

GNLU CENTRE FOR LAW & ECONOMICS
Policy Recommendations



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**Comments to the Securities and Exchange Board of India on consultation
paper titled review of the definition of Unpublished Price Sensitive
Information (UPSI) under SEBI (Prohibition of Insider Trading)
Regulations, 2015 to bring regulatory clarity, certainty and uniformity of
compliance in the ecosystem**

Comments on behalf of the Policy Inputs Research Group on SEBI, GNLU
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I. INTRODUCTION: -

On 9th November 2024, the Securities Exchange Board of India (“SEBI”) released a Consultation Paper for Proposed review of the definition of Unpublished Price Sensitive Information (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015 to bring regulatory clarity, certainty and uniformity of compliance in the ecosystem. The proposal seeks to align the definition of UPSI in PIT Regulations with events from Para A and Para B of Part A of Schedule III as defined under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 by amending the definition of UPSI to include material event in accordance with Regulation 30 of LODR Regulations”.

With regards to the underlying purpose for which the Centre for Law and Economics was established at the Gujarat National Law University, the Centre constituted a special Research Group to look further into the proposed set of rules and regulations and research on the recommendations so as to suggest changes in order to ensure a more efficient framework.

This document proposes comments which would facilitate striking a balance between ease of doing business and expanding the scope of UPSI by maintaining an efficient level of disclosures.

II. GENERAL COMMENTS: -

This section will provide an overview of the Centre’s comments as stated below.

The discussion paper by SEBI regarding the review of the definition of UPSI under the SEBI (Prohibition of Insider Trading) Regulations, 2015, presents a significant step toward achieving clarity, uniformity, and enhanced compliance within the regulatory ecosystem. The proposed amendments aim to address ambiguities, reduce information asymmetry, and strengthen market integrity, ensuring a fairer environment for all stakeholders.

The inclusion of specific categories, such as material changes in ratings, fundraising activities, agreements affecting management and control, and outcomes of litigation, provides greater clarity on what constitutes UPSI. However, precise thresholds for materiality are essential to avoid over-disclosure and inefficiencies.

Aligning the UPSI framework with international standards, such as those of the SEC in the U.S. or the EU regulations, would bolster investor confidence while ensuring consistency in disclosures and reducing systemic risks.

Introducing clear, quantifiable thresholds for determining materiality across different categories of information will help distinguish between routine and significant disclosures, reducing noise and enabling investors to focus on impactful information.

Proposals such as including forensic audits, regulatory actions, and insolvency proceedings in UPSI definitions contribute to greater investor protection. However, the emphasis should remain on significant developments to maintain market stability and trust.

III. SPECIFIC COMMENTS: -

SL. NO.	ISSUE	SUMMARY OF PROPOSAL	COMMENTS/ SUGGESTION	RATIONALE
1.	<u>Proposal No.1</u> Include “Change in Rating(s)” in the definition of	SEBI proposes including "Change in Ratings" in the definition of Unpublished Price Sensitive	The proposal is appropriate, subject to the condition that the threshold of materiality of the	Proposal 1 is based on the relationship between rating changes and their impact on the valuation and perception of a firm's securities. Credit ratings

	<p>UPSI from Clause 3 of Para A of Part A of Schedule III of LODR.</p>	<p>Information (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015. The proposal seeks to keep out routine revalidations or confirmations of ratings and focuses on material changes and, therefore, strikes a balance between transparency and practicality for listed entities by addressing the price-sensitive nature of credit rating changes.</p>	<p>revision has to be defined.</p> <p>Suggestion: The proposal does not define what a "material" change in ratings would entail. Without clear thresholds, entities might face uncertainty regarding which rating changes they have to disclose. Minor changes in ratings could become an over-reporting tool, burdening both companies and the market participants with irrelevant information. SEBI may resolve this problem by quantitatively defining thresholds as well as contextual criteria.</p>	<p>are an important signal of the creditworthiness and financial health of an entity, affecting investor decisions and systemic stability in important ways¹. The aforementioned definition of UPSI only partially captures the impact of ratings through broader categories of "change in capital structure" but does not have explicit material implications for either upward or downward rating revisions. The proposal is seeking to integrate these revisions into the UPSI framework to eliminate ambiguity by ensuring consistent disclosure practices amongst listed entities. Furthermore, the proposal limits its scope to material change, which includes</p>
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¹ <https://www.imf.org/external/pubs/ft/wp/2009/wp09129.pdf>

				<p>upgrades and downgrades, but excludes revalidations that are inelastic with respect to price, so there is always a balance between full disclosure and operational practicability. Finally, this makes sure that material information, which directly affects the securities price, is uniformly dealt with as UPSI in order to have market integrity without burdening entities with non-material compliance obligations.</p> <p>However, if all routine rating revisions are disclosed, even when they are intended to be excluded, then the market might be saturated with information that lacks significant value.</p>
2.	<u>Proposal No.2</u> Include “fund raising proposed to be	The term "fundraising proposed to be undertaken" should	The proposal as it stands is inefficient at the outset.	The proposal of including “fund raising proposed to be undertaken” in the definition of UPSI may not

	<p>undertaken” in the definition of UPSI from Clause 4 of Para A of Part A of Schedule III of LODR.</p>	<p>be included in the definition of Unpublished Price Sensitive Information (UPSI), according to SEBI. By guaranteeing that all fundraising choices, which are revealed as the results of board meetings, are acknowledged as potentially price-sensitive occurrences, this proposed change aims to improve clarity.</p>	<p>By classifying actions with negligible market impact as unpublished price-sensitive information (UPSI), the inclusion of "fundraising proposed to be undertaken" in the definition of UPSI may unintentionally result in inefficiencies. This strategy can ultimately jeopardize market stability and well-informed investor decision-making by raising transaction and compliance costs, increasing information overload, and causing needless market speculation. In order to improve compliance, curb speculation, preserve</p>	<p>prove to be efficient as not all fund-raising activity will be material enough to be classified as UPSI. Routine or small-scale fund raising that is unlikely to be a price sensitive information will be under UPSI making the system less efficient. There will be an increase in compliance cost as the obligation to treat every fundraising instance as UPSI increases administrative burdens. According to the Transaction Cost Theory a company can be the most economical if it minimizes transaction costs, and this provision in turn increases the transaction cost associated with fund raising, reducing the ease-of-doing business. It would lead to information overload, as the notification of each fundraising activity in a</p>
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			<p>market stability, safeguard investors, and ensure that only significant information is UPSI, SEBI should permit companies to evaluate the materiality of fundraising.</p>	<p>listed entity may make investors unable to distinguish or prioritize material activities. This inability stems from bounded rationality, which refers to the cognitive limitations individuals face in processing and analyzing large volumes of information. When overwhelmed with excessive or irrelevant data, investors may struggle to focus on activities with genuine market significance, leading to suboptimal decision-making. It might also lead to unnecessary speculation by investors, causing volatility in the market. In order to ensure compliance with board-authorized policies and the responsible handling of material, non-public information (MNPI), the Securities and Exchange Commission (SEC) in the</p>
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				<p>United States requires public companies to set up strong internal controls over stock buybacks and securities transactions. Under regulatory supervision, the SEC gives businesses latitude in assessing materiality². It is advised that the SEBI take into account a similar approach that would enable businesses to evaluate the significance of suggested fundraising initiatives. By ensuring that only information with a significant market impact is considered unpublished price-sensitive information (UPSI), this strategy would improve compliance efficiency, cut down on unnecessary speculation, preserve market stability, and safeguard investor interests.</p>
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²<https://corpgov.law.harvard.edu/2020/11/09/sec-extends-its-focus-on-mnpi-clearance-procedures/?form=MG0AV3>.

3.	<p><u>Proposal No. 3</u></p> <p>Include “Agreements, by whatever name called, impacting the management and control of the company” in the definition of UPSI from Clause 5 and 5A of Para A of Part A of Schedule III of LODR.</p>	<p>SEBI suggests adding agreements that affect a company's control and management to the UPSI definition. This focuses on contracts that affect the management, control, or responsibilities of the listed company, such as joint venture, shareholder, or family settlement agreements.</p>	<p>Classifying agreements that impact management and control as UPSI may cause ambiguity and implementation difficulties, which could result in compliance problems because of the diversity of agreements. It would also skew talks since parties might change their tactics to avoid making UPSI disclosures, which would lead to less formal or transparent agreements. This would limit accountability and make it more difficult to reach the best possible negotiating results.</p>	<p>This proposal, while aiming to improve investor confidence and lessen informational asymmetry, might not be totally successful. It is difficult to categorize which agreements have an impact on the management and control of a listed firm due to the great variability of those agreements. Because it becomes challenging to distinguish between his proposal, while aiming to improve investor confidence and lessen informational asymmetry, might not be totally successful. It is difficult to categorize which agreements have an impact on the management and control of a listed firm due to the great variability of those agreements. Because it becomes challenging to distinguish between material and non-material agreements, this</p>
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				<p>classification may cause uncertainty and compliance problems. The Working Group's suggestion to include only agreements affecting management and control of the company may not be as clear as Clauses 5 and 5A of Paragraph A of Part A of Schedule III, which specifically lists the specific agreements that must be disclosed. This could lead to a variety of interpretations. The intended regulatory objective may be undermined by inconsistent application resulting from the lack of a comprehensive, itemized list as provided in Clauses 5 and 5A. Furthermore, in order to avoid making UPSI disclosures, parties to management or control agreements may change their negotiating tactics, which could skew the</p>
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				agreements' results and decrease transparency.
4.	<u>Proposal No. 4</u> Include “Fraud or defaults by a listed entity, its promoter, director, key managerial personnel, senior management, or subsidiary or arrest of key managerial personnel, senior management, promoter or director of the listed entity, whether occurred within India or abroad” in the definition of UPSI from Clause 6 of Para A of Part A of Schedule III and Clause 9 of Para B of Part A of Schedule III	SEBI proposes including fraudulent activities, defaults, or arrests related to key individuals (like promoters, directors, key managerial personnel, senior management) or subsidiaries of a listed entity—whether occurring in India or abroad—as part of the UPSI definition Fraud: Defined per SEBI’s Prohibition of Fraudulent and Unfair Trade Practices Regulations, 2003. Default: Covers non-payment of debt (interest or principal) on due	The changes are welcomed as these changes aim to provide more transparency in reporting events that could significantly influence the company's securities prices.	The inclusion of fraud, defaults, and arrests involving key individuals or subsidiaries of a listed entity in the definition of <i>Unpublished Price Sensitive Information (UPSII)</i> is a significant step toward enhancing transparency and investor protection. This broadens the scope of what constitutes UPSI, SEBI acknowledges the material impact that such events can have on a company's market valuation and investor confidence.

		<p>dates or prolonged over-limit balances in revolving credit facilities.</p> <p>Impact Scope: Includes frauds or defaults that may influence the listed entity.</p>		
5.	<p><u>Proposal No. 5</u></p> <p>Amend regulation 2(1)(n)(v) of PIT Regulations to include:</p> <p>“Change in key managerial personnel, other than due to superannuation or end of term, and resignation of a Statutory Auditor or Secretarial Auditor”</p>	<p>Change in Key Managerial Personnel (KMP), <i>other than due to superannuation or end of term</i>. This means any departure or replacement of key personnel, except for regular retirements or term expirations, would be considered price-sensitive</p>	<p>The proposal limits and clarifies the scope of the term ‘Change in key managerial personnel’ in the PIT regulation 2(1); essentially removing scope for redundant application of the regulations, reducing efficiency.</p>	
6.	<p><u>Proposal No. 6</u></p>	<p>SEBI has proposed to include</p>	<p>It is suggested that the inclusion of</p>	<p>Incorporation of the suggestion would align the</p>

	<p>Include Resolution plan/Restructuring/One-time settlement in relation to loan/borrowings from banks/financial institutions in the definition of UPSI from Clause 9 and 10 of Para A of Part A of Schedule III.</p>	<p>“Resolution plan/Restructuring/One-time settlement in relation to loan/borrowings from banks/financial institutions” as part of the definition of UPSI under SEBI’s PIT Regulations, 2015. This proposal aims to ensure that debt management information, which may be price-sensitive in nature, affecting a listed entity’s financial health and stock price is covered under the definition of UPSI.</p>	<p>events under this proposal is too broad, therefore, it would be suitable to amend proposal 6 (in para 4.9.2) to include “Resolution plan/Restructuring/One-time settlement in relation to loan/borrowings from banks/financial institutions, that exceeds the materiality threshold as may be determined under Regulation 30 (4) of LODR.” in the definition of UPSI.</p>	<p>UPSI definition with the existing materiality thresholds and prevent treating minor restructuring events as UPSI. This becomes relevant in light of several key considerations. First, all restructuring events do not have a material impact on the price and only those exceeding certain thresholds affect market behavior significantly. Research from other jurisdictions indicates that minor debt restructuring has minimal or negligible impact on firm investment³. Secondly, keeping a broad definition would lead to excessive trading window closures, hampering trading activity and liquidity in the market. A cost-benefit analysis shows that the optimal amount of</p>
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³ Jinglu Jiang, Bo Liu, Jinqiang Yang, The impact of debt restructuring on firm investment: Evidence from China, 81, Eco Modelling 325, 325-337 (2019). Available at: <https://doi.org/10.1016/j.econmod.2019.05.019>

				disclosure/investor protection lies somewhere between overregulation and non-protection. Thus, USPI should be carefully crafted to include only as much information as could substantially affect market activity when disclosed.
5.	<u>Proposal No.7</u> Include Admission of winding-up petition filed by any party / creditors, admission of application by the corporate applicant or financial creditors for initiation of corporate insolvency resolution	SEBI has proposed to include “Admission of winding-up petitions filed by any party/creditor, admission of applications by the corporate applicant or financial creditors for initiation for CIRP of a listed corporate debtor, and approval/rejection thereof under the Insolvency Code”	It is suggested that the proposal be expanded to include interim developments during the insolvency process that are likely to affect market prices when disclosed. A suitable amendment could be for proposal 7 (in para) to read as: include “Admission of winding-up petition filed by any	The suggestions rest upon a number of considerations. Firstly, studies indicate ⁴ that interim developments during insolvency proceedings could improve transparency and predictability boosting investor confidence, thereby impacting the final outcome and market value of the entity. Information asymmetry during insolvency proceedings can lead to inefficiencies in the market. A clear distinction between

⁴ Agarwal, A. and Varma, J. (2024) *Measuring Going Concern Viability and the Effect of Interim Financing Under the Indian Insolvency and Bankruptcy Code, 2016*. Asian Journal of Law and Economics. Available at: <https://doi.org/10.1515/ajle-2024-0044>

	<p>process of a listed corporate debtor and its approval or rejection thereof under the Insolvency Code, in the definition of UPSI from Clause 11 and 16 of Para A of Part A of Schedule III.</p>	<p>in the definition of UPSI. This proposal seeks to include within the definition of UPSI the significant insolvency-related events that could affect share price while excluding other events under Clause 11 and 16 of Para A of Part A of Schedule III</p>	<p>party/creditors, admission of application by the corporate applicant or financial creditors for initiation of CIRP of a listed corporate debtor, its approval or rejection thereof under the Insolvency Code, and material interim orders or developments that substantially affect the likelihood of the final outcome of the CIRP.” Additionally, thresholds must be established to ensure that only proceedings that are likely to affect market prices fall within the definition of UPSI. Thresholds may differ based on the nature of proceedings, i.e. whether voluntary or involuntary, with</p>	<p>material and routine procedural developments in Insolvency proceedings can help improve market efficiency and affect investor decisions. Thus, the inclusion of material interim orders becomes essential. Secondly, it is essential to strike a balance between overregulation and measures for the protection of investors. Thus, inclusion should be limited to matters that materially affect prices in the market. This necessitates stipulation of thresholds and timelines.</p>
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			<p>mandated disclosures for involuntary proceedings while keeping a higher threshold for mandatory ones. Further, a timeline could be stipulated, and only information related to proceedings that lasts beyond that timeline should be regarded as UPSI.</p>	
6.	<p><u>Proposal No. 8</u></p> <p>Include Forensic Audits in the Definition of UPSI</p>	<p>SEBI suggests inclusion of “initiation of forensic audits and receipt of final forensic audit reports” in the definition of UPSI to ensure that information like potential financial statement, misstatement, misappropriation or diversion of funds, etc., is reported in</p>	<p>This is a positive step towards increasing the scope of insider trading by including forensic audit events in the definition, yet SEBI needs to work upon improving this provision by bringing in threshold levels of materiality to assure that only material audits are prohibited from being disclosed . For example, audits initiated based on</p>	<p>Forensic audits often occur due to suspected cases of financial malpractices including misstated financial statements and/or misappropriation of funds. Such events can gravely affect the financial well-being of the company, thus impacting the share price that is inherently price sensitive. Incorporating forensic audits as UPSI will give protection to this price sensitive information so that the opportunity of</p>

		time with enhanced transparency for protection of investors 'interests. It is in line with Clause 17 of Part A of Schedule III as envisaged under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	materiality of financial misstatement, or fund misappropriation or any other misdeeds should not be disclosed, as against routine or precautionary audits. SEBI may also provide specific guidance on the types of forensic audits that qualify as UPSI to avoid ambiguity	insider trading is reduced to the least. However, absolute prohibition on disclosure of every forensic audit may be inefficient especially when the audits are precautionary rather than indicating wrongdoing. Materiality thresholds will help focus on significant audits with substantial implications while others. Globally, regulators like the SEC in the U.S. require disclosure only when such events materially impact financial statements, which SEBI could emulate for balanced implementation
8.	<u>Proposal No. 9</u> Include “Regulatory actions against the company or its personnel” in the definition of UPSI	SEBI seeks to bring within the list of UPSI the actions initiated, or orders passed by regulatory, statutory, enforcement authorities, or judicial bodies	In the definition of UPSI, regulatory actions should also be included to maintain the integrity of the market and allow equal access to material information. However, SEBI should clarify	Regulatory actions, such as fines, suspensions, or investigations, may have a material impact on the operations of a company and investor confidence. Including such regulatory actions in UPSI grants equal access to critical

		<p>against listed entities or their directors, KMP, senior management, promoters, or subsidiaries. The same includes search/seizure operations, reopening accounts under Section 130 of the Companies Act, investigations under Chapter XIV of the Companies Act, suspensions, fines/penalties, and all other similar actions.</p>	<p>materiality thresholds and guidelines so routine regulatory actions, such as minor penalties, are distinguished from actions that carry significant financial or reputational impacts. For instance, those actions involving a quantifiable monetary impact above a threshold or otherwise affecting operations materially should be disclosed. This will prevent over-disclosure but ensure that meaningful information is shared with investors.</p>	<p>information to all market participants without risking selective dissemination and insider trading. However, all regulatory actions are not equal, and routine inquiries or minor penalties may not have a material impact on the operations of the company or the stock price. In the absence of materiality thresholds, the over-disclosure is likely where investors are bombarded by minor details, thereby diluting major events, and SEBI may ensure meaningful disclosure by bringing in thresholds, such as monetary value of penalties while maintaining transparency in the jurisdiction. In some jurisdictions, such as the EU, similar criteria are considered to focus on material regulatory action. This ensures that disclosures deliver their</p>
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				purpose and do not further burden corporations through unnecessary compliance onus.
9.	<u>Proposal No. 11</u> Include “outcome of any litigation(s) or dispute(s) which may have an impact on the listed entity” in the definition of UPSI from Clause 8 of Para B of Part A of Schedule III.	The proposal suggests the inclusion of “outcome of litigation(s) or dispute(s) that may impact the listed entity” to the definition of UPSI in SEBI PIT Regulations, 2015 because the outcomes of such ongoing litigations have an impact on prices and investors' decisions with regard to securities ⁵ . By focusing on material outcomes rather than	The proposal is appropriate as the outcome of a litigation can significantly impact a company's finances, thus affecting the securities prices	The rationale behind incorporating the outcome of any litigation(s) or dispute(s) into the definition of UPSI under SEBI PIT Regulations, 2015, arises due to the impact litigation outcomes can have on the company's financial, operational, or reputational standing. Litigation outcomes are pivotal events that change a company's potential valuation, alter market confidence or create operational stumbling blocks, thereby impacting securities prices ⁶ . Ordinarily, ongoing litigations are in the public domain, however, their

⁵ <https://gowlingwlg.com/en/insights-resources/articles/2022/impact-of-litigation-on-company-value-study>

⁶ <https://www.wolperlawfirm.com/securities-litigation-impact-on-publicly-traded-companies-a-deep-dive/>

		<p>pendency, the proposal balances transparency with operational feasibility and helps mitigate insider trading linked to undisclosed litigation outcomes.</p>		<p>outcomes may directly influence investor decision-making, especially if they involve settlement agreements, penalties, or judgments. Besides, this proposal is compliant with SEBI's objective of reducing information asymmetry and protecting the integrity of the capital markets through timely and transparent disclosures. By mandating disclosure once, a litigation outcome has material effects, the proposal achieves a balance between transparency and operations discretion for listed entities. This reduces possible distortions in the economy that may arise from insider trading on undisclosed litigation outcomes, which in turn allows for a better trading platform. However, this is likely to impose some</p>
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				burden on entities that need to come up with a robust disclosure system
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