

M&A Hotline

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INSIDERS BEWARE: SEBI PROPOSES CHANGES TO THE DEFINITION OF "UNPUBLISHED PRICE SENSITIVE INFORMATION"

INTRODUCTION

The Securities and Exchange Board of India ("SEBI") recently issued a consultation paper dated May 18, 2023 ("Consultation Paper")¹, on review of the definition of Unpublished Price Sensitive Information ("UPSI") under the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("SEBI PIT Regulations"). The objective of the Consultation Paper is to propose an amendment to the definition of UPSI in order to bring clarity and uniformity in the compliance ecosystem and to seek public views on the proposed amendment.

EVOLUTION OF THE DEFINITION OF UPSI

SEBI, in August 2017, had constituted a committee on fair market conduct ("FMC Committee"). The FMC Committee submitted its report on August 8, 2018, wherein it recommended various amendments to the SEBI PIT Regulations. The FMC Committee, specifically in reference to the definition of UPSI, made an observation that the definition of UPSI is inclusive in nature and includes 'material events in accordance with the listing agreement' as deemed to be UPSI.

Further, in terms of Regulation 68² of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"), the FMC Committee noted that this regulation requires disclosures of material events or information which may or may not be price sensitive. The FMC Committee took a view that all material events that are required to be disclosed pursuant to Regulation 68 of the LODR Regulations may not necessarily constitute to be UPSI in terms of SEBI PIT Regulations. Accordingly, the FMC Committee recommended the removal of explicit inclusion of 'material events in accordance with the listing agreement' from the definition of UPSI under the SEBI PIT Regulations. Thereafter, specific amendments were made in this regard and the aforesaid inclusion was excluded from the definition of UPSI with effect from April 1, 2019.

SEBI'S OBSERVATIONS

Post the aforesaid amendment to the definition of UPSI coming into effect, SEBI, on multiple occasions, observed that an information/ event which should have been categorised as UPSI was not done so by the listed entity. Further, SEBI along with the stock exchanges carried out a study to analyse the announcements that were being made by the listed entities. A summary of the study and the findings is set out below:

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

From review of the press releases, SEBI, further observed that announcements pertaining to sales/ production, potential investments by listed entities, expansion of business undertaking including brand acquisitions, strategic tie ups and etc. were not being categorised as UPSI, which indeed warranted to be categorised as UPSI in the public announcements being made by any listed entity.

SEBI from its analysis noted that, the listed entities had begun to treat only the items as explicitly set out in the definition of UPSI³ under the SEBI PIT Regulations as UPSI and that most companies considered this to be a 'uniform practice', since such items were explicitly articulated in the SEBI PIT Regulations.

PROPOSED AMENDMENT

SEBI has proposed to amend the current definition of UPSI such that the disclosures as required under Regulation 30 of LODR Regulations are brought under the ambit of this definition. The amendment to the definition of UPSI is aimed at bringing regulatory clarity, certainty and uniformity in compliance requirement for the listed companies, in

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respect of identification of certain events/ information as UPSI. The draft of the proposed amendment is as under:

- Regulation 2(1)(n) of SEBI PIT Regulations

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

ANALYSIS

Regulation 30 of LODR Regulations requires listed entities to disclose material events or information to the stock exchanges. Recently, SEBI pursuant to its board meeting held on March 29, 2023⁴, approved the proposal for review and rationalisation of the disclosure of material events or information by the listed entities. The changes, inter-alia, approved introduction of quantitative thresholds for determining ‘materiality of events/ information, disclosure for certain types of agreements binding listed entities, etc. Accordingly, in light of the amendments made to Regulation 30 of the LODR Regulations and in order to bring clarity and uniformity in the compliance ecosystem for the listed space, SEBI has suggested the amendment to the definition of UPSI.

Further, it is of high importance to note here that the definition of UPSI under the SEBI PIT Regulations is inclusive in nature but not exhaustive. The intention to list out various matters in the definition is to set out matters that would ordinarily give rise to UPSI and this list should only act as a guiding principle for listed entities to categorize events/ information as UPSI.

SEBI has, time and again, taken steps to reduce the information asymmetry between the listed entities and the market participants through enactment of amendments and regulations that increase transparency and stakeholder participation in the affairs of listed companies. This amendment to the definition of UPSI seems another attempt of SEBI to align with SEBI's general approach towards transparency and consistency in disclosure requirements.

– Harman Khorana & Nishchal Joshipura

You can direct your queries or comments to the authors

¹ Consultation Paper on proposed review of the definition of Unpublished Price Sensitive Information under the SEBI (Prohibition of Insider Trading) Regulations, 2015 to bring greater clarity and uniformity of compliance in the ecosystem, available at: <https://www.sebi.gov.in/reports-and-statistics/reports/may-2023/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-71337.html>

² **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.

³ Regulation 2(1)(n) of the SEBI PIT Regulations: “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.

⁴ SEBI Board Meeting dated March 29, 2023, available at: <https://www.sebi.gov.in/media/press-releases/march-2023/sebi-board-meeting-69552.html>

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