



WHITE PAPER

On

Continuous Disclosures by Listed Companies

BOMBAY CHAMBER OF COMMERCE

&

INDUSTRY

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FOREWORD

The Capital Markets Group, Banking, Finance and Economics Committee of the Bombay Chamber of Commerce & Industry have taken the initiative of doing review of the current version of the equity listing agreement of the stock exchanges. It has been done in light of the best practices adopted in the global securities markets.

Disclosure, a much said and talked about term in the financial market literature has also become a defining characteristic of securities practice across the globe. In India, there is a greater emphasis on disclosures at the time of initial public offering *vis-à-vis* ongoing periodic disclosures by listed companies. The Capital Markets Group of Bombay Chamber do believe that continuous, adequate and accurate disclosure of material information on a timely basis by a listed company enables investors to make prudent investment decisions. And against this backdrop, the Capital Markets Group constituted Core Group to highlight certain areas in the continuous disclosure regime for listed companies in India that need regulatory review. The Core Group had three rounds of discussion besides the final round on March 2, 2012 to finalize its recommendations.

While presenting this White Paper we would like to place on record our sincere appreciation of the contributions of the Core Group and also the support of the entire Capital Markets Group of the Bombay Chamber in the completion of this task.

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(Director General)

Core Group on Continuous Disclosures by Listed Companies

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BANKING, FINANCE & ECONOMICS COMMITTEE

CAPITAL MARKETS GROUP

PAPER ON CONTINUOUS DISCLOSURES BY LISTED COMPANIES*

The Capital Markets Group of the Bombay Chamber of Commerce & Industry's Banking, Finance and Economics Committee has reviewed the current version of the equity listing agreement of the stock exchanges in light of the best practices adopted in the global securities markets.

Introduction

Disclosure, stemming from the philosophy of the legal maxim "*caveat emptor*", has become a defining characteristic of securities practice across the globe. Almost universally, securities regulations seek to ensure that companies make adequate disclosures – both in offering documents as well as in subsequent periodic filings, the role of the regulator being to determine the extent and nature of disclosures so required. In India, there is a greater emphasis on disclosures at the time of initial public offering *vis-à-vis* ongoing periodic disclosures by listed companies. This raises the issue of disparity between primary market disclosures and continuous disclosures. Continuous, adequate and accurate disclosure of material information on a timely basis by a listed company enables investors to make prudent investment decisions. This is also necessary from the perspective of parity of information to all stakeholders and avoids situations where certain stakeholders may have important price sensitive information which others don't have. It not only assists investors to compare the performance of a company over various periods, but also enables comparison with the company's peers.

The listing agreement is a contract between a stock exchange and a company whose shares are listed on the stock exchange ("**Listing Agreement**"). Although a contract, pursuant to the amendment to the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") in 1995, it was made mandatory for every listed company to comply with the Listing Agreement.¹The Listing Agreement lays out rules and procedures which listed companies are required to comply with and follow in order to remain listed on the stock exchanges.

This paper seeks to highlight certain areas in the continuous disclosure regime for listed companies in India that need regulatory review and updating to ensure the Indian secondary market practices are comparable with those in the developed markets.

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¹Section 21 was amended pursuant to the Securities Laws (Amendment) Act, 1995 w.e.f. January 25, 1995.

Continuous disclosure

While there have been significant regulatory developments in strengthening primary market disclosures over the years, there is far lesser guidance on disclosures required to be made on an ongoing basis, as mandated under the Listing Agreements. For instance:

Material Agreement: The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“**SEBI ICDR Regulations**”) specify limited details (such as name of parties, date and general nature) in relation to the disclosure of material non-ordinary course contracts in the offer document at the time of an initial public offering. However, there is no guidance in the Listing Agreement for disclosure of details of material agreements entered into by listed companies on an ongoing basis. Drawing a comparison with the disclosure requirements in developed markets, listed companies are required to periodically report details of all definitive and binding agreements entered into by them to acquire or sell assets which are material to them and make these contracts available to the investors by way of filings with the securities regulators. In addition to the filing requirement, regulations also provide guidance for disclosures of material contracts which are not entered into in the ordinary course of business. Further, disclosure and filing of contracts on which company’s business is substantially dependent, such as continuing contracts to sell a major part of company’s products or services or to purchase major part of company’s requirement of services or raw material or any franchise, license, agreement to use a patent, trade secret, trade name, etc. is also prescribed. The absence of similar guidance and regulatory requirements to file copies of contracts in India, the decision to make the disclosure and the extent of detail is often left to the judgment and discretion of the company.

Suggestion: In view of the above, we suggest that suitable guidance in relation to periodic disclosure of material agreements should be included in the Listing Agreement which should specify: (i) criteria for identifying material non-ordinary course agreements; and (ii) timing, manner and level of details for such disclosures.

Concept of materiality and adequate disclosures of material events: Clause 36 of the Listing Agreement requires disclosure of all events that have a bearing on the performance of the company along with all information that may be considered “price sensitive” and includes a list of events that may be considered as “material” for such determination. However, the list of events is indicative and not comprehensive. Absence of any definition or guidance on interpretation of the above terms leads to discretionary disclosures by listed companies, which could lead to presentation of the company such that it is perceived in a favourable manner by the investor community. We have compared disclosures made by companies in India to report an incident of fire at their offices or manufacturing units with disclosures made by companies in developed markets. While Indian companies inform the stock exchanges of the occurrence of the event, no further updates with respect to quantum of damage or insurance claimed or realized have been made either in a subsequent filing with the stock exchanges or in their annual reports. On the other

hand, companies in developed markets disclose the occurrence of the incident along with an approximation of quantum of damage caused and status of insurance coverage. This is followed by a subsequent disclosure to the securities regulator and exchanges with details of exact damage caused, insurance claim realized and impact on financials. Similarly, disclosures made by companies in India to report fraud by employees or officers have not been adequate. While Indian companies have informed the stock exchanges about the event of fraud, only limited information on the nature and consequences of fraud committed have been disclosed. On the other hand, companies in developed markets have disclosed the motives, character, size and effect of a fraud committed by employees of the company along with an analysis of the impact it may have on future financial results of the company. Further, disclosures by companies in relation to an acquisitions made by them are often inconsistent. In absence of a clear regulatory guidance, the information provided in the public domain lack details such as the cost of the acquisition, level of control in the acquired entity, objects and effects of acquisition. We also note that in acquisitions involving foreign entities, the level of disclosure is relatively more detailed. This is primarily because the companies use the same disclosure as is made in foreign jurisdictions due to disclosure obligations in such jurisdictions. Therefore, while we may argue that Indian companies have complied with Clause 36 in terms of notification of the occurrence of a material event, such disclosures do not provide adequate information of the consequences or impact such events.

Suggestion: The Listing Agreement should indicate thresholds for determining materiality of an event of fraud, fire or other industrial accidents. Full disclosure of such events with an estimation of loss, insurance coverage and impact on financial results and future prospects should be prescribed. In addition to financial thresholds, for certain events where financial implication is not quantifiable, the Listing Agreement should provide a qualitative guidance on the level of disclosure. Such events may include criminal charges against key officials, regulatory investigations, threatened litigation, etc.

Financial Information: The Listing Agreement mandates a listed company to prepare and submit its financial results in the manner specified therein². However, there is no requirement for any qualitative disclosures. The financial results are published without any discussion or analysis by the company's management. Therefore, disclosures made by most companies do not provide any assistance to a layman on how to understand and use them to make an investment decision. Needless to add, most of the large cap companies provide detailed analyst presentations, however, this is not the norm across the market.

Suggestion: In addition to financial results required to be published under the Listing Agreement currently, qualitative disclosures such as management's discussion and analysis and summary notes to such financial results should also be required to be disclosed along with the financial results.

² Clause 41 of the Listing Agreement.

Selective disclosure by companies

Full and fair disclosure by listed companies has been an objective of regulatory authorities across various jurisdictions. However, some listed companies tend to provide unpublished material information to third parties such as analysts, employees, credit rating agencies, lenders and major shareholders, either periodically, or in response to queries from such parties, or in case of any possible investment or capital raising exercise. As a result, those privy to such information have the ability to use such information to make a profit or avoid a loss at the expense of the public at large and arguably raise concerns of insider trading under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, which lays down certain guidelines in relation to dealing with price sensitive information³. Some investors such as retail investors are often not on a 'level playing field' with such market insiders. Certain listed companies periodically upload business updates or important news on their website, or disseminate the information by way of a press release in newspapers. Companies often use media to selectively disseminate information and publish public statements instead of disclosing details to stock exchanges. Such misuse of media may actually result in manipulation of secondary market. For ensuring dissemination of important information to all sections of investors simultaneously, it is important that such information is filed with the stock exchanges to make it available in public domain. Ensuring that all information is filed with the stock exchanges provides a compilation of all corporate announcements made by a listed company at one place for any investor to view. Selective disclosure as a practice has been heavily criticized for having led to a loss of investor confidence in the integrity of capital markets. Such disclosures may be offered to only a select group of analysts and such analysts may feel obligated to report only the positive news about that company or bias their analysis in order to have continued access to selectively disclosed information.

In developed markets, publicly traded companies are subject to specific rules and regulations on fair disclosures and transparency. Such rules prescribe that when an issuer discloses material nonpublic information to certain individuals or entities (generally, securities market professionals, such as stock analysts, or holders of the issuer's securities who may trade on the basis of the information) the issuer must make public disclosure of that information. A full disclosure of inside information is required to be made in the event such information is inadvertently released to the analysts. Similarly any selective briefing of analysts by directors or other persons discharging managerial responsibilities is regarded as market abuse.

³ Regulation 12(2) read with Schedule II of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 mandate a listed company to (i) disclose only public information to the analysts and institutional investors or simultaneously make public such information which is given to the analyst, (ii) make at least two company representatives attend meetings with analysts and institutional investors and preferably record such discussion, (iii) observe diligence while dealing with analysts' questions that raise issues outside the intended scope of discussion, i.e. if an answer to the analyst's question includes price sensitive information, a public announcement should be made before responding, and (iv) make a press release or post relevant information on its website after the company's meeting with analysts.

Therefore, whilst ‘full and fair disclosure’ by listed companies has been an objective of various securities regulators across jurisdictions, including India, there is a need to ensure that such ‘full and fair disclosure’ is actually made by the Indian listed companies. Since, selective disclosure has its own set of pros and cons, the problem at hand needs to be solved by striking the right balance. Accordingly, amending the Listing Agreement by incorporating additional requirements for ‘full and fair disclosure’ by a listed company may be a way to address the issue.

Suggestion: All the information shared with analysts, securities markets professionals and other third parties should first be publicly disclosed through the stock exchanges. To the extent that any analyst or other reports based on such price sensitive information are not proprietary and their disclosure would not result infringement of intellectual property or compromise the Company’s commercial interest, such reports should also be made available to the public by the Company. Additionally, all listed Companies should provide a link on their website which provides access to all media reports about the Company. A significant number of listed companies already provide such link even without any regulatory requirements and, therefore, it should not be onerous.

Conclusion

Enforcement of the Listing Agreement is the responsibility of SEBI and the stock exchanges. Under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992, SEBI has power to regulate the business of the stock exchanges and issue directions in the interest of investors and orderly development of securities market. Under Section 21A of the SCRA and Rule 19(5) of Securities Contracts (Regulation) Rules, 1957 (“**SCRR**”), the stock exchanges may suspend or withdraw admission to dealings in the securities of a company; or delist the securities for a breach of or non-compliance with any of the conditions of the Listing Agreement⁴. Further, there are serious penalties prescribed for failure to comply with various provisions of SCRA and Listing Agreement.⁵ Additionally, SEBI may, at its own discretion or on the recommendation of the stock exchanges, waive or relax the strict enforcement of any or all of the requirements.

Although there have been certain cases of adjudication by SEBI and SAT where penalties were levied on companies which were in violation of the listing agreement, we are yet to see an effective and comprehensive enforcement mechanism. It can be argued that whilst provisions in

⁴ Certain examples of compulsory delisting are Ajanta Tubes Limited, Alliance Capital & Financial Service Limited, Arihant Thermoware Limited and CRB Capital Markets Limited (2004).

⁵ (i) Under Section 23 of the SCRA, penalty for failure to comply with provisions of section 21 of the SCRA (which provides for compliance with conditions of Listing Agreement) is ten years imprisonment or with a fine up to Rs. 25 crores or both. (ii) Under Section 23A, penalty for failure to furnish information, document, books, returns or report to stock exchanges within the time limit specified under Listing Agreement or failure to maintain books of accounts or records as per Listing Agreement is Rs. one lakh per day for each day of continued violation up to a maximum penalty of Rs. one crore. (iii) Under section 23C of SCRA, penalty for failure to redress investor’s grievances is Rs. one lakh per day for each day of continued failure up to a maximum penalty of Rs. one crore. (iv) Under 23E penalty for failure to comply with provisions of listing conditions or delisting conditions is up to Rs. 25 crores.

the law exist, strict compliance of the Listing Agreement along with monitoring of such compliance could have been more robust.

Over the years various factors such as changes in laws including enactment of new regulations or amendments to the existing regulations have resulted in some of the clauses of the Listing Agreement to become redundant, duplicative or inconsistent with each other or with other legal provisions. Further, certain clauses which are procedural in nature and are already included elsewhere, for example in the articles of association of a company, SCRA, SCRR or the Companies Act, 1956, may be removed from the Listing Agreement to avoid duplication. A list of these clauses has been included as **Annexure A** to this paper.

In today's dynamic and fast changing business environment and economy, disclosures made by companies in offering documents at the time of their initial listing cannot be relied on for subsequent investment decisions. This is due to either of the two reasons: (i) the companies were listed prior to the invent of the disclosure regime, or (ii) the information in the offer documents, if available in the public domain has become outdated. Thus, in most cases investors do not have an option except to rely on periodic disclosures and annual reports released by companies prior to making any investment decision. This increases the probability of a retail investor investing in an overvalued stock without having adequate information to make an informed investment decision in the secondary market. It is imperative that the Listing Agreement is modified to ensure a strong and robust continuous disclosure regime.

Annexure A

I. The procedural requirements should be included in the articles of association of a company instead of the Listing Agreement

Rule 19(2)(a) of the Securities Contracts (Regulation) Rules, 1957⁶, as amended, (“SCRR”) specifies certain provisions which should be included in the articles of association (“AoA”) of a company. Further, in terms of the Rule 19(1)(a) of the SCRR a company seeking listing on the stock exchanges is required to file its AoA along with the listing application. In view of above, the stock exchanges are empowered to, and routinely suggest, amendments to AoA prior to granting the in-principle approval. Therefore, certain Clauses of the Listing Agreement which lay down procedural requirements such as Clauses 1, 2, 3, 4, 5, 7, 8, 11, 12A, 16, 23(b) and 34, should be contained in AoA and not the Listing Agreement.

Clauses 1, 2, 3, 4, 5, 7, 8, 11, 12A, 16, 23(b) and 34 read as follows:

Clause No.	Particulars
1	The Issuer agrees: a) that letters of allotment will be issued simultaneously and that in the event of its being impossible to issue letters of regret at the same time, a notice to that effect will be inserted in the press so that it will appear on the morning after the letters of allotment have been posted; b) that letters of right will be issued simultaneously; c) that letters of allotment, acceptance or rights will be serially numbered, printed on good quality paper and examined and signed by a responsible officer of the Issuer and that

⁶ **Requirements with respect to the listing of securities on a recognised stock exchange.**

19. (2) Apart from complying with such other terms and conditions as may be laid down by a recognised stock exchange, an applicant company shall satisfy the stock exchange that:

(a) Its articles of association provide for the following among others -

(i) that the company shall use a common form of transfer,

(ii) that the fully paid shares will be free from all lien, while in the case of partly paid shares, the company’s lien, if any, will be restricted to moneys called or payable at a fixed time in respect of such shares,

(iii) that any amount paid-up in advance of calls on any share may carry interest but shall not entitle the holder of the share to participate in respect thereof, in a dividend subsequently declared,

(iv) there will be no forfeiture of unclaimed dividends before the claim becomes barred by law,

(v) that option or right to call of shares shall not be given to any person except with the sanction of the company in general meeting:

Provided that a recognised stock exchange may provisionally admit to dealings the securities of a company which undertakes to amend its articles of association at its next general meeting so as to fulfill the foregoing requirements and agrees to act in the meantime strictly in accordance with the provisions of this clause.

Clause No.	Particulars
	<p>whenever possible they will contain the distinctive numbers of the securities to which they relate;</p> <p>d) that letters of allotment and renounceable letters of right will contain a provision for splitting and that when so required by the NSE the form of renunciation will be printed on the back of or attached to the letters of allotment and letters of right;</p> <p>e) that letters of allotment and letters of rights will state how the next payment of interest or dividend on the securities will be calculated.</p>
2	<p>The Issuer will issue, when so required, receipts in such forms as prescribed by the NSE, for all securities deposited with it whether for registration, sub-division, consolidation, renewal, exchange or for other purposes.</p>
3	<p>The Issuer agrees:</p> <p>a) to have on hand at all times a sufficient supply of certificates to meet the demands for transfer, sub-division, consolidation and renewal;</p> <p>b) to issue certificates or pucca receipts within one month of the date of the expiration of any right to renunciation;</p> <p>c) to issue certificates within one month of the date of lodgment for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies or to issue within fifteen days of such lodgment for transfer, pucca transfer receipts in denominations corresponding to the market units of trading autographically signed by a responsible official of the Issuer and bearing an endorsement that the transfer has been duly approved by the directors or that no such approval is necessary;</p> <p>d) to issue without charge balance certificates, within one month, if so required;</p> <p>e) to issue new certificates in replacement of those which are lost within six weeks of notification of loss and receipt of proper indemnity</p>
4	<p>The Issuer agrees:</p> <p>a) to issue, unless the NSE otherwise agrees and the parties concerned desire, allotment letters, share certificates, call notices and other relevant documents in such units of trading (market units) as may be specified by NSE;</p> <p>b) to split certificates, letters of allotment, letters of right, and split, consolidation, renewal and pucca transfer receipts of large denominations into smaller units;</p> <p>c) to consolidate certificates of small denominations into denominations corresponding to the market units of trading or other units as may be decided by NSE from time to time;</p> <p>d) to issue within one week split, consolidation and renewal receipts duly signed by an official of the Issuer and in denominations corresponding to the market units of trading, particularly when so required by NSE;</p> <p>e) to exchange `rights` or `entitled` shares into coupons or fractional certificates when so required by NSE;</p> <p>f) to issue call notices and splits and duplicates thereof in a standard form acceptable to NSE, to forward a supply of the same promptly to NSE for meeting requests for blank, split and duplicate call notices, to make arrangements for accepting call moneys at all centers where there are recognized stock exchanges in India and not to require a discharge on call receipts.</p> <p>g) to accept the discharge of the member of NSE on split, consolidation and renewal receipts as good and sufficient without insisting on the discharge of the registered holders.</p>
5	<p>When documents are lodged for sub-division, consolidation or renewal through the clearing house of NSE, the Issuer agrees:</p> <p>a) that it will accept the discharge of an official of NSE Clearing House on the Issuer's split, consolidation and renewal receipts as good and sufficient without insisting on the</p>

Clause No.	Particulars
	<p>discharge of the registered holders;</p> <p>b) that when the Issuer is unable to issue certificates or split, consolidation or renewal receipts immediately on lodgment, it will verify whether the discharge of the registered holders on the documents lodged for sub-division, consolidation or renewal and their signature on the relative transfers are in order.</p>
7	<p>On production of the necessary documents by security holders or by members of NSE, the Issuer will make on transfer an endorsement to the effect that the Power of Attorney or Probate or Letters of Administration or Death Certificate or Certificate of the Controller of Estate Duty or similar other documents have been duly exhibited to and registered by the Issuer.</p>
8	<p>The Issuer agrees that it will not make any charge:</p> <p>a) for registration of transfers of its share and debentures;</p> <p>b) for sub-division and consolidation of share and debenture certificates and for sub-division of letters of allotment and split, consolidation, renewal and pucca transfer receipts into denominations corresponding to the market unit of trading;</p> <p>c) for sub-division of renounceable letters of rights;</p> <p>d) for issue of new certificates in replacement of those which are old, decrepit or worn out, or where the cages on the reverse of recording transfers have been fully utilised;</p> <p>e) for registration of any power of attorney, probate, letters of administration or similar other documents.</p>
11	<p>The Issuer agrees that it will entertain applications for registering transfers of its securities when:</p> <p>a) the instrument of transfer is in any usual or common form approved by NSE; and</p> <p>b) the transfer deeds are properly executed and accompanied either by certificates or by letters of allotment, pucca transfer receipts, split, consolidation or renewal receipts duly discharged either by the registered holders or, in the case of split, consolidation or renewal receipts, by the members of NSE or an official of NSE Clearing House as provided herein. and</p> <p>c) the transferee(s) furnish a copy of their PAN card to the Company/RTA's for registration of transfer of shares, for securities market transactions and off-market / private transactions involving transfer of shares in physical form.</p>
12A	<p>(1) The Company agrees that when proper documents are lodged for transfer and there are no material defects in the documents except minor difference in signature of the transferor(s),</p> <p>(i) then the Company will promptly send to the first transferor an intimation of the aforesaid defect in the documents, and inform the transferor that objection, if any, of the transferor supported by valid proof, is not lodged with the Company within fifteen days of receipt of the Company's letter, then the securities will be transferred;</p> <p>(ii) if the objection from the transferor with supporting documents is not received within the stipulated period, the Company shall transfer the securities provided the Company does not suspect fraud or forgery in the matter.</p> <p>(1a) The company agrees that in respect of transfer of shares where the company has not effected transfer of shares within 1 month or where the company has failed to communicate to the transferee any valid objection to the transfer within the stipulated time period of 1 month, the company shall compensate the aggrieved party for the opportunity losses caused during the period of the delay.</p> <p>(1b) The Issuer agrees that any claim, difference or dispute arising out of Clause 12 (1a) may be referred to and decided by arbitration as provided in the Bye-Laws and Regulations of the Exchange. The issuer further agrees to actively participate in any arbitral proceeding so initiated and comply with the arbitration award.</p>

Clause No.	Particulars
	<p>In addition, the company keeping in view the provisions of Section 206A of the Companies Act and Section 27 of the Securities Contracts (Regulation) Act, 1956, shall provide all benefits (i.e. bonus shares, right shares, dividend) which accrued to the investor during the intervening period on account of such delay.</p> <p>(2) The Company agrees that when the signature of the transferor(s) is attested by a person authorised by the Department of Company Affairs, u/s 108(1A) of the Companies Act, 1956, then it shall not refuse to transfer the securities on the ground of signature difference unless it has reasons to believe that a forgery or fraud is involved.</p>
16	<p>The Issuer agrees to close its transfer books for purposes of declaration of dividend or the issue of right or bonus shares or issue of shares for conversion of debentures or of shares arising out of right attached to debentures or for such other purposes as the NSE may agree to or require and further agree to close its transfer books at least once a year at the time of the Annual General Meeting if they have not been otherwise closed at any time during the year and to give to NSE the notice in advance of at least seven working days, or of as many days as NSE may from time to time reasonably prescribe, stating the dates of closure of its transfer books (or, when the Transfer books are not to be closed, the date fixed for taking a record of its shareholders or debenture holders) and specifying the purpose or purposes for which the transfer books are to be closed (or the record is to be taken) and to send copies of such notices to the other recognized stock exchanges in India. The Issuer further agrees to ensure that the time gap between two book closures and record dates would be at least 30 days.</p> <p>The Company on whose stocks, derivatives are available or whose stocks form part of an index on which derivatives are available, shall give a notice period of at least 7 working days to stock exchanges for corporate actions like mergers, de-mergers, splits and bonus shares.</p>
23b	<p>The Issuer agrees:</p> <p>b) to close the transfer books as from such date or to fix such record date for the purpose in consultation with NSE as may be suitable for the settlement of transactions and to so close the Transfer books or fix the record date only after the sanctions subject to which the issue or offer is proposed to be made have been duly obtained unless the NSE agrees otherwise;</p>
34	<p>The Issuer agrees:-</p> <p>a) that it will not exercise a lien on its fully paid securities and that in respect of partly paid securities it will not exercise any lien except in respect of moneys called or payable at a fixed time in respect of such securities;</p> <p>b) that it will not decline to register or acknowledge any transfer of securities on the ground of the transferor being either alone or jointly with any other person or persons indebted to the Issuer on any account whatsoever;</p> <p>c) that it will not forfeit unclaimed dividends before the claim becomes barred by law and that such forfeiture, when effected, will be annulled in appropriate cases;</p> <p>d) that if any amount be paid up in advance of calls on any securities it will stipulate that such amount may carry interest but shall not in respect thereof confer a right to dividend or to participate in profits;</p> <p>e) that it will not give to any person the call of any securities without the sanction of the security holders in general meeting;</p> <p>f) that it will send out proxy forms to security holders in all cases, such proxy forms being so worded that a security holders may vote either for or against each resolution;</p> <p>g) that when notice is given to its security holders by advertisement, it will advertise such notice in at least one leading National daily newspaper.</p>

II. Inconsistency

There are various Clauses of the Listing Agreement which are arguably inconsistent with each other or with other legal provisions, which impacts the disclosures by listed companies.

Please see below certain examples of such Clauses:

Sr. No.	Clause No.	Particulars	Clause No.	Particulars	Observations
1.	8(b) of the Listing Agreement	The Issuer agrees that it will not make any charge: b) for sub-division and consolidation of share and debenture certificates and for sub-division of letters of allotment and split, consolidation, renewal and pucca transfer receipts into denominations corresponding to the market unit of trading;	9(b) of the Listing Agreement	The Issuer agrees that it will not charge any fees exceeding those, which may be agreed upon with NSE - b) for sub-division and consolidation of share and debenture certificates and for sub-division of letters of allotment and split, consolidation, renewal and pucca transfer receipts into denominations other than those fixed for the market units of trading.	Clause 8(b) of the Listing Agreement and Rule 19(3)(b) of SCRR are inconsistent with the Clause 9(b) of the Listing Agreement.
	Rule 19(3)(b) of the SCRR	Requirements with respect to the listing of securities on a recognised stock exchange. 19. (3) A company applying for listing shall, as a condition precedent, undertake inter alia – (b) to issue, when so required, receipts for all securities deposited with it whether for registration, sub-division, exchange or for other purposes; and not to charge any fees for registration of transfers, for sub-division and consolidation of certificates and for sub-division of letters of allotment, renounceable letters of right, and split, consolidation, renewal and transfer receipts into denominations of the market unit of trading;			

Sr. No.	Clause No.	Particulars	Clause No.	Particulars	Observations
2.	23(e) of the Listing Agreement	The Issuer agrees: e) To give to the shareholders reasonable time, not being less than four weeks, within which to record their interest and exercise their rights;	81(1)(b) of the Companies Act, 1956	81. Further Issue of Capital (1) Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then, - (b) the offer aforesaid shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined;	Clause 23(e) of the Listing Agreement is inconsistent with the Section 81(1)(b) of the Companies Act, 1956 and Regulation 54(6) of the SEBI ICDR Regulations.
			54(6) of the SEBI ICDR Regulations	Letter of offer, abridged letter of offer, pricing and period of subscription. 54. (6) A rights issue shall be open for subscription for a minimum period of fifteen days and for a maximum period of thirty days.	

III. Redundant Clauses

Due to legal developments over the years, such as enactment of new regulations or new provisions in existing regulations, or because certain Clauses have been inspired by other legal provisions, some of the Clauses of the Listing Agreement are redundant.

Please see below certain examples of such Clauses:

Sr. No.	Clause No.	Particulars	Clause No.	Particulars	Observations
1.	18 of the Listing Agreement	The Issuer will publish in a form approved by NSE such periodical interim statements of its working and earning as required by NSE, SEBI, or any statutory body or local authority or any body or authority acting under the authority or direction of the Central Government.	41 of the Listing Agreement	Clause 41 mandates publication of periodical financial results of the companies and provide detailed guidance, format, etc for submitting the financial results to the stock exchange.	Clause 18 of the Listing Agreement is redundant in view of Clause 41 of the Listing Agreement.
2.	23(a) of the Listing Agreement	The Issuer agrees: a) to issue or offer in the first instance all shares (including forfeited shares, unless NSE otherwise agrees), securities, rights, privileges and benefits to subscribe pro rata to the security shareholders of the Issuer unless the security holders in the general meeting decide otherwise;	81(1)(a) of the Companies Act, 1956	81. Further Issue of Capital (1) Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then, - (a) such further shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid-up on those shares at that	Clause 23(a) of the Listing Agreement is redundant in view of Section 81(1)(a) of the Companies Act, 1956.

Sr. No.	Clause No.	Particulars	Clause No.	Particulars	Observations
				date;	
3.	23(c) of the Listing Agreement	The Issuer agrees: c) to make such issues or offers in a form to be approved by NSE and unless NSE otherwise agrees to grant in all cases the right of renunciation to the shareholders and to forward a supply of renunciation forms promptly to NSE;	81(c) of the Companies Act, 1956	81. Further Issue of Capital (1) Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then, - (c) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in Clause (b) shall contain a statement of this right;	Clause 23(c) of the Listing Agreement is redundant in view of Section 81(c) of the Companies Act, 1956.
4.	45(a) of the Listing Agreement	The Issuer agrees: f) to issue letters of allotment or letters of right within six weeks of the record date or date of reopening of the transfer books after their closure for the purpose of making a bonus or right issue and to issue allotment letters or	SEBI Circular (CIR/CFD/DIL/2011 dated April 29, 2011)	SEBI Circular dated April 29, 2011 provides detailed timelines for post issue activities including the listing of securities.	Clauses 23(f) and 45 of the Listing Agreement are redundant in view of SEBI Circular (CIR/CFD/DIL/2011 dated April 29, 2011).

Sr. No.	Clause No.	Particulars	Clause No.	Particulars	Observations
		certificates within six weeks of the last date fixed by the Issuer for submission of letters of renunciation or applications of new securities.			
5.	24(b) of the Listing Agreement	24. b) The Issuer agrees to make true, fair and adequate disclosure in the offer documents/draft prospectus/letter of offer in respect of any new or further issue of shares/ securities.	-	-	Clause 24(b) of the Listing Agreement is redundant in view of the Companies Act, 1956 and SEBI ICDR Regulations.
6.	24(d)(ii) of the Listing Agreement	24. d) The Issuer further agrees that the Issuer shall submit to the exchange the following documents to enable it to admit/ list the said securities for dealing in NSE, such as – ii) a certificate from a merchant banker acting as lead manager to the issue reporting positive compliance by the issuer of the SEBI ICDR Regulations.	-	-	Clause 24(d)(ii) of the Listing Agreement is not required in view of SEBI ICDR Regulations' requirement of filing of due diligence certificate by merchant banks and Clause 24(d)(i)'s requirement of submission of SEBI acknowledgement card.

IV. Duplication

Sr. No.	Clause No.	Particulars	Clause No.	Particulars	Observations
1.	29 of the Listing Agreement	The Issuer will promptly notify NSE of any proposed change in the general character or nature of its business.	36 of the Listing Agreement	<p>Apart from complying with all specific requirements as above, the Issuer will intimate to the Stock Exchanges, where the company is listed immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will have a bearing on the performance / operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the security holders and the public to appraise the position of the Issuer and to avoid the establishment of a false market in its securities. In addition, the Issuer will furnish to NSE on request such information concerning the Issuer as the NSE may reasonably require. The material events may be events such as:</p> <ul style="list-style-type: none"> •Change in the general character or nature of business <p>Without prejudice to the generality of</p>	Clause 29 of the Listing Agreement is irrelevant in view of specific requirements under Clause 36 of the Listing Agreement.

Sr. No.	Clause No.	Particulars	Clause No.	Particulars	Observations
				<p>Clause 29 of the Listing Agreement the Issuer will promptly notify the Exchange of any material change in the general character or nature of its business where such change is brought about by the Issuer entering into or proposing to enter into any arrangement for technical, manufacturing, marketing or financial tie-up or by reason of the Issuer, selling or disposing of or agreeing to sell or dispose of any unit or division or by the Issuer, enlarging, restricting or closing the operations of any unit or division or proposing to enlarge, restrict or close the operations of any unit or division or otherwise.</p>	
2.	36(g)(6) of the Listing Agreement	<p>Apart from complying with all specific requirements as above, the Issuer will intimate to the Stock Exchanges, where the company is listed immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will</p>	27(a) of the Listing Agreement	<p>The Issuer will promptly notify NSE: a) of any action, which will result in the redemption, cancellation or retirement in whole or in part of any securities listed on NSE.</p>	<p>Requirement of Clause 36(g)(6) of the Listing Agreement is similar to that of Clause 27(a) of the Listing Agreement.</p>

Sr. No.	Clause No.	Particulars	Clause No.	Particulars	Observations
		<p>have a bearing on the performance / operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the security holders and the public to appraise the position of the Issuer and to avoid the establishment of a false market in its securities. In addition, the Issuer will furnish to NSE on request such information concerning the Issuer as the NSE may reasonably require. The material events may be events such as:</p> <p>g) Any other information having bearing on the operation/performance of the company as well as price sensitive information which includes but not restricted to;</p> <p>6. Any action which will result in alteration in the</p>			

Sr. No.	Clause No.	Particulars	Clause No.	Particulars	Observations
		terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.			