

# AMIDST MARKET WHIMS: CHALLENGES IN SEBI'S MARKET RUMOUR REGULATION

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## **Abstract**

*Market rumours wield the power to disrupt market stability by triggering rapid and often erratic fluctuations in securities of the company along with erosion of investor confidence. SEBI's response, the amended LODR Regulation 30(11), mandates prompt clarification of market rumours by top listed entities, aiming to overcome such challenges. However, this regulation hurdles timely verification, especially in sensitive situations like mergers and acquisitions governed by non-disclosure agreements. While designed to bolster investor confidence, the regulation's rigid 24-hour compliance window raises concerns of inadvertent market volatility. Drawing insights from global practice, this article critically assesses SEBI's initiative. It advocates for a nuanced approach, incorporating exemptions for ongoing negotiations, inspired by global best practices, while urging SEBI to reconsider the stringent timeframe. By melding global wisdom with domestic needs, a balanced regulatory framework can emerge, fortifying investor trust while navigating the complexities of market rumour verification.*

**Keywords:** Market rumors; listing obligations; non-disclosure agreements; unfair trade practice

## I. INTRODUCTION

The recent growth of social media platforms and means of communication has resulted in rapid exchange of information. This information exchange has affected all areas of business transactions, and consequently, can have extremely detrimental outcomes. Within the securities market, the Securities and Exchange Board of India (“SEBI”) is constantly faced with the challenge of addressing the issue of unverified information that has the potential to disrupt market stability and investors’ confidence. The magnitude of such disruption is evident from the recent Adani-Hindenburg row, which led to the erosion of \$134 Billion from the Adani group’s market value.<sup>1</sup> To counter the issue of market rumours SEBI amended the Listing Obligations and Disclosure Requirements (“LODR”) (Second Amendment) Regulations, 2023.<sup>2</sup>

Regulation 30(11) of the LODR has been amended to mandatorily require the top 100 listed entities by market capitalization to either accept or deny any market rumour within 24 hours,

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<sup>1</sup> Amit Mudgil, ‘Adani Group CFO recalls first two days of 88 Hindenburg allegations, says this’ Business Today (22 February, 2023) <<https://www.businesstoday.in/markets/company-stock/story/adani-group-cfo-recalls-first-two-days-of-88-hindenburg-allegations-says-this-371083-2023-02-22>> accessed 23 November 2023.

<sup>2</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023, reg. 30(11).

effective from February 1, 2024. Further, the Regulation shall apply to the top 250 listed entities effective from August 1, 2024.<sup>3</sup> This Regulation has been brought about by analysing the practices in other advanced jurisdictions, with the board note particularly referring to Section 202.03 of the New York Stock Exchange Listed Company Manual (“**NYSE Manual**”).<sup>4</sup> The primary objective of this amendment is to reduce information asymmetry, promote transparency, enable the investor to make a well-informed choice and mitigate the undesirable consequences arising from unverified market rumours and speculations.

By delving into the nature and implications of market rumour verification, one can understand the effects of the aforesaid Regulation on market stability, investors and the listed entities. In this article, the authors provide a critical analysis of market rumour verification regulation, along with its consequences in the Indian securities market and investors, followed by suggestions for its successful implementation.

## II. CHALLENGES OF TIMELY RESPONSE

Regulation 30(11) specifies a 24-hour period within which an entity must clarify market rumour from the reporting of the event or information in mainstream media. The 24-hour time period is manifestly insufficient to comply with the necessary compliances and obligations to ascertain the veracity of the rumour. In situations wherein the rumour emanates from a third-party source, an entity requires time to conduct internal inquiries and investigations to be in a position to rightfully verify the information.<sup>5</sup>

For instance, in the Adani-Hindenburg short-selling controversy, despite Adani Enterprises' prompt denial of the report within 24 hours, the situation intensified. Stocks of Adani Enterprises and its subsidiaries continuously hit lower circuits.<sup>6</sup> This demonstrates that 24 hours is not a sufficient period for entities to clarify rumours to the satisfaction of the investors. Alternatively, had the rumour been clarified after taking the requisite time and providing the public with the necessary documents that supported the denial by Adani Enterprises, the losses incurred could have been avoided.

Furthermore, unverified rumours, confirmed or denied by an entity, which are subsequently disclosed to be otherwise, have the possibility of facing regulatory scrutiny under section 4(2)(f) of the SEBI Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market (“**PFUTP**”)<sup>7</sup> Regulations, 2003 as it will be an unfair trade practice to knowingly publish any information which is either not true or which the person does not deem to be true.

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<sup>3</sup> *ibid.*

<sup>4</sup> New York Stock Exchange Listed Company Manual, s 2(202.03) [“**NYSE Manual**”].

<sup>5</sup> SEBI Board Meeting, ‘Amendments to requirements for disclosure of material events or information by listed entities under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015’ [https://www.sebi.gov.in/sebi\\_data/meetingfiles/apr-2023/1681703089597\\_1.pdf](https://www.sebi.gov.in/sebi_data/meetingfiles/apr-2023/1681703089597_1.pdf) accessed 25 November 2023 [“**Board Note**”].

<sup>6</sup> Astha Rajvanshi, ‘India’s Richest Man Accused of Pulling the ‘Largest Con in Corporate History’ Time (25 January, 2023) <<https://time.com/6250052/adani-hindenburg-fraud>> accessed 22 November 2023.

<sup>7</sup> Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003 [Last amended on 25 January, 2022].

Furthermore, SEBI's guidelines in Annexure II of the Continuous Disclosure Requirements Circular stipulates that an event must be disclosed after attaining a definite level of certainty.<sup>8</sup>

In the particular instance of mergers and acquisitions, there are multiple hurdles in the implementation of this Regulation. Firstly, deal negotiations are governed by Non-Disclosure Agreements ("NDA") that restrict the disclosure of any information beyond the parties.<sup>9</sup> Further, negotiations are shrouded with uncertainty, and it may not be possible to clarify any rumour relating to the deal until the deal is concluded. There have been numerous instances where initial negotiations fell through, and confirming any rumour pertaining to them would have attracted the provisions as mentioned earlier on the entity. In addition, the board note on this amendment suggests that the stage of the negotiation may be provided, even if it is at a nascent stage.<sup>10</sup> Such disclosure during preliminary negotiations may prove to be disadvantageous for the parties involved, as it may alter the upper hand and control that the listed entity may have exercised over the deal.<sup>11</sup>

### III. MARKET VOLATILITY AND INVESTOR CONFIDENCE

Financial rumours lead to significant fluctuation in the stock prices of a listed entity. Capital markets throughout the world remain prey to such rumours and move accordingly. The amendment focuses on preventing such situations and maintaining investor confidence. However, the Regulation may amplify rather than stabilise the market volatility due to the susceptibility to false positives and negatives.<sup>12</sup> For instance, a scenario involving a rumoured merger between listed entities 'X' and 'Y'. Under amended Disclosure Regulations, entity X is obligated to clarify its position. Even if the rumour holds truth, entity X may officially refute it. In contrast to more developed jurisdictions, Indian companies operate without regulatory barriers like standstill periods. Consequently, despite official refutation, Entity X may proceed with a speculated merger at a later juncture. This action could ultimately undermine market sentiments, leading to a situation of instability in the market.

To counter this, in the UK, an advanced regulatory framework under section 2(6) within the Takeover Code comes into effect when there is a rumour announcement.<sup>13</sup> Under this provision if a rumour surrounding negotiations floats, the concerned entity has to either announce an offer within 28 days or verify that they will not be making an offer, triggering a six-month standstill period, in which they cannot make any offer in respect of the denied negotiation. Such

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<sup>8</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on October 23, 2023], reg(s) 30 and 30A.

<sup>9</sup> Vinod Kothari, 'Silence no more golden: New regulatory regime forces top listed companies to respond to rumours' (Vinod Kothari & Consultants, 12 July 2023) <https://vinodkothari.com/2023/07/silence-no-more-golden-new-regulatory-regime-forces-top-listed-companies-to-respond-to-rumours/> accessed 27 November 2023.

<sup>10</sup> Board Note.

<sup>11</sup> Nitin Kumar, 'M&A Deal Leakage' (Medium, 22 December 2021) <https://medium.com/mergers-acquisitions-and-divestitures/m-a-deal-leakage-9f9b4ff6c629> accessed 26 November 2023.

<sup>12</sup> Affluence Advisory Pvt Ltd, 'Mandatory Verification of Market rumours' (CaClubIndia, 01 July 2023) <https://www.caclubindia.com/articles/mandatory-verification-of-market-rumours-49912.asp> accessed 26 November 2023.

<sup>13</sup> The City Code on Takeovers and Mergers 2016, s 2(6).

stringent regulations help maintain stability in corporate negotiations as opposed to the Indian landscape.

#### IV. GLOBAL STANDARDS: SUGGESTIONS FOR INDIA'S MARKET RUMOUR VERIFICATION REGULATION

The regulatory approach to counter the negative impact of market rumours is not novel. Several advanced jurisdictions have already established rules for listed entities to verify such rumours. The framing of rules to verify market rumours by listed entities demonstrates a proactive stance of regulators in mitigating potential market disruptions. These regulations aim to instil confidence in market integrity and investor trust by encouraging accountability in information dissemination.<sup>14</sup>

The NYSE Manual also provides for the confirmation of market rumours, however, unlike the Indian regulation, there is no timeframe for clarification. It merely states that the entity is obligated to provide an immediate and candid statement to the public. This provision overcomes the challenge posed by the 24-hour time period and provides the requisite time for the entity to conduct inquiries and investigation, and consequently, be able to accurately ascertain the veracity of the rumour.<sup>15</sup> In this manner, the entity is no longer under the threat of facing regulatory scrutiny for wrongful disclosures, as highlighted by the authors above.

Similarly, the UK Market Abuse Regulation<sup>16</sup> allows for delayed verification of the rumours in case of legitimate interests being compromised. This includes ongoing negotiations, financial stability and future prospects of the entity. This stands in contrast with the Indian regulation and provides an exception to entities from disclosing highly sensitive and confidential information, which is not possible to provide at nascent stages and is detrimental to the interests of the negotiating entities.

Additionally, Chapter 3 of the European Union Market Abuse Regulation<sup>17</sup> also addresses rumour verification. It allows entities to postpone disclosures in cases that could harm their legitimate interests. This provision safeguards business confidentiality, shielding entities from the adverse impacts caused by market rumours. However, compliance requires listed entities choosing to delay clarification to provide explanations to regulators. This mechanism prevents misuse of the provision for unfair advantage, fostering an environment of transparency and accountability.

Section 307(B), (C) and (D) of the Hong Kong Securities and Futures Ordinance,<sup>18</sup> in parallel, requires listed corporations to make public insider information, in a manner that is prompt, however, there is no timeframe to adhere to. Further, the Regulation provides that an entity has failed to make public insider information if the information so made public is incorrect or

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<sup>14</sup> Board Note.

<sup>15</sup> NYSE Manual.

<sup>16</sup> The Market Abuse (Amendment) (EU Exit) Regulations 2019, SI 2019/310 [*“Abuse Regulations”*].

<sup>17</sup> Council Regulation (EU) 596/2014 on market abuse regulation; Repealing Directive 2003/6/EC; Council and Commission Directives 2003/124/EC; 2003/125/EC; 2004/72/EC.

<sup>18</sup> Securities and Futures (Amendment) Ordinance 2012, s 307 SI 2012/9 [*“Securities Ordinance”*].

deceiving as to a material fact. This measure ensures that an entity provides true and accurate information that allows investors to make well-informed choices. However, an entity is exempted from such disclosures when the information relates to an ongoing negotiation or a trade secret.

Therefore, it is discernible that Regulation 30(11) falls short of adequately addressing market rumours while keeping the interests of the investors and entities in mind. To counter this, the Regulation must incorporate some changes, such as introducing exemptions from disclosures when the information relates to ongoing negotiations or trade secrets, taking inspiration from the UK, EU and Hong Kong regulations.<sup>19</sup> Further, the authors suggest that the 24-hour timeframe should be removed, however, not in a similar vein as the above jurisdictions. A timeframe is required to prevent entities from escaping the obligations of prompt clarifications. Additionally, there may arise a situation in which an entity releases a statement right before the official corporate announcement. This may jeopardise the regulatory intent behind the introduction of the Regulation.

## V. CONCLUSION AND WAY FORWARD

Market rumours pose an imminent threat to the stability of financial markets and investor confidence. Their mandatory verification by listed entities, therefore, is a welcome move in the Indian regulatory landscape. However, challenges arise in complying with the stringent 24-hour timeframe, especially in cases where rumours stem from third-party sources. Moreover, such disclosures made under regulatory pressure can attract regulatory action under PFUTP Regulations. Additionally, corporate negotiations are marred by NDA agreements thereby leading to uncertainty, which operates as a challenge to such clarifications. While the regulatory intent is to curb market volatility and maintain investor confidence, its implementation might inadvertently amplify volatility due to false positives and negatives.

Thus, the experiences from global markets, such as the UK's "Put Up or Shut Up" Rule and provisions in the EU and Hong Kong, offer valuable insights.<sup>20</sup> These Regulations allow for delayed verification in sensitive negotiations, safeguarding entities from premature disclosures that could compromise negotiations or reveal trade secrets. Such provisions balance transparency with the protection of legitimate interests.

In light of these global standards, Regulation 30(11) could benefit from revisions, including exemptions for ongoing negotiations and removing the strict 24-hour timeframe while ensuring timely disclosures. Striking this balance is crucial to prevent entities from evading their obligations while allowing sufficient time for accurate verifications.

In conclusion, while SEBI's amendment aims to enhance transparency and curb market rumours, a revision of the Regulation is imperative. By incorporating elements from established

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<sup>19</sup> *ibid.*

<sup>20</sup> Abuse Regulation.

global standards and adjusting the time frame, SEBI can achieve a more balanced approach that safeguards investor interests while ensuring the accuracy of disclosures.