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SEBI TIGHTENS CORPORATE GOVERNANCE NORMS THROUGH VERIFICATION OF MARKET RUMOURS BY LISTED COMPANIES

Introduction

To reduce price speculation and prevent false market sentiments arising from information asymmetry concerning key events that affect listed companies or their securities, the Securities and Exchange Board of India (“SEBI”), vide the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 notified on June 14, 2023 (“**Amendment Regulations**”) has introduced a requirement for eligible listed companies to confirm, clarify or deny market rumours relating to an impending specific material event or information that concerns their listed securities.

The Amendment Regulations have brought about various landmark changes to the disclosure regime and has introduced new compliance obligations for listed companies. Within this backdrop, the verification of market rumours by listed companies impacts multiple stakeholders and has therefore been the subject of extensive discourse.

1. Please explain the amendment in respect of verification of market rumours by listed companies.

The Amendment Regulations have amended Regulation 30 (11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR**”) to provide for mandatory confirmation/ clarification/ denial of any reported event or information in the mainstream media, by a listed company (“**Market Rumour Amendment**”). The Market Rumour Amendment comes in the backdrop of multiple consultation papers and proposals deliberated upon by the SEBI prior to the release of the Amendment Regulations.

However, in order to be confirmed, clarified or denied by the listed company, the reported information must meet the following

criteria: (i) it should not be general, rather specific and material in nature, and (ii) it should be indicative of the fact that the underlying information discussed within the market rumours is a disclosable material event or information under Schedule III of the LODR.

The Market Rumour Amendment is applicable to the top 100 listed companies from October 1, 2023, and to the top 250 listed companies from April 1, 2024 (each of which shall be determined based on the market capitalization of the listed companies, as at the end of immediately preceding financial year). Therefore, as on October 1, 2023, the top 100 listed companies shall be the top 100 listed companies as on March 31, 2023. As on April 1, 2024, the top 250 listed companies would be those as on March 31, 2024.

In addition to the aforementioned, once the obligations are applicable to a listed company, the listed company must confirm/ clarify/ deny reported events or information “as soon as reasonably possible, but not later than 24 hours from the reporting of such events or information”. Once a listed company has confirmed a reported event or information, it shall also provide the current stage of such reported event or information to the general public.

2. What is the scope of the term “mainstream media”, as defined within the Market Rumour Amendment?

The newly inserted definition of “mainstream media” extends to a print or electronic mode of: (i) newspapers registered with the Indian Registrar of Newspapers; (ii) permitted news channels as per the Ministry of Information and Broadcasting; (iii) content of a “publisher of news and current affairs content” as defined within the Information Technology (Intermediary Guidelines and Digital Marketing Ethics Code) Rules, 2021 (“**Ethics Code**”); and (iv)

content within permitted or regulated newspapers, news channels or other news and current affairs from jurisdictions other than India.

This is to be read with the scope of the term “publisher of news and current affairs content” in the Ethics Code, which includes online papers, portals, aggregators, agencies that are similar to publishers of news and current affairs content, but are not newspapers, or e-papers of any newspaper. Interestingly, this also extends to individuals or online users that transmit content for business, professional or commercial activity (which may mean content disbursed by online bloggers or influencers via written blogs or videos).

The total number of registered publications in India, in FY 2021-22, was 1,46,045. Additionally, nearly 40% of the world uses social media and may receive news through online forums. Therefore, the Market Rumour Amendment covers a broad spectrum of sources of news and reporting.

3. What are the implications of a listed company not following the Market Rumour Amendment?

In case a listed company having the obligation to confirm, deny or clarify a reported event fails to do so, it would constitute as a breach of Regulation 30 (11) of the LODR. By way of extension, it will also lead to a breach of the “Principles of Fair Disclosure for the purposes of Code of Practices and Procedures for Fair Disclosure of UPSI” read with Regulation 8 (1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015. There are no specific provisions within the LODR that currently prescribe or govern the penalty for non-adherence to Regulation 30 (11) of the LODR. However, there are past precedents of SEBI having invoked Section 15H of the SEBI Act, 1992 to impose monetary penalties on listed companies for an absence of clarification, confirmation or denial of material market rumors (which have been briefly summarized below)

Section 15H of the SEBI Act, 1992 allows SEBI to impose penalties on contraventions that do not have a specific penalty under any SEBI regulations. Any penalty imposed under this section shall not be less than INR 1,00,000 (Indian Rupees One Lakh Only) but may extend up to INR 1,00,00,000 (Indian Rupees One Crore Only). Such penalties may be in addition to any actions that SEBI may take under the residuary powers provided to it under the SEBI Act, 1992.

4. Are there any precedents where SEBI has penalized non-clarification of market rumors by listed companies?

It is noteworthy that prior to the Market Rumour Amendment, penalizations for non-clarification have generally been low, as the mandatory obligation to clarify/ confirm/ deny, which is now prescribed within Regulation 30 (11) of the LODR, was absent. Regulation 30 (11), prior to the Market Rumour Amendment, provided that a listed company may, by its own initiative, confirm or deny any reported event or information to a stock exchange. However, there have been some instances where SEBI has delved into this question within the previous regime.

A key precedent is SEBI’s adjudication order in the matter of Reliance Industries Limited dated June 20, 2022. In this case, SEBI penalized Reliance Industries Limited for non-clarification of market rumors pertaining to its impending deal with Facebook. However, the adjudication order was stayed by the Securities Appellate Tribunal in its order dated September 27, 2022, on

grounds that the law did not impose a mandatory obligation to clarify market rumours.

Another interesting example is that of Zomato and its acquisition of Blinkit. On June 29, 2022, the investors of Zomato wrote a letter to SEBI complaining that there were market rumors and speculation of the acquisition of Blinkit by Zomato, however the absence of a timely confirmation/ denial of such speculations by Zomato had led to the investors incurring losses, as they were unaware of the deal till it was announced much later on June 24, 2022.

5. Do other jurisdictions have a similar framework?

India follows suit from practices across leading jurisdictions in this respect.

For instance, the Corporate Disclosure Policy of the Singapore Exchange (“SGX”) and the New York Stock Exchange Listed Company Manual broadly require listed companies to respond to market rumours in the following manner: (i) any rumours or unusual market activity indicating that information has been leaked is to be clarified through a frank and explicit announcement; (ii) false and inaccurate rumours must be promptly denied/ clarified with an accompanying statement indicating that the listed company is unaware of any corporate developments alluding to such rumour; and (iii) accurate rumours are to be clarified with a candid statement on the current state of negotiations and corporate plans connected to the rumour.

The SGX Corporate Disclosure Policy additionally requires listed companies to undertake “reasonable efforts” to apprise the source of the veracity of information disclosed by them, in case such information is incorrect. It also states that clarifications in respect of a rumour/ report predicting future sales or earnings etc. is required only if such rumour impacts the price activity of its listed securities.

Thus, the Market Rumour Amendment borrows key features from the listing rules across developed countries to create a framework for added governance of listed companies in India.

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