

EXCHANGES BEEF UP VIGIL ON UNUSUAL PRICE MOVEMENTS

IN 2016, BSE AND NSE SENT FAR MORE QUERIES IN THIS REGARD TO LISTED FIRMS, KEEPING SEBI IN THE LOOP ON REPLIES

Amid growing instances of media reports triggering wild swings in stock prices, stock exchanges have raised their watch on this.

In 2016, BSE and the National Stock Exchange sent 42 per cent and eight per cent more queries, respectively, over the previous year to listed companies, seeking clarity on rumours and for information verification. In the past two months itself, the exchanges have sent many more such queries.

The exchanges have put in place systems which generate alerts on company-specific news in the media. And, then follow up with companies to verify the news. Similarly, if there is any unusual movement in stock prices, the exchanges say they query companies on any price-sensitive information that needs to be disclosed.

"Disclosures are closely monitored from the standpoint of material information and also vis-à-vis possible rumours appearing in various media. Any differences observed therein are required to be explained by the companies and their responses are then disseminated on the exchange website, for the benefit of investors and market

participants, to take informed decisions, said a BSE spokesperson.

Stock exchange data showed NSE sought price movement clarification from 549

Sebi also has regular meetings with exchanges and depositories to track surveillance activities

ON HIGH ALERT

Queries sent by exchanges to companies for rumour verification and clarification are going up

| No. of queries | 2015 | 2016 | Increase (%) |
|----------------|------|------|--------------|
| BSE | 202 | 287 | 42 |
| NSE | 521 | 549 | 6 |

Sources: BSE, NSE

listed entities in 2016, as compared to 521 in 2015. BSE's surveillance department sent rumour verification letters to 287 companies in 2016.

Further, in cases where there is a spurt

in price or volume without any major corporate announcement, clarification is sought and the company's reply disseminated. The process, one was told, was based on pre-decided criteria and in coordination with the Securities and Exchange Board of India (Sebi) and other bourses.

Under the current listing regulations, companies are bound to reply to the exchanges. This could be one reason for the increase in surveillance enquiries, said a person familiar with the development. The challenge is to identify relevant information.

Companies listed on stock exchanges are required to make certain disclosures to the latter in a timely manner. Exchanges have broadly divided the surveillance reports in four categories. These being

rumour clarification in the case of a spurt in prices and volume; daily review of price band which determines the range in which a security moves; periodic review of movement of securities on a trade to trade basis; and, a periodic call auction session for illiquid stocks.

Beside, the exchanges have implemented a mechanism to prevent accidental self-trades and also brought changes in the format for disclosure under the Sebi (Prohibition of Insider Trading) Regulations.

Sebi conducts meetings at regular intervals with stock exchanges and depositories, to track surveillance activities and market movements. On the basis of reports from the exchanges or specific complaints or sometimes on its own accord, preliminary enquiries are conducted to determine if a trade points to market manipulation or insider dealing.

Source: Business Standard

February 20, 2017

LABOUR MINISTRY MAKES AN ENTRY IN EASE OF DOING BUSINESS REGISTER

56 REGISTERS UNDER NINE CENTRAL LAWS MERGED INTO FIVE

The labour ministry has rationalised and simplified procedures to maintain registers under various labour laws in a move aimed at enhancing ease of doing business that will lead to sharp reduction in cost and compliance burden on the employer.

The ministry has notified 'Ease of Compliance to Maintain Registers' under various Labour Laws Rules, 2017, following which 56 registers under nine central laws have now been merged into five registers. Besides, under the easier

compliance regime new registers have only 144 data fields compared to 933 data fields earlier.

"For the ease of and for the expedient compliance of the requirement of the various labour related laws referred to herein and for the purpose of maintaining combine registers for all such laws, it has become essential to frame separate rules for the said purpose," the notification dated February 21 said.

According to the notification, the employer shall henceforth

maintain a combined register in the forms specified in the schedule to these rules either electronically or otherwise.

"If the combined register referred is required for inspection by concerned inspector appointed under any of the enactments referred to in the said sub-rule, the concerned persons shall make available the combined registers or provide the necessary particulars for the purposes of accessing the information, as the case may be," the notification said.

The nine legislations for which compliance has been simplified include the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the Contract Labour (Regulation and Abolition) Act, 1970, Equal Remuneration Act, 1976, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Mines Act, 1952, the Minimum Wages Act, 1948, among others.

Source: The Economic Times

February 24, 2017

SIX YEARS OF U K SINHA IN SEBI

As U K Sinha (pictured) prepares to hand over the impressive top floor office at Sebi Bhavan to Ajay Tyagi, it is time to look at the rearview mirror. Sinha started his tenure at the Securities and Exchange Board of India (Sebi) a bit shakily, fending off attacks from various quarters, making people wonder if he'd complete his three years. Eventually, he went on to stay twice that long. Let us look at the key regulatory measures in each of those years, from the Sebi annual reports:

The first year (2011-12):

The regulator made Asba (Application Supported by Blocked Amount) mandatory for non-retail investors. It also expanded the facility's reach by allowing brokers to accept Asba forms from investors. Merchant bankers were asked to disclose the track record of public issues. A new takeover code, which lifted the trigger point for open offers to 25 per cent and the size of the offer to 26 per cent, was a major reform that was said to transform the merger and acquisition world. A forensic accounting cell was set up. So was an International Advisory Board.

The second year (2012- 13):

In April 2012, Sebi told the Supreme Court it had decided to amend the rules governing the shareholding of exchanges and sought three months time (http://www.business-standard.com/article/markets/apex-court-breaks-the-ice-pavesway-for-mcx-sx-112041200067_1.html).

The move would break the impasse with MCX Stock Exchange. A month later, it notified the Alternative Investment Fund Regulations, which sought to bring the bustling private equity and hedge fund space under regulatory oversight. The Investment Advisers Regulations helped monitor a community straddling the grey area between agency and advisory roles.

The third year (2013-14):

As the deadline to comply with minimum public shareholding norms expired in June 2013, as many as 107 non-compliant companies were hit by orders that froze the voting and dividend rights of errant promoters, barred directorships and transactions. By the year-end, 37 of them had

complied. After the framework of Qualified Foreign Investors failed to take off, Sebi decided to merge it with the FII (foreign institutional investor) framework, by bringing in foreign portfolio investor regulations.

The fourth year (2014-15):

After getting a surprise two-year extension, Sinha got Sebi some new powers. The Securities Laws (Amendment) Act, 2014, finally notified in August, gave Sebi powers to search, seize, disgorge, attach and recover. The Act also brought any pooling of money over ₹100 crore under its ambit. Sebi also focused on shutting down regional stock exchanges, which had little trading activity and were becoming conduits for spurious activities. By March 2015, 12 defunct exchanges had exited. Stringent corporate governance measures brought in by Sebi helped India score a high ranking (7') on protection of minority investors in the World Bank's 'Doing Business' report.

The fifth year (2015-16):

The merger into Sebi of the

commodities market regulator, the Forward Markets Commission, was the major development. After integrating at the regulatory level, the regulator has taken up the task of integrating the two diverse markets, at different stages of evolution. As the government's fight against undisclosed money became a focus, Sebi did its bit by stepping up inspections of intermediaries.

The bonus year (2016-17):

Though the annual report will take time, Sebi's energies have been spent on tweaking existing regulations and looking at regulatory concerns, after major boardroom wars broke out at Tatas and Infosys. But, several long-pending and high-profile cases are awaiting closure. Had Sinha been given the long term on day one, he might have utilised it more effectively. It appeared that successor Ajay Tyagi had that luxury, only to be robbed of it by a clarification. Let us see if he can do better in the three years he now has.

Source: Business Standard
February 21, 2017

41 COMPANIES TAKE BACK SHARES WORTH ₹27,783 CRORE IN FY17

Buyback of shares has hit a six year high in 2016-17 (FY17), with 41 companies announcing offers in the last 11 months totaling ₹27,783 crore, as against 16 firms during the entire previous financial year (FY16). Of 41 companies, 10 companies still have their offers open amounting to ₹1,575 crore (excluding the proposed offer by Tata Consultancy Services or TCS).

Most of these companies announced buyback through the tender route, which offers a fixed price to shareholders for a certain number of shares. A buyback reduces a company's cash and number of shares. As a result, the EPS (earnings or net profit per share) goes up. Also, buyback may lift share

| Company | Opening date | Closing date | Offer amount (₹ cr) |
|---------------------------------|--------------|--------------|---------------------|
| Indiabulls Real Estate | Dec 14, '16 | Jun 13, '17 | 540.00 |
| KPR Mill | Jan 23, '17 | Feb 06, '17 | 97.02 |
| Hexaware Technologies | Feb 02, '17 | Feb 15, '17 | 136.68 |
| Sasken Communication Tech. | Feb 03, '17 | Feb 16, '17 | 117.63 |
| Balrampur Chini Mills | Feb 07, '17 | Feb 20, '17 | 175.00 |
| Infinite Computer Solutions (I) | Feb 10, '17 | Feb 23, '17 | 149.99 |
| Vardhman Acrylics | Feb 13, '17 | Feb 27, '17 | 69.00 |
| Apar Industries | Feb 15, '17 | Mar 01, '17 | 29.70 |
| GHCL | Feb 15, '17 | Aug 14, '17 | 80.00 |
| Ramco Cements | Feb 20, '17 | Aug 18, '17 | 180.00 |

Source: Prime Database

price in the short term. "In most companies, capital expenditure has been put on hold. As a result, there is idle or surplus cash, which is dragging down the return ratios. There is pressure from shareholders, too, as the stocks haven't performed well. Hence, it is better to return the cash to them. Secondly,

after changes to Dividend Distribution Tax, buyback offers a more lucrative way to return the money to shareholders than dividends. Thirdly, the promoters could want to give temporary support to the share price by initiating a buyback. All these reasons have seen all these companies opting for this route in FY17," explains

Deepak Jasani, head of retail research at HDFC Securities.

On Monday, TCS board approved a proposal to buy back up to 56.14 million shares of the company for an amount not exceeding ₹16,000 crore (accounting for 2.85 per cent of the money received for selling shares through Initial Public Offering of stocks), at ₹2,850 per share. The TCS stock rallied four per cent to close at ₹2,506 on BSE (formerly Bombay Stock Exchange).

"For those who own TCS shares, it would be sensible to tender the shares in the buyback offer. In the run-up to the buyback, one can even exit fully or partially. For information technology (IT) stocks to rise sustainably, they need a trigger in terms

of order flows, profit outlook, and others. All this is missing right now," Jasani of HDFC Securities says.

A buyback proposal signals company belief that its shares are undervalued, analysts say.

"Given the offer from TCS has come at a time when the IT industry is facing challenging times, it is better shareholders make use of the offer, or exit via the market route in case the stock moves up from here on," says G Chokkalingam, managing director of Equinomics Research & Advisory.

Source: Business Standard
February 21, 2017

COS MAY GET A FAIRER DEAL IN M&A TAXATION

IF GOVERNMENT ADOPTS A NAV-BASED APPROACH TO ARRIVE AT THE FAIR VALUE OF A DEAL, ONLY A SECTION OF M&AS WOULD COME UNDER TAXMAN'S LENS

There may be some good news for corporate houses and private equity and venture capital funds concerned over the government's Budget 2017 plan to allow the income-tax department to reassess the valuations of merger and acquisition (M&A) deals and tax them accordingly.

In a bid to assess whether a deal was done at a lower or higher valuation for levying tax, the government may now prescribe a net-asset-value (NAV) method as against the discounted-cash flow (DCF) method to arrive at the fair value of the deal, sources said.

The move could soothe some nerves, as there were fears of a huge tax burden on all concluded transactions since the tax man had been given a free hand to challenge the valuations of various M&A deals including those between relatives or secondary private equity firms.

"If the government prescribes the NAV method as against the DCF method to arrive at a fair market value under section 50CA, this would only target certain section of M&As. After the budget announcement, there was a worry that many M&As done at valuations lower than the perceived fairmarket value could see taxation. This could also

have led to double taxation in the hands of the buyer and the seller," said Amit Maheshwari, partner, Ashok Maheshwary & Associates LLP.

As per the new section (50CA), sale transactions of unlisted shares of an Indian company in cases where the fair-market value is more than the sales consideration would be taxed in the hands of the seller.

Tax experts are of the view that under the new section, the income-tax officer can demand tax after any M&A deal, if it is felt that the sale was undervalued.

"In the context of the fact that we should logically move to a system of taxing real income, this provision is unwarranted and should be rolled back. There are other provisions in the tax law to deal with outlier situations, such as where understatement of consideration is suspected," said Ketan Dalal, senior tax partner, PwC India.

Most of the industry experts want the government to roll back the section entirely. Industry experts point out that not only will it impact M&A deals but also family restructuring.

"This provision (50CA) has the unfortunate consequence of badly impacting genuine deals and, in any case, should not apply to family restructuring and also where either of the counter parties of the transactions are institutional in vectors, including private equity and venture capital," said Dalal.

The main difference between NAV and DCF is that the latter arrives at a valuation based on future viability of the business. In most cases, say experts, DCF is based on the hypothesis that there is a perpetual growth in the business. This would mean that the valuation or fair value of a deal arrived at through DCF is likely to be higher as against NAV .

Using the NAV could mean that only companies with huge real estate on their books and shell companies that are selling the whole business to escape stamp duty will come under tax scrutiny .

Source: The Economic Times
February 25, 2017

FINMIN QUIZZES SEBI ON NSE CO-LOCATION AUDIT

The Union finance ministry had questioned the Securities and Exchange Board of India (Sebi) over the latter directing the National Stock Exchange (NSE) to conduct a forensic audit on itself.

In an October 2016 letter, the ministry asked why the investigation on the allegation against the exchange's colocation facility was instead not done under Sebi's own supervision, through its technical advisory committee (TAC), Sebi said in a note presented to its board members.

The complaints against NSE's co-location facility were discussed at a Sebi board meeting held on February 11. Based on findings made by Sebi's TAC, the NSE board in September 2016 was directed by the market regulator to initiate an independent examination of systems and process. The exchange's board had appointed Deloitte Touche Tohmatsu India for a forensic investigation.

Others, too, had raised an eyebrow over Sebi's decision to let NSE appoint an examiner to conduct an inspection.

In December 2016, Sebi is said to have explained its stance on the issue to the ministry. Details of this aren't known. Sources in the know say that Sebi's TAC

might not have been equipped to conduct such an audit and it had to rely on a third-party expert.

Based on the Deloitte findings, Sebi had asked NSE to make a comprehensive action plan to address the issues raised in the forensic report. This was to include the fixation of accountability of employees and stock brokers for the breaches.

Sebi also asked NSE to prepare a road map on technological and process changes required at the exchange. "The matter is being further examined for initiating appropriate course of action in light of the findings of the expert committee of Sebi – TAC, forensic auditor and the response of the NSE's board," Sebi said in the board note.

Sebi began probing the matter in early 2015, after at least three complaints alleging certain brokers colluded with NSE's employees/outsourced staff to get information regarding load and starting of servers, including back-up servers. According to Sebi, the complainant also alleged NSE's system enabled 'first-to-connect' stock brokers to receive data ahead of others. The said set-up was used for three years (2011-14).

It further alleged differential access in the form of

'dark fiber' was given to one firm/member at NSE in particular, to connect NSE and BSE co-location at least four to five months ahead of other members. Dark fiber can allow a trader a split-second faster access to data feed of an exchange. Even this much is considered to result in huge gains for a trader.

Sebi said as part of an interim measure, it directed NSE to put aside revenues in an escrow account emanating from the co-location facility. Accordingly, NSE had transferred ₹20.51 crore and 145.5 crore as rack and transaction charges, respectively.

The board took note of the steps taken by Sebi in consultation with the TAC to strengthen the exchange's trading infrastructure in the needed areas. Namely, a fair and transparent data dissemination process, tools to monitor service quality of data feeds, mechanisms to manage system load in a fair manner, and direct connectivity between co-location facilities of the exchange.

Source: The Times of India
February 22, 2017

COMPANIES BLAZE NEW ROUTE TO BUYBACK, SKIP NARROWER ONE

OPT FOR TENDER ROUTE, WHICH ALLOWS PROMOTER PARTICIPATION, OVER THE OPEN-MARKET OPTION

India Inc is increasingly taking the tender route to buyback, instead of the open market one. Between 2006 and 2014, nearly 80 per cent of the buybacks were through open market. Ever since 2015 start, 95 per cent of buybacks have been through tender.

Even the recent mega buyback of Tata Consultancy Services (TCS) is proposed to be done through tender. Change in regulation and taxes has spurred the shift.

The sharp rise in tender buybacks have coincided with the government's decision to levy 10 per cent additional taxes on dividend in the hands of individuals.

"Over the years, the primary motive of buybacks has changed. Earlier, buybacks were used to send a signal to the market that the stock is undervalued. In the current context and with the change in tax code, companies are using buyback as a tax-efficient way of distribution to shareholders. The change in mechanism being used largely reflects the changed motives behind buyback," said Munish Aggarwal, director, Equirus Capital.

In 2016, buybacks saw a spurt on the back of the government's decision to tax dividends. A total of 38 buybacks worth ₹29,080 crore were done last year, of which 29 or ₹26,800 crore worth of buybacks were through the tender route, data compiled by Prime Database showed.

Companies are scaling back on dividends and

TWO KINDS OF REPURCHASE

Companies prefer tender-route buybacks to open-market buybacks

| | Buyback method | | Market share (%) | |
|------|-------------------|--------------------|------------------|------------------|
| | Number of tenders | Number of open mkt | Tender size | Open market size |
| 2006 | 1 | 6 | 17.9 | 82.1 |
| 2007 | 4 | 6 | 24.7 | 75.3 |
| 2008 | 2 | 40 | 2.1 | 97.9 |
| 2009 | 3 | 24 | 7.3 | 92.7 |
| 2010 | 5 | 10 | 67.8 | 32.2 |
| 2011 | 1 | 27 | 0.3 | 99.7 |
| 2012 | 1 | 19 | 1.0 | 99.0 |
| 2013 | 10 | 22 | 28.6 | 71.4 |
| 2014 | 6 | 9 | 49.5 | 50.5 |
| 2015 | 11 | 4 | 90.8 | 9.2 |
| 2016 | 29 | 9 | 92.2 | 7.8 |
| 2017 | 2 | 2 | 98.8 | 1.2 |

rewarding shareholders, including promoters, through buybacks to avail tax arbitrage, say market experts.

Going by Securities and Exchange Board of India (Sebi), through the tender route, both promoters and public shareholders can offer their shares. On the other hand, through open market route, only public shareholders can offer their shares for buyback.

In 2012, Sebi overhauled buyback regulations to

ensure only companies with serious intentions announce share repurchase programmes. The new regulations also encouraged companies to opt for tender buybacks instead of open-market ones as the latter were prone to manipulations.

Interestingly, not just private companies, but several public sector undertakings too have done tender buybacks as the part of the divestment programme. In 2016-17, the government has mopped up ₹16,000 crore through buybacks.

"In a lot of buybacks that have happened in the past two years, promoters have been keen to participate. As promoter group cannot participate when buyback is through open market, tender is the only option," said Gaurang Mehta, executive director, investment banking, Axis Capital.

Market participants say tender buybacks are more investor-friendly as shares are purchased at the maximum buyback price. On the other hand, open-market buybacks can be done at any price below the maximum buyback price.

Market players say new regulations have tighter timelines for completion of buyback process, which has increased the appeal. Sebi has lowered the duration of a buyback to three months from one year. The regulator increased the disclosure requirements for buybacks.

Source: The Times of India
February 23, 2017

TAXMAN SCANS COS WITH SUDDEN RISE IN CASH SALES

Tightening its scrutiny of cash deposits post note ban, the tax department is closely looking at any business entity showing sudden spurt in cash sales in November and December in a bid to detect possible tax evasion. In every case of abnormal increase in cash sale, the tax department will match the sales and inventory data claimed by any company, enterprise or trading establishment with those of prior months to find out if black money was being camouflaged as business sales, a senior government official said. On the taxman's radar are traders and business establishments that have shown sudden rise in cash sales or inventory purchase immediately after November 8 when the government unveiled its decision to demonetise old 500 and 1,000 rupee notes.

Source: The Economic Times
February 24, 2017

OPEN OFFERS BY FIRMS UP 14% TO ₹9,676 CR IN 2016

Open offers made by listed companies to buy shares from the public picked up nearly 14 per cent to ₹9,676 crore in 2016, led almost entirely by issues towards change in control of management. A total of 57 open offers for shares worth ₹9,676 crore were made by the companies in the last year, latest data by Sebi showed. In comparison, 120 offers amounting to ₹8,501 crore were made in 2015. According to the Securities and Exchange Board of India's regulations, pursuant to substantial acquisition of shares or change in control in a listed firm, an acquire has to make an offer to the public shareholders, known as open offers, so as to give them a fair opportunity to exit the company if they so wish to. The open offers are made with the objective of change in control of management, consolidation of holdings and substantial acquisition in a company. PTI

Source: Business Standard
February 22, 2017

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