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REVAMPED DISCLOSURE NORMS FOR LISTED ENTITIES: ADVANTAGE STAKEHOLDERS



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PROLOGUE

The Securities and Exchange Board of India ("**SEBI**") has over a period of time placed significant value on timely disclosures of relevant information to the stakeholders of a listed entity. While the extent of disclosure required to be made by a listed entity has been a contentious issue, SEBI has remained unwavering in its credence pertaining to the criticality of timely and relevant disclosures in protecting the interests of the stakeholders of a listed entity, especially those of common shareholders and investors. SEBI, vide SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, ("**LODR Regulations**") provides for timelines and guidelines for dissemination of various information. The timelines for disclosure of information varied as per the materiality of the information, which led to delayed, inadequate and/or inaccurate dissemination of information and/or non-disclosure of information due to discretion provided to companies to determine materiality of an event. Consequently, this created a disconnect between the Company and its investors and gave more place for circulation of market rumors and inadvertently created plethora of problems that had not been addressed previously. SEBI, *inter-alia*, to bring uniformity in dissemination across the industry, introduced the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 on June 14, 2023, to amend the LODR Regulations which *inter alia* deals with the disclosure of material events.

GENESIS OF THIS AMENDMENT

In recent years, there has been tremendous technological development and upgradation enabling the economy to grow expeditiously. These technological developments have also created a digital age where information, rumors, or any on-going developments in a listed entity are disseminated at a pace hitherto unimagined before. This has prompted SEBI to revisit the provisions/ regulations, and guidelines provided to listed entities under LODR Regulations, in regard to the dissemination of information to stakeholders. In this regard SEBI had, on November 12, 2022, issued a Consultation Paper¹ inviting comments, recommendations, views of the companies, industry experts and public on the proposed disclosure requirements for material events or information under LODR Regulations. Pursuant to the consultation paper, SEBI on June 14, 2023, introduced the following amendments vide (i) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 on June 14, 2023, (hereinafter referred to as "**LODR Amendment Regulations**") and (ii) Circular SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123

¹ The link for Consultation paper: https://www.sebi.gov.in/reports-and-statistics/reports/nov-2022/review-of-disclosure-requirements-for-material-events-or-information-under-sebi-listing-obligations-and-disclosure-requirements-regulations-2015_64962.html

dated July 13, 2023, to amend the LODR Regulations to the extent provided hereinafter. The Circular of July 13, 2023, provides for the manner of disclosure of material events / information by listed entities under Regulations 30 and 30A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

BROAD OVERVIEW OF THE KEY AMENDMENTS INTRODUCED PERTAINING TO DISCLOSURE

1. Determination of Materiality for the purpose of Regulation 30(4):

Regulation 30(4) earlier provided for generic and wide guidelines for determination of materiality of an event / information. The erstwhile criteria provided for determination of materiality of an event / information was limited to such events / information, the omission of disclosure of which, would entail (a) discontinuation or alteration of event or information already available publicly; or (b) significant market reaction if such omission came to light at a later date.

It was observed that this guideline on determination of materiality provided a degree of discretion to listed entities which ultimately created a disparity of understanding in what constitutes a material event / information between a particular listed entity and the investors. Furthermore, it was also seen that an event considered materiality was not considered material by another listed entity resulting in omission / delayed disclosures of an event / information. Accordingly, the following criteria based on quantitative factors have now been introduced, as part of the LODR Amendment Regulations, to determine materiality:

"the omission of an event or information, whose value or the expected impact in terms of value, exceeds the lower of the following:

- a. 2% of turnover (to be taken as per the last consolidated financial statement);*
- b. 2% of net worth (to be taken as per the last consolidated financial statement);*
- c. 5% of the average of absolute value of profit or loss after tax as per the preceding three audited consolidated financial statements."*

The LODR Amendment Regulation has considered net-worth, turnover, and profit to determine the quantitative factor as they are inter-linked and an impact on either of the quantitative factor shall have a cascading effect on the other quantitative factors and market price; and as such seeks to eliminate misrepresentation or inadequate consideration of factors for determining materiality of an event / information.

While the event / information considered material may still differ amongst the listed entity basis the quantum of turnover or net-worth or absolute value of profit or loss, the introduction of a quantum threshold, highlights the events that may have material impact on the market. This, however, requires the listed entity to undertake valuation exercise for every event / information that may have a material impact, thereby slowing down the process of decision making. Furthermore, the listed entities would be required to revisit and revise their materiality policies to bring the same in line with the amended provisions pertaining to determination of materiality under Regulation 30(4). The listed entities however ensure that the revised materiality policy does not dilute any requirement specified under the applicable regulations.

In addition to the above, the listed entity shall also be required to disclose an event or information as is required to be disclosed pursuant to the receipt of a communication from any regulatory, statutory, enforcement or judicial authority along with the event or information. It is also pertinent to note that any continuing event or information that may be material as per this amendment shall also be disclosed within the prescribed timelines.

Further, in addition to providing for quantitative threshold for determining materiality, LODR Amendment Regulation, in Para B of Part A of Schedule III provides for additional events/information which if it meets materiality threshold will be required to be disclosed including (i) arrangements for strategic, technical, manufacturing, or marketing tie-up; (ii) adoption of new line(s) of business; (iii) closure of operation of any unit, division or subsidiary (in entirety or in piecemeal).

2. Disclosure requirements of Agreements, arrangements, contracts:

The LODR Regulations, prior to the amendment, mandated the disclosure of only such agreements which were binding on the listed entity, and which were not in the ordinary course of business. Even prior to the LODR Amendment Regulations, the requirement to disclose agreements, arrangements, contracts etc. which essentially impacted management and control of the Company existed.

This provision read with newly inserted Regulation 30A requires the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel, employees of listed entity, its holding, subsidiary or associate company to disclose to the listed entity and the stock exchange details of agreements executed amongst themselves (to which listed entity is not a party), third parties, or with listed entities and having direct and indirect impact on the management and control of the listed entity and agreements creating obligation on parties to agreement to ensure listed entity shall or shall not act in a particular manner. The inclusion of related parties has increased the ambit of agreements that are now required to be disclosed. On

perusal of Regulation 30A, read with Sub-Para 5A of Para A of Part A of Schedule III, it is understood, that listed entities are now required to disclose family arrangements pertaining to the management, control and ownership of the listed entity including arrangements in nature of gift deeds, inter-se agreements between promoters, family settlements deeds, or MOUs pertaining to the management, voting and / or transfer of ownership executed between shareholders or directors. Furthermore, the said regulation is retrospective in nature and any existing agreements are required to be disclosed to the stock exchange(s) on the date of LODR Amendment Regulations coming into effect i.e. from July 14, 2023.

SEBI has also, vide its circular (SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123) dated July 13, 2023², *inter alia*, provided for details of agreements that must be disclosed.

The listed entity to ensure disclosure of such agreements may undertake and initiate programs to educate its promoters, directors, key managerial personnels, employees with the requirement of disclosure of any inter-se agreement for purposes specified in Sub-Para 5A of Para A of Part A of Schedule III of LODR Regulations.

It is understood from the information available in public domain that certain listed entities have started disclosing information in terms of these revised norms concerning family arrangements etc.

3. Commentary on events / information reported in Mainstream Media:

The LODR Amendment Regulations now require top 100 listed entities (and top 250 listed entities w.e.f. April 01, 2024) to confirm, deny, or clarify any reported event in mainstream media, which includes print or electronic mode in (i) newspapers and (ii) news channels in India and in foreign nations.

The definition of mainstream media is an inclusive definition and includes a far wider range of media outfits that may be categorized as mainstream media. Furthermore, the inclusion of media outlets in foreign nations has increased the logistical challenges of a listed entity as they now must identify foreign newspaper and channels that may fall under the category of "*mainstream media*" under the respective nations' prevalent laws.

² SEBI Circular dated July 13, 2023: https://www.sebi.gov.in/legal/circulars/jul-2023/disclosure-of-material-events-information-by-listed-entities-under-regulations-30-and-30a-of-securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-201-_73910.html

However, listed entities have been provided with a breather in regard to the confirmation/ denial of market rumors. The listed entity is only required to confirm, deny, or clarify reported events / information that indicate or point towards a rumored **material** event of information, i.e., the listed entity is not required to comment on all/ general commentaries in mainstream media. The Listed entities are further required to provide the exact status of the transaction, in the event the rumored material event or information is true and confirmed. However, the listed entity should be careful at the time of confirming/ denying the market rumors as any mistake or omission in this regard may entail non-compliance with other applicable regulations/provisions in effect at the time.

This requirement necessitates the listed entity to mandatorily comment on rumored events. This is an addition to the erstwhile provisions, which provided complete discretion to listed entities to comment upon any market rumors.

The listed entities shall need a robust system to track all information/events reported by mainstream media in relation to the listed entity.

4. Instances of breach in cyber security:

The growth of technology has allowed many companies to eliminate or reduce to a great extent, the maintenance of data / documents in physical mode. Entities can now record information, data, or documents in virtual data centers as the same is more secure and efficient. Furthermore, the introduction of System Driven Disclosures and requirement of digital databases has led to the listed entities storing their entire information on their private server. Any attack or attempt or breach of server is an offence under the Information Technology Act, 2000 and other relevant acts. Accordingly, LODR Amendment Regulations mandates the listed entity to disclose instances of cyber security incidents including breach in cyber security, loss of data or documents and other cyber security incidents.

5. Miscellaneous requirements pertaining to Disclosures:

In addition to the above, following events / information are also required to be disclosed pursuant to the LODR Amendment Regulations:

- a. Frauds, defaults and arrests: Prior to the amendment, LODR Regulations mandated the disclosure of frauds or defaults by promoters or key managerial personnel and arrests of promoters or key managerial personnel.
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Pursuant to the amendments, listed entities are now required to also disclose frauds or defaults by directors, senior management, promoters, key managerial personnel and subsidiaries and arrests of directors, senior management, promoters, or key managerial personnel of listed entity in India or in a foreign nation.

- b. Change in senior management: The listed entity, pursuant to LODR Amendment Regulations, is required to disclose details of the change in employees who are senior management. This is in addition to the requirement to disclose details of changes in directorship, auditor, compliance officer and in key managerial personnel of the listed entity. Furthermore, the listed entity, in the event of resignation by directors (other than independent director), senior management, promoters, key managerial personnel is required to submit with the stock exchange the resignation letter received by it.
 - c. Events of discontinuity in tenure of office of Managing Director / Chief Executive Officer (CEO): The listed entity shall disclose with reason, all instances of discontinuity, indisposition, or unavailability of Managing Director and / or CEO in fulfilling their role in a regular manner for a period of more than 45 (forty-five) days in a rolling period of 90 (ninety) days.
 - d. The listed entity is required to disclose any new and / or revised ratings from all agencies, regulatory bodies, independent bodies, authorities, institutions, banks, or any other entities etc.
 - e. Sale of whole or substantially the whole of an undertaking of the listed entity and sale of stake in associate company(ies).
 - f. Announcements made by directors, promoters, key managerial personnel or senior management of a listed entity in relation to material events/ information through social media intermediaries and/ or in mainstream media.
 - g. Voluntary revision of financial statement or report of the board of directors.
 - h. Any action initiated, taken or order passed by any regulatory, statutory, enforcement authority or judicial body against the listed entity or its directors, key managerial personnel, senior management, promoter or subsidiary, in relation to the listed entity for the matters provided in clause 19 and 20 of Para A of Part A of Schedule III of LODR Regulations.
 - i. Pending litigations or disputes, delay in payments of fines, penalties, dues etc., closure of operations and adoption of new line of business.
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EPILOGUE

The new amendments introduced to the LODR Regulations are inarguably aimed at further improving the transparency for the investors and empowering them further concerning their interest vis a vis the listed entity. The revised regulations enable the investors to have a detailed insight into the relevant aspects of the listed entity as is necessary to understand and ascertain its health and operations. The concerns and intentions of the regulator is indeed a noble gesture, however, the same imposes onerous duties on a listed entity. The listed entities would have to pull up their socks in as much as the new disclosure norms are concerned by repositioning their approach towards compliances and corporate disclosures especially if one considers the somewhat overarching nature of the new disclosure norms. The amendments introduced mandate the listed entity to provide a plethora of additional requirements at a more stringent timeline to ensure minimal chances of leak of information and onset of rumors. The listed entity to ensure the same shall need to set up a comprehensive and robust systems in place to ensure, *inter alia*, timely knowledge of the onset of a material event / information, mention of listed entity in mainstream media, ratings issued and the timely analysis and disclosure of material events / information. Artificial Intelligence and other technological development would certainly prove to be a big catalyst in assisting the entities and somewhat making them future ready to ensure compliances with the new disclosure norms. The listed entity may also need to undertake training exercises to make aware their promoters, promoter group directors, key managerial personnel, senior management, and employees of the revised compliances/ amendments, and sensitize them to the intent of SEBI and necessity of ensuring compliance with the revised amendments. Furthermore, the listed entity shall be required to exercise caution at the time of disclosure of material events to stock exchanges. While on the one hand the new amendments are intended to provide more information to the investors and shareholders, the same has put the onus on the listed entities to have a relook at their compliance systems with a view to adapt to the new disclosure regime.

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