

Consultation Paper on proposed review of the definition of Unpublished Price Sensitive Information (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015 to bring greater clarity and uniformity of compliance in the ecosystem

1. Objective

- 1.1. Soliciting public comments / views on the proposed amendment to the definition of UPSI, under SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations**” or “**PIT**”), to bring greater clarity and uniformity of compliance in the ecosystem by linking to material events as defined under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred in as “**LODR Regulations**” or “**LODR**”).

2. Evolution of the current definition of UPSI

- 2.1. SEBI constituted a Committee on Fair Market Conduct in August, 2017 under the Chairmanship of Dr. T.K. Viswanathan, Ex-Secretary General, Lok Sabha and Ex-Law Secretary (hereinafter referred to as “**FMC Committee**” or “**Committee**”).
- 2.2. The Committee submitted its report to SEBI on August 08, 2018 wherein it recommended amendments to SEBI Act, 1992, SEBI (Prohibition of Insider Trading) Regulations, 2015 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003.

2.3. In respect of the definition of UPSI, the Committee noted and recommended the following in its report:

“The definition of “unpublished price sensitive information” (UPSI) under regulation 2(1)(n) of the Insider Trading Regulations is an inclusive definition and currently “material events in accordance with the listing agreement” are deemed to be UPSI. The Committee noted that the provision related to “material events” as stated in Regulation 68 of LODR Regulations is as follows:

“Disclosure of material events or information. The listed entity shall promptly inform to the stock exchange(s) of all events which are material, all information which is price sensitive and/or have bearing on performance/operation of the listed entity.”

The Committee noted that the aforesaid regulation requires disclosures of material events or information which may or may not be price sensitive. Accordingly, the Committee is of the view that all material events which are required to be disclosed as per the Regulation 68 of the LODR Regulations may not necessarily be UPSI under the PIT Regulations. Since, the definition of UPSI is inclusive, the Committee recommends the removal of explicit inclusion of “material events in accordance with the listing agreement” in definition of UPSI.”

2.4. The Committee report was put up for public consultation on August 09, 2018 and the public comments received, specifically in respect of the proposal on the definition of UPSI, were generally positive. Thereafter, amendments in this

regard were considered by the SEBI Board, in its Meeting held on September 18, 2018, and the same was approved.

- 2.5. Pursuant to the approval of the SEBI Board, PIT Regulations were amended, wherein, inter-alia, following clause was omitted from the definition of UPSI, with the amendment coming in to effect from April 01, 2019.

2(1)(n)(vi) "material events in accordance with the listing agreement"

- 2.6. Accordingly, the amended definition of UPSI is now as under:

"2(1)(n) unpublished price sensitive information" 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 securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel."

3. **Observations pursuant to the amendment**

3.1. The aforesaid amendment to the definition of UPSI was carried out with the expectation that the listed entities, guided by the principles as laid out in the definition of UPSI, will exercise their judgement with prudence and categorise information as UPSI and, thus, comply, in-spirit, with the principles laid out under PIT Regulations.

3.2. However, post the aforesaid amendment coming into effect, on multiple instances, it has been observed that an information/event which should have been categorised as UPSI was not done so by the listed entity. A few examples as noted by SEBI, wherein the information despite of being UPSI was not categorised so, are as under:

3.2.1. A company acquired another company and made the announcement through a press release. The press release claimed that the said acquisition would help grow a particular business vertical, thereby indicating that the acquisition was likely to have direct impact on revenue and profits. Upon this announcement, the share price of the company increased by 4.79% in 1 trading day.

3.2.2. A company won a deal, the largest ever in the history of a particular vertical in that company. The company itself claimed that the deal will propel revenue growth in that particular vertical. Upon this announcement, the share price of the company increased by 6.09% in 1 trading day.

- 3.3. In a case of alleged insider trading by an employee of a company, the employee contended that if the company itself did not consider the information as UPSI, then how the employee could have considered it to be so. This highlighted the fact that companies were not exercising due care in the matter.
- 3.4. In addition to the aforesaid specific instances, SEBI along with stock exchanges carried out a study to identify the kind of announcements/information the listed companies were categorising as UPSI and what were being left out. Around 1,100 press releases made by the top 100 listed companies between January 2021 and September 2022, were considered for the analysis. The summary of the findings are as follows:

Total no. of press releases analysed	Total no. of press releases (out of 1,099), where price movement adjusted for index was more than 2%	Press releases, where information was categorised as UPSI (out of 227)	Press releases, where information was not categorised as UPSI (out of 227)
1,099	227	18	209

- 3.5. Thus, it was seen that, out of 1,099 press releases, in 227 instances, the price movement in the scrip, adjusted for movement in the Nifty/Sensex, was more than 2%. However, of these 227 instances, merely 8% (18) press releases were categorised as UPSI by the listed companies. Further, if the total press releases (1,099) are considered, only 1.64% of the press releases were categorised as UPSI by the listed companies.

3.6. It was further observed that the nature of information released/ announcement made in several of these press releases, indeed warranted it to be categorised as UPSI. However, the same was not categorised as UPSI by the entities. A few kind of announcement made in these press releases which warranted to be categorised as UPSI are as under:

- 3.6.1. Sales/production related press release.
- 3.6.2. Potential investments by the listed company, regulatory approvals, etc.
- 3.6.3. Expansion of business including brand acquisitions, product launches, etc.
- 3.6.4. Strategic tie-ups

3.7. It was observed from the analysis that, by and large companies categorised only the items explicitly mentioned in Regulation 2(1)(n) of PIT Regulations as UPSI. The market feedback also suggested that most companies consider this to be a 'uniform practice' since this is explicitly articulated in PIT Regulations.

3.8. Further, SEBI's surveillance system also generates a significant number of alerts on suspected insider trading cases where it was observed that a substantial number of entities made notional profits, sometimes exceeding even Rupees Twenty five crores. However, a significant number of these alerts could not be taken up for further examination by SEBI due to non-categorization of material information as UPSI, by the listed companies.

3.9. Therefore, SEBI's efforts towards curbing insider trading is hampered by the non-categorization of material information as UPSI by the listed companies.

4. **Rationalisation of the disclosure requirements for Listed Companies**

4.1. Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred in as “**LODR Regulations**” or “**LODR**”) requires listed entities to disclose material events or information to the stock exchanges. The events specified in Para A of Part A of Schedule III of LODR are deemed to be material events which listed entities are mandatorily required to disclose. Further, events under Para B of Part A of Schedule III of LODR are required to be disclosed based on application of the guidelines for materiality, which the listed entities are required to frame (Materiality Policy) based on the criteria specified in regulation 30.

4.2. In this respect, SEBI, in its Board meeting held on March 29, 2023, has approved the proposal for review and rationalisation of the disclosure of material events or information by the listed entities. The changes approved, inter-alia, also include introduction of quantitative thresholds for determining ‘materiality’ of events / information, disclosure for certain types of agreements binding listed entities, etc. The aforesaid changes have been brought in with an intent of bringing more transparency and to ensure timely disclosure of material events or information by listed entities.

5. **Proposal**

5.1. Given the context of the observations as mentioned above, the judgment exercised by the listed entities in terms of categorising information/ announcement as UPSI and consequent compliance with the spirit of law, are not found to be adequate. Therefore, in light of the recent review of disclosure

requirements under Regulation 30 of LODR, for listed entities, it is felt that there is a need to review the definition of UPSI as well.

- 5.2. It is, therefore, proposed that the current definition of UPSI be amended and the disclosures as required under Regulation 30 of LODR be brought under it. The amendment to the definition of UPSI is also aimed at bringing regulatory clarity, certainty and uniformity in compliance for the listed companies, in respect of identification of certain events/information as UPSI. The draft of the proposed amendment is as under:

Regulation 2(1)(n) of PIT Regulations

.....

“(vi) material event in accordance with Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. ”

6. **Public comments**

- 6.1. In order to take into consideration, the views of various stakeholders, public comments are invited on the proposal made at **para 5** above. These comments/ suggestions may be sent latest by **June 02, 2023**, by email to pit_isd@sebi.gov.in
- 6.2. While sending the comments/ suggestions, the sender is advised to mention the subject as **“Comments on consultation paper on proposed review of the definition of UPSI to bring greater clarity and uniformity of compliance in the ecosystem”**.

Issued on: May 18, 2023