

FE Get the latest news on the Stock Market, Personal finance throughout the day.
 Notifications can be turned off anytime from browser settings.

Don't Allow Allow

SENSEX PERFORMANCE	NSE TOP GAINERS	NSE TOP LOSERS	BSE TOP GAINERS
BSE Sensex ₹78041.59 ↓ -1176.46 ↓ -1.49%	HDFC Life ₹823.8 ↑ 25.0 ↑ 3.04%	Axis Bank ₹28.17 ↓ 20.70 ↓ 7.32%	JCIAM ₹8.15 ↑ 0.8 ↑ 9.8%

MUST READ

IMD predicts severe cold wave in Himachal Pradesh and Jammu-Kashmir for next seven days ◀ ▶

Business News / Opinion / Board Observers In The Spotlight

Board observers in the spotlight

At present, RBI does not see any middle ground for NBFC investors acting as observers.

Written by [Quest](#)

December 19, 2024 04:45 IST



NBFCs have to tackle the perennial issue of raising capital at frequent intervals to grow. (Image/Reuters)

By [Viral Mehta & Khyati Dalal](#)

Two recent regulatory developments have brought the role of board observers into the spotlight. A few months back, the Competition Commission of India (CCI) amended the rules that exempted combinations from its notification requirement. Previously, to qualify for an exemption, acquirers could not acquire any special rights in the target entity—rights unavailable to ordinary shareholders. These special rights included the full range of contractual rights such as director and observer rights, as well as information and inspection rights. However, the only explicitly specified right in the old regulations was the right to appoint a director. The CCI's new exemption rules now explicitly include the right to appoint a board observer. This move clearly indicates that the CCI sees no differentiation between directors and board observers when it comes to the ability to exert 'material influence' over the management and affairs of the target entity.

The Reserve Bank of India (RBI) seems to have gone a step further. A few days ago, it was reported that the central bank instructed various non-banking financial companies (NBFCs) to remove observers from their boards and instead consider appointing them as directors. The RBI's stand has caught investors, who currently have appointed board observers in NBFCs, by surprise. Considering these developments, it is crucial to assess the role that board observers play within a company.

Also Read

- NBFC loans: Balancing growth and risk in a changing...**
- Placing Indian agriculture on the global map**
- Wealth tax: A bad idea**
- Transforming rural health systems**

Board observers are generally appointed by investors to exercise oversight over their portfolio companies. An observer right is a contractual one that companies grant to investors so that they can monitor their investment. Observers perform similar functions to directors, such as attending board

RELATED NEWS

- Radical overhaul of shipping laws**
- Board observers in the spotlight**
- Transforming rural health systems**
- Wah Ustad! The Taj of Tabla**
- Can Trump save dollar hegemony?**

FE Shorts

SpiceJet expects 3 grounded B737 MAX planes to return to service by April

Business 8 hr ago

SpiceJet expects three Boeing 737 MAX aircraft to be operational by April 2022, partnering with US-based MRO provider StandardAero to restore its fleet. The airline aims to bring all 36 grounded aircraft, including seven 737 MAX planes, back into service by 2026. It has also resolved...

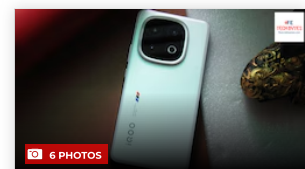
STOCK ACTION

NSE
 BSE

Name	LTP	Chg
Nifty 50	23,738.20	150.70 0.64%
Nifty Bank	51,044.40	285.20 0.56%
Nifty Next 50	69,096.40	393.75 0.57%
Nifty 100	24,597.30	148.45 0.61%
Nifty 200	13,452.95	79.05 0.59%

[VIEW ALL](#) →

PHOTO GALLERY



meetings and participating in board decisions. They can also receive information that is sent to them. The main difference between them is that, unlike directors, they do not have voting rights. Since they cannot vote, they are not responsible for the board's decisions. When these decisions go wrong, it is this aspect that seems to have irked the RBI. The central bank views their position as being akin to that of directors, but because they are not subject to the duties imposed on directors, they can avoid liability when things go wrong.

The duties of directors are established by law. The Companies Act, 2013 (Companies Act) mandates that they exercise independent judgement, along with reasonable care, skill, and diligence, and avoid conflicts of interest. Directors of NBFCs have additional responsibilities, some of which are even more onerous than those imposed by the Companies Act. For instance, the RBI's regulatory framework for NBFCs requires NBFCs to have a board-approved policy to ensure directors meet the 'fit and proper' criteria. The framework also requires directors to sign an undertaking and a deed of covenants that outline their specific duties and obligations. As a result, being a director of an NBFC comes with significant potential consequences if issues arise. Conversely, board observers are considered a safer option, as they are not liable for such responsibilities. Nonetheless, liability concerns are not always the primary reason that investors opt to be observers instead of directors. In fact, most investors nowadays require their portfolio companies to maintain a robust directors and officers insurance policy. Consequently, they don't view director liability as a substantial risk that would lead them to forgo board participation rights entirely. There are other reasons that sometimes prompt them to choose observers over directors.

Take, for example, an NBFC that already has multiple existing investors and desires to raise further capital from a new investor. The new investor wants the right to appoint a director, but the NBFC is unwilling to grant it either because its investment is relatively small, or the board is too large to accommodate another member. In this situation, while the new investor favours obtaining a board seat, it is the NBFC that is opposed to this arrangement. As a result, the NBFC needs to carry out a balancing act. Negotiations can get tricky and go either way depending on the bargaining power of the parties. If neither party is willing to budge, an observer right can be a useful tool to break the impasse and achieve an acceptable outcome for both parties. Therefore, rather than adopting an all-or-nothing approach, the RBI could consider permitting cases in which there may be a legitimate need to grant observer rights to get the deal over the line.

The other concern with the RBI's stand is that it may require NBFCs to renegotiate closed deals. NBFCs may have to reopen negotiations and convince their existing investors to forgo their observer rights. They may even need to recast their board's composition if the investors insist on a directorship in exchange for relinquishing their observer rights. Hence, to avoid upsetting settled transactions, it may be prudent for the RBI to clarify that its stand is prospective in nature and will not impact past transactions.

NBFCs have to tackle the perennial issue of raising capital at frequent intervals to grow. Imposing such restrictions could complicate their efforts to attract investors willing to provide essential funding for growth. Therefore, a more measured approach by the RBI might be favourable for both investors and NBFCs, such as prescribing notification or approval requirements for appointing board observers or placing a limit on the number of board observers an NBFC is allowed to have. However, at present, the RBI's message to investors of NBFCs seems to be clear: either take a board seat or have no board presence at all. It does not see any middle ground between these two extremes.

The authors are with Nishith Desai Associates.

Disclaimer: Views expressed are personal and do not reflect the official position or policy of [FinancialExpress.com](https://www.financialexpress.com). Reproducing this content without permission is prohibited.

TOPICS NBFC RESERVE BANK OF INDIA

Get Live [Share Market](#) updates, [Stock Market Quotes](#), and the latest [India News](#) ... [Read More](#)

First published on: 19-12-2024 at 04:45 IST


STOCK MARKET STATS

FE Get the latest news on the Stock Market, Personal finance throughout the day. Notifications can be turned off anytime from browser settings.

iQOO 13 launched in India: Flagship specs, price starts at Rs 54,999
3 weeks ago



In pictures| Delhi's air quality plummets: National Capital gasping for breath as AQI dips to 'severe plus' category
1 month ago



US Election 2024 In Pictures: Trump's victory fills the air with excitement but Harris' 'heart is full'
1 month ago

[View More](#) →

Today's Commodity Rate
23 DEC, 2024 **Mumbai** ▾

GOLD(18K)	₹5734.5/GM	₹0.00 ↕	>
SILVER	₹882.7/10GM	₹0.00 ↕	>
PETROL	₹103.5/LTR	₹0.00 ↕	>
DIESEL	₹90.03/LTR	₹0.00 ↕	>


[VIEW GOLD RATE TRENDS](#) >

LATEST NEWS

Air Orca eVTOLs Deployed by Indian Armed Forces to Enhance Logistics in High-Altitude Regions



Germany police arrests driver after car rams market crowd killing two, injuring 60



Crime Branch to probe FIR against Rahul Gandhi and Congress' counter-complaint in Parliament scuffle case



Weather Update: IMD predicts severe cold wave in Himachal Pradesh and Jammu-Kashmir for next seven days; Check full forecast here



Denmark Jobs: New salary declaration rule for work and residence permits of foreign workers



TRENDING TOPICS



Get the latest news on the Stock Market, Personal finance throughout the day.

Notifications can be turned off anytime from browser settings.

INCOME TAX CALCULATOR

SILVER RATE TODAY

GOLD RATE TODAY IPO

STOCK MARKET QUOTES

MUTUAL FUNDS

WAAREE ENERGIES IPO 2024 LIVE

TOP CATEGORIES

MARKET | JOBS | INDIA NEWS | BUSINESS | MONEY | HEALTH CARE | JOB CARRIER | LIFE | PHOTOS | LIFESTYLE | NDA VS INDIA LOK SABHA ELECTION | MAHARASHTRA ELECTION

STOCK MARKET STATS

MARKET STATS | NSE TOP GAINERS | NSE TOP LOSERS | BSE TOP GAINERS | BSE TOP LOSERS | INDICES PERFORMANCE | NIFTY 50 | BSE SENSEX PERFORMANCE | STOCK MARKET QUOTES

TOP NSE/BSE COMPANIES SHARE PRICE

TOP NSE/BSE COMPANIES SHARE PRICE | TATA MOTORS SHARE PRICE | TATA STEEL SHARE PRICE | STATE BANK OF INDIA SHARE PRICE | HDFC BANK SHARE PRICE | INFOSYS SHARE PRICE | ITC SHARE PRICE | WIPRO SHARE PRICE | NTPC SHARE PRICE | ONGC SHARE PRICE | ADANI ENTERPRISES SHARE PRICE | ADANI PORTS AND SPECIAL ECONOMIC ZONE SHARE PRICE | BHARAT PETROLEUM CORPORATION SHARE PRICE | COAL INDIA SHARE PRICE | BAJAJ FINANCE SHARE PRICE | ICICI BANK SHARE PRICE | TITAN COMPANY SHARE PRICE | LARSEN & TOUBRO SHARE PRICE | POWER GRID CORPORATION OF INDIA SHARE PRICE | ASIAN PAINTS SHARE PRICE | HINDUSTAN UNILEVER SHARE PRICE | HCL TECHNOLOGIES SHARE PRICE | HINDALCO INDUSTRIES SHARE PRICE | BAJAJ AUTO SHARE PRICE | NESTLE INDIA SHARE PRICE | AXIS BANK SHARE PRICE | JSW STEEL SHARE PRICE | TRENT SHARE PRICE | TECH MAHINDRA SHARE PRICE | RELIANCE INDUSTRIES SHARE PRICE | SUN PHARMACEUTICAL INDUSTRIES SHARE PRICE | BAJAJ FINSERV SHARE PRICE | ULTRATECH CEMENT SHARE PRICE | CIPLA SHARE PRICE | INDUSIND BANK SHARE PRICE | BHARTI AIRTEL SHARE PRICE | EICHER MOTORS SHARE PRICE | BRITANNIA INDUSTRIES SHARE PRICE | HERO MOTOCORP SHARE PRICE | GRASIM INDUSTRIES SHARE PRICE | SHRIRAM FINANCE SHARE PRICE | APOLLO HOSPITALS ENTERPRISE SHARE PRICE | MARUTI SUZUKI INDIA SHARE PRICE | KOTAK MAHINDRA BANK SHARE PRICE | MAHINDRA & MAHINDRA SHARE PRICE | TATA CONSUMER PRODUCTS SHARE PRICE | SBI LIFE INSURANCE COMPANY SHARE PRICE | TCS SHARE PRICE | DR. REDDYS LABORATORIES SHARE PRICE | HDFC LIFE INSURANCE COMPANY SHARE PRICE

STOCK PRICE QUOTES

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z | OTHERS

POPULAR CAR MODELS

ALTO K10 | MARUTI BALENO | ERTIGA | SWIFT | DZIRE | FRONX | WAGON R | MARUTI SUZUKI BREZZA | GRAND VITARA | HYUNDAI CRETA | HYUNDAI VENUE | MAHINDRA THAR | SCORPIO N | XUV 3XO | KIA SELTOS | KIA SONET | TATA NEXON | TATA PUNCH | TOYOTA FORTUNER | TOYOTA INNOVA CRYSTA | TATA CURVV | MAHINDRA THAR ROXX | HYUNDAI ALCAZAR | MAHINDRA BOLERO | MAHINDRA SCORPIO | HONDA ELEVATE | MARUTI SUZUKI EECO | MARUTI SUZUKI CELERIO | HONDA AMAZE | HONDA CITY | TOYOTA HYRYDER | KIA CARNIVAL | TATA SAFARI | TATA TIAGO | TATA HARRIER | MARUTI SUZUKI S PRESSO | MARUTI SUZUKI INVICTO | TOYOTA RUMION | TOYOTA TAISOR | TOYOTA GLANZA | MAHINDRA XUV700

POPULAR BRANDS

HYUNDAI CARS | MAHINDRA CARS | MARUTI SUZUKI CARS | TATA CARS | TOYOTA CARS | KIA CARS | HONDA CARS | BEST POPULAR CARS

TOP COMMODITIES

GOLD RATE TODAY | GOLD RATE IN CHENNAI | GOLD RATE IN KERALA | GOLD RATE IN HYDERABAD | GOLD RATE IN BANGALORE | GOLD RATE IN MUMBAI | GOLD RATE IN NOIDA | GOLD PRICE IN DELHI | GOLD PRICE IN AHMEDABAD | GOLD PRICE IN KOLKATA | SILVER RATE TODAY | SILVER RATE IN BANGALORE | SILVER RATE IN AHMEDABAD | SILVER RATE IN HYDERABAD | SILVER RATE IN CHENNAI | SILVER RATE IN JAIPUR | SILVER RATE IN MUMBAI | SILVER RATE IN DELHI | SILVER RATE IN NOIDA | SILVER RATE IN LUCKNOW | PETROL PRICE | PETROL PRICE IN DELHI | PETROL PRICE IN MUMBAI | PETROL PRICE IN BANGALORE | PETROL PRICE IN HYDERABAD | PETROL PRICE IN CHENNAI | PETROL PRICE IN KOLKATA | PETROL PRICE IN PUNE | DIESEL PRICE | DIESEL PRICE IN DELHI | DIESEL PRICE IN BANGALORE | DIESEL PRICE IN MUMBAI | DIESEL PRICE IN HYDERABAD | DIESEL PRICE IN CHENNAI | DIESEL PRICE IN CHANDIGARH | DIESEL PRICE IN JAIPUR | DIESEL PRICE IN LUCKNOW

TRENDING STORIES

India Election Results 2024 Highlights: Nitish Kumar, Chandrababu Naidu attend NDA meet at Modi residence, INDIA huddle shortly

PSEB 10th Result 2024 Highlights: Results OUT at psebac.in, how to check, direct link to scoreboard

BSEB Bihar Board 10th Result 2024 Live Updates: Result declared at bsebmatric.org

Happy International Women's Day 2024: Share wishes, greetings, and messages with friends and family

MARKET DATA

Maha Shivratri 2024: Spread festive wishes and quotes to commemorate this special occasion

Lok Sabha Election Commission: Congress CEO Gandhi's can Wayanad sea candidate to



Get the latest news on the Stock Market, Personal finance throughout the day.

Notifications can be turned off anytime from browser settings.

will fully
si in probe
debt

MORE FROM OPINION

A framework for fair interest rates

Can Trump save dollar hegemony?

Reforming agriculture marketing

Radical overhaul of shipping laws

Better late than never

A haze of institutional weakness

Acting with restraint

Board observers in the spotlight

Placing Indian agriculture on the global map

Wah Ustad! The Taj of Tabla

INDIANEXPRESS

Two dead, scores injured as car ploughs into crowd at Christmas market in Germany

Crime Branch to investigate BJP's FIR against Rahul Gandhi over scuffle in Parliament, Congress complaint

'He aspired to be just 1% of Babasaheb, but police killed him': A family in Maharashtra's Parbhani seeks justice

Under the shadow of hotel tragedy, Georgia ski resort's emerging Indian connection

'Could be heard for miles' – eyewitnesses recount ordeal after LPG tanker explosion on Jaipur highway

FOLLOW US



DOWNLOAD APPS



EXPRESS GROUP

INDIAN EXPRESS GROUP

The Indian Express

Loksatta

Jansatta

Inuth

Ramnath Goenka Awards

IE Tamil

IE Malayalam

IE Bangla

IE Gujarati

IE Education

This Website Follows The DNPA's Code Of Conduct

QUICK LINKS

T&C

Privacy Policy

Hindi

Pan Card

Aadhaar Card

Insurance

World News

Entertainment

Airlines/Aviation

CONTACT US

About Us