  - The design of the regulations - are definitions of insider/insider trading too vague?
  - The design of internal process manuals - do the internal manuals not provide enough guidance to officers on how to write orders
  - The structure of SEBI - does having both the enforcement arm and investigation arm in the same agency lead to gaps in quality?

Questions & Comments?  
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