

Continuing Disclosures by listed entities: Regulation 30 of SEBI LODR

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- Vinod Kothari and Company, company secretaries, is a firm with more than 34 years of vintage
 - Based out of Kolkata, Mumbai, New Delhi and Bengaluru
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

Our Organization's Credo:

Focus on capabilities; opportunities follow

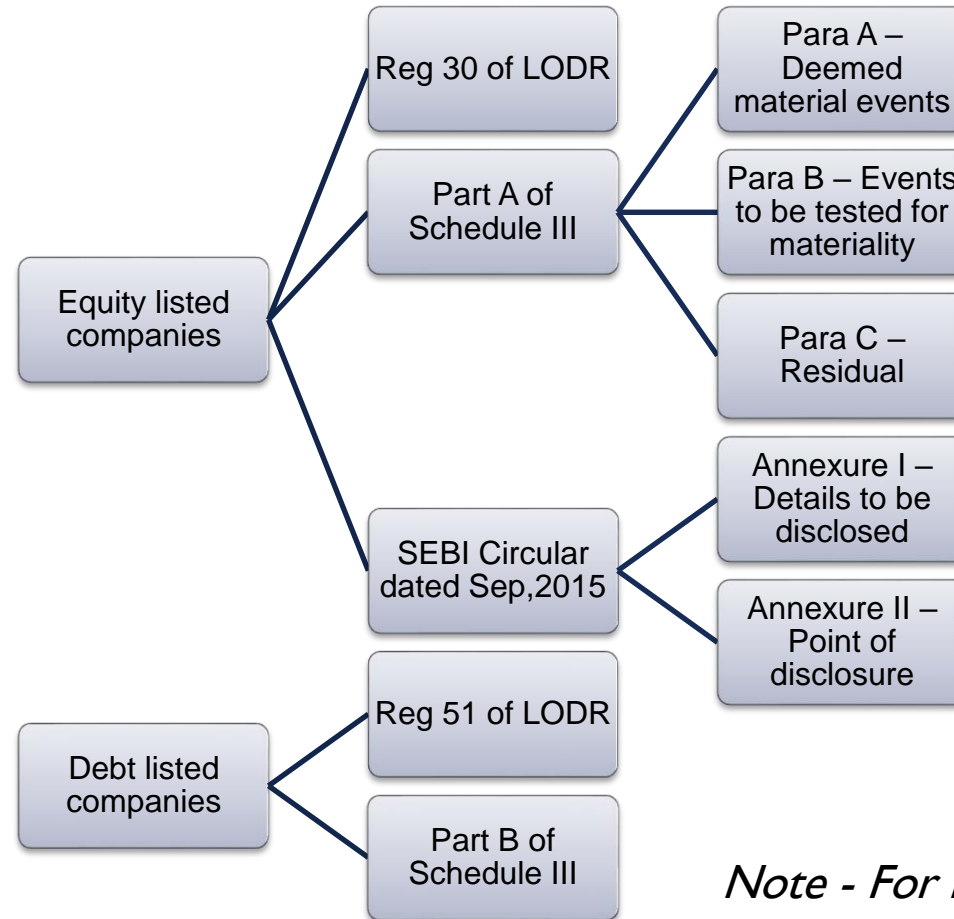
Outline

- Need for disclosure of material events and information
- Provisions governing disclosure of material events and information
 - Broad overview of Reg 30
 - Adjudication orders against Reg 30 violations
 - Role of Compliance Officer and PCS
 - Deemed material events
 - Events subject to test of materiality
- Interplay with PIT Regulations
- Trigger point for disclosure of material events and information
 - Trajectory of information in an organization
 - Metamorphosis of information from origin to publication
- Amendments to Reg 30 read with Schedule III
 - Sequence of events
 - Summary of proposals under Consultation Paper and approvals as per press release
 - Enhanced disclosures under Schedule III
 - New disclosure requirements added
 - Some existing disclosure requirements modified
 - Quantitative criteria along with subjective and discretionary materiality determination
 - Mandatory verification of market rumours
 - Stricter timelines for disclosures
- Actionables and approach to compliance
 - Changes in materiality policy
 - Internal sensitisation
 - SOP for determination of materiality, along with record keeping for the same

Need for disclosure of material events and information

- Timely and seamless flow of information is a critical aspect of stakeholder governance
 - Various domestic and international principles also enunciate the same
- OECD Principles of Corporate Governance -
 - The corporate governance framework should ensure that **timely and accurate disclosure is made on all material matters** regarding the corporation, including the financial situation, performance, ownership, and governance of the company
- Corporate Governance Principles and Recommendations, Australia -
 - A listed entity should make **timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities**
- Reg 4 of SEBI LODR Regs
 - The listed entity shall provide **adequate and timely information** to recognised stock exchange(s) and investors.
 - The listed entity shall **refrain from misrepresentation** and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.
 - The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are **adequate, accurate, explicit, timely and presented in a simple language**.

Provisions governing disclosure of material events and information



Note - For HVDLEs, regulations pertaining to debt-listed companies attract

Broad overview of Reg 30

- Disclosure of material events or information - Reg 30 (1)
 - Deemed material event - Sched III.A.A
 - Tested for materiality - Sched III.A.B
 - Other events which may be material - 30 (12), Sched III.A.C
- Criteria for materiality: significant impact on price discovery. Reg 30 (4)
 - To be complemented with numerical standards
- Information to SE first, and ASAP but not later than 24 hours
 - specific timelines for events listed in Sched III.A.A (4)
- Material information about subsidiaries also to be disclosed - 30 (9)
- responses to rumours - currently, the LE has the option to confirm or deny any reports - Reg 30 (11)
 - to be made mandatory for top 250 LEs
- Sched III.A.A
 - events to be disclosed without testing for materiality
 - 17 events are listed
 - as the intent is informational, entities should do a liberal reading of the entries, and go by intent
- Sched III.A.B
 - 12 listed events, to be tested for materiality, based on a materiality policy
- Penalties for non-disclosure or delayed disclosure
 - not covered under SOP for penalties levied by SEs
 - to be adjudicated by SEBI
 - Penalty u/ s 23A of SCRA
 - Minimum Rs. 1 lac
 - Continuing Rs. 1 lac per day
 - Maximum Rs. 1 crore

Adjudication proceedings against listed entities due to non-disclosure

- Non-disclosure of objection of lender to buyback
 - when no-objection was a precondition
 - voting through postal ballot ongoing at that time
 - subsequently withdrawal of buyback
 - objection was considered material to be disclosed during ongoing voting
 - Settlement order passed at Rs. 19.12 lacs
- Non-disclosure of significant regulatory actions already appearing in media
- Failure to address queries of stock exchanges
- Delay in disclosure of deemed material events
 - Penalty of Rs. 10 lacs imposed
- Non-disclosure of final assessment order imposing tax demand having material effect on financials
 - relying on opinion on professional, and
 - pending appeal on tax demand order
 - considered to be non-compliance with Clause 36 of Listing Agreement (presently Reg 30) read with PIT Regs
 - Penalty of Rs. 10 lac on company
 - Rs. 3 lac on each non-ID
 - Order upheld by SAT on appeal
- Failure to disclose change in management (SAST Regs) as material event under Clause 36 of Listing Agreement
 - necessary public announcement made
 - Penalty of Rs. 2 lacs imposed

Responsibilities of Compliance Officer vis-a-vis Practising Company Secretary

Compliance Officer of Listed Entity

- Reg 6 of LODR deals with responsibilities of CO
 - ensuring **conformity with the regulatory provisions** applicable to the listed entity in letter and spirit
 - co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
- May also be designated as authorized KMP under Reg 30(5)
- To ensure timely dissemination of material events and information
 - Including disclosure of complete information as reqd.

Practising Company Secretaries

- Reg 24A of LODR requires PCS to conduct Annual Secretarial Compliance of listed entities
- Revised format of ASC requires additional affirmation
- Clause (9) of Para (C) states following –
Disclosure of events or information:
The listed entity has provided all the required disclosure(s) under Regulation 30 along with Schedule III of Listing Regulations within the time limits prescribed thereunder.

Deemed material events: Para A of Part A of Schedule III

- Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring.
 - 'acquisition' shall mean,-
 - (i) acquiring control, whether directly or indirectly; or,
 - (ii) acquiring or agreeing to acquire shares or voting rights in, a company, whether directly or indirectly, such that -
 - (a) the listed entity holds shares or voting rights aggregating to **five per cent or more of the shares or voting rights** in the said company, or;
 - (b) there has been a **change in holding from the last disclosure** made and such change **exceeds two per cent of the total shareholding or voting rights** in the said company.
- Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc.
 - **does it include unlisted securities too?**
- Revision in Rating(s)
 - **whether re-affirmation/ withdrawal also included?**

Deemed material events: Para A of Part A of Schedule III (1/2)

- Outcome of Meetings of the board of directors:
 - a) dividends and/or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched;
 - b) any cancellation of dividend with reasons thereof;
 - c) the decision on buyback of securities;
 - d) the decision with respect to fund raising proposed to be undertaken
 - e) increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched;
 - f) reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to;
 - g) short particulars of any other alterations of capital, including calls;
 - h) financial results;
 - i) decision on voluntary delisting by the listed entity from stock exchange(s)
- Agreements (viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the listed entity), agreement(s)/treaty(ies)/contract(s) with media companies) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof.
- Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter

Deemed material events: Para A of Part A of Schedule III (2/2)

- Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), Auditor and Compliance Officer
 - whether “change” constitutes re-designation/ re-appointment?
 - does auditor include secretarial auditor, internal auditor, cost auditor etc?
- Resignation of independent director including reasons for resignation
- Appointment or discontinuation of share transfer agent
- Resolution plan/ Restructuring in relation to loans/borrowings from banks/financial institutions
- One time settlement with a bank
- Reference to BIFR and winding-up petition filed by any party / creditors
- Proceedings of Annual and extraordinary general meetings of the listed entity.
- Amendments to memorandum and articles of association of listed entity, in brief.
- Schedule of analysts or institutional investors meet and presentations made by the listed entity to analysts or institutional investors
- Audio or video recordings and transcripts of post earnings/quarterly calls, by whatever name called, conducted physically or through digital means
- Specified events in relation to CIRP of a listed corporate debtor under IBC
- Initiation of Forensic audit
- Issuance of Notices, call letters, resolutions and circulars sent to shareholders, debenture holders or creditors or any class of them or advertised in the media by the listed entity

Events and information tested for materiality : Para B of Part A of Schedule III

- Commencement/ postponement of commercial production or commercial operations of any unit/division.
 - Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/division
 - Capacity addition or product launch.
 - Awarding, bagging/ receiving, amendment or termination of awarded/bagged orders/contracts not in the normal course of business.
 - Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof.
 - Also applicable to a financing company?
 - Disruption of operations of any one or more units or division of the listed entity due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.
 - Effect(s) arising out of change in the regulatory framework applicable to the listed entity
 - Litigation(s) / dispute(s) / regulatory action(s) with impact.
 - does it include fine/ penalties by SEs?
 - Fraud/defaults etc. by directors (other than key managerial personnel) or employees of listed entity.
 - Options to purchase securities including any ESOP/ESPS Scheme
 - at the time of grant, vesting or exercise?
 - materiality to be calculated on each employee basis or aggregate options?
 - Giving of guarantees or indemnity or becoming a surety for any third party
 - Also applicable to a financing company?
 - Granting, withdrawal , surrender , cancellation or suspension of key licenses or regulatory approvals.
 - pending renewal cases also required to be reported?
- Para C - Any other information/event viz. major dev. likely to affect business
- e.g. emergence of new technologies, expiry of patents, any change of accounting policy having significant impact on the accounts, etc. and brief details thereof
 - any other information which is exclusively known to the listed entity which may be necessary to enable the holders of securities of the listed entity to assess its position and to make

Interplay with PIT Regulations

PIT Regulations	LODR Regulations
Provision: “No person shall procure from or cause the communication by any insider of unpublished price sensitive information”	Provision: “Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material”
Prohibition in flow of information which is unpublished	Continuous flow of information
Mandatory restriction on sharing information	Mandatory release of information
Creation of artificial Chinese wall for disallowing flow of information	Ensure transparency of information

Provisions are complementary and not conflicting

Trigger point for disclosure of material events and information

- Reg 30(6) specifies timelines for disclosure
 - requires disclosure to SEs as soon as reasonably possible
 - but not later than 24 hours from occurrence of event or information
 - within 30 mins from conclusion of board meeting in specified cases
- When is an event considered to have occurred?
 - should be disclosed once the happening of the event can be determined with reasonable certainty
 - SEBI Circular dated 9th Sep, 2015 also provides guidance on the same
- Subsequent developments to material events and information
 - to be informed to stock exchanges regularly

For events involving stages of discussion, negotiation and approval	For events not involving such stages
on receipt of requisite approval (generally board approval)	as and when the listed entity becomes aware of the same or as soon as an officer of the entity has, or ought to have reasonably come into possession of the information in the course of the performance of his duties
E.g. - rights issue, acquisitions etc	E.g. - strikes, lock-outs etc

The trajectory of information in an organisation

■ N: The MD spots a tender/scheme of the Orissa Govt whereby there will be allotment of land, provided the entrepreneur makes an minimum capex of Rs 500 crores in a new plant. Other conditions are there.

■ N+1 Captivated by the idea, the MD would want to examine the feasibility of setting up a new unit in Orissa.

■ N+3 The MD discusses the matter with the CFO and the two agree to engage one of the consulting firms to do a feasibility study for setting up the Orissa plant

■ N+15 At this stage, an in-principle board approval is taken by circulation for carrying the feasibility study, to be reported back to the Board.

■ N+ 75 The feasibility study comes a couple of months later. The study inter alia recommends an investment of Rs 650 crores. This will nearly doubling the current capacity of the company

■ N+ 90 After doing further work on the matter, the MD and the CFO set up an internal team to identify the technology/machinery vendor, make financial projections, identify land parcel, etc.

■ N+ 115 A board meeting is to be called by the CS, setting up the details as currently available.

■ N + 123 Board resolution passed for making application to the Govt of Orissa for the plant; if the application succeeds, the matter to come back to the board.

■ N+ 125 Application made

■ N+ 155 Govt of Orissa sanctions the application

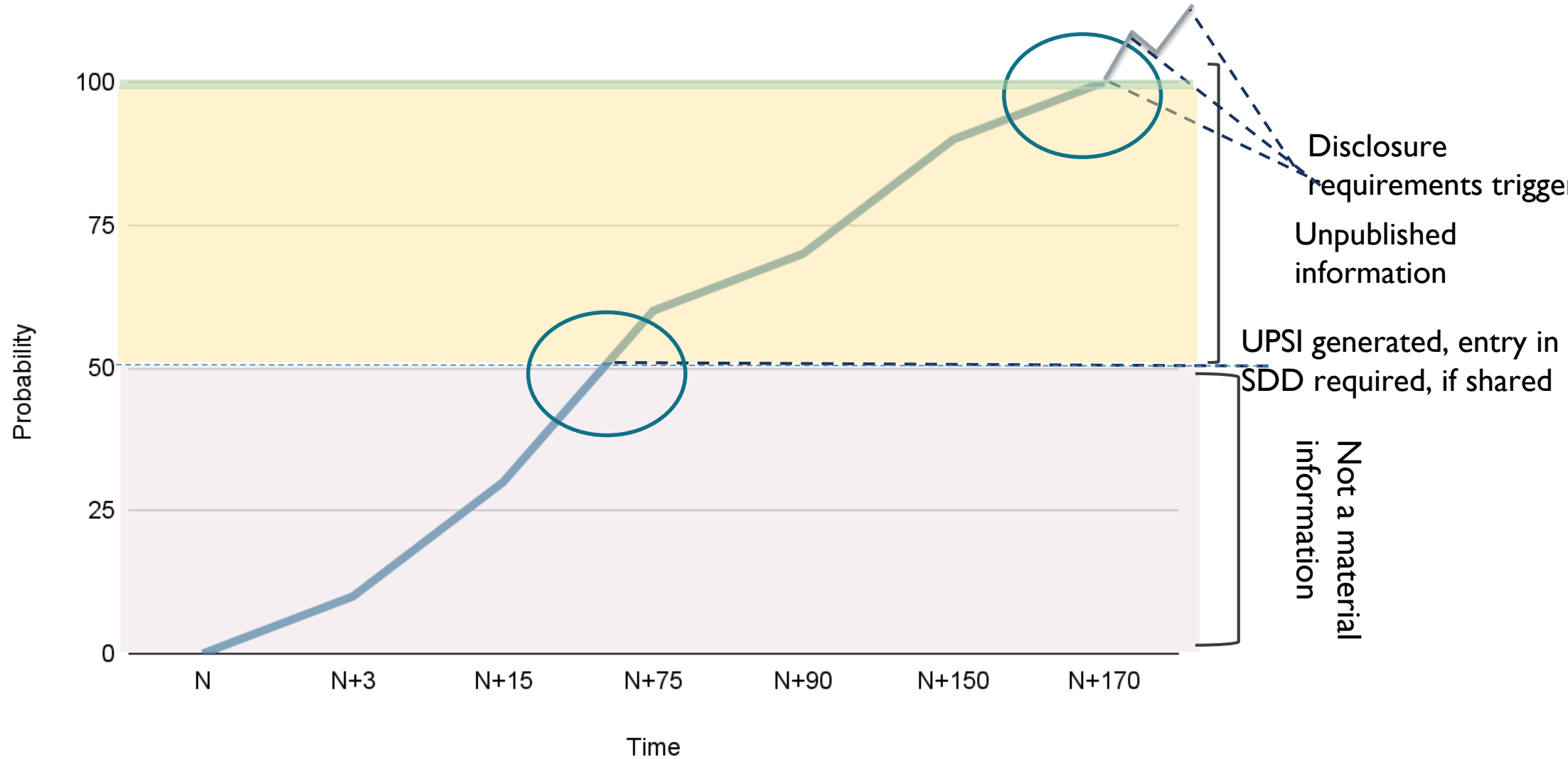
■ N+ 170 Further board resolution for setting up a WOS

■ **N+ 170 At this stage, the information is disclosed to SE**

■ **N+200 Subscription to shares of WOS**

■ **N+300 Tender cancelled for uncontrollable reasons**

Metamorphosis of “information” from “origin” to “publication”





Amendments to disclosure of material events and information

Regulation 30 read with Schedule III of Listing Regulations



Sequence of events

Consultation Paper on Review of Disclosure Requirements – Nov 2022

SEBI approved amendments in board meeting – 29th March, 2023

Amendments to Listing Regulations – not notified yet

Proposals in the Consultation Paper vis-a-vis as approved in SEBI Board Meeting

Proposals under Consultation Paper

- **Quantitative criteria** for determination of materiality of an event/ information
- Responsibility to **employees to identify and escalate** material information requiring disclosure to KMPs
- **Reduction in timelines** for disclosure of material events or information
 - 12 hours instead of existing 24 hours
- Mandatory **verification of market rumours** by top 250 listed entities
- Modification to the meaning of “**acquisition**”
 - **linking the same with a threshold of turnover** (2% of the turnover of the listed entity on a standalone basis)
- **Expanding** the scope of materiality
 - to all directors, senior management and subsidiary
- **Unavailability of the MD/ CEO** for fulfillment of roles in the listed entity for more than a month
- Any **announcements made to any form of mass communication media** in relation to the listed entity
- Disclosure of **regulatory action under “deemed material”** events/ information
- Loan agreements not in ordinary course of business entered into
 - either as a lender or a borrower

Approved as per Press Release

- Introduction of **materiality thresholds** for determination of materiality
- Mandatory **verification of market rumours**
- **Stricter timelines** for disclosure of material events and information
- Disclosure for certain types of agreements binding listed entities
 - press release does not specify which type of agreements



Determination of materiality

Quantitative thresholds and drawing guidance from international counterparts



Quantitative thresholds for determination of materiality

- Reg 30(4) specifies guidelines for determination of material events and information
 - Existing guidelines are subjective
 - (a) the omission of an event or information, which is **likely to result in discontinuity or alteration of event or information already available publicly**; or
 - (b) the omission of an event or information is **likely to result in significant market reaction if the said omission came to light at a later date**;
 - (c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the **opinion of the board of directors of listed entity**, the event / information is considered material.
 - Criteria is subjective and provides excessive discretion to listed entities
 - SEBI prescribed quantitative thresholds in addition to the subjective criteria
 - to make the provision more objective and non-discretionary
- Proposal contained in Consultation Paper -**
- whose **value or expected impact** in terms of value, **exceeds the least** of the following:
 - **two percent of turnover**, as per the last audited **standalone** financial statements of the listed entity;
 - **two percent of net worth**, as per the last audited standalone financial statements of the listed entity;
 - **five percent of three-year average of absolute value of profit/loss after tax**, as per the last three audited standalone financial statements of the listed entity.
 - Materiality threshold based on only one item of P/L or balance sheet may not capture the impact
 - Hence a combination of turnover, net worth and profit/loss after tax on account of their inter-linkage

Materiality tests in international jurisdictions (1/3)

- Determination of “materiality” is important before disclosure
 - to ensure information is “relevant” and not “redundant”
- Materiality is understood as a filtering mechanism
 - Re. TSC Industries, Inc. v. Northway, Inc
*“Some information is of such **dubious significance** that **insistence on its disclosure may accomplish more harm than good.**”*
- “Material” is defined under Rule 405 to the Securities Act
 - The term *material*, when used to qualify a requirement for the furnishing of information as to any subject,
 - **limits the information** required to those matters
 - to which there is a **substantial likelihood**
 - that a **reasonable investor would attach importance in determining whether to purchase the security** registered.
- Re. Mills v. Electric Auto-Lite Co., the US SC stated that
 - *“here the misstatement or omission in a proxy statement has been shown to be ‘material,’ as it was to be here, that determination itself indubitably embodies a conclusion that the **defect was of such a character that it might have been considered important by a reasonable shareholder who was in the process of deciding how to vote**”*
- Re-affirmed in Halliburton Co. v. Erica P. John Fund, Inc.
- Doctrine of “**buried facts**”
 - Re. Werner v. Werner, 267 F.3d 288, 297 (3d Cir. 2001)
 - when the **fact in question is hidden in a voluminous document** or is disclosed in a piecemeal fashion which **prevents a reasonable shareholder from realizing the ‘correlation and overall import of the various facts interspersed throughout’** the document.

Materiality tests in international jurisdictions (2/3)

■ UK Listing Rules

- Rule 9.6 requires disclosure of material information to RIS
- Ch 10 deals with premium listing companies
 - requires additionally disclosure of Class 1 and Class 2 transactions
 - Class 2 transaction: a transaction where any percentage ratio is **5% or more** but each is less than 25%;
 - Class 1 transaction: a transaction where any percentage ratio is **25% or more**.
 - to be determined as per class test

■ Class test include the following -

- (1) the gross assets test;
- (2) the profits test;
- (3) the consideration test; and
- (4) the gross capital test

UK Listing Rules	SEBI LODR
5% of gross assets	
5% of profits before tax	5% of three-years' average profit after tax
5% of consideration	2% of turnover
5% of gross capital	2% of net-worth

Materiality tests in international jurisdictions (3/3)

■ Article 27-36 of Financial Instruments and Exchange Act of Japan read with Cabinet Office Order

- mandates disclosure of “material information” at the same time as the provision of information
- with regard to the company's business, undisclosed material information about the operations, business, or assets of the listed company, etc. which has a **material influence on investors' investment decisions**

■ Section 202.05 of NYSE Manual

- release quickly to the public any news or information which might **reasonably be expected to materially affect the market for its securities**

■ Rule 703 of SGX Rules

- mandates disclosure concerning the issuer/ its subsidiaries/ associates which -
 - (a) is necessary to avoid the establishment of a false market in the issuer's securities; or
 - (b) would be likely to materially affect the price or value of its securities.
- as per the Corporate Disclosure Policy (Appendix 7.1)
 - provides subjective conditions
 - no definitive tests for materiality



Mandatory verification of market rumours



Verification of market rumours by listed entities

Existing provision	Proposed insertion as per CP
<ul style="list-style-type: none"> ● The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s). ● Clause (5) of Code of Fair Disclosures under PIT Regulations <ul style="list-style-type: none"> ○ Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities 	<p>Provided that the top 250 listed entities shall necessarily confirm or deny any event or information reported in mainstream media, whether in print or digital mode, which may have material effect on the listed entity under this regulation.</p>

■ Applicable to whom?

- top 250 listed entities based on market cap

■ Applicable from?

- 1st October, 2023 - for top 100 listed entities
- 1st April, 2024 - for top 250 listed entities

■ Sources of market rumours?

- mainstream media, whether in print or digital mode: Mainstream media, as opposed to alternative media, is mass communication that is likely to affect public opinion. Whether regional or national media - not clear
- Social media, or publications with limited circulation seem not covered. Idea is publications which may result into market reaction

- The rumour, in turn, is to be tested for materiality in terms of guidelines under Reg 30(4)

International rules on verification of market rumours

■ Part VI of Appendix 7A (SGX Rules)

- require prompt confirmation and clarification of
- Public circulation of information, whether by an **article published in a newspaper, by a broker's market letter, or by word-of-mouth**
- likely to have, or has had,
 - an **effect on the price of the issuer's listed securities**
 - a **bearing on investment decisions**

■ Section 202.3 of NYSE Manual

- Relates rumours with unusual market activity. If unusual market activity is arising out of rumours, then the company to give prompt clarification.
- Listed entities to contact the Exchange on becoming aware of rumours.
- Prompt investigation by Exchange on such rumours

Stricter timelines for disclosure of material events and information

- Presently, disclosures are required within 24 hours from occurrence of event
 - for specified events, 30 minutes after conclusion of board meeting
- Consultation Paper proposes timelines as following -
 - for events emanating from the listed entity itself - 12 hours instead of existing 24 hours
 - E.g. - Amendments to charter documents, acquisition etc
 - for events emanating from outside the listed entity - existing timeline of 24 hours to be retained
 - E.g. - resignation of director/ KMP etc, actions taken by regulatory authorities etc

Actionables and approach to compliance

- Amendments to the existing materiality policy
 - to include prescriptive materiality thresholds
 - guidance on manner of dealing with material information by persons having access to the same
 - may also suggest documentation for events and information specified under Schedule III but not considered material for disclosure with reasons thereof
- Requires internal sensitisation
- SOP for identification of materiality and record-keeping of decision