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Bombay Stock Exchange ('BSE') and National Stock Exchange ('NSE') mandates use of Digital Signature for filings on stock exchanges

1. Background:

With the imposition of lockdowns due to outbreak of Covid-19 in 2020, SEBI vide its circulars dt: April 17, 2020 had allowed use of digital signature certification ('DSC') for authentication / certification of filings / submissions made to stock exchanges. Further this facility was extended by SEBI vide its circular dt: July 31, 2020 till December 31, 2020. SEBI further extended this facility vide its circular dt: April 29, 2021 till December 31, 2021. So till December 31, 2021 it was permitted to submit authentication / certification of filings / submissions made to stock exchanges by affixing DSC. This facility was not further extended by SEBI.

2. Amendment:

BSE and NSE have, vide their circulars dated August 1, 2022 and August 2, 2022, respectively, made it mandatory to file announcements under various SEBI Regulations using DSC to stock exchanges except for disclosures / events listed below:-

- a. Outcome of Board meeting which includes only financial result.
- b. Any disclosure in which document(s) issued by entity/ies other than listed company is/are included (For e.g., Auditors certificate, NCLT / other court's order, Credit Rating, etc.);
- c. Newspaper advertisement.
- d. Any other disclosure as specified by Stock Exchanges from time to time.

BSE and NSE in consultation with each and other and with SEBI have decided to make DSC mandatory looking at response from market participants.

3. Some ambiguities in the amendment?

i. BSE and NSE have now made DSC mandatory for filing announcements under various SEBI Regulations. However, the term 'SEBI Regulations' is not defined under both BSE and NSE circulars?

ii. Further it needs to be noted here that SEBI had vide their **earlier circulars** as mentioned above had mentioned that use of DSC is mandatory for authentication / certification of filings/ submissions made to stock exchanges made filings under SEBI (Listing Obligations and Disclosure) Requirements, Regulations, 2015 [**'SEBI LODR'**] **only**. **Now** BSE and NSE have stated that it is mandatory for **various SEBI Regulations**. So does it mean that filings under SEBI (Share Based Employee Benefits and Sweat Equity Shares), Regulations, 2021, SEBI (Prohibition of Insider Trading) regulations, 2015, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI (Infrastructure Investment Trusts) Regulations, 2014 etc, has to be mandatorily made with DSC?

iii. Further **is this circular applicable to REITs, INVITs also?** This circular is addressed to listed companies. So, it is not clear whether the provisions of this circular will be applicable to REITs and InvITs also?

iv. Whether filings under various SEBI, BSE and NSE circulars should also be done with DSC only? Since BSE & NSE Circular says about filing announcements under SEBI Regulations, it needs to be checked whether if any disclosures is required pursuant to any SEBI Circular(s) or any circular(s) issued by BSE or NSE, then whether the filing of same must also be done by affixing DSC especially when the certification or document submitted is onerous/responsible one? Viz. Certificate of compliance with Structured Digital Database under PIT Regulations, disclosure regarding default on unlisted debt as per SEBI circular dt: November 21, 2019, SEBI circular on resignation of Auditors dt: October 18, 2019 etc.

v. Is this circular applicable to debt listed entities also? BSE and NSE have issued this circular under the tab 'Equity segment'. So clarification is needed if this circular is applicable to debt listed companies also?

vi. SEBI had, vide its circular dt: April 17, 2020, mentioned that all filings under SEBI LODR had to be done in DSC. Now in the present circulars, BSE and NSE have made it mandatory for filing announcements under various SEBI Regulations. However, they have made a carve out wherein filings can be done through physical signature, i.e., affixing DSC is not mandatory. One of those carve outs is "Outcome of Board meeting which includes only financial results." With respect to this, it is not clear what does the language '.... only financial results' would mean? Generally, it is seen that in the outcome of board meeting alongwith financial results, there are other agenda items too, which are incidental to financial results, that are also disclosed. Does it mean that when alongwith financial results, other disclosures are also given, DSC must be mandatorily affixed? Or does it mean that while filing disclosure of financials under Regulation 33 on BSE and NSE online filing portals, physical signature can be permitted and when same disclosure is filed under Regulation 30 of SEBI LODR it is not necessary to have physical signature?

vii. Further BSE and NSE have made it mandatory to file announcements under various SEBI Regulations with DSC except for

- disclosure in which document(s) issued by entity/ies other than listed company is/are included (For e.g., Auditors certificate, NCLT / other court's order, Credit Rating, etc.),
- Newspaper advertisement and
- other documents as may be submitted by stock exchange from time to time physical signature has to be affixed.

It is not clear whether BSE and NSE are trying to refer the covering letter for these announcements may be filed in physical signature or the document that is being sent as attachment may be signed in physical signature? It needs to be highlighted here that use of DSC is permitted as per Section 3A of Information Technology Act, 2000. So BSE and NSE may clarify on this point.

Copy of BSE circular can be accessed at below mentioned link:

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20220801-24>

Copy of NSE Circular can be accessed at below mentioned link:

<https://static.nseindia.com//s3fs-public/inline-files/Circular%20on%20use%20of%20digital%20signature%20certificate.pdf>



Best Practices on Investor / Analyst Call–Guidance by BSE & NSE

I. Introduction:

Investor / Analyst call is a means of communication wherein listed entities communicate with stakeholders, investors, analyst, fund managers etc. Securities Exchange Board of India (SEBI), *vide* its amendment dated May 05, 2021 in SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 ('LODR Regulations'), made the submission of audio or video recordings and transcripts of post earnings/quarterly calls in the form of group meetings or group conference calls conducted physically or through digital means, mandatory w.e.f April 01, 2022. In furtherance to this amendment, BSE and NSE had issued a guidance note *vide* their circulars dated June 29, 2021, titled "**Guidance Note on Analyst/Institutional Investors meet**" whereby they have stated that disclosures with regard to group meetings shall be mandatory, whereas disclosure with respect to one-on-one meetings shall not be mandatory.

BSE and NSE have now, *vide* their circulars dt: July 29, 2022 ['July 2022 Guidance Note'] have provided a new guidance note on disclosures pertaining to analyst/institutional investors meet in continuation to the guidance note issued in 2021 and also industry best practices in this regard.

II. Objective of this Guidance note:

There were varied market practices being followed for conducting investor /analyst call by various listed entities as there is no standard procedure prescribed for conducting investor / analyst call.

Now BSE and NSE have provided guidance, in continuance to the existing regulatory framework, to further acquaint the listed companies with the existing regulatory requirement and also the industry best practices surrounding the reporting of analysts / institutional investor meet / conference calls made to Exchange to encourage listed companies to proactively disclose all material information that not only help investors in decision making but also helps listed entities in building trust with various stakeholders. July 2022 Guidance Note can be used only for benchmarking reporting procedures.

III. Ambiguity whether this circular is mandatory in nature or only advisory?

It needs to be noted that July 2022 Guidance Note is given by BSE and NSE by way of a circular. As per clause 2(ii) of uniform listing agreement, which would have been entered by all listed entities with stock exchanges where they are listed under Regulation 109 of SEBI LODR Regulations, it is mandatory for every listed entity to comply with all circulars issued by the stock exchange(s). So it is not clear whether circular dt: July 29, 2022 has to be complied with mandatorily or it is just for benchmarking purpose?

IV. Guidance on schedule of one-to-one investor meet:

Pursuant to Regulation 30 read with Point 15(a) of Schedule III and as per Regulation 46(2)(o) of **SEBI LODR Regulations**, it was stated that disclosure of schedule of group meet of analyst or institutional investors shall be given to stock exchanges. **There was no mention of** whether disclosure of schedule **one-to-one analyst or institutional investors meet** has to be given or not – mandatorily or voluntarily? **BSE *vide* its circular dt: June 29, 2021 had stated that** disclosure of schedule of group meets (including schedule and post meeting disclosures) shall be mandatory, whereas disclosure of schedule with respect to **one-on-one meetings shall not be**

mandatory. Now BSE and NSE have vide **July 2022 Guidance Note** have mentioned that the disclosure of the schedule of group meetings / conference calls conducted physically or through digital was mandatory thereby making disclosure of schedule of **one-to-one meeting voluntary** is also one of the best practices followed by industry.

It must be noted that till now it was mentioned that disclosure relating to one-to-one meetings was not mandatory. Now it has been mentioned that although disclosure of one-to-one meetings is voluntary, it is one of the best practices among industry. Taking clue from this, if listed entities start disclosing about one-to-one meets also, but only for selective one-to-one meets only (as it is voluntary to disclose), then it may have a serious impact and may amount to selective disclosure of information and may be considered as a violation of SEBI PIT Regulations. Hence, if listed entities want to disclose about one-to-one meets also, then consistency needs to be ensured in such disclosures.

V. Need for alteration in Archival policy:

July Guidance Note 2022 has mentioned that if regulatory authority initiates any investigation on any agenda of any investor / analyst call then transcripts of that investor /analyst call shall be preserved till the investigation gets over.

However, as per Regulation 9 of SEBI LODR Regulations, listed entities are required to form an archival policy. As per Reg. 46(2)(oa)(ii)(a) of these Regulations, transcripts of the investor / analyst call shall be preserved for a period of five years on the website of listed entity and later on, it shall be maintained as per archival policy.

Now pursuant to this July 2022 Guidance note it needs to be noted that BSE and NSE have stated that transcripts of investor/analyst call shall be maintained till investigation by regulatory authorities is completed. So due to this amendment, there is a need for alteration to be done to the archival policies of listed entities to this effect.

Following are the highlights of the the best practices suggested by BSE & NSE by way of July 2022 Guidance note:

A. Pre- call

- Notice of earnings / open ended call / meet be hosted on company's website and be submitted to the Exchange well in advance.
- Recommended to provide the following minimum but not limited to the said details in disclosures of schedule of analysts / investors meet:
 - Details pertaining to the meet / call,
 - Mode of attending, details pertaining to registrations,
 - Disclaimers/note to complete/ease registration/attending the call,
 - Details regarding specific platform requirements, if any,
 - Inclusions/exclusions of audience/participants if any,
 - Such other details as applicable.
- Presentation of earnings / open ended meet / call be submitted to the Exchange and be uploaded on company's website in advance of such meet / call.

B. During Call

- Disclaimer / confirmation be added in the disclosure stating that 'Company will be referring to publicly available documents for discussions during interaction in the meet/call' or 'No unpublished price sensitive information is proposed to be shared during the meeting / call' to create confidence and maintain sanctity of the meet / call.
- Recommended that disclosing an UPSI during discussion in any meet / call be avoided;
- If UPSI disclosed whether voluntarily / involuntarily, is mandated under PIT Regulations / the earlier Guidance note dated June 29, 2021, to provide a prompt disclosure on

occurrence of such instance.

C. Post Call

- Recommendations that listed companies can undertake to improvise the disclosures and record keeping of transcripts & recording by:
 - i. Attachment of the copy of transcript to the corporate announcement submitted to the Exchange
 - ii. Providing exact web link to the website of the listed company instead of the home page where the document is uploaded.
 - iii. List of management attendees
 - iv. Recording the dialogues including but not limited to the presentation, the Q&As', any assents / dissents and open points.
 - v. Confirmation that no unpublished price sensitive information was shared/discussed in the meeting / call.
 - vi. Readable pdf to be uploaded.

Copy of circulars can be accessed at below mentioned link:

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20210629-44>:

BSE circular June 29, 2021

https://static.nseindia.com//s3fs-public/inline-files/NSE_Circular_29062021.pdf .:

NSE circular dt: June 29, 2021

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20220729-18>:

BSE circular July 29, 2022

<https://static.nseindia.com//s3fs-public/inline-files/Guidance%20note%20on%20disclosures%20pertaining%20to%20analysts%2C%20institutional%20investors%20meet%20and%20best%20practices.pdf>:

NSE circular July 29, 2022



SEBI mulls for system driven trading window closure

1. Background: One of the key principles of SEBI (Prohibition of Insider Trading) Regulations 2015 ("PIT Regulations") is given in Regulation 4 which prohibits any insider to trade in listed / proposed to be listed securities when in possession of unpublished price sensitive information ("UPSI"). Clause 4 (1) of Schedule B (which lists out minimum standards for code of conduct for listed entities to regulate, monitor & report trading by designated persons ("DPs")) read with Regulation 9 of PIT Regulations, prescribes for a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a DP or class of DPs can reasonably be expected to have possession of UPSI. DPs and their immediate relatives shall not trade in securities when the trading window is closed".

One of the instances of closure of trading window is provided in Clause 4 (2) of Schedule B read with Regulation 9 of PIT Regulations, which inter-alia states that "trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results.....".

Securities and Exchange Board of India ("SEBI") is trying to put an additional barrier by taking technology's help to ensure this compliance through freezing of PAN of DPs during this period.

2. Amendment: SEBI has now, vide its circular dt: August 5, 2022 [**'Blocking of trades circular'**] has directed Stock Exchanges and Depositories to develop a system to restrict trading by DPs of listed company during trading window closure period. SEBI has provided a detailed procedure of implementation of this circular on the basis of systems to be brought in place by depositories and stock exchanges. SEBI has clarified that blocking will be done on PAN basis at security level. This procedure is given at Annexure A of this Blocking of trades circular.

3. Applicability: Provisions of this circular shall be made applicable to companies that are or were part of NIFTY 50 **and** SENSEX companies from September 30, 2022. SEBI has directed depositories to provide operational guidelines for listed companies. SEBI has further asked Compliance Officers and DPs of listed companies to continue to independently comply with the obligations under PIT Regulations, as applicable to them, till further communication.

4. Anomalies:

(i) Intimation of Board Meeting date: SEBI has directed listed companies to update start date and end date of trading window closure for quarterly/half yearly financial results on designated depository portal two trading before commencement of trading window closure at the end of every quarter

['Blocking of Trades Period']. So a question arises that whether listed companies will have to fix and specify the date of audit committee and board meeting date on designated depository portal at the end of quarter itself? Further whether the date also needs to be informed to stock exchanges at that time only, i.e., while intimating trading window closure or company can separately intimate the date of meetings as per the requisite no. of days (i.e., 5 days) before board meeting?

(ii) Whether all DPs or selected DPs?: Further it is not clear whether listed companies will get option to select as to which DP's PAN is to be blocked as appearing on Designated Depository portal or blocking will be done for all Designated Persons? Further

(iii) Addition/deletion of DP and its effective date: SEBI has stated that during Blocking of Trades Period, if any new DP has joined or if any DP has left the listed company during Blocking of Trades Period, then his name and PAN or other identifier number shall be uploaded or deleted on Designated Depository and accordingly his trades shall be blocked from second trading day after his name has been added. For example, assuming the trading window closure period is October 01 - 15, 2022 and if the listed company adds/deletes name of any designated person on October 10, 2022, then the change i.e., freeze/de-freeze shall be affected on or before October 12, 2022. So, if listed entity is aware that a particular employee is proposed to be joining during Blocking of Trades Period and he is going to be designated person, then whether his details need to be taken on the date of joining or even before that and be uploaded on Designated Depository portal? This is because what if the Designated Persons trades during the period between from October 10 to October 12, 2022 (in above example) or within two trading days from the date of joining, as the case may be?

(iv) Does Blocking of Trades Circular require re-look at policy as to how and when employees are brought under the purview of DPs designated persons under SEBI PIT Regulations? As per Regulation 9A (2)(a) read with Schedule B, Point 15 of SEBI PIT Regulations, 2015, listed company is required to put in place internal controls to identify designated persons. So, if Code of Conduct of a listed company provides that employees will be identified as designated persons only with approval of audit committee or any analogous authority and there is no delegation of power in this regard, then it may pose difficulties to listed companies to identify any person as DP and upload his PAN or other identifier number on the portal of designated depository without approval of audit committee. Hence, there appears a need to alter the code of conduct to this effect.

(v) What if DP does not hold any shares? If a DP states that he does not hold any shares of listed company, then whether his name has to be uploaded on the designated depository portal or not? The purpose of Blocking of Trades Circular is to prevent inadvertent trading during trading window closure. So even if a DP is not holding shares in a listed company, then still whether

blocking of his PAN or other identifier number at security level needs to be done?

(vi) Participation in corporate action during blocking of trades? SEBI has stated that provisions of Blocking of trades circular is applicable for cash and derivatives market. So, trading in these two segments of market for listed entity security is blocked. But it is not clear whether during the Blocking of Trades Period DPs will be able to participate in open offer, rights offer, buyback offer, credit of bonus issue will be allowed etc or not?

(vii) What if there are more than one UPSI during the time when company is in the process of preparation of financial results? Blocking of Trades Circular is intended to block trades for those designated persons who have access to UPSI relating to financial results. So, if a particular DP has any UPSI other than financial results too, and that other UPSI might be expected to remain UPSI even beyond the date of declaration of financial results, then whether unblocking of such DP's PAN post declaration of financial results should be permitted?

We hope all the above anomalies might get cleared once the process of blocking of PAN gets started from September 30, 2022.

SEBI circular can be accessed at below given link:

<https://www.sebi.gov.in/legal/circulars/aug-2022/trading-window-closure-period-under-clause-4-of-schedule-b-read-with-regulation-9-of-sebi-prohibition-of-insider-trading-regulations-2015-framework-for-restricting-trading-by-designated-persons-b-61781.html>



Pending QIP Issue, its pricing and probable impact on share capital of the company is UPSI!!

I. Background:

The Board of directors of **Deepak Nitrite Ltd ('DNL')** had announced Qualified Institutional Placement (QIP) of equity shares of DNL upto Rs. 2000 crore at its meeting held on December 22, 2021. The shareholders of company had approved the QIP by way of Special resolution passed by Postal Ballot on January 27, 2022. The board of directors, in their meeting held on January 24, 2022, had approved Unaudited Financial Statements (UFR) for the Quarter and nine months period ended December 31, 2021. The said UFR had been submitted to stock exchange within prescribed timeline.

The QIP was to be launched at an appropriate time as may be decided by Board of Directors or any Committee duly authorised in this behalf.

The promoters/ promoter group wished to purchase Equity shares of the company from open market in compliance with the code of conduct of the Company on Prohibition of Insider Trading.

II. Informal Guidance sought:

DNL sought an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 on the issue that

(1) Whether pending QIP issue, its pricing, and probable impact on the share capital of the company, which is not yet known and shall be determined as per ICD regulations, be considered as Unpublished Price Sensitive Information (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations")?

(2) In view of above, whether individual promoters which include the Chairman & Managing Director and Executive Director and CEO of the Company or any member of the promoter group purchase shares of Company from open market during pendency of QIP?

III. Reply given by SEBI:

(1) SEBI clarified that the QIP issue will increase the capital of the Company and in turn lead to **"change in capital structure"** of the Company. Change in capital structure of Company is *per se* UPSI as per Regulation 2(1)(n)(iii) of PIT Regulations. Hence **pending QIP issue, its pricing & probable impact on the share capital of the company, is UPSI** in terms of PIT Regulations.

(2) SEBI further clarified that Chairman & Managing Director and Executive Director and CEO of the company are "connected persons" and thereby deemed

to be insiders in terms of Regulation 2(1)(g)(i) read with 2(1)(d)(i) of PIT Regulations 2015. Further, based on facts and circumstances of each case, a member of the promoter group may deem to be “connected persons” or may be in possession of UPSI. Hence, member of promoter group may also be covered under definition of Insider.

While opining on this SEBI also highlighted the provisions of Regulation 3 of (Prohibition of Insider Trading) Regulations, 2015 which inter-alia prohibits communication or procurement of UPSI except if it is for legitimate purpose, Regulation 5 which provides for framing trading plan when a person is in perpetual possession of UPSI, and proviso to Regulation 4 (1) which provides for circumstances which an insider may demonstrate to prove his innocence.

Copy of the informal guidance can be accessed at the below mentioned link:

https://www.sebi.gov.in/sebi_data/commondocs/jul-2022/Deepak_Nitrite_IG_p.pdf

Contributors:

Deepti Jambigi Joshi
Partner
deeptijambigi@mmjc.in

Vallabh Joshi
RnD Team
vallabhjoshi@mmjc.in

Varun Shah
RnD Team
varunshah@mmjc.in