
**Article on SEBI's Circular dated January 22, 2020 on
Streamlining of Fines for Non-Compliance of LODR by
listed entities &
Standard Operating Procedure (SoP) for Suspension and
Revocation of Trading of Specified Securities**

A. BACKGROUND:

1. As per SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 ("LODR"), the Stock Exchanges used to **impose fines for non-compliances by a listed entity and invoke suspension of trading for consecutive defaults.**
2. In order to maintain uniformity, vide circular dated November 30, 2015, SEBI had taken an initiative and prescribed the procedure to be followed by the Stock Exchanges for levying penalties for violation of Listing Regulations by any listed entity and **mandated a Standard Operating Procedure (SoP)** to follow for suspension and revocation of suspension of trading of specified securities and any deviation therefrom to be recorded in writing with justification. Depositories were also required to freeze or unfreeze the entire shareholding of the promoter and promoter group in such entity.
3. SEBI had observed that some of the non-compliant listed entities have not paid the fines levied by the recognized stock exchanges under provisions of LODR and its circular dated November 30, 2015. Hence for **ensuring effective implementation of SoP and fines** SEBI vide circular dated October 26, 2016 decided to freeze the share holding of promoters and promoter group entities of those non-complaint listed entities to the extent of liability which shall be calculated on a quarterly basis. And in case of non-compliance for two consecutive periods, **freeze the entire shareholding** of the promoter and promoter group in such listed entities and also to freeze any other shares / securities in the demat account of promoter and promoter group (as per discretion of stock exchange) to the extent of liability which shall be calculated on a quarterly basis.
4. On May 03, 2018, in order to streamline the SoP and to adopt the uniform approach in the matter of levying of fines SEBI had issued Circular which superseded the circular dated November 30, 2015 and October 26, 2016.
5. However **after amendment in LODR with effect from 1st April, 2019 there was a need for further streamlining the SoP** for dealing with non-compliances & suspension / revocation of trading.

B. NEW SOP CIRCULAR:

1. Hence, **SEBI had vide circular dated January 22, 2020 (herein after called as “the New SoPCircular”)** revised the approach to be taken by Stock Exchanges for dealing with non-compliances, suspension and revocation of suspension of trading in supersession of SEBI’s earlier circular dated May 03, 2018. The New SoP Circular shall come into force with effect from compliance periods ending on or after March 31, 2020. It may be noted that the circular dated May 03, 2018 would be applicable till the time New SoP Circular comes into force. The provision was kept for the Stock Exchanges, that if it found necessary it may deviate from the approach mandated by SEBI in New SoP Circular, however the reason for same to be recorded in writing.
2. The SoP is without prejudice to the power of SEBI to take action under the securities laws against such non-compliant entities.
3. There are two annexures in the New SoP Circular
 - (a) **Annexure I-** Action to be taken by Stock Exchange for non-compliance; and
 - (b) **Annexure II-** Standard Operating Procedures (SoP)

C. ANNEXURE I FOR ACTION TO BE TAKEN BY STOCK EXCHANGES FOR NON-COMPLIANCES:

1. **Non-compliances:** Additional 10 Regulations of LODR are covered in the New SoP Circular and hence now the fines are standardised for the non-compliances of total **28 regulations of LODR.**
2. **The fines and its accrual:** Fines are specified either **per day or per instances** of non-compliances and mandated in Annexure I. The fines shall **continue to accrue** till the time of rectification of the non-compliance by the listed entity to the satisfaction of the concerned stock exchange or till the scrip of such listed entity is suspended from trading for non-compliance with aforesaid provisions.
3. **IEPF:** Such amount of fine received from the non-compliant listed entities shall be credited to the **"Investor Protection Fund"** of the stock exchange.
4. **Notice to listed entity:** Stock Exchange shall review the compliance status of listed entity and shall issue notice to non-compliant listed entities **within 30 days** from the due date of submission of information. The non-compliant listed entities need **to ensure compliance in next 15 days** and **pay the fines** for such non compliances
5. **Notice to promoters:** In case such non-complaint listed entity fails to comply and/or pay fine, the Stock Exchange shall, **issue notices to the promoter(s)** of such non-compliant entities, to ensure compliance with the requirement(s) and pay fines within 10 days from the date of such notice. Stock Exchange shall also send intimation to other Stock Exchange(s) where the shares of the non-compliant entity are listed.

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6. **Reason to give notice to Promoters:** This change has been brought up *to give anopportunity to promoter to rectify the violation and pay fines.* As there may be some listed entities where the promoters are not on Board of the Company or there may be some possibilities that such listed entity had not complied with the listing regulations in order to purposely hide certain events or information. In such circumstances, the Promoters are suffering due to non-compliance by listed entity and their shareholdings get frozen. Now the Stock Exchange gives opportunity to the Promoters before freezing their shareholding and thus Promoters require to keep a check on compliance status of the listed entity in order to safeguard its securities from being frozen by stock exchange and also to maintain the good governance in entity.
7. **Freezing of Securities of the Promoters:** If the non-compliant listed entity fails to ensure the compliances and pay fine, then the Stock Exchange shall **intimate the depositories to freeze the entire shareholding** of the promoter(s) in such entity as well as all other securities held in the demat accounts.
8. **Depository:** The depository(ies) shall immediately freeze demat accounts of promoters & intimate the promoter about it.
9. **Rectification by non-complaint listed entities:** Subsequently if such non-compliant listed entity complies with the requirements and pays the fine as stipulated in the notice then the Stock Exchange shall intimate the depositories to **unfreeze the shares** which were frozen, immediately from the date of compliance (earlier it was done after one month from the date of compliance) and the Stock Exchange shall **display on its website** details of compliance and fines paid by the listed entity.
10. **No rectification by non-complaint listed entity:** The Stock Exchange may also initiate appropriate enforcement action apart from freezing the shares of promoters.
11. **Placing details before the Board of such non-complaint listed entity:** The Stock Exchange shall also advise such non-compliant listed entity to ensure that the details of non-compliance and action taken by the Stock Exchange in that regard shall be placed before the Board of Directors of such non-complaint listed entity in its next meeting and comments made by the Board shall be informed to the Stock Exchange for dissemination.
12. **Fines:** According to New SoP circular, the Stock Exchanges can impose a fine of Rs 50,000 per instance for non-compliance with obtaining in-principle approval of stock exchange before issuance of securities. The Stock Exchange can levy a fine of Rs 25,000 to listed entity per instance of (a) non-disclosure of Dividend Distribution Policy in Annual Reports and on the websites of the entity (b) for non-convening of Annual General Meeting within a period of five months from the close of the financial year and (c) for not obtaining approval of Stock Exchange before filing request for change of name with the Registrar of Companies

D. ANNEXURE II- STANDARD OPERATING PROCEDURE (SoP) FOR SUSPENSION & REVOCATION OF SUSPENSION OF TRADING OF SECURITIES:

1. In case the listed entity is ***non-complaint of LODR as specified in para 2 of Annexure II (detailed below)***, the Stock Exchange shall, in addition to imposing fine and freezing the shares of Promoters shall take following two actions :

- (a) ***Move the scrip to "Z" category*** as per **Para A** of Annexure II
- (b) ***Suspend Trading*** of such non-complaint listed entity as per **Para B** of Annexure II and **revocation of suspension** of trading as per **Para C** of Annexure II.

2. **Criteria for suspension of the trading in the shares of the listed entities:**

Failure of any of the following eight criteria, the Stock Exchange can initiate action of suspension of trading:

- (a) Failure to comply with regulation 17(1) of LODR with respect to **Board composition** including appointment of woman director for two consecutive quarters;
- (b) Failure to comply with regulation 18(1) of LODR with respect to **constitution of audit committee** for two consecutive quarters;
- (c) Failure to comply with regulation 27(2) of LODR with respect to submission of **corporate governance compliance report** for two consecutive quarters;
- (d) Failure to comply with regulation 31 of LODR with respect to submission of **shareholding pattern** for two consecutive quarters;
- (e) Failure to comply with regulation 33 of LODR with respect to submission of **financial results** for two consecutive quarters;
- (f) Failure to comply with regulation 34 of LODR with respect to submission of **Annual Report** for two consecutive financial years;
- (g) Failure to submit information on the **reconciliation of shares and capital audit report**, for two consecutive quarters;
- (h) Receipt of the **notice of suspension of trading by any other Stock Exchange** on any or all of the above grounds.

Explanation: Any non-compliance of Regulations 17(1) [Board composition] and 18(1) [constitution of Audit Committee] for two consecutive quarters, refers to two complete consecutive quarters (180 days) of non-compliance

3. If the ***non-compliant listed entity rectifies non-compliance***, the Stock Exchange shall:

- (a) neither move the listed entity to "Z" category
- (b) nor suspend trading in the shares of such listed entity.
- (c) However, the entire shareholding of the promoter(s) ***shall remain frozen*** till the non-compliant listed entity complies with the requirement and pays the fines

4. If the ***non-compliant listed entity rectifies non-compliance and pays the fine also***, the Stock Exchange shall

- (a) neither move the listed entity to "Z" category
- (b) nor suspend trading in the shares of such listed entity

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- (c) intimate the depositories to unfreeze the entire shareholding of the promoter(s) in such entity as well as all other securities held in the demat account of the promoter(s) immediately from the date of compliance.
5. If the non-compliant listed entity complies the requirement(s), within 6 months but after the date of suspension, the Stock Exchange shall:
- (a) revoke the suspension of trading as per process prescribed in Para C of Annexure II.
6. If the non-compliant listed entity fails to comply the requirement(s) within 6 months from the date of suspension, the Stock Exchange shall:
- (a) Initiate the process of compulsory delisting of the non-compliant listed entity in accordance with the provisions of applicable regulations like SCRA, 1956, SCR Rules, 1957 and the SEBI (Delisting of Equity Shares) Regulations, 2009.

E. PARA A- SOP FOR MOVING THE SCRIP TO Z CATEGORY:

If a listed entity defaults as per Criteria mentioned above the Stock Exchange shall, in addition to imposing fine move the scrip of such non-complaint listed entity to "Z" category wherein trades shall take place on 'Trade for Trade' basis.

1. The Stock Exchange shall before moving the scrip to "Z" category send a written intimation to non-compliant listed entity calling upon it to comply with requirement within 7 days of the date of the intimation
2. The Stock Exchange shall also give 10 days prior public notice to investors before moving the scrip of the listed entity to "Z" Category and intimate to other Stock Exchanges also.
3. The Stock Exchange shall not move the scripto "Z" category, if such non-compliant listed entity complies with the provisions in 2 working days before the proposed date of movement of the scrip to "Z" category. The Stock Exchange shall give a public notice on its website and intimate other Stock Exchanges, where the shares of the non-compliant entity are listed.
4. If the non-complaint listed entity complies with the requirements and the scrip is not yet suspended, the Stock Exchange shall move back the scrip from "Z" category to the normal trading category. The Stock Exchange shall intimate the other Stock Exchange, where the shares of the non-compliant entity are listed.

F. PARA B- SOP FOR SUSPENSION OF TRADING:

If a listed entity complies with the requirements, the Stock Exchange would not initiate suspension proceedings.

1. The Stock Exchange shall before suspending the trading of script send a written intimation to non-compliant listed entity calling upon it to comply with requirement and pay fines within 21 days of the date of the intimation

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2. The Stock Exchange shall also give **30 days prior public notice to investors** before the date of suspension and intimate to other Stock Exchanges also.
3. The Stock Exchange **shall not suspend the trading**, if such non-compliant listed entity **complies with the provisions in 2 working days** before the proposed date of suspension. The Stock Exchange shall give a public notice on its website and intimate other Stock Exchanges, where the shares of the non-compliant entity are listed.
4. In case of **failure to comply with requirement(s)**, the Stock Exchange shall **suspend** the trading in the shares of a non-compliant listed entity. The Stock exchange(s) shall **send intimation** of suspension to other recognized stock exchange(s) where the shares of the non-compliant entity are listed. The **entire shareholding** of the promoter in the non-compliant listed entity and other securities held in the demat account(s) **shall remain frozen** during the period of suspension.
5. **After 15 days of suspension**, trading in the shares of non-compliant entity may be allowed on **'Trade for Trade' basis**, on the first trading day of every week for 6 months from the date of suspension. In this regard, the Stock Exchange shall also give instruction to its trading members to obtain confirmation from clients before accepting an order for purchase of shares of the non-compliant listed entity on 'Trade for Trade' basis.
6. The Stock Exchange shall put in place a system to **publish a caution message** on its trading terminals, as follows: "Trading in shares of the <Name of the Listed Entity> is presently under 'suspension and trade to trade basis' and trading shall stop completely and compulsory delisting may be initiated if <Name of the Listed Entity> does not become compliant by <Date>

G. **PARA C- SOP FOR REVOCATION OF SUSPENSION OF TRADING:**

1. If the non-compliant listed entity complies with the requirement(s) after trading is suspended in the shares, the Stock Exchange shall on the date of compliance give a public notice on its website informing compliance by the listed entity.
2. The Stock Exchange shall revoke the suspension of trading of its shares after a period of 7 days from the date of public notice.
3. The Stock Exchange shall send intimation of the public notice to other Stock Exchange where the shares of the entity are listed.
4. After revocation of suspension, the trading of shares shall be permitted only in 'Trade for Trade' basis for a period of 7 days from the date of revocation and thereafter, trading in the shares of the entity shall be shifted back to the normal trading category

H. INSTANCES WHERE THE STOCK EXCHANGE TOOK ACTION UNDER SoP CIRCULAR OF MAY 03, 2018:

1. The National Stock Exchange (NSE) after monitoring the compliance of LODR for all its listed entities imposed fines and issued notices to non-compliant companies for quarter ended 31 March 2019.
2. The NSE disclosed that it has penalized about 250 companies for violating LODR. The violations include non-appointment of a woman director, compliance officer and share transfer agent and delay in intimation of board meeting.
3. The companies include Adani Ports and Special Economic Zone Ltd, Bharat Petroleum Corp. Ltd, Jet Airways (India) Ltd, Bharat Heavy Electricals Ltd, Inter Globe Aviation Ltd, IL&FS Engineering and Construction Co. Ltd and Indian Oil Corp. Ltd.

NSE has penalised various companies for following non –compliances

Sr. No.	Default / Non -compliance	No. of Companies
1	Non-compliance with the composition of a board, including appointment of a woman director.	72
2	Non-submission of the statement on shareholder complaints within the stipulated time frame	39
3	Non-compliance with constitution of nomination and remuneration committee	19
4	Non-compliance with the constitution of audit committee	18
5	Non-submission of corporate governance compliance report within the prescribed period	26
6	Non-submission of shareholding pattern within the prescribed period	37

4. In May 2019, India’s biggest stock exchanges have penalized hundreds of companies for non-compliance with LODR. BSE has levied penalties against various companies for late or non-submission of filings and non-compliance with corporate governance requirements based on filings received by the exchange from companies for the March quarter.

BSE has penalised various companies for following non –compliances

Sr. No.	Default / Non -compliance	No. of Companies
1	Non-compliance in appointing a qualified Company Secretary as the Compliance Officer	515
2	Non- compliance with Board composition requirements,	173
3	Non-compliance with composition of Nomination and Remuneration Committee	122
4	Non–submission or delay in submission of shareholding pattern	121
5	Non-submission or delay in submission of Investor complaints report	124

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CONCLUSION: The objective of SEBI is that all listed entities comply with listing regulations (LODR) and follow good corporate governance practice. SEBI specified uniform structure of fines for any non-compliance of LODR and mandated Stock Exchange to take action of fines, suspension of trading or revocation of suspension of trading as per Standard Operating Procedure (SoP) prescribed by it. In order to safeguard the interest of shareholders and investors, in the revised SoP, SEBI has provided more opportunities to such non-compliant entity to comply, before Stock Exchange shifts the scrip to Z category or suspends it.

Further if the listed entity complies with the provisions of LODR but is unable to pay the fines, the Stock Exchange shall neither move the listed entity to Z category nor suspend trading in its shares. Instead, the **entire shareholding of the promoters in such non-compliant entity as well as all other securities held in their demat accounts shall remain frozen** till the compliances are made and fines are paid.

Hence, as a law of natural justice Stock Exchange to issue **notice to the promoter of such non-complaint listed entity, giving them time of 10 days to ensure compliance and pay fines.** Upon expiry of stipulated period mentioned in the notice, Stock Exchange shall **forthwith** intimate depositories to freeze the entire shareholding of the promoter in such non-compliant entity as well as all other securities held in their demat accounts.

The onus of compliance of LODR by the listed entity is thus shifted on the Promoter also.

The link for the New SoP Circular is mentioned below for your quick reference:

<https://www.sebi.gov.in/legal/circulars/jan-2020/non-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-the-standard-operating-procedure-for-suspension-and-revocation-of-trading-of-45752.html>

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