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SEBI'S PROPOSAL FOR BETTER INFORMATION DISSEMINATION BY LISTED COMPANIES

Introduction

In a bid to prevent incorrect market sentiment from unjustly impacting securities of listed companies owing to market rumours pertaining to such listed companies, on June 14, 2023, the Securities and Exchange Board of India ("SEBI") notified the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 ("Amendment Regulations"). The Amendment Regulations provided for a mandatory obligation upon listed companies to confirm, deny or clarify information published in "mainstream media" that dealt with any specific, impending event that was disclosable under Regulation 30 of the existing SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR"). While this obligation has not come into effect, the date for its implementation was recently extended to June 1, 2024 for the top 100 listed entities by market capitalization and December 1, 2024 for the top 250 listed entities by market capitalization.

Pursuant to discussions between SEBI and other industry associations (ASSOCHAM, CII and FICCI) to ease doing business in India, SEBI released a consultation paper titled "Consultation Paper on Amendments to SEBI Regulations with respect to Verification of Market Rumour" ("Consultation Paper") on December 28, 2023. While the Consultation Paper does not do away with the obligation of clarification imposed on listed companies, it presents certain landmark proposals which, if implemented in whole or part, have the potential to significantly alter the manner of implementation of the market rumour verification requirement.

1. What are the proposed amendments to the criteria for triggering the obligation of verifying market rumours?

Under the Amendment Regulations, listed companies are required to respond to a market rumour if it qualifies as a disclosable event under Regulation 30 of the LODR.

However, the Consultation Paper acknowledges that practically, a market rumour may be relevant in the context of listed companies only when it impacts the price of the scrips trading on a stock exchange. Accordingly, it proposes to link the trigger for the obligation to verify market rumours with a "material price movement" of the scrip of such company arising as a result of the release of such rumour within the "mainstream media". Further, the definition of the term "mainstream media" remains unchanged from that proposed within the Amendment Regulations.

With respect to the manner of determination of a "material price movement", the Consultation Paper: (i) acknowledges that a smaller percentage variation in scrip price leads to a higher absolute price variation for securities within a higher price range (and vice versa for securities within a lower price range); and (ii) proposes a framework that also accounts for the benchmark index movement (i.e. Nifty50/ Sensex) as a comparative to assess market dynamics during the calculation of such price movement. Thus, "material price movement" is assessed based on a combination of the price range of the security and the corresponding benchmark index movement prevalent at such time.

Lastly, the timeline for verification has been made 24 hours from the material price movement (as opposed to the existing requirement for verification to occur within 24 hours from the publication of a market rumour).

2. Has SEBI considered the impact of "material price movement" pursuant to a market rumour verification with the pricing for transactions concerning the scrips of such listed companies?

Yes. The Consultation Paper assesses this linkage and notes that the rules for pricing of transactions are found under numerous regulations such as the SEBI (Issue of Capital and Disclosure

Requirements) Regulations, 2018 (“ICDR Regulations”), pricing guidelines for qualified institutional placements under the ICDR Regulations, pricing guidelines for open offers under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, and pricing guidelines for delisting under the SEBI (Delisting of Equity Shares) Regulations, 2021. Therefore, it becomes important to determine the “relevant date” that shall govern the pricing of scrips for transactions, as per the modalities set out within these regulations.

Accordingly, the Consultation Paper indicates that a legal framework should be set out in order to ensure that transactions based on these prices are not adversely impacted by price movements arising from the verification of a market rumour. The following are the contours of the two proposed frameworks:

i. Framework A

Framework A proposes that the “relevant date” shall be the date that immediately precedes the date on which the listed company has confirmed, denied or clarified the market rumour. In effect, the volume weighted average price (“VWAP”) under applicable SEBI regulations will be determined based on a look-back from this relevant date, thereby removing chances of price movements occurring due to verification of the market rumour from being accounted for within the determination.

However, the Consultation Paper recognizes the following challenges associated with this framework: (i) shareholders may be affected to their detriment due to price movements pursuant to confirmation of the market rumour not being accounted for; and (ii) any person or entity interested in a specific listed company may deliberately spread a rumour across the “mainstream media” in order to ensure that subsequent price movement is not calculated with respect to their proposed transaction.

ii. Framework B

Framework B is premised on the following: (i) price movements for any reason other than the act of confirmation of the market rumour should form part of the VWAP; and (ii) the market will take note and adjust itself in respect of confirmation of a market rumour within one trading day. Accordingly, the price variation shall be deemed to be the price variation from the day of the “material price movement” and until one trading day after confirmation of the market rumour by the listed company (“Variation”). In effect, the price of the scrip on each day after the “material price movement” shall be adjusted by the Variation, and this adjusted price shall be utilized to calculate the VWAP. This adjustment process shall be carried out each time that there is a price movement owing to the existence of a market rumour.

Even in case of Framework B, the following challenges have been laid down: (i) conclusively predicting the number of days for which the price shall be impacted is difficult, which may pose challenges in adjustment of the VWAP at each such stage; and (ii) in the event that the impact of a market rumour confirmation extends beyond one trading day, it may also hit the band limit on the subsequent trading day.

3. What are the implications of Frameworks A and B respectively (if enacted in the manner proposed in the Consultation Paper) on Indian public markets?

While Framework A excludes any price movement that occurs after verification of a market rumour (regardless of whether such price movement is as a result of the verification), Framework B only excludes price movement due to verification of the market rumour (whilst accounting for any other price movements).

Therefore, the enactment of Framework A is likely to benefit an incoming investor and deprive shareholders of the benefits of any price movements that could increase the scrip’s price after the date of verification of the market rumour. On the other hand, the enactment of Framework B is likely to suit shareholders and ensure that the adjusted scrip price (considering all price movements other than those attributable to the market rumour) are accurately reflected when pricing is undertaken.

4. What are the other proposals within the Consultation Paper?

The Consultation Paper briefly delves into the following proposals:

- **Imposition of an obligation on promoters, directors, key managerial personnel and senior management:** In order to ensure that listed companies are able to meet the timelines and make disclosures in accordance with the adequacy standards prescribed under Regulation 30 of the LODR, the Consultation Paper indicates that there is a need to set out an obligation on such persons to provide timely, adequate and accurate assistance to the listed companies. However, the manner in which such obligation is intended to be cast has not been fleshed out.
- **Classifying unverified information as unpublished price sensitive information (“UPSI”):** In certain cases, it is possible that a market rumour does not contribute to a “material price movement” and accordingly does not warrant a confirmation, denial or clarification by the listed company. However, if such information is classified as UPSI, the Consultation Paper proposes that insiders should not be permitted to take a defence that the release of such market rumour (regardless of whether it has been responded to by the listed company) amounts to the information being “generally available” in the public domain, and accordingly avert compliances under the SEBI (Prohibition of Insider Trading) Regulations, 2015.

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