

# Transparency and disclosure Requirements –Ingredients for strong Corporate Governance

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# Ingredients of Governance Process – Evolution of CG

- Milton Friedman : "The conduct of business in accordance with shareholders' desires which generally is to make as much money as possible while confirming to the basic rules of the society embodied in law and local customs ."
- ICSI-Application of best management practices , compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.
- Two ends of a spectrum in terms of perspectives
- CG an edict of Man and is constantly evolving

# Board's responsibility for disclosure

- All CG Codes including OECD ,Cadbury Report provide for disclosure to shareholders and others information relating to financial results and operational matters .
- Transparency and disclosure-the bed rocks for a robust governance system
- Increasing focus on non-financial disclosures- BRSR Reporting and sustainability reporting.
- Companies encouraged to make voluntary disclosures.

# Transparency and Disclosure

- Transparent-Being open, honest and ensuring accessible communication to stakeholders.
- Transparency- both internal and external .
- Disclosure –Act or process of making something known that was previously unknown-A revelation of facts;
- Intentional release of information to facilitate transparency, accountability and openness – whether self regulatory or under provocation of Regulations .

# Need for transparency and disclosure

- Information asymmetry in the market.
- Every one does not have access to sensitive information at the same time.
- Were it so ,no distortion likely between intrinsic value and market value of Scrip.
- Efficient Market hypothesis-a theoretical myth.
- The need to arrest distortions in market prices
- Investors need to take informed, objective, dispassionate decisions based on information available.
- Promoters cannot unethically or be allowed to cash in on UPSI.

# Need for transparency and disclosure

- Ongoing obligation to disclose timely-enables informed decision making as to investments.
- Information in relation to business dynamics, regulatory developments, macro economic factors which can potentially impact stock prices.
- Channels for dissemination – should be equal, timely and provide cost effective enabling uniform accessibility.

# Frequency and disclosure attributes

- Episodic-Immediately upon happening of material event – say declaration of dividend, fire in plant ,resignation of senior management etc.
- Quarterly-financial results including changes in accounting policies and their impact
- Half yearly results-with financial ratios ,cash flows/Half yearly Statement of Assets and liabilities
- Yearly audited results with last quarter also subject to audit.

# Attributes and trends in disclosure

- Information to be-
- Timely
- Reliable
- Comprehensive
- Qualitative
- Accurate
- Relevant
- No “feel good factor” approach/low hanging fruits policy
- Kautilya-Birds flock only to a tree bearing fruits



# Fruits of proper disclosure

- Whether by impost or voluntary- Ceteris Paribus disclosure beneficial to investors –creates value, change investor perception and increases liquidity in the stock.
- Regulation 30 as revised has taken away substantially discretion in determining materiality of information to be disseminated.
- International perspective-Companies disclose extent to which strategic objectives achieved-not merely financial information –marked against budgets, targets etc.

# Better practices adopted in India

- Adoption of External communication and media policy (Airtel)
- Quarterly meets with investors not necessarily restricted to financials.
- Setting up Corporate Communications Dept.(Unilever)-Closure of investor queries immediately.
- Setting up disclosure Committee with Senior employees.

# Regulation 30 as amended –Has Taken away discretion in determining materiality

- Requirement to disclose events/information which in Board's view –material.
- Original requirement in Reg.30-Exercise of discretion as to materiality ;A paradigm shift from original form.
- Cherry picking on information providing “feel good “ factor conspicuous previously.
- Events in Para A of Part A of Schedule III material invariably regardless of Board's view.
- No Materiality test for events not in Para A-Application of judgment
- Omission of event or information likely to result in discontinuity or alteration of event already available publicly or

# Test for materiality –Narrowed to Quantitative limits

- Omission of event or information likely to result in significant market reaction if omission comes to light later or
- Where criteria specified for above not applicable, event material if in the opinion of Board it is considered material.
- **Now Quantitative measure (Effective from 15.7.2023)**
- Omission of event or information whose value or expected value in terms of impact exceeds –
- 2% of consolidated turnover or
- 2% of consolidated net worth or
- 5% of average of absolute profit before tax for last three years whichever lower .
- If Quantitative measure does not apply, to disclose if considered material.
- Any continuing event material to be disclosed within thirty days of the event

# Clause 30 as amended

- Policy on materiality to be framed and hosted on website .
- Policy not to dilute any of the requirements as to materiality.
- Policy to allow for bottom up approach enabling employees down below to report to KMPs on Events .
- KMPs to decide on disclosure based on materiality

# Clause 30 –Further Changes

- Information to be disclosed to Exchanges as soon as can be .
- Where decision on any material event taken by Board –within 30 minutes of meeting
- If event or information emanating from within the company within 12 hours.
- If event is emanating outside company – within 24 hours of occurrence.

# Regulation 30 –further tightening of the Noose!

- Where timelines specified in Para A of Part A – abide by the same.
- If disclosure delayed beyond time lines explanation for delay.
- Material developments in respect of continuing events -update with regularity.
- Information/event reported -host on website and retain for 5 years
- Disclosure on subsidiaries which are material in nature

# Responses to mainstream media – Regulation 30(11) Application

## postponed

- Reg.30(11)-Companies -provide adequate and specific replies to queries raised by the Exchanges
- Exchanges to disseminate such information as considered reasonable.
- Companies may on their own confirm or deny any reported information to the Exchanges
- Effective October 1, 2023 top 100 companies to confirm , deny any reported event in mainstream media not general in nature which indicates rumours of a material event floating in the public.
- Reform since postponed vide notification October 9, 2023 .
- Consultative paper on this introduced December 31. 2023 to elicit views



# Para A of Part A-Items –Schedule III-No discretionary application of materiality

- Acquisitions including agreement to acquire, Scheme of arrangement, sale/disposal of undertaking including of subsidiary/stake sale in Associate and other restructuring.
- Covers move to acquire 5% or more triggers /change in shareholding 2% over earlier disclosure
- Timing the disclosure appropriately the key
- Issue or forfeiture of securities, split/consolidation, restrictions on transfer/forfeiture, reissue and redemption of securities
- New ratings or revision in ratings with rationale for change

# Para A Part A Items

- Outcome of meetings of Board (within 30 minutes )on:
- Dividend/cash bonuses /decision to pass over/date of payment
- Cancellation of dividend with reasons
- Buyback & Fund raising
- Bonus issue with Schedule of distribution.
- Alterations in share capital
- Financial results
- Reissue of forfeited shares , new issues, voluntary delisting.

# PARA A Events

- Agreements including shareholders , JVs , family settlements etc. impacting management and control , agreements with media companies not in normal course of business, amendments, terminations .
- Agreements by shareholders , promoters , RPs, Directors, KMPs ,employees or of its holding/subsidiary companies impacting/likely to impact management or imposing restrictions on company whether company is party thereto or not including amendments , termination .
- No disclosures in case of agreements entered into in normal course.

# Para A Part A

- Frauds /defaults by company, promoters , directors , KMPs/Senior management or subsidiary /arrest of KMPs, Senior management/Promoter /Director whether in India or outside.
- Rethinking by SEBI –fallout of ridiculous corporate disclosures
- appraise future developments on above.
- Changes in board ,KMPs, Senior Management , Auditors and Compliance Officer .
- Resignation of Auditors, IDs with reasons .Letter of resignation of IDs within 7 days.
- Is resignation of director subject to acceptance to be effective

# Para A

- Where MD/CEO not available for 45 days or more in rolling period of 90 days or more, reasons to be stated.
- Resignation by Senior Management, KMPs with reasons as provided within 7 days
- Appointment/discontinuance of RTA
- Resolution plans/restructuring of loans with banks etc.
- OTS with Banks
- Winding up petitions filed by any party and admitted by Courts.

# Para A

- Notices to members /debenture holders , call letters etc.
- Proceedings of AGM/EGMs.
- Two phased approach for compliance.
- Schedule of Analysts meet (two working days before to intimate)
- Audio or video recordings/transcripts within 24 hours/ before next trading session.
- No coverage for one on one meets/non-financial information

# Para A Part A

- Events relating to corporate insolvency resolution process covering entire gamut of process
- Initiation - forensic audit including Agency initiating , reasons, findings
- Announcements - social media platforms /mainstream media by Directors/KMPs in relation to material events

# PARA A

- Action taken by Regulators against company/KMPs , promoters, directors /subsidiary company –say search and seizure, re-opening of Accounts under Section 130 , impact thereof, copy of orders passed with details.
- voluntary revision of accounts under Section 131



# Para B of Part A –Applicability of materiality

- Commencement/postponement of commercial production
- Tie-ups on strategy, new product, marketing , closure of unit etc.
- Disruption in operations –natural calamities , strikes . Lock outs etc.
- Impact of change in regulatory framework
- Litigations with financial and reputational impact.

# Part B

- Frauds by directors other than KMPs, Employees in relation to company
- Provision of guarantees to third parties
- Emergence of new technology, changes in accounting policy etc.
- Granting, withdrawal , surrender, cancellation of licenses .
- Delays in payment of fines , penalties imposed by regulators

# Transparency and Disclosures – Enforcement through other Regulations

- PIT Regulations-Window closure during disclosure of financial results
- Internal code for fair practices
- No trades without pre-clearances
- Maintenance of SDD
- Applicability to Fiduciaries also
- Takeover Regulations
- Requirement of open offer
- Transparency in price discovery
- Filings of Promoters periodically

# Concluding Musings

- Governance is never at a static equilibrium
- No zenith/Nadir to Governance as it is dynamic
- Benchmarking of Governance to be continuous
- Focus more on substance and not on form
- Approach to be top-down
- Pervasiveness of the concept to be recognized and it can never be sectoral.
- Company Secretary a major catalyst in the process .Don't be Shakespeare's Prince of Denmark while reporting!!
- When in doubt-report –Should be the mantra.
- Flip side - Chances of information overload .An Elephant in the room-Ending up with holding on to tail instead of trunk

- Q and A
- Thank you Very much