

REPORT ON DISCLOSURES PERTAINING TO ANALYST MEETS, INVESTOR MEETS AND CONFERENCE CALLS

Background

The issue of information asymmetry between various classes of investors arising out of limited disclosures in respect of analyst meets/ institutional investors meet/ conference calls was discussed by Primary Markets Advisory Committee (PMAC) in the meeting in July, 2020. PMAC deliberated on the issue and decided to form a sub-group under the chairmanship of Mr. Keki Mistry, Vice-Chairman and CEO of HDFC Ltd, to deal with issues concerning sharing of information with select investors and strengthening the disclosure framework.

The sub-group deliberated various aspects with respect to information asymmetry amongst various classes of stakeholders, best practices in Indian securities market, regulatory regimes in various overseas jurisdictions and the way forward to bridge the gaps of aforesaid information asymmetry.

The report of the sub-group was discussed by the PMAC in its meeting in November, 2020.

Public comments

In order to take into consideration, the views of various stakeholders, comments are sought from the public on the enclosed report in the following format:

Name of the person/ entity				
Sr. no.	Recommendation in the report to which the comment pertains	Comment	Rationale for the comment	Revisions to the recommendations, if any (Please provide revisions to amendments as well, if possible)

Comments may be sent by email to consultationcmd2@sebi.gov.in or by post to the following address latest by December 21, 2020:

General Manager,
Compliance and Monitoring Division – II,
Corporation Finance Department,
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C4-A, "G" Block,
Bandra Kurla Complex, Bandra (East),
Mumbai -400 051

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INVESTOR MEETS AND CONFERENCE CALLS

Background

Disclosure and transparency are the bedrock of good corporate governance. Disclosure of accurate information are critical for investment decisions of the investors. Regulatory framework of SEBI already provides for disclosure of adequate and timely information to enable investors to track the performance of a listed entity. Listed entities are encouraged to proactively disclose all material information that not only help investors in decision making but also helps listed entities in building trust with various stakeholders.

Institutional investors meet or conference call with analysts/ shareholders is a means of communication with shareholders and sharing of information. However, it is noticed that while many listed companies disclose the occurrence of institutional investors meet or conference call with analysts, they do not divulge the details of what transpired in such meetings. Minority shareholders, who do not attend these meetings, are not privy to the information shared with a select group of investors, thereby creating information asymmetry among different classes of shareholders. While Companies disclose the presentations as mandated under SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 to the recognized stock exchanges and on their respective websites, it is observed that they generally confine themselves to merely disclosing PowerPoint slides presented in such meetings.

The concerns relating to information asymmetry was discussed as an agenda item in the meeting of Primary Markets Advisory Committee (referred as 'PMAC') meeting on July 27, 2020. PMAC deliberated on the issue and decided to form a sub-group under the chairmanship of Mr. Keki Mistry, Vice-Chairman and CEO of HDFC Ltd, to deal with issues concerning to sharing of information with select investors and strengthen the disclosure framework.

Composition of sub-group

Details of the sub-group are tabulated below:

S no.	Name of the Member	Name of the organisation
1	Mr. Keki Mistry (Chairman)	HDFC Ltd.
2	Mr. Sunil Sanghai	NovaDhruva Capital Pvt. Ltd.
3	Ms. Ashu Suyash	CRISIL Ltd.
4	Mr. J N Gupta	Stakeholders Empowerment Services
5	Mr. Sandip Bhagat	S&R Associates
6	Mr. Prithvi Haldea	Prime Database
7	Mr. Ramesh Srinivasan	Kotak Mahindra Capital Company Ltd.
8	Ms. Priya Subbaraman	National Stock Exchange (NSE)
9	Ms. Barnali Mukherjee	CGM, SEBI
10	Mr. TVVPS Chakravarti T (Member Secretary)	GM, SEBI

Scope of discussion

The sub-group deliberated on various aspects of disclosures pertaining to analyst meets/ investor meets and conference calls. The sub-group also delved into the aspects of adequacy of regulatory requirements covering the analyst / investor meets and conference calls and to bridge the gaps of information asymmetry among various classes of investors.

The approach adopted by the sub-group would be to identify key aspects pertaining to disclosure and analysing them in light of prevalent practices in Indian securities market, before arriving at a conclusion.

The aspects of disclosure that are being looked at by the sub-group are:

- Best practices followed by Indian listed companies
- Regulatory regime in developed countries and best practices
- Regulatory framework governing the disclosure of investor meets/ analyst meets/ conference calls
- Post-earnings conference calls/quarterly calls
- Disclosure of one-to-one investor / analyst meets or conference calls conducted with select investors
- Principle based versus Prescriptive disclosure requirements

The aforementioned aspects have been covered in detail as a part of 'Discussions of the sub-group'.

Concerns relating to disclosures

It is understood that in some conference calls, questions that do not originate from information given in the quarterly results or investor presentations were raised. This is evident of Information that is unpublished and price sensitive that is shared with few persons / entities, thus raising concerns about the sanctity of price sensitive information with the listed companies. This also means that if such information can be disclosed to a few set of investors, the same can also be disclosed to all the investors.

Apart from the disclosures of material information to certain individuals, inconsistencies have also been observed in the disclosures made by listed entities. For example, some companies only provide quarterly results but do not provide investor presentations and/or conference call transcripts. Further, at times there are incomplete explanations for a major deviation in the financial results and although mandated, some companies do not provide detailed rationale for abnormal financial numbers such as substantial write-offs or extreme change in financial ratios.

The sub-group deliberated on the issue at hand keeping in mind the concerns mentioned above.

Discussions of the sub-group

Best practices followed by Indian listed companies

The sub-group perused the best practices followed by top Indian listed company to understand the process of disclosures followed by them in relation to analyst/ investor meets and conference calls and minimising the instances of information asymmetry. The process followed by one such company is summarized below:

- The Company hosts a notice of the Earnings Call on its corporate website around 10 days before the actual Earnings Call
- Details of the 'Registration' process is explained in the above notice
- The Registration process is opened at least 3 days before the call (5 days if there is an intervening weekend)
- If the Earnings Call and declaration of financial results are scheduled in the evening, then the Registration process is closed at 12 noon on the day of the call and the Earnings Call presentation is uploaded on the Corporate Website 1 hour before the call (after sending to Stock Exchanges). Excel files of the results are also uploaded at the same time
- If the Earnings Call is in the morning (after declaration of results the previous evening) then the Registration process is closed at 5 pm on the day preceding the call and the Earnings Call presentation is uploaded on the Corporate Website after 7:30 pm on the day preceding the call (after sending to Stock Exchanges). Excel files of the results are also uploaded at the same time
- Individual emails are sent to registered participants giving dial in details and 'security pins'

Similar practices are followed by other top companies wherein participation in the call is not restricted and the records of transcripts/ audio files so disclosed are kept as per their recorded policies.

It is noticed that though certain companies have an elaborate mechanism in place to effectively disclose information to shareholders, there are many listed companies which lack such procedures or deal with the disclosure requirement as more of tick of the box compliance.

Regulatory regime in developed countries and best practices

In order to compare disclosure experience of Indian listed companies with those of other jurisdictions, an analysis of requirements of other jurisdictions was discussed by the sub-group. Details of requirements are summarised below:

- USA: Regulation Fair Disclosure (referred as 'Reg FD') prohibits companies from selectively disclosing material non-public information (referred as 'MNPI') to analysts, institutional investors, and others without concurrently making widespread public disclosure. The processes followed while disclosing intentional and unintentional selective disclosure have been dealt with in Reg FD.

General practice by US companies with listed securities includes public announcement of quarterly earnings release followed by widely publicized earnings call open to everyone to attend, and earnings call transcript being made publicly available.

One-on-one or small group investor meetings held after the earnings call generally do not involve disclosure of any MNPI. Accordingly, these meetings are not conducted under any confidentiality procedures. Moreover, Investors are unlikely to want to receive any MNPI because that would restrict them from being able to trade in company's securities. Investors are likely to insist upon immediate disclosure of any MNPI if that gets disclosed at these meetings. Hence, onus remains on the companies to not disclose any MNPI during these meetings, and promptly disclose if any MNPI is discussed. As a result, there is no practice of recording or transcribing the investor meetings.

- EU/UK: Market Abuse Regulation ("MAR") in these jurisdictions prevents selective disclosure of MNPI. MAR requires that the companies must not disclose MNPI selectively at the investor meetings. If they do, an immediate announcement would be required but it would still be a breach of the regulations.

Similar to the US, onus is on the company to promptly disclose any MNPI that may get disclosed in any investor meeting. Accordingly, there is no practice of recording or transcribing these investor meetings.

In a "deal context", there is a "market sounding" regime under MAR when a company with listed securities is meeting with investors in preparation of any offering. Under the regime, meetings are recorded by the banks coordinating the market sounding/notes are taken. But no such practice outside of a "deal context".

It is observed that there is no practice of recording or transcribing the investor meetings in USA. While such a requirement in Indian scenario may seem far-fetched, it must be understood that Regulation FD is a principle based regulation, unlike many prescriptive requirements under SEBI (LODR) Regulations, 2015. Furthermore, the compliance status of US companies with Reg FD is significantly better owing to corporate governance practices being developed and implemented over several years. Hence, the sub-group felt that though the requirement of recording or transcribing investor meetings may not be feasible for every meeting, such a requirement should be mandated for post earnings conference call / quarterly call especially considering the quality of disclosures by majority of Indian listed companies.

Regulatory framework governing the disclosure of investor meets/ analyst meets/ conference calls

Based on the above and examining the existing regulatory provisions governing disclosures pertaining to investor meets/ analyst meets/ conference calls, it is clear that the objective of investor presentation/ conference calls/ investor meets was to present the true and fair state of affairs of businesses to shareholders/ potential investors. Furthermore, the objective of disclosing the presentation made in such meetings was to ensure that there is no information asymmetry among various classes of investors. However, it is observed that existing regulations are not followed in letter and spirit by majority of listed companies thereby causing information asymmetry. Some reports have information that does not have its source

from quarterly results or Investor presentation or conference calls and alludes to selective sharing of information to some individuals. Thus there exists a need to review the current regulatory prescriptions and further strengthen the disclosure regime.

Post-earnings conference calls/quarterly calls

Post earnings conference calls/ investor meets/ analyst meets after the release of quarterly financial information is a material information benefitting the investors to take informed decisions. Any UPSI discussed as part of such meetings particularly or any other meetings should be immediately disclosed. The sub-group opined that audio/video recording should be made available on the website of the listed entity immediately after the call but not exceeding the next trading day. Written transcript of the calls should be made available on the website of the listed entity within five trading days after the earning call. Listed company shall make available audio/video recordings and the written transcripts on their websites for a period of at least five years.

It is seen that in USA, the conference call is open to everyone to attend while in Indian scenario, companies restrict such calls to their investors only. The reason for this may be attributed to dilution of competitive position in case of presence of competitors in the calls, disgruntled investors/ suppliers disrupting the call etc. However, such a condition also excludes genuine institutional investor or analyst from participating in the meeting and thereby hurting investment goals of the company. Hence, it would be prudent if companies make the provision of inclusion of certain individuals based on their request and on verification of their credentials.

The sub-group considered as to whether access to such post earning calls/quarterly calls should be open for everyone, like in US, or limited to existing shareholders and decided to leave it to the discretion of the listed company to determine.

Disclosure of one-to-one investor / analyst meets or conference calls conducted with select investors

Quality and process of disclosures should be looked at from the perspective of three principles of continuous disclosure, i.e. maximizing ability of market to arrive at accurate price of securities; ensuring global and domestic investors have confidence in Indian markets and Optimising cost of compliance. It was further discussed that the fundamental reason for analysts to seek meetings with the listed entity is to check their hypothesis that they have developed, based on controls and processes that have been built to comply with the public disclosures and complying with regulations relating to handling of private information. Hence, premature public disclosure of these questions may lead to a regime of “mandatory dissemination of proprietary information” –and effectively allow trading on them by third parties taking positions before the investors can act (or even firm up their opinion) on their hypotheses. This will thus create volatility in short term and may also hamper the price discovery process in effect increasing acquisition / execution costs in the Indian market –and may act as a deterrent for large investors to put in the research effort, and / or to participate in the Indian market. Furthermore, due to increased emphasis on privacy, any institutional investor may not be agreeable to sharing of call recording in the public domain. Such a

deviation from globally accepted practices and controls around prevention and leakage of intellectual property would dissuade institutional investors from investing in Indian companies.

It is also observed that some listed companies disclose names of entities they interact in compliance with SEBI (LoDR) Regulations, 2015 requiring listed companies to disclose schedule of analyst or institutional investor meet and presentations made therein to stock exchanges. Such disclosure would not only have privacy concerns but also allow third parties taking speculative positions.

On the other side, disclosure of information pertaining to analyst/ investor meets/ conference calls may benefit minority investors as they may be benefitted from effective price discovery. However, the same may lead to information overload to retail investors.

In spite of the above, there is merit in disclosure of information pertaining to analyst/ investor meets/ conference calls as the same would create a record for the regulatory authorities and stock exchanges for any future references. The possibility of check by regulatory authorities would ensure that the instances of false/ misleading disclosures in such calls are minimised. Further, in view of CoVID-19 pandemic, there has been greater emphasis on correct and prompt disclosures by the company as many retail investors have not been able to attend investor meets in person.

The sub-group deliberated on the issue and decided that Listed companies to provide number of such meetings as part of corporate governance report submitted by them to stock exchanges on a quarterly basis along with affirmation that no UPSI was shared by any official of the company in such meetings. However, the names of entities participating in such meetings should not be disclosed. Further, if the listed entity discloses UPSI in such Select Meets (whether intentionally or not), it should comply with requirements of Reg 30 of SEBI (LoDR) Regulations, 2015 which requires disclosure of material information within twenty-four hours from the occurrence of event or information.

Further, the Company shall maintain a record of all such one-to-one meetings, as the same could be required for future reference. The data should be preserved for a period of atleast eight years in line with 'Preservation of documents' as required under Regulation 9 of SEBI (LoDR) Regulations, 2015. Details to be maintained include the name/names of the investor who were met, the name of the fund that he/ she represents, name of the brokerage firm which fixed the meeting (if any), the location, date and time of the meeting and a reference to the presentation made.

Principle based versus Prescriptive disclosure requirements

Principles form the basis of any legal document and have wide interpretation by law. Principles of any legal document not only act as a guiding light to its enforcement, but also embody the purpose of the legal document. SEBI (LoDR) Regulations, 2015 have a dedicated chapter on 'Principles governing disclosures and obligations of listed entity' which requires listed entities to disclose adequate and timely information and follow the obligations in letter and spirit taking into consideration the interest of all stakeholders. Further, prescriptive

regime of disclosures mandating companies to adhere to specific corporate governance practices may also be perceived as micromanagement and against the spirit of ease of doing business.

However, it is seen that many listed entities implement the said principles in letter and not in spirit. The cavalier attitude of many listed companies towards safeguarding the minority shareholder interests, tilts the balance towards prescriptive rule making. Prescriptive regulatory regime is preferred in circumstances where the disclosure practices followed by listed companies are not strong. Further, hardcoding of principle may be advantageous in case of initiating effective enforcement actions against non-compliant entities.

SEBI (LoDR) has a balance of principle and specific rules concerning to disclosures. Since many of the listed entities are not following the spirit of principles concerning to investor meets/ analyst meets/ conference calls, sub-group felt that specific requirements strengthening the disclosures concerning to the investor meets would appropriately complement the principles of the disclosures and decided to recommend specific requirements.

Summary of the recommendations

In view of the aforementioned discussion, following are the recommendations to be included along with the current regulatory requirements specified under SEBI (LoDR) Regulations, 2015:

1. Audio/video recordings shall be made available on the website of the listed entity and respective stock exchanges immediately after the post-earnings conference call/quarterly call, before the next trading day or within twenty-four hours from the occurrence of event or information, as required under the Reg 30 of SEBI (LoDR) Regulations, 2015, whichever is earlier.
2. Written transcripts of such calls should be made available on the website of the listed entity and respective stock exchanges within five working days after the earning call.
3. Listed company shall make available audio/video recordings and the written transcripts on their websites for a period of atleast eight years in addition to the details disseminated on respective stock exchanges.
4. Listed companies can decide as to whether conference calls are open to everyone to attend or limit such calls to their existing shareholders.
5. Listed companies to provide number of one-to-one meetings with select investors as part of corporate governance report submitted by them to stock exchanges on a quarterly basis along with affirmation that no UPSI was shared by any official of the company in such meetings. Company shall maintain a record of all such one-to-one meetings, as the same could be required for future reference. The data should be preserved for a period of atleast eight years.

The sub-group recommends that the aforementioned requirements should be made applicable in a phased manner. The requirements shall be initially recommendatory for a period of one year and mandatory thereafter for all listed companies.