

Guidance Note on SEBI circular dated May 03, 2018 regarding non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) and the Standard Operating Procedure (SOP) for suspension and revocation of trading of specified securities

SEBI vide circular dated May 3, 2018 (ref no. SEBI/HO/CFD/CMD/CIR/P/2018/77) have specified uniform approach in the matter of levy of fines for non-compliance with certain provisions of the Listing Regulations, the manner of suspension of trading of securities of a listed entity and the manner of freezing the holdings of the promoter and promoter group of a non-compliant listed entity.

A. Salient Features of the circular

- Shall come into force effective from compliance periods ending on or after September 30, 2018.
- Fine applicable to total 18 regulations viz; 6(1), 7(1), 13(1)/ 13(3), 17(1), 18(1), 19(1)/19(2), 20(2), 21(2), 27(2), 29(2),/29(3), 31, 32(1) 33, 34, 39(3), 42(2)/42(3)/42(4)/42(5), 44(3), 46 (vis a vis 4 regulations as per current SOP) including non appointment of woman director, non appointment of compliance officer, non appointment of share transfer agent, delay intimation of Board meeting, etc.
- Penal action prescribed for freezing of entire holding of promoter and promoter group on non submission/non-payment of fine at FIRST INSTANCE of non-compliance.
- Companies are required to place before the BOARD OF DIRECTORS the action taken by Exchanges and submit comments made by Board of directors to Exchange for dissemination.
- SUSPENSION of security: For non-compliance of the 7 regulations for 2 consecutive quarters, trading in securities of the company will be suspended.
- After suspension, if company fails to comply within 6 months from the date of suspension, the Exchange shall initiate the process of COMPULSORY DELISTING against such company.

B. Compliance with provisions of LODR

Sr. No.	Regulation	Action by the Exchange post identification of noncompliance
1	<p><u>Regulation 6(1)</u> Non-compliance with requirement to appoint qualified company secretary as the compliance officer</p>	<p>1. Review of non-compliances will be done within 12 days from end of due date of submission of Reconciliation of share capital audit report and letter will be issued for intimation of fine levied.</p> <p>e.g. For compliance period from October 01, 2018 till December 31, 2018, submission done by company in Reconciliation of share capital audit report for quarter ended December 31, 2018 will be considered and fine will be levied for non-compliance.</p> <p>2. Exchange will monitor it on Quarterly basis i.e. details of compliance officer are already captured in Reconciliation of share capital audit report which is submitted quarterly.</p> <p>3. If compliance officer is not appointed during quarter or compliance officer appointed is not a company secretary then fine will be levied for number of days of non appointment of compliance officer.</p>

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		<p>4. If company fails to submit Reconciliation of share capital audit report then fine will be levied for entire quarter under this regulation for non appointment of compliance officer.</p> <p>However, if company confirm in writing that they have appointed compliance officer during quarter before review by Exchange then fine shall be not be levied else fine will be levied for entire quarter.</p> <p>5. Compliance for this regulation will be monitored w.e.f. October 1, 2018 and first review will be done based on submission for quarter December 2018.</p>
2	<p><u>Regulation 7(1)</u> Non-compliance with requirement to appoint share transfer agent</p>	<p>1. Review of non-compliances will be done within 12 days from end of due date of submission of Reconciliation of share capital audit report and letter will be issued for intimation of fine levied.</p> <p><u>e.g.</u> For compliance period from October 01, 2018 till December 31, 2018, submission done by company in Reconciliation of share capital audit report for quarter ended December 31, 2018 will be considered and fine will be levied for non-compliance.</p> <p>2. Exchange will monitor it on Quarterly basis i.e. details are already captured in Reconciliation of share capital audit report.</p> <p>3. If company has not appointed share transfer agent during quarter then fine will be levied for number of days of non appointment of share transfer agent.</p> <p>4. If company fails to submit Reconciliation of share capital audit report then fine will be levied for entire quarter under this regulation for non appointment of share transfer agent.</p> <p>However, if company confirm in writing that they have appointed share transfer agent during quarter before review by Exchange then fine shall be not be levied else fine will be levied for entire quarter.</p> <p>5. Compliance for this regulation will be monitored w.e.f. October 1, 2018 and first review will be done based on submission for quarter December 2018.</p>
3	<p><u>Regulation 13(1)</u> Failure to ensure that adequate steps are taken for expeditious redressal of investor complaints</p> <p><u>Regulation 13(3)</u> Non-submission of the statement on shareholder</p>	<p>1. Reg. 13(1) - Exchange will intimate separately regarding compliance monitoring of Reg. 13(1).</p> <p>2. Reg. 13 (3) – non submission of Investor compliant statement within 21 days from the end of each quarter will be treated as non-compliance.</p> <p>Review of non-compliances will be done within 15 days from the due date of submission of statement on shareholder complaints and letter will be issued for intimation of fine levied.</p>

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	complaints within the period prescribed under this regulation or under any circular issued in respect of redressal of investor grievances	
4	<p><u>Regulation 17(1)</u> Non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director</p>	<ol style="list-style-type: none"> 1. Review of non-compliance will be done within 15 days from due date of submission of Corporate Governance Report. 2. Fine will be levied for non-compliance of provisions under this regulation w.e.f. compliance period ending on September 30, 2018 (i.e. from 01-July-2018 onwards) and letter will be issued for intimation of fine levied. 3. If company submits Corporate Governance Report within due date and observed as non compliant then fine will be levied for number of days of non-compliance during the quarter. 4. If company fails to submit corporate governance report then fine will be levied for entire quarter under this regulation. Fine shall not be levied only if company submits corporate governance report ensuring compliance with this regulation before end of review period. 5. No period mentioned for appointment in case of resignation of women director. Fine will be levied for non appointment of woman director on board during the quarter. 6. Fraction shall be rounded off to the higher number while determining compliance. 7. Fine shall be levied only one time for the multiple non-compliance within the same regulation.
5	<p><u>Regulation 18(1)</u> Non-compliance with the constitution of audit committee</p>	<ol style="list-style-type: none"> 1. Review of non-compliance will be done within 15 days from due date of submission of Corporate Governance Report. 2. Fine will be levied for non-compliance of provisions under this regulation w.e.f. compliance period ending on September 30, 2018 (i.e. from 01-July-2018 onwards) and letter will be issued for intimation of fine levied. 3. If company submits Corporate Governance Report within due date and observed as non compliant then fine will be levied for number of days of non-compliance during quarter. 4. If company fails to submit corporate governance report then fine will be levied for entire quarter under this regulation. Fine shall not be levied only if company submits corporate governance report ensuring compliance with this regulation before end of review period.

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		5. Fraction shall be rounded off to the higher number while determining compliance.
6	<u>Regulation 19(1)/ 19(2)</u> Non-compliance with the constitution of nomination and remuneration committee	<ol style="list-style-type: none"> 1. Review of identified non-compliance will be done within 15 days from due date of submission of Corporate Governance Report. 2. Fine will be levied for non-compliance of provisions under this regulation w.e.f. compliance period ending on September 30, 2018 (i.e. from 01-July-2018 onwards) and letter will be issued for intimation of fine levied. 3. If company submits Corporate Governance Report within due date and observed as non compliant then fine will be levied for number of days of non-compliance during quarter. 4. If company fails to submit corporate governance report then fine will be levied for entire quarter under this regulation. Fine shall not be levied only if company submits corporate governance report ensuring compliance with this regulation before end of review period. 5. Fraction shall be rounded off to the higher number while determining compliance
7	<u>Regulation 20(2)</u> Non-compliance with the constitution of stakeholder relationship committee	<ol style="list-style-type: none"> 1. Review of non-compliance will be done within 15 days from due date of submission of Corporate Governance Report. 2. Fine will be levied for non-compliance of provisions under this regulation w.e.f. compliance period ending on September 30, 2018 (i.e. from 01-July-2018 onwards) and letter will be issued for intimation of fine levied. 3. If company submits Corporate Governance Report within due date and observed as non compliant then fine will be levied for number of days of non-compliance during quarter. 4. If company fails to submit corporate governance report then fine will be levied for entire quarter under this regulation. 5. Fine shall not be levied only if company submits corporate governance report ensuring compliance with this regulation before end of review period. 6. Fraction shall be rounded off to the higher number while determining compliance.
8	<u>Regulation 21(2)</u> Non-compliance with the constitution of risk management committee	<ol style="list-style-type: none"> 1. Review of identified non-compliance will be done within 15 days from due date of submission of Corporate Governance Report. 2. Fine will be levied for non-compliance of provisions under this regulation w.e.f. compliance period ending on September 30, 2018 (i.e.

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		<p>from 01-July-2018 onwards) and letter will be issued for intimation of fine levied.</p> <p>3. If company submits Corporate Governance Report within due date and observed as non compliant then fine will be levied for number of days of non-compliance during quarter.</p> <p>4. If company fails to submit corporate governance report then fine will be levied for entire quarter under this regulation.</p> <p>5. Fine shall not be levied only if company submits corporate governance report ensuring compliance with this regulation before end of review period.</p> <p>6. Fraction shall be rounded off to the higher number while determining compliance.</p>
9	<p><u>Regulation 27(2)</u> Non-submission of the Corporate governance compliance report within the period provided under this regulation</p>	<p>1. Review of non-compliance will be done within 15 days from due date of submission of Corporate Governance Report and letter will be issued for intimation of fine levied.</p> <p>2. Fine will be levied for non submission of Corporate Governance report within due date</p> <p>3. If provisions of Corporate Governance are not applicable to the companies as per Reg.15 (2) of LODR 2015, the companies are required to submit the Not Applicability Certificate stating Networth and Paid up equity Capital on or before end of the first quarter review by Exchange.</p>
10	<p><u>Regulation 29(2)/29(3)</u> Delay in furnishing prior intimation about the meeting of the board of directors</p>	<p>1. Exchange shall monitor compliance on monthly basis and Review of identified non-compliance will be done within 10 days from end of the month and letter will be issued for intimation of fine levied.</p> <p>2. Fine will be levied for delay in furnishing prior intimation about the meetings of the board.</p>
11	<p><u>Regulation 31</u> Non-submission of shareholding pattern within the period prescribed</p>	<p>1. Review of identified non-compliance will be done within 15 days from due date of submission of Shareholding pattern Report and letter will be issued for intimation of fine levied.</p> <p>2. Fine will be levied for non submission of Shareholding pattern within due date</p>
12	<p><u>Regulation 32(1)</u> Non-submission of deviations/ variations in utilization of issue proceeds</p>	<p>1. Companies will be required to provide undertaking along with financial results for any deviation/variation in utilisation proceeds.</p> <p>2. Re-view of identified non-compliance will be done along with review of financial results i.e. within 15 days from due date of submission of financial results and letter will be issued for intimation of fine levied.</p>

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13	<u>Regulation 33</u> Non-submission of the financial results within the period prescribed under this regulation	<ol style="list-style-type: none"> 1. Review of identified non-compliance will be done within 15 days from due date of submission of financial results and letter will be issued for intimation of fine levied. 2. Fine will be levied for non submission of Financial Results within due date.
14	<u>Regulation 34</u> Non-submission of the Annual Report within the period prescribed under this regulation	<ol style="list-style-type: none"> 1. Fine will be levied for non submission of Annual Report within due date. 2. Review of non-compliance will be done within 15 days from the due date of submission of Annual report and letter will be issued for intimation of fine levied after the last due date for submission.
15	<u>Regulation 39(3)</u> Non-submission of information regarding loss of share certificates and issue of the duplicate certificates within the period prescribed under this regulation	<ol style="list-style-type: none"> 1. Review of non-compliance will be done within 15 days from the end of every month and letter will be issued for intimation of fine levied. 2. Fine will be levied for non-compliance with provisions mentioned under this circular.
16	<u>Regulation 42(2)/42(3)/42(4)/42(5)</u> Delay in/ non-disclosure of record date/ dividend declaration or non-compliance with ensuring the prescribed time gap between two record dates/ book closure dates	<ol style="list-style-type: none"> 1. Fine will be levied for non-compliance with provisions mentioned under this circular 2. Review of identified non-compliance will be done within 10 days from end of the month and letter will be issued for intimation of fine levied.
17	<u>Regulation 44(3)</u> Non-submission of the voting results within the period provided under this regulation	<ol style="list-style-type: none"> 1. Fine will be levied for non-submission of voting results within due date for AGM, EGM, postal Ballot and court conveyed meeting. 2. Review of identified non-compliance will be done within 25 days from end of the month (for all the AGM/EGM/Postal ballot/ court conveyed meeting held in previous month) and letter will be issued for intimation of fine levied.
18	<u>Regulation 46</u> Non-compliance with norms pertaining to functional website	<ol style="list-style-type: none"> 1. Initially review will be done annually based on the submission of Corporate Governance Report. 2. Exchange will intimate separately regarding compliance monitoring of Reg. 46. 3. Exchange shall monitor the non-compliance under this regulation based on declaration for website provided by companies on yearly basis along with corporate governance report.

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		4. However, companies will have to submit compliance certificate to Exchange regarding compliance to this regulation as and when demand.

*All Listed entities are advised to ensure compliance with SEBI (LODR), 2015 and amendments thereof.

C. Points to be noted:

1. Compliance means submission of document/information alongwith payment of fine.
2. For the purpose of computation of fine, date of submission (as per respective regulation of LODR) would also be included.
3. As per point no. 3 of said circular, the present circular in supersession of the said circulars dated November 30, 2015 and October 26, 2016. Therefore, September 30, 2018 will be 1st quarter for monitoring of non-compliant companies under SEBI Circular dated May 03, 2018.

For deriving consecutive non-compliance for the first time under the SEBI circular May 3, 2018, June 2018 quarter will be considered as first instance of non-compliance.

4. Since the new circular is effective for compliance period ending on after September 30, 2018, the companies which are non-compliant prior to this period and continue to be non-compliant post Sep 30, 2018 shall trigger fines and subsequent actions as per SEBI circular dated May 03, 2018.
5. The review for the submission status of Annual Report (Regulation 34) for the period ended March 2018, will be done as per provisions of SEBI circular dated May 03, 2018.
6. For the companies which are non-compliant/late-compliant and/or do not pay fines, for the compliance period ended September 2018 onwards, freezing action will be initiated against companies as per new circular dated May 3, 2018.
7. For the purpose of submission and levy of fine, if the last day of submission and/or next day of submission for levying fine on the non-compliant Company is on a holiday (including Saturday) then the next working day shall be considered as the last day of submission and start of levying of fine. The same would be applicable at the time of review, day of transfer to Z group, giving intimation for freezing of promoter holding and suspension date. (*Non-working day benefit*).
8. If the company does not submit consolidated and stand alone for audited annual then it would be considered non-compliant. For all other quarter submission of standalone only can be considered compliant (till April 1, 2019). Further, the Companies who have submitted only Consolidated and not standalone would be considered as non-compliant.
9. If the company makes relevant submission of one quarter out of the 2 quarters and pay the fine for the said quarter, then such company will not be considered as consecutive default and the name of such company will not be included in notice for movement to Z and suspension. But if Company makes only relevant submission of one or both the quarters but does not pay the fine for any of the quarters it will be considered as consecutive default and name of such company will be included in the notice for notice for movement to Z and suspension.

10. After issue of transfer to Z group notice, if company complies with both the quarters and pay fine for both the quarters two working days before the effective date of transfer to Z group, then such company will not be transferred to Z group on the effective date.
11. The Exchanges would continue to apply the jointly decided policy on carve outs in relation to waiver of fines which was duly taken on record by SEBI. The companies are requested to refer carve out policy published on Exchange website.
12. Compulsory delisting process shall be initiated within 6 months from the actual date of suspension, and not from 6 months from the date of completion of weekly trading facility which is given for six month after the date of actual date of suspension.
