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India's Securities Regulator Revisits Market Rumour Verification Regime for Listed Companies

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Introduction:

Last year, vide the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 ('**LODR Amendment**')¹, SEBI inserted a proviso to Regulation 30 (11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2023 ('**LODR**'). As per the newly inserted proviso, certain categories of listed companies shall mandatorily confirm, deny or clarify any reported event or information in the mainstream media if such event or information is in relation to any matter specified under Regulation 30 of the LODR. Thereafter, SEBI on December 28, 2023 released a consultation paper titled "Consultation paper on amendment to SEBI regulations with respect to verification of market rumour" ('**Consultation Paper**') which aims at addressing the issues raised by stakeholders pursuant to release of the LODR amendment. Previously, in our article dated July

06, 2023, we had analyzed the LODR Amendment and the externalities arising from the mandatory requirement to verify market rumours. In this article, we analyze the genesis of the market rumour verification requirement and the steps taken by SEBI to resolve the issues raised by stakeholders.

Background on the requirement to verify market rumours:

The genesis of this obligation can be traced back to SEBI's order dated June 20, 2022 against Reliance Industries Limited.³ As per this order, SEBI penalized Reliance Industries Limited for not clarifying a market rumour in relation to the Jio-Facebook deal. At the time of this order, Regulation 30 (11) only required a listed company to on its own initiate, confirm or deny any reported event or information on a stock exchange. In the order, SEBI while noting that the language of Regulation 30 (11) does not impose a mandatory obligation, mentioned that Reliance Industries Limited shall have ensured that it verified the market rumour in relation to Jio-Facebook deal in order to avoid inorganic movement in the price of the scrip. Therefore, SEBI imposed a fine on Reliance Industries Limited for breach of SEBI regulations. The order by SEBI was stayed by the Securities Appellate Tribunal ('SAT') vide its order dated September 27, 2022, wherein one of the key considerations of SAT was the practical feasibility of a listed entity verifying all rumours floating in the market.⁴

Post the aforementioned events, SEBI in its board meeting dated March 29, 2023 proposed an amendment to LODR which provided verification, confirmation, denial or clarification of market rumours by top 100 listed entities by market capitalization effective from October 1, 2023 and by top 250 listed entities with effect from April 1, 2024. Post this, through the LODR Amendment, the proviso to Regulation 30 (11) was introduced which mandated the requirement of verification of market rumours. The LODR Amendment provided that only such market rumours would be required to be verified, confirmed, denied or clarified which: (i) are reported on the mainstream media; (ii) if such market rumour related to an event dealt with Regulation 30; and (iii) reported event or information is not general in nature and which indicates that rumours of an impending specific material event or information are circulating amongst the investing public (together, '**Existing Materiality Threshold**').

The LODR Amendment defined 'mainstream media' as inclusive of print and electronic mode of the following: (i) Newspapers registered with the Registrar of Newspapers for India; (ii) news channels permitted by Ministry of Information and Broadcasting under the Government of India; (iii) content published by the publisher of news and current affairs content as defined under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021; and (iv) newspapers or news channels or news and current affairs content similarly registered or permitted or regulated, as the case may be, in jurisdictions outside India. As per the LODR Amendment, such verification was required to be made by the listed entity within 24 hours period from the reporting of the event or information.

While the LODR Amendment provided that the effective date of mandatory verification requirement for top 100 listed entities would be October 01, 2023 and for top 250 listed entities was April 01, 2024; however as per the circular dated



September 30, 2023, the effective dates were extended to February 01, 2024 and August 01, 2024 respectively.⁵ This was further extended to June 01, 2024 for the top 250 listed entities and December 01, 2024 for the top 1000 listed entities vide the circular dated January 25, 2024.⁶

SEBI, based on the feedback by Industry Standard Forum which comprised of ASSOCHAM, CII and FICCI, released the Consultation Paper which further provided suggestions to resolve the externalities arising from the mandatory requirement of verifying market rumours.

Determining materiality of market rumours that require verification:

As mentioned above, for the purposes of the proviso of Regulation 30 (11), a verification, clarification, confirmation or denial is only required if it qualifies the Existing Materiality Threshold. However, based on the recommendation of the industry bodies, SEBI realized that there was a requirement to further flesh out the Existing Materiality Threshold in order to make compliance with this requirement more efficient and practical. Therefore, as per the Consultation Paper, one idea proposed is to define the materiality of a rumour based on the price movement of the scrip of the listed entity. Therefore, only a rumour which leads to a material price movement would be required to be verified, clarified, confirmed or denied.

The process for determination of material price movement would be based on two parameters: (a) the price range of the scrip and (b) the movement in the benchmark index (Nifty50 / Sensex). For the purposes of (a), since in case of securities with high price ranges, even smaller percentage variations in price would lead to a higher actual variation, the percentage variation required to consider it as a material movement would be lower. Based on this principle, the Consultation Paper proposes movements which would be considered material upon a market rumour being published.

However, the Consultation Paper itself acknowledges that the dependency of price movement to determine materiality is not an error free proposal, given that there could be high variations in price movement also based on other factors such as policy, events or announcements. However, for the purposes of verifying market rumours, it would be assumed that such variation in price movement was an aftermath of a market rumour.

Additionally, since the obligation to verify a market rumour would be dependent on whether such market rumour is material or not (based on variations in price movement), the Consultation Paper proposes that the obligation to verify shall be within 24 hours from the material price movement, rather than 24 hours from the publication of the market rumour.

Pricing of securities upon verification of market rumours for the purposes of SEBI Regulations:

Given that a market rumour will now be verified only upon it being considered material (based on variation in price movements), this would also create issues in relation to pricing of securities for a transaction under SEBI regulations. The Consultation Paper acknowledges that under various SEBI regulations, the pricing

of different types of transactions is dependent upon the market price of the scrip being traded on the stock exchange. Few examples relied on by the Consultation Paper includes the pricing guidelines for preferential issues under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ('**ICDR Regulations**'), pricing guidelines for qualified institutional placements under the ICDR Regulations; pricing guidelines for open offers under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011; and pricing guidelines for delisting under the SEBI (Delisting of Equity Shares) Regulations, 2021.

In order to solve this conundrum, the Consultation Paper proposes that for the purposes of the aforesaid pricing guidelines, the unaffected price of the scrip shall be considered once a listed entity has either verified, clarified, confirmed or denied the market rumour. For the determination of unaffected price, two frameworks have been proposed by the Consultation Paper:

(a) Framework A: Under Framework A, the date immediately preceding the date on which the listed entity first confirms the market rumour would be deemed to be the 'relevant date' for the purposes of applicable SEBI pricing guidelines. Since all these pricing guidelines have a look-back from the 'relevant date', all prices will be determined based on a look back from the date on which market rumour is verified, thereby eliminating any price movement which occurs as a result of verification of market rumours.

Illustration for pricing under Framework A:

Date	VWAP	Event	Adjustment as per Framework A
January 20	INR 1000	-	
January 21	INR 1000	-	
January 22	INR 1050	Date of material price movement	New Relevant Date for the purposes of SEBI Regulations (Revised Relevant Date – RT)
January 23	INR 1100	Date of rumour verification	-
January 24	INR 1150	Next trading day after rumour verification	-
January 25	INR 1200	-	
January 26	INR 1250	-	
January 27	INR 1200	-	
January 28	INR 1200	-	
January 29	INR 1250	T-1	-
January 30	INR 1250	Date of Board Approval for the purposes of SEBI Regulations	-

(Relevant Date - T)

However, the challenges as observed by the Consultation Paper for this Framework would include – (a) any price movement post the verification, which would result out of factors other than the verification (such as industry developments, policies or similar factors), would be excluded, thereby depriving the shareholders of the economic benefits of such factors; and (b) this would increase the risk or possibility of any person/entity having interest in the transaction from knowingly spreading rumours in order to manipulate the price and achieve a favorable price.

(b) Framework B: Under Framework B, the variation in price due to a market rumour and subsequent verification would be excluded while calculating volume weighted average price as per SEBI regulations. For the purposes of this exclusion, the weighted average price from the day of material price movement (used for determining the materiality of the rumour) till the end of the next trading day from the date on which verification of the rumour is undertaken would be considered as variation in price due to the market rumour and subsequent verification. Post the end of the next trading day after confirmation, any price movement will be adjusted for in the price prior to the date of material price movement.

Illustration for pricing under Framework B:

Date	VWAP	Event	Adjustment as per Framework B (Adjusted VWAP)
January 20	INR 1000	-	
January 21	INR 1000	-	
January 22	INR 1050	Date of material price movement	INR 1000
January 23	INR 1100	Date of rumour verification	INR 1000
January 24	INR 1150	Next trading day after rumour verification	INR 1000
January 25	INR 1200	INR 1100	
January 26	INR 1250	INR 1150	
January 27	INR 1200	INR 1100	
January 28	INR 1200	INR 1100	
January 29	INR 1250	T-1	INR 1150 (T-1)
January 30	INR 1250	Date of Board Approval for the purposes of SEBI Regulations (Relevant Date - T)	INR 1150 (T)

The benefit of Framework B over Framework A is that Framework B would only exclude price movement due to verification of market rumour while taking into account price movement due to other considerations such as policy changes and announcements. However, as per the Consultation Paper, there are two issues under Framework B which are: (i) the period which the market might take to digest and react to the market rumour verification might be different for different events and the two day period in this framework might not suffice, and (ii) there would be a risk in an event the price variation arising from verification of a rumour is so high that the band limit for next trading day is hit and therefore, the impact might spread over more than two days.

Obligations of promoters, directors, KMP and senior management to provide adequate information:

The Consultation Paper also discusses instances where there might be rumours in relation to the promoters/directors/KMP/Senior Management of the listed entity. Since the obligation to verify such market rumour is on the listed entity, the LODR would require an obligation on such promoters/directors/KMP/Senior Management to provide adequate, accurate and timely response to queries raised or explanation sought by listed entity.

Classification of non-verified information as UPSI

Further, the Consultation Paper discussed an event where there is market rumour being circulated however the impact of such market rumour is not material in nature or does not cause a material price movement. In such a situation the market rumour will not be required to be verified. However, if the listed entity has classified certain information as 'Unpublished Price Sensitive Information' (UPSI) under the SEBI (Prevention of Insider Trading) Regulations, 2015 and a non-material market rumour is present in relation to such UPSI which did not warrant a verification by the listed entity, in such an event any such non-material market rumour cannot be used by an insider later-on to show a defence that the information was generally available.

Analysis

Through the proposals in the Consultation Paper, SEBI has tried to narrow down the scope of the proviso to Regulation 30 (11). While it is safe to say that the stakeholders are better positioned now with clarity on the narrowed scope of "materiality" for market rumour verification, certain pertinent issues should ideally be resolved before the market rumour verification regime is mandated for listed companies.

In particular, the following complications arising from the proposals in the Consultation Paper need to be addressed:

ONEROUS NATURE OF THE OBLIGATIONS

It may be argued that the Existing Materiality Threshold increases the burden of compliance on listed companies. In effect, the Existing Materiality Threshold requires listed companies to: (i) diligently track daily price movements in their stocks to determine whether the applicable "material price movement" criteria is

met, and (ii) check for rumours in the “mainstream media” (regardless of whether they may be linked to such material price movement). This is because while price movements are permissible if they are not attributed to any rumours in the market, there is no definitive manner in which a listed company may currently be able to determine the converse (i.e. whether a material price movement is definitely linked to a prevalent market rumour). Owing to the broad scope of “mainstream media”, it is likely that in practice, listed companies will track (i) and (ii) individually, and verify any rumour prevalent on a day when there is a price movement, in order to avoid potential non-compliance of Regulation 30. Accordingly, while the obligation may arguably be more onerous than its predecessor, comfort can be drawn from the fact that the “material price movement” criteria accounts for: (a) the benchmark index movement on a particular day; and (b) the general price range of the scrip, and is therefore more certain and market-oriented from a threshold perspective.

NO AMENDMENT TO THE DEFINITION OF “MAINSTREAM MEDIA”

Notably, the Consultation Paper does not make any amendments to the definition of “mainstream media” despite there being multiple concerns about its broad scope upon the notification of the Existing Materiality Threshold earlier last year.

Accordingly, listed companies will likely have to continue to monitor content published (in print and electronic mode) across the publications that may fall under the ambit of its existing definition in the LODR. This obligation will be applicable **over and above** their responsibility to track and ascertain “material price movements” on a daily basis.

THE DOUBLE-EDGED SWORD THAT IS FRAMEWORKS A AND B

While Frameworks A and B have their own benefits, it is important to note that the preferred framework shall depend on the perspective adopted by the stakeholder involved.

Because the date preceding the date of confirmation of a rumour is the “relevant date” under Framework A, any price movement in the stock prices post the verification has to be discounted for regulatory purposes. There are a number of scenarios, in addition to the ones discussed in the consultation paper, in which this framework may operate in an unintended manner. For instance, if there is a market rumour in relation to a scientific breakthrough or discovery of oil / gold deposits by a listed entity and the market rumour is true, then the mere act of confirmation of the market rumour, would lead to an upward movement of the price post the verification. However, the same would not be considered for the purposes of determination of floor price under SEBI’s regulations, thereby depriving shareholders of the benefit of such price movement. Conversely, in an event where there is a market rumour in relation to a massive disaster at the manufacturing facility of a listed entity, upon confirmation of such rumour as true by the listed entity, while the price would fall down, the same would not be accounted for determining floor price. In such an event, a potential buyer would not have the benefit of such low price for the purposes of price determination in case of takeover for example. Therefore, in such events under Framework A, based on the type of price movement, either the buyer / investor or the shareholders would receive the shorted end of the stick.

On the other hand, for the calculation of “relevant date”, Framework B ensures that: (i) the price movement caused due to the rumour and its verification are appropriately adjusted to ensure that no unjust benefits/ unintended deprivation occurs to transacting parties; and (ii) parties are not deprived of the benefits of any events (other than the act of verification of the rumour itself). This framework fails to take into consideration a scenario where the impact of the market rumour confirmation takes place only for one day and post that the price movement is natural in nature. In such a circumstance, the market should be entitled to the benefit of the price movement.

While the approach that shall be adopted by SEBI cannot conclusively be predicted, it is important that these nuances are deliberated prior to adoption of the relevant framework.

TIMELINE FOR A RUMOUR CLARIFICATION BECOMING GENERALLY AVAILABLE TO THE PUBLIC: A NEED FOR FURTHER HARMONIZATION?

Frameworks A and B of the Consultation Paper are based on the presumption that any clarifications of rumours by the listed company will be known to/ become available to the public within 24 hours of their public clarification. Practically, it is to be noted that the rumour is to be verified by the listed company in a forum that is different from the forum on which such rumour may have been published (i.e., the “mainstream media”).

Accordingly, while it may be argued that this verification shall become “available” to the public within 24 hours, it cannot be conclusively stated that this verification shall become “known” to the public as well. It is important to note that material price movements may therefore occur (in response to such verification) significantly beyond the timelines presumed within Frameworks A and B (i.e., 24 hours). A classic example of this is available within the SEBI (Prohibition of Insider Trading) Regulations, 2015 (**‘PIT Regulations’**), which states that *“unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available...”*⁷ The PIT Regulations appear to presume that any disclosure is “capable of assimilation by the market” (i.e. known to the public) only 48 hours after its release. Therefore, it is unclear why the Consultation Paper proposes a separate timeline from that set out within the PIT Regulations, noting that the manner of information dissemination in both the regulations remains similar.

Conclusion

SEBI is proactively attempting to revisit the extant regime applicable to listed companies in India in a manner that balances transparency and accountability with feasibility of implementation. While the Framework that shall finally be adopted pursuant to receipt of public comments and discourse remains to be seen, the intent of SEBI to retain the rumour verification requirement for listed companies appears to now be crystal clear. We only hope that the issues highlighted in this article are adequately addressed in the final version of the rules to be notified.

Footnotes

¹ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 dated June 14, 2023

² Our analysis is available at: <https://www.natlawreview.com/article/sebi-s-amendments-to-lodr-increasing>

³ Order of AO dated June 20, 2022 in the Adjudication Proceedings in respect of Reliance Industries Limited, Ms. Savithri Parekh and Shri K. Sethuraman in the matter of Reliance Industries Limited

⁴ SAT Order dated September 27, 2022 for Misc Application Number 751 of 2022 and Appeal No 603 of 2022; Palak Shah, "SAT stays SEBI penalty on RIL regarding disclosure of Facebook deal", The Hindu Business Line (September 28, 2022), available at: <https://www.thehindubusinessline.com/markets/sat-stays-sebi-penalty-on-ril-regarding-disclosure-of-facebook-deal/article65947166.ece>. Order available at - https://sat.gov.in/english/pdf/E2022_JO2022603_3.PDF

⁵ Circular No.: SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/162 dated September 30, 2023 titled "Extension of timeline for verification of market rumours by listed entities"

⁶ Circular No.: SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/7 dated January 25, 2024 titled "Extension of timeline for verification of market rumours by listed entities"

⁷ Schedule B Para 5, PIT Regulations.

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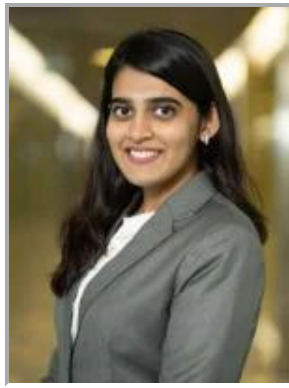


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