

INSIDER TRADING IN THE UNITED STATES AND INDIA: A COMPARATIVE LEGAL AND POLICY ANALYSIS

Safi Mohan M. R.

Assistant Professor in Law, Government Law College, Thiruvananthapuram

Abstract

Insider trading in India is a key capital market issue which has been regulated by SEBI as per the provisions of the Prohibition of Insider Trading Regulation, 2015. In fact, this subject involves lots of fundamental aspects of finance and capital market issues. It is essential to study the subject in detail by analysing the existing law and precedents in India. The present study aims to analyse the insider trading laws in India, one of the world's largest emerging capital markets and insider trading laws in the United States of America, the world's largest capital market.

Keywords: Insider trading, Regulations, Capital markets, Precedents, Supreme Court, Securities and Exchange Board of India, Act, Holding company.

I. Introduction: Theoretical Foundations and Regulatory Obligations

A. The Policy Schism: Reconciling Market Efficiency and Investor Fairness

The regulation of insider trading globally is based on a constant tension between two fundamental policy objectives: increasing market efficiency and ensuring investor justice. This contradiction is the philosophical basis that distinguishes the regulatory approaches adopted by the United States and India. Fairness intuition suggests that trading in undisclosed and material information undermines public confidence in capital markets and creates an unequal playing field that favours the individuals concerned. Advocates of strict prohibition argue that market integrity based on the principle of equal access to information outweighs any efficiency gains. Efficiency awareness, on the contrary, suggests that allowing certain types of trading to knowledgeable individuals will accelerate price discovery. The accelerated inclusion of non-public information in share prices ensures that securities reflect their intrinsic value more quickly, thereby improving resource allocation.

The resolution of this inherent tension determines the structure of each legal system. U.S. law addresses this dilemma primarily through anti-fraud doctrines that provide for the breach or responsibility of a particular duty of trust or confidence owed to shareholders or the source of the information. Rooted in common law notions of fraud, this approach inherently favours the efficiency argument by limiting active insider trading only to situations where there is a prior breach of duty. This judicial limitation provides legal space for non-believers to exploit the informational benefits, provided the information is not misused, thereby allowing the market to incorporate the information quickly, which is the main economic justification for a duty-based system.

In contrast, India resolves this tension through a strict, code-based prohibition of possession. This approach, coupled with meticulous compliance and disclosure obligations, prioritises fairness and prophylactic design. By focusing on the simple and verifiable fact of possession of unpublished price-sensitive information (UPSI) rather than proving complex

intent or breach of duty, India's system is a pragmatic response to market structural weaknesses such as concentrated promoter holdings and inherent information asymmetry.

B. Legal and Regulatory Background: 1934 Sea. And Sebi Act Of 1992.

The legal authority governing domestic trade in both countries comes from different legislative frameworks. In the United States, the basis is the Securities Exchange Act of 1934 (SEA), which gives the Securities and Exchange Commission (SEC) broad authority to regulate market behaviour. Specifically, Section 10 (b) empowers the SEC to prohibit any artificial or fraudulent instrument. This power is exercised under Rule 10B-5 of the Basic Anti-Fraud Law.¹

In India, the regulatory landscape is governed by the Securities and Exchange Board of India Act, 1992 (SEBI Act).²

The proposed prohibition against insider trading is codified in SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT 2015), which is subject to subsequent strengthening amendments, including in March 2025. This code-based approach provides a clear legal definition and framework away from the common law evolution that characterises the U.S. system.³

II. Antifraud Paradigm: Insider Trading Liability in the United States

A. Fundamental Rules and Regulations: Section 10 (B) Rule 10b-5

Insider trading liability in the U.S. is not clearly defined by law. Instead, it is s. E. A is legally implied from the general anti-fraud provisions. Rule 10b-5 prohibits a number of activities, including cheating by using any device, scheme, or artifice to buy or sell any security, making material false statements or omissions, or engaging in any act that constitutes fraud or deception. Relying on a generalised anti-fraud injunction rather than a specific prohibition against informational gains has led to a complex, public-law-like evolution characterized by complex doctrinal differences.

B. Theoretical Pillars of Responsibility

U.S. courts have developed two primary theories rooted in the need for fraud to establish insider trading liability under Rule 10b-5.

1. The Classical Theory

The classical doctrine applies to corporate insiders - such as directors, officers, or controlling shareholders - who violate a fiduciary duty owed directly to the shareholders of a company that trades based on material nonpublic information (MNPI).

¹ 17 C.F.R. § 240.10b-5 (2024).

² Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India).

³ SEBI (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, pt. II sec. 3(i), No. 1 (Jan. 15, 2015).

SEC V. Influential case of Texas Gulf Sulphur (2DCr). 1968)⁴ enacted the "disclose or omit" rule, applying Rule 10b-5 liability to insider trading that generally takes place in the marketplace. However, Chiarella V. The Supreme Court in the United States (1980)⁵

significantly curtailed the scope of this duty. Chiarella rejected the advanced idea of a generalized duty owed to the market or to counterparties. M. N. P. The court held that it was not illegal to trade in the possession of I; liability requires a special fiduciary or similar relationship that creates an obligation to disclose before trading.

The initial rejection of a public duty in Chiarella underscores the structural weakness of relying on anti-fraud principles against the exploitation of information in arm's length transactions. Because deception requires deception, in the absence of a relationship of trust, and because silence is not deceptive, classical doctrine is inherently limited, creating legal boundaries that allow non-believers to exploit information asymmetries, as long as they do not violate a pre-existing duty.

2. The Theory of Abuse

The misappropriation theory put the onus on corporate outsiders exploiting the MNPI. This doctrine applies when a person violates the trust or confidence they owe to the source of the information (e.g., an employer, a client, or the source of confidential corporate plans) by trading in that information for personal gain.

United States v. The Supreme Court in O'Hagan (1997)⁶

Formally adopted this doctrine, affirming that fraud occurs when the source of information is deceived by the abuser's use of confidential information in an undisclosed manner. This development was a direct response to judicial obstacles such as Chiarella, which limited the application of classical theory. The misappropriation doctrine fills a significant enforcement gap, allowing the SEC to pursue individuals who steal information for trading, even if they are not required to pay a fiduciary duty to the shareholders of the company they are trading with.

C. The Nuances of Tippee Liability:

The personal benefit test and constructive insiders

In Dirks v. SEC,⁷ the complexity of the U.S. framework is perhaps most acute in the context of the tipping and tipping obligation established in SEC (1983). Dirks established that the recipient of the MNPI (the TIPI) can inherit the Tipper's liability only if two different factors

⁴ SEBI (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, pt. II sec. 3(i), No. 1 (Jan. 15, 2015).

⁵ Chiarella v. United States, 445 U.S. 222 (1980).

⁶ United States v. O'Hagan, 521 U.S. 642 (1997).

⁷ Dirks v. SEC, 463 U.S. 646 (1983).

are

met:

1. For personal gain. N. P. The tipper must have breached a fiduciary duty by disclosing the I. This benefit can be money, fame, or a gift to a relative or friend.
2. The tipper must be aware or reasonably aware that the tipper has breached their duty. The need to prove Tipper's personal gain creates significant challenges for prosecutors because it requires them to prove a subjective and often indirect motive behind the disclosure.

This requirement has led to continued judicial reform and circuit splits, which illustrate the inherent difficulty of proving a guilty conscience within a complex legal framework. The Dirks test created legal ambiguities, especially in proving that gifting information to a friend was a sufficient personal benefit to the tipper. Dirks also coined the concept of "constructive insiders," temporary insiders such as lawyers, investment bankers, and consultants who take on the fiduciary duties of the company when it is entrusted with MNPI for a corporate purpose.

D. Duty-Free Regulation: Rule 14e-3 within the Tender Offer Context

The most significant variance within the duty-based system that exists within the U.S. is Rule 14e-3, which deals with the issue of insider trading in the course of a tender offer.⁸ This rule came into effect after the ruling in the **Chiarella** case and prescribes a possession-based barrier to trading. Rule 14e-3 bars trading during a tender offer if a person has material nonpublic information and knows that the information came from the bidder, the target, or each of their agents, even if the person owes no fiduciary duty to the other party. This preventive rule works much the same way as the general ban found in the Indian environment, because even within the U.S. environment, it is understood that within the volatile world of tenders, a possession standard is needed to safeguard the balance of the marketplace. The coexistence of Rule 14e-3 illustrates that the weaknesses of the antifraud rule are understood within the U.S. framework and that a possession standard is therefore required for specific high-risk transactions.

Iii. The Possession and Prevention Model: Insider Trading Liability in India

***A. The Codified Framework: Sebi (Prohibition Of Insider Trading) Regulations, 2015 (Pit**

The regulative framework of the PIT regime introduced through the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT 2015), is more straightforward and direct and has been fashioned specifically to prohibit the trade, rather than applying the antifraud rule retrospectively. The PIT regime follows a straightforward code model that focuses greatly on preventive measures of a systemic kind.

B. Defining the Prohibited Act: Possession vs. Use

⁸ 17 C.F.R. § 240.14e-3 (2023).

The heart of the framework is the possession-based prohibition in Regulation 4(1): trading while a “insider” in possession of Unpublished Price Sensitive Information (UPSI) is prohibited by the regulation.

This model of liability is largely founded upon the fact of possession and carries a robust presumption of liability where any insider trades while in possession of UPSI. This is a very different standard of proof than that required within the U.S., which requires proof of use (or breach of duty and scienter). The standard of proof is much lower for SEBI than that required of the SEC, who must prove complex notions of intention or personal gain. Liability is typically determinable based upon possession rather than use or profit motive, although various defenses exist, such as trades arranged through pre-cleared trading programs (Regulation 5).

C. Determining the Parties Involved: Related Persons And Insiders

PIT 2015 also includes a wide definition of the scope of liability that may be imposed. The definition of the term “insider” includes a person related to a company and any person who has possession of or “access to” U.P.S.I.

The definition of “connected person” is broad and includes any person who is or has been related to the company within the preceding six months through any relationship that could enable, or be reasonably expected to enable, access to the UPSI. This definition expressly encompasses a broad range of fiduciaries, transient insiders, and persons with frequent communications with officers, so that the scope of the regulation includes persons who could be outside the stringent boundaries of the classical U.S. theory of fiduciary obligation.

D. The Communication Ban and the «Legitimate Purpose» Exception

The code of law explicitly forbids the transmission and acquisition of UPSI (Regulation 3). Nevertheless, there is a very important exemption to such a prohibition – that is, transmission permitted towards the satisfaction of a “legitimate purpose” and the performance of functions and/or the fulfilment of a legal obligation (Regulation 3(i)). The compliance requirement is emphasized to be the responsibility of the concerned entities themselves.

Importantly, within the tipping hypothesis, the “personal benefit” standard is not a determinative element of tippee liability under Indian law. Rather, the explanation of the UPSI and the possession of it through trading are alone sufficient to invoke liability. The fact that the Dirks standard is not required within the tipping hypothesis makes the tipping element of the insider trading rule much more easily enforceable within the Indian regime, and thus less burdensome within the regulatory framework of establishing objective proof of motive, which is a key positive element of the policy regime within the complex ownership structures found within modern markets.

E. Evidentiary Standards and Judicial Interpretation

Although the prohibition is possession-based, the evidentiary requirement for enforcement is largely dependent upon the ability of SEBI to draw a temporal and logical connection between the possession of the UPSI and the trading that follows. The courts of India

permit the use of circumstantial evidence such as call data records and trade analysis to draw such a connection.⁹

Nevertheless, the Supreme Court of India has presented a clarification (in the decisions of both 2016 and 2022) that the regulatory bodies' decisions ought to be supported through a convincing connection between the access to the UPSI and the trades, thus avoiding the imposition of liability merely through proximity.¹⁰ The need to prove the latter connection prevents the overturning of the regulatory bodies' decisions through appeal.¹¹

Iv. The Modernization of Compliance and Enforcement Structures

A. Structural Compliance in India: Mandatory Preventative Tools

The possession-based rule of India's Data Protection Bill requires a strong compliance regime to trace and control the flow of confidential information.

1. The Structured Digital Database (SDD): Requirements, Auditability, and Implementation

Under regulation 3(5) and 3(6) of PIT 2015, listed companies are required to operate a Structured Digital Database (SDD), which records every time there is access and sharing of UPSI information. The SDD is a very important compliance instrument for SEBI, turning a passive compliance event into an ongoing and real-time control within the company.

The SDD has to be extremely technologically compliant: it has to record each communication of the UPSI, include the Designated Persons and Insiders, be non-editable, encrypted, viewable only through the compliance officer, and produce a thorough and dated audit trail. The trigger for insertion into the SDD is the distribution of the UPSI, whether it is within the company or outside.

The Sara δη Nokia possession-based model's efficacy largely depends upon the SDD's integrity. The SDD yields the indomitable logic required to confirm/disprove the essential temporal connection between information acquisition and trading, which remains the cornerstone of the SDD's justification of the trading case's prosecution argument. The standard of the SDD shall be directly related to the company's appeal-sustainability and the Compliance Officer's accountability during a probe enquiry from the SEBI.

2. The Role and Liability of the Compliance Officer (CO)

The Compliance Officer (CO) functions within the Indian framework as a critical and high-profile role. The CO is specifically charged with the task of monitoring compliance with the preservation of UPSI information, SDD material records, trade monitoring, and code of

⁹ Securities and Exchange Board of India v. Kishore R. Ajmera, (2016) 6 SCC 368 (India).

¹⁰ Balram Garg v. Securities and Exchange Board of India, (2022) 6 SCC 241 (India).

¹¹ Securities and Exchange Board of India v. Abhijit Rajan, (2022) 8 SCC 760 (India).

conduct compliance required within the PIT Regulations regime. The adjudication orders issued by SEBI emphasize the stringent expectations of the CO to be proactive on the compliance front. Nevertheless, juristic writings indicate that the scope of CO liability, even within the corporate information and the board-approved misstatement contexts, is not yet clear within the Securities Appellate Tribunal (SAT) jurisprudence.

3. Continuous Disclosure Mandates

The SEBI (LODR) Regulations of 2015, through Regulation 30, stipulate the immediate and continuous reporting of material events to the stock exchange. This is conducive to the basic objective of information equality because material information is required to be shared immediately, thus minimizing the scope of persons within a company benefiting from trading based on that information.

B. Refining Safe Harbors in the U.S.: The 2022 Rule 10b5-1

Rule 10b5-1 offers a affirmative defense for insider trading if the trades were effected under a prearranged plan and the plan and the person possessing the MNPI were not contemporaneous.¹² Realizing the abuse of these plans, the SEC introduced substantial amendments during December 2022 to thwart plan abuse.

The essential details of the extensive changes of 2022 are the following:

- Cooling-Off Periods: Mandatory waiting periods (90 days for officers/directors, up to two days after the next quarterly report) between plan adoption/modification and the first trade.
- Insider Certifications: The directors and officers are required to certify that they do not possess any material nonpublic information while adopting and changing any plan.
- Plan Limitations: Overlap prohibitions and single trade agreements.
- Expanded Good Faith: The addition of the obligation of good faith during the entire period of the plan.

Data confirms the success of the cooling-off period with respect to the deterrent effect it has on short-term opportunistic sales. Before the amendment, sales of a total of 31.1 percent of the 10b5-1 sales were within the first 90 days of adoption, but after the amendment, the sales declined sharply to a total of 1.7 percent.

Nevertheless, after a closer examination, the data indicate that the trend of opportunistic actions has changed, and trades are still being discontinued before any stock price increases, as shown through positive abnormal returns after the cancellation of the plans. As a result of the current timing of the disclosure of these plan cancellations, which is delayed until the next quarterly or annual filing (10-Q and 10-K), the effect of the news is nullified.

C. Judicial and Regulatory Convergence/Divergence

¹² 17 C.F.R. § 240.10b5-1 (2022).

1. The Macquarie Constraint on Pure Omissions (Rule 10b-5)

Notably limiting the reach of private securities litigation in court, the Supreme Court declared unanimously within the decision of *Macquarie Infrastructure Corp. v. Moab Partners* (2024)¹³ that any private action brought under Rule 10b-5(b) must be founded upon a statement that is rendered false through the omission of information, so-called “half-truths.”

The Court held that Rule 10b-5(b) prohibits the failure to state a material fact necessary to make the statements made, “not misleading.” It also refuted the argument that a “pure omission” such as the failure to disclose information required by Item 303 of Regulation S-K (known trends and uncertainties) is itself actionable unless it renders a separately affirmative statement misleading.

This ruling represents a significant narrowing of the scope of private actions for securities fraud within the U.S. Though the SEC retains its power to enforce the former (Item 303 violations), the power of private plaintiffs to bring suit against generalised failures of disclosure is thereby impaired. The effect of the ruling is thus to consolidate enforcement power within the SEC and to eliminate the deterrent effect of privately brought class actions concerning compliance with disclosure statements, since a plaintiff must now plead a “meaningful relationship” between the fraud and a positive statement.

2. The Expanding Definition of UPSI under the March 2025 SEBI Amendments

The PIT 2015 regime continues to be strengthened by SEBI proactively. The amendments introduced through a circular issued in March 2025 expanded the definition of Unpublished Price Sensitive Information (UPSI) and brought within its scope the following specific instances: award and/or cancellation of material contracts not made in the normal course of business, ratings (except ESG ratings), proposed fund-raising measures, and specific fraud and/or litigation outcomes concerning the company and key personnel.

This shift in regulation increases transparency because firms are required to record a broader set of information material to the market into the SDD, thus diminishing corporate discretion over materiality. This ongoing development reflects the commitment of the SEBI to ensure that the compliance regime provides total transparency.

V. Penalties, Remedies, and Enforcement Dynamics

A. U.S. Remedies: Civil Disgorgement, Penalties (Itsa), and Criminal

Enforcement within the U.S. is divided into civil cases brought by the SEC and criminal cases brought by the DOJ.

Turning to civil offenses, the remedies that the SEC may obtain are injunctive relief, disgorgement of illicit profits, and substantial civil monetary penalties. The SEC relies on the use of statutory power through the Acts of Congress, such as the Insider Trading and Securities Act (ITSA), to impose a treble civil fine that amounts to three times the profit earned or the

¹³ *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257 (2023).

loss avoided.¹⁴ The disgorgement of illicit profits and civil penalties are also governed by a five-year statute of limitation (28 U.S.C. § 2462), a certainty that demands swift action.

Prosecution of criminal liability also occurs through the DOJ and IA under SEA §32 and needs proof of “willful” action, which could lead to imprisonment. The U.S. enforcement regime is scienter and duty-based and so emphasizes large-scale criminal and complex civil cases to prove “criminal intent” to the degree that there is “proof beyond a reasonable doubt.”

B. Indian Penalties: Administrative Fines (§15g) and Infrequent Criminal Sanctions

The enforcement of the remittance regime within the Indian environment is mostly administrative, and the chief regulatory agency is the SEBI. Section 15G of the SEBI Act of 1992 permits Adjudicating Officers to impose a substantial financial penalty.¹⁵ The fine that is required to be imposed could be not less than ₹10 lakh and not exceeding ₹25 crore or three times the profit, whichever is higher. The high level of administrative penalties becomes the chief deterrent and also makes it possible for the SEBI to impose penalties that involve a high standard of proof of a criminal offense.

Imprisonment and other criminal penalties are also available through Section 24 of the SEBI Act but are not used as often as administrative penalties. The possession standard of reckoning makes the administrative procedure of SEBI easier, allowing for mass policing and quicker enforcement outcomes than the U.S. system of construing duties through extensive litigation.¹⁶

C. Surveillance and Investigation Techniques

1. United States

The Market Abuse Unit of the SEC and the Financial Industry Regulatory Authority (FINRA) employ cutting-edge tech and analysis to review trading data not only for stocks and options but also for the entire bond marketplace, scanning a massive 100% of trades. Trading surveillance systems are not passive but rather look for unusual trading behavior linked to material news announcements to see if trading is coordinated between apparently disparate accounts and if trading does not make any apparent sense economically.

2. India

SEBI retains a proactive approach to market regulation, using real-time surveillance to keep a tab on the market. The probe is normally anchored on trade pattern analysis and telecommunication data. Notably, however, SEBI has found itself increasingly using the required Structured Digital Database (SDD) records to demonstrate the temporal relationship between the trades and the access of the UPSI information. An important element of the SDD is that it makes it easier for SEBI to access the data and pursue possession offences.

¹⁴ Insider Trading Sanctions Act of 1984, Pub. L. No. 98-376, 98 Stat. 1264.

¹⁵ Securities and Exchange Board of India Act § 15G, No. 15, Acts of Parliament, 1992 (India).

¹⁶ Securities and Exchange Board of India Act § 24, No. 15, Acts of Parliament, 1992 (India).

Vi. Comparative Synthesis and Policy Reform

A. Doctrinal Contrast: Scierter/Duty of Culpability versus Possession

The basic distinction between the two regimes is the philosophical foundation. The U.S. regime founds liability upon the idea of deception and breach of a relationship of trust, whereas the Indian regime founds liability upon possession and the control of the system's process.

The U.S. system provides that only those actions that are essentially fraudulent will be penalized, and the result is a classical view of security regulation. This duty-driven approach, however, often demands complex and fact-intensive court analyses (e.g., the *Dirks* personal benefit analysis), resulting in a degree of uncertainty with respect to the scope of the duty-driven standard of review. The possession-driven scheme of the Indian system eliminates these uncertainties and maximises administrative efficiency.

The table below summarises the fundamental differences in doctrinal approach:

Comparative Doctrinal Anchors of Insider Trading Liability

B. Evaluation of Compliance Architectures

The effectiveness of insider trading doctrines is deeply influenced by the underlying compliance infrastructures of each jurisdiction. In the United States, the regulatory architecture is essentially premised on a disclosure-based system. Here, compliance is largely reactive and

Jurisdiction	Foundational Principle	Liability Anchor	Tippee Liability Standard	Exculpatory Defense/Safe Harbor
United States	Antifraud/Deception (SEA §10(b), Rule 10b-5)	Breach of Fiduciary Duty (Duty to Shareholder or Source)	Tipper's "Personal Benefit" + Tippee Knowledge (<i>Dirks</i>)	Rule 10b5-1 Trading Plans (2022 Amendments)
India	Prophylactic/Statutory Code (SEBI PIT 2015)	Possession of Unpublished Price Sensitive Information (UPSI) (Reg. 4(1))	Possession of UPSI via Communication/Procurement (No personal benefit test)	Pre-cleared Trading Plans (Reg. 5); "Legitimate Purposes" Communication

individual-driven: companies and insiders self-certify their adherence to Rule 10b5-1, relying on safe harbors that shield bona fide pre-planned trades from liability. The 2022 amendments have bolstered the integrity of these plans, particularly by introducing mandatory cooling-off periods to curb opportunistic trades in proximity to material events. These changes have brought measurable improvements, but notable vulnerabilities persist. One key weakness is the loophole allowing insiders to unilaterally cancel their pre-arranged trading plans, potentially in response to undisclosed material nonpublic information (MNPI), and thereby sidestep the very protections the rule was designed to ensure. In effect, a reliance on disclosure and self-

reporting, without robust ex ante controls or real-time oversight, creates persistent opportunities for sophisticated actors to game the system.

India, by contrast, has constructed a compliance regime that is fundamentally proactive and process-oriented. The backbone of this architecture is the Structured Digital Database (SDD), complemented by Regulation 30's emphasis on immediate material event disclosure. This approach is particularly vital in Indian markets, which are often characterized by concentrated promoter control and heightened risk of information leakage. By institutionalizing the SDD as a central compliance mechanism, India elevates the role of the compliance officer, transforming them from a procedural gatekeeper into a pivotal participant in the legal defense against insider trading allegations. The SDD's main advantage lies in its ability to systematically log and timestamp every instance of MNPI access or sharing, thus creating a comprehensive audit trail. This directly addresses one of the longstanding evidentiary challenges faced in the U.S.: the difficulty of pinpointing when an individual actually received MNPI, which is essential for proving scienter, the requisite mental state for a finding of liability. India's structured, technology-driven approach is designed to make this evidentiary showing straightforward, thereby streamlining enforcement and enhancing deterrence.

Comparative Compliance Architectures and Information Logging

Compliance Mechanism	United States (SEC Focus)	India (SEBI Focus)	Primary Purpose
Information Management	General corporate internal controls; Focus on 10b5-1 adoption disclosures.	Mandatory Structured Digital Database (SDD); Non-editable, time-stamped, and encrypted.	Proving the flow and access history of material information (Possession Proof).
Trading Plan Control	Rule 10b5-1 Plans: Requires cooling-off (90+ days), certification, limits on overlapping plans.	Trading Plans (Reg. 5): Requires pre-clearance by Compliance Officer, limited execution windows.	Mitigating opportunistic trading on MNPI via pre-commitment.
Disclosure Requirement	Regulation FD (Fair Disclosure); Item 303 requirements (post- <i>Macquarie</i> limited to half-truths).	LODR Regulation 30: Prompt disclosure of material events to stock exchanges.	Equalizing information access among all market participants.

C. Policy Recommendations

To fortify market integrity and public confidence, regulators should strive to synthesize the strengths of these contrasting systems—blending the U.S. approach's focus on individual responsibility with India's rigorous, process-driven compliance infrastructure.

1. For the United States: Harmonising Disclosure with Enhanced Monitoring of Rule 10b5-1 Plans

Recent legal and regulatory developments have introduced new complexities for U.S. enforcement.

- **Post-Macquarie Guidance:** The 2024 Macquarie decision, by narrowing the scope for private shareholder suits based on omissions, has shifted the burden onto the SEC to clarify when omissions of required disclosures—such as those mandated by Item 303, concerning known trends and uncertainties—render corporate statements materially misleading. The SEC should issue concrete guidelines aligning Management’s Discussion & Analysis (MD&A) and Regulation S-K requirements with Rule 10b-5(b)’s prohibition on misleading half-truths. This would ensure that even as private litigation avenues constrict, public enforcement maintains robust standards for truthful and complete disclosure. Doing so is especially critical in an era of rapid market movements and heightened investor reliance on forward-looking disclosures.
- **Enhancing Transparency for 10b5-1 Plan Terminations:** To close the gap that allows insiders to cancel pre-planned trading programs based on MNPI, the SEC should mandate prompt, public disclosure—ideally via a Form 4 filing—whenever a Rule 10b5-1 plan is terminated. This would deter opportunistic behavior, as insiders could no longer quietly abort trades in anticipation of favorable developments. Moreover, real-time transparency around plan cancellations would empower market participants and enforcement agencies to more effectively monitor for abuse, reinforcing the credibility of the pre-commitment mechanism that underpins Rule 10b5-1.

2. For India: Bolstering Rebuttal Mechanisms and SDD Data Integrity

While India’s possession-based framework is efficient and straightforward, its fairness and resilience depend on well-calibrated evidentiary and procedural safeguards.

- **Clarifying Rebuttal Standards:** SEBI and appellate bodies should preserve the clarity and enforceability of the possession-based rule while developing objective, detailed criteria for what constitutes “innocent possession.” The absence of such standards risks arbitrary outcomes and, potentially, overbroad application of insider trading prohibitions. By setting out concrete rebuttal pathways—such as clear documentation of the timing and context of MNPI access—regulators can strike a balance between effective deterrence and procedural fairness, ensuring that enforcement actions are both consistent and just.
- **Standardizing and Auditing the SDD:** The amendments have heightened the importance of the SDD, but its effectiveness hinges on standardised, tamper-proof audit protocols. SEBI should issue detailed guidance on maintaining, securing, and periodically auditing SDD entries to ensure their integrity under legal scrutiny. This includes mandating third-party audits, immutable time-stamping, and transparent reporting mechanisms. Since the SDD underpins both the establishment of possession and the defence of “legitimate purpose,” its reliability is crucial not just for enforcement but also for companies seeking to demonstrate good-faith compliance in adversarial proceedings.

Vii. Conclusion

The U.S. and Indian approaches to insider trading regulation reflect fundamentally different legal cultures and market realities, yet both ultimately aim to preserve the fairness and credibility of capital markets. The U.S. system, rooted in antifraud theory, deploys a nuanced, duty-based framework that prioritizes individual culpability but often leads to complex, protracted enforcement challenges. India, in contrast, has adopted a more rigid, possession-

centric model that emphasizes ex ante prevention and objective recordkeeping, making enforcement more direct and reducing the risk of information asymmetry.

This comparative analysis suggests that neither approach is wholly sufficient in isolation. The future of effective insider trading regulation lies in hybridization: the U.S. would benefit from incorporating prophylactic, technology-enabled data-logging systems such as India's SDD to create a robust evidentiary foundation for duty-based enforcement. At the same time, India must continue to refine its procedural protections and ensure the reliability of its digital compliance infrastructure. By drawing on the complementary strengths of each regime—combining the U.S.'s emphasis on individual accountability with India's institutionalized, process-driven oversight—regulators can construct a next-generation compliance architecture that is both rigorous and adaptable. Such a synthesis is essential for navigating the evolving complexities of global securities markets and ensuring enduring investor trust.

CITATION

1) 17 C.F.R. § 243.100 (2022).

Position: After "Regulation FD (Fair Disclosure)" in Section IV.B.3 (table).

2) 17 C.F.R. § 229.303 (2022).

Position: After "Item 303 of Regulation S-K (known trends and uncertainties)" in Section IV.C.1.

3) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, pt. III sec. 4, No. 655 (Sept. 2, 2015), reg. 30.

Position: After "The SEBI (LODR) Regulations of 2015, through Regulation 30" in Section IV.A.3.

4) Kamshad Mohsin, Insider Trading in India in Comparison With USA (Aug. 7, 2020) (unpublished manuscript), <https://ssrn.com/abstract=3687905>.

Position: After "This contradiction is the philosophical basis that distinguishes the regulatory approaches adopted by the United States and India" in Section I.A.

5) Shr0eyas Vaishnav, Insider Trading: A Comparative Analysis of the Regulatory Models of US and India, 2 Int'l J. Fin. Mgmt. Rsch. 1 (2023).

Position: After "U.S. law addresses this dilemma primarily through anti-fraud doctrines" in Section I.A.

6) Somesh K. Mathur, Fraud, Manipulation and Insider Trading in the Indian Securities Markets (5th ed. 2023).

Position: After "India resolves this tension through a strict, code-based prohibition of possession" in Section I.A.

7) Stephen M. Bainbridge, Insider Trading Law and Policy 45–67 (2014).

Position: After "Rooted in common law notions of fraud, this approach inherently favors the efficiency argument" in Section I.A.

8) Jeffrey D. Bauman, Rule 10b-5 and the Corporation's Affirmative Duty to Disclose, 67 Geo. L.J. 935 (1979).

Position: After "Relying on a generalized anti-fraud injunction rather than a specific prohibition" in Section II.A.

9) Harry S. Davis, Insider Trading Law and Compliance Answer Book (2016).

Position: After "The classical doctrine applies to corporate insiders" in Section II.B.1.

10) Bruce A. Hiler, United States v. O'Hagan: The Supreme Court Upholds the Misappropriation Theory of Insider Trading Liability, Insights, Sept. 1997, at 2.
Position: After "The misappropriation theory put the onus on corporate outsiders" in Section II.B.2.

11) Alan R. Bromberg & Lewis D. Lowenfels, Securities Fraud & Commodities Fraud § 7.4 (2d ed. 2024).

Position: After "The need to prove Tipper's personal gain creates significant challenges" in Section II.C.

12) Donna M. Nagy, Insider Trading and the Gradual Demise of Fiduciary Principles, 93 Iowa L. Rev. 1315 (2008).

Position: After "Dirks also coined the concept of 'constructive insiders'" in Section II.C.

13) William K.S. Wang, Trading on Material Non-Public Information on Impersonal Markets: Who Is Harmed, and Who Can Sue Whom Under SEC Rule 10b-5?, 54 S. Cal. L. Rev. 1217 (1981).

Position: After "This preventive rule works much the same way as the general ban found in the Indian environment" in Section II.D.

14) Umakanth Varottil, Insider Trading Regime in India: Learning Lessons from the US and UK, 37 Bus. L. Rev. 15 (2016).

Position: After "The PIT regime follows a straightforward code model" in Section III.A.

15) Nisha Yadav, Insider Trading Regulations in India: A Critical Evaluation of SEBI (Prohibition of Insider Trading) Regulation, 2015, 7 Int'l J. Innovative Rsch. L. 45 (2024).

Position: After "The heart of the framework is the possession-based prohibition in Regulation 4(1)" in Section III.B.

16) Ronojoy Basu, Determining the Parties Involved: Related Persons and Insiders Under PIT 2015, 12 Corp. L. Advisor 78 (2018).

Position: After "The definition of 'connected person' is broad" in Section III.C.

17) Sandeep Parekh, Prevention of Insider Trading and Corporate Good Governance, 59 Econ. & Pol. Wkly. 21 (2003).

Position: After "The code of law explicitly forbids the transmission and acquisition of UPSI (Regulation 3)" in Section III.D.

18) Mihir Naniwadekar, The Evidentiary Standards in Indian Insider Trading Cases, 15 Cap. Mkts. L.J. 345 (2020).

Position: After "Although the prohibition is possession-based, the evidentiary requirement for enforcement is largely dependent upon the ability of SEBI to draw a temporal and logical connection" in Section III.E.

19) Vaishnavi Vats, Insider Trading and the Regulatory Overreach of SEBI, 4 Jus Corpus L.J. 112 (2024).

Position: After "Under regulation 3(5) and 3(6) of PIT 2015, listed companies are required to operate a Structured Digital Database (SDD)" in Section IV.A.1.

20) Vikramaditya Khanna, Insider Trading, Chinese Walls, and Brokerage Commissions: The Origins of Modern Regulation of Information Flows in Securities Markets, 4 J.L. Econ. & Pol'y 385 (2009).

Position: After "The Compliance Officer (CO) functions within the Indian framework as a critical and high-profile role" in Section IV.A.2.

21) John C. Coffee, Jr., Reforming the Securities Class Action: An Essay on Deterrence and Its Implementation, 106 Colum. L. Rev. 1534 (2006).

Position: After "Realizing the abuse of these plans, the SEC introduced substantial amendments during December 2022" in Section IV.B.

22) Donald C. Langevoort, Theories, Assumptions, and Securities Regulation: Market Efficiency Revisited, 140 U. Pa. L. Rev. 851 (1992).

Position: After "The Court held that Rule 10b-5(b) prohibits the failure to state a material fact necessary to make the statements made, 'not misleading'" in Section IV.C.1.

23) SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2022, Gazette of India, pt. II sec. 3(i), No. 12 (Mar. 11, 2022).

Position: After "The amendments introduced through a circular issued in the month of March 2025 expanded the definition of Unpublished Price Sensitive Information (UPSI)" in Section IV.C.2.

24) Arnold S. Jacobs, The Impact of Rule 10b-5 (2023Supp.).

Position: After "Enforcement within the U.S. is divided into civil cases brought by the SEC and criminal cases brought by the DOJ" in Section V.A.

25) Suchismita Bose, Securities Market Regulations: Lessons from US and Indian Experience (ICRIER Working Paper No. 131, 2005).

Position: After "The enforcement of the remittance regime within the Indian environment is mostly administrative" in Section V.B.

26) Pranav Mishra, Surveillance and Investigation Techniques in SEBI Enforcement, 10 Indian J. Sec. L. 67 (2019).

Position: After "The Market Abuse Unit of the SEC and the Financial Industry Regulatory Authority (FINRA) employ cutting-edge tech" in Section V.C.1.

27) Ajay Shah & Susan Thomas, Securities Markets in India: Regulation and Policy After 1992, in India Development Report 1997 (IGIDR ed., 1997).

Position: After "SEBI retains a proactive approach to market regulation, using real-time surveillance" in Section V.C.2.

28) Franklin A. Gevurtz, Corporation Law § 8.3 (2d ed. 2010).

Position: After "The basic distinction between the two regimes is the philosophical foundation" in Section VI.A (before table).

29) Umakanth Varottil, The Nature of the Market for Corporate Control in India, in Research Handbook on Mergers and Acquisitions 327 (Claire A. Hill & Steven Davidoff Solomon eds., 2016).

Position: After "The effectiveness of insider trading doctrines is deeply influenced by the underlying compliance infrastructures" in Section VI.B.

30) Jill E. Fisch, The Peculiar Role of the Delaware Courts in the Competition for Corporate Charters, 68 U. Cin. L. Rev. 1061 (2000).

Position: After "Recent legal and regulatory developments have introduced new complexities for U.S. enforcement" in Section VI.C.1.

31) Neelam Bhardwaj, Insider Trading: An Overview in Indian and Global Markets, 5 J. Innovative Eng'g & Rsch. L. 89 (2023).

osition: After "While India's possession-based framework is efficient and straightforward, its fairness and resilience depend on well-calibrated evidentiary and procedural safeguards" in Section VI.C.2.

32) Roberta Romano, Empowering Investors: A Market Approach to Securities Regulation, 107 Yale L.J. 2359 (1998).

Position: After "The U.S. and Indian approaches to insider trading regulation reflect fundamentally different legal cultures and market realities" in Section VII.

33) Bhaskar Chatterjee, Corporate Governance in India: Issues and Challenges, in Corporate Governance in India 145 (Jayati Sarkar ed., 2018).

Position: After "This comparative analysis suggests that neither approach is wholly sufficient in isolation" in Section VII.