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# **SEBI LODR: EVERYTHING WRONG WITH NEW RUMOR REGULATIONS**

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## **ABSTRACT**

This short paper would look at Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, Regulation 30(11) which deals with rumors. This paper would specifically tackle the new regulations as they stand after December, 2023 when SEBI released their Consultation Paper. Introduction would look at a brief overview of the problem created by the new regulations and complexities. This paper would also explain in brief the change (before and after 2023) and why it happened and SEBI's motive behind the change. A close analysis would look at multiple problems in the new regulations and their implementation and procedural blockades from both a legal and economic standpoint. The paper would refer to different articles and economists while also giving authors own views and interpretation about the topic to give the reader a better understanding of the new change in the rumor regime.

## Introduction

It is a well admitted fact that rumors play a great role in determining market value of a brand and subsequently its standing in the share market. No doubt, they can be used viciously by competitors to tarnish one's reputation and in doing so hurt the very fabric and intention of a mixed economy envisioned by the economists and people of this nation. However, the question isn't how hurtful they can be or how much damage they can do, the question is will an attempt to curb this practice infringe on the bounds of a free-market system and whether it is adversely affecting the economy? Or is it just plain useless?

Under status quo Securities Exchange Board of India (Listing of Disclosure Requirements) Regulations 30(11) Listed Companies are required to verify only material rumors surrounding them in the mainstream media within 24 hours, However, the Sebi consultation paper dated December 28, 2023<sup>1</sup> brings some changes. The verification has to follow a "materiality" principle whereby only those rumors which affect the entity materially will have to be disclosed. The criterion of materiality was such that the rumor has to correspond to a material event or information listed out under the Part A of Schedule III of the LODR Regulations. Through the consultation paper, SEBI proposes to change such a criterion to material price movement where, instead of the rumor being contingent on a material event, its confirmation will depend upon the price movement it brought in the scrips of the entity. In order to establish materiality of a movement, the paper has affixed certain percentages to price movements. A highly priced scrip will have a higher percentage attached and vice versa. According to the paper, the top 100 listed companies will have to verify market rumors from February 1, 2024, while the top 250 firms will have to carry out the exercise from August 1, 2024. The new entity defining 'materiality' according to the consultation paper will be "Industry Standards Forum ("ISF") under the aegis of the Stock Exchanges to set industry standards. ``

### SEBI LODR Regulation 30(11): Before and After 2023

Before the amendments of 2023 and the subsequent changes to SEBI Listing Obligations and Disclosure Requirements, Regulation 30(11) stood as an option to any and all companies in the stock market. The regulation stated as follows:

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<sup>1</sup> CONSULTATION PAPER ON AMENDMENTS TO SEBI REGULATIONS WITH RESPECT TO VERIFICATION OF MARKET RUMOR

*“30(11) The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).”<sup>2</sup>*

After 2023 and the consultation paper of December 2023 the said provision has been changed to the following:

*“30(11) The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s):*

*Provided that the top 100 listed entities and thereafter the top 250 listed entities, with effect from the date as may be specified by the Board, shall confirm, deny or clarify any reported event or information in the mainstream media which is not general in nature and which indicates that rumors of an impending specific material event or information in terms of the provisions of this regulation are circulating amongst the investing public, as soon as reasonably possible and not later than twenty four hours from the reporting of the event or information:*

*Provided further that if the listed entity confirms the reported event or information, it shall also provide the current stage of such event or information.*

*Explanation—The top 100 and 250 listed entities shall be determined on the basis of market capitalization, as at the end of the immediately preceding financial year.”<sup>3</sup>*

The main issue lies with the added proviso which uses the word “shall” as opposed to only “may” before 2023. This use of the word “shall” is bound to make an impression that the requirement to disclose is a mandate for at least the top 250 listed entities by market capitalization.

Not only does it make a mandate but it also directs the listed entities to disclose such material within 24 hours of material price movement. SEBI has also left listed entities in the dark as to what is this “specific material information” or information that is not general in nature that is to be disclosed. The criteria for determining who is to be called “mainstream media” has also

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<sup>2</sup> See Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on December 5, 2022]

<sup>3</sup> See Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on December 21, 2023]

been left unanswered. Which leaves a lot of room for the Courts, Tribunals and SEBI itself to interpret.

SEBI has gone as far as mandating the release of “current stage” of such an event, which would normally, in any other free or mixed economy, would be considered a breach of corporate privacy and economic independence.

Before 2023 a simple option to disclose any information was sufficient enough to maintain the integrity of a free market or at least the ideas of Adam Smith as far as they could be protected in a mixed economy.

### **Why The Change?**

SEBI, as an institution, works primarily for the protection of the investors and regulation of the stockbrokers and stock markets. Given that we can try to justify why the change happened. A major rumor might affect the price movements of a stock and this is a phenomenon that has happened multiple times previously too. This inadvertently affects the investors as they either gain out of the rumor or lose out. However, from an actual free economy point of view, it is a risk that they themselves took upon and as such should not be provided any remedy for something that is a mere result of a natural functioning of the market.

India is a mixed economy so it makes sense to want to protect the investors this especially considering that the market awareness among the citizenry is very low and any unsubstantiated rumors in the mainstream media would only act as cherry on top to create more confusion.

The change from “material events” to “price movements” could safeguard investors and would restrict the requirement to only that information which will finally affect a common investor. Before disclosing a material, event which might or might not lead to a movement of price could have been interpreted as burdensome for this reason, I believe this was a way for SEBI to narrow down the provision to what is actually necessary.

### **Analysis**

The first and foremost thing that should be looked at is the timeline of 24 hours which in itself seems a little ridiculous. SEBI is providing companies a strict timeline of 24 hours to confirm or deny any rumors that might affect price movements after appearing in the mainstream media.

24 hours is a lot less time when you think from the point of view of a company, it is understandable that SEBI will want this clarified without delay so that the investors are not deceived leading to a false price of a stock. However, 24 hours would mean that apart from their daily operations a company would have to dedicate a team solely to this cause so that they can keep up with the timeline provided by SEBI. It would be burdensome for a company to have a dedicated staff for this purpose which could also increase their cost even if by not much. Altogether the timeline is itself very suffocating and discouraging when we approach this problem from the viewpoint of a company. Moreover, the new regulation puts an obligation on the promoters, directors and Key Managerial Personnel to disclose information relating to them which might affect the price movements in the share market. 24 hours to gather information from a person and then to verify and cross check it before clarifying is too less of a time when you consider that this is not a company's priority, nor should it be.

A problem directly attached to the last one is the question of what exactly is mainstream media? The SEBI (LODR) Regulations, while mandating disclosure to "mainstream media" do not define what would be considered mainstream media. Different regions and states of India could have different media outlets that prevail in that region, similarly at the national level how would a person which media outlet is mainstream and which is not? No criteria for the same has been given and if this problem persists, we will most likely see a clarification through SEBI or SAT through case laws.

Any student of economics or business management would, if asked, concur that privacy is of paramount importance at times in business dealings. If we were to consider a company "person" as is the case through multiple previous precedents, for example *Lee vs Lee*<sup>4</sup>, then could we not say that in a manner of speaking SEBI is asking the company to disclose information so critical that it might amount to breach of privacy. For example, take the illustration below:

*XYZ Co. operates in the field of semiconductor manufacturing and enters into a contract with ABC Co., which is a giant smartphone manufacturer wanting to enter into the field of semiconductors. ABC Co. enters into talks with XYZ Co. to acquire a majority shareholding in XYZ Co. It so also happens that ABC Co. is in the top 100 companies by market capitalization.*

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<sup>4</sup> *Lee v. Lee's Air Farming Ltd.* (1960) 3 All E.R. 420

*This information of share purchase talks leaks out to the media and is subsequently broadcasted by a national media outlet. Circumstances are such that if such news is confirmed XYZ Co. might lose a lot of market share and reputation among the market since ABC Co. despite being one of the biggest has low reputation due to their past dealings with the companies in the semiconductor business.*

In such a scenario wouldn't disclosing the truth lead to a failed merger talks and eventual loss to XYZ Co. furthermore if in their talks or preliminary agreement they have agreed to non-disclosure they would also have to breach it to satisfy a law that is not completely economically sound.

A more pressing breach of privacy could be forcing "real person" such as Key Managerial Personnel, Promoters or Directors to disclose information. Even though such information may affect price movements they could also relate to personal matters outside the ambit of that person's professional life<sup>5</sup>.

A pure form of economics would revolve around Supply and Demand forces only<sup>6</sup>, we understand that that is hardly possible, especially after seeing the economic crisis of the 1920's, 2008 housing market crisis and the Greek economic crash. Although it is true that some checks are required for smooth governance<sup>7</sup>, it becomes a problem to business management and not necessarily the investors.

## Conclusion

The Intentions of the Securities Exchange Board of India are commendable but at the same time their means to achieve this goal is rushed to put it lightly. SEBI focuses on Investor security that is why Regulation 30 of the LODR Regulation was put in the first place. With this move what SEBI wanted to do was to make a more efficient way to root out rumors and safeguard the investors and also avoiding huge changes in stock prices just because of unconfirmed rumors as such instances would have caused losses to the companies and would have hurt the economy in the short run.

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<sup>5</sup> Indus Law, Guardians of gossip: analyzing SEBI Consultation Paper on market rumor verification, (February 29, 2024), <https://www.lexology.com/library/detail.aspx?g=61353d8c-9d06-4066-9cc4-ac5017c56626>

<sup>6</sup> Adam Smith, *The Invisible Hand*, 1-102, 2008.

<sup>7</sup> John Maynard Keynes, *The Essential Keynes*, 1-592, Robert Skidelsky, 2015.

However, the means through which they sought to sort out this problem seems to do more bad than good, it causes trouble and confusion for the companies and the market forces and hence a suggestion going forward would be that SEBI needs to re-visit this provision and try to revise it with the help and consultation from industry leaders and economists as well as legal policy drafters.