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A date to remember: Ad-hoc Analyst/Investor meets become a passé affair

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It is a common practice to have several analysts approaching the KMPs of listed entities to know more about the company, product lines, future prospects etc. Although the officials never have the intent to divulge any undisclosed or sensitive matters, it is better to be safe than sorry while scheduling analysts meets. Any inadvertent disclosure of price sensitive information is likely to have far reaching effect. In this article, we have given an overview of the disclosure requirements under various regulations in India and corresponding provisions internationally. The intent is to evaluate whether private meetings with analysts or potential investors is possible in the given scenario.

Disclosure requirements with regard to meetings with Analysts and Institutional Investors:

SEBI (Prohibition of Insider Trading) Regulations, 2015¹:

Regulation 8(1) of the SEBI (PIT) Regulations, 2015 reads:

“The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner

Note: *This provision intends to require every company whose securities are listed on stock exchanges to formulate a stated framework and policy for fair disclosure of events and occurrences that could impact price discovery in the market for its securities. Principles such as, equality of access to information, publication of policies such as those on dividend, inorganic growth pursuits, calls and meetings with analysts, publication of transcripts of such calls and meetings, and the like are set out in the schedule.”*

Principle 6 & 7 of Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information under Schedule A of the PIT Regulations, 2015 requires the company to ensure that no UPSI is shared with analysts and research personnel and to develop best practices to make transcripts or records of meetings with such analysts on the official website of the company.

“Principle 6: Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.

¹ http://www.sebi.gov.in/cms/sebi_data/attachdocs/1421319519608.pdf



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Principle 7: Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.”

SEBI (Prohibition of Insider Trading) Regulations, 1992²:

Para 6 of the Code Of Corporate Disclosure Practices For Prevention Of Insider Trading under Schedule II of the SEBI (PIT) Regulations, 1992 provided the following:

“Listed companies should follow the guidelines given hereunder while dealing with analysts and institutional investors:—

*(i) **Only Public information to be provided** - Listed companies shall provide only public information to the analyst/research persons/large investors like institutions. Alternatively, the information given to the analyst should be simultaneously made public at the earliest.*

*(ii) **Recording of discussion** - In order to avoid misquoting or misrepresentation, it is desirable that at least two company representatives be present at meetings with Analysts, brokers or Institutional Investors and discussion should preferably be recorded.*

*(iii) **Handling of unanticipated questions** - A listed company should be careful when dealing with analysts' questions that raise issues outside the intended scope of discussion. Unanticipated questions may be taken on notice and a considered response given later. If the answer includes price sensitive information, a public announcement should be made before responding.*

*(iv) **Simultaneous release of Information** - When a company organizes meetings with analysts, the company shall make a press release or post relevant information on its website after every such meet. The company may also consider live webcasting of analyst meets.”*

Further, Para 7(iv) of the CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING under Schedule II of the SEBI (PIT) Regulations, 1992 requires the website of the companies to provide a means of giving investors a direct access to analyst briefing material, significant background information and questions and answers.

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015³

Regulation 46(2)(o) of the SEBI(LODR) Regulations, 2015 requires the listed entity to disseminate the schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submitting the same to the stock exchange. The aforesaid regulation reads as below:

“46(2) The listed entity shall disseminate the following information on its website:

²<http://www.sebi.gov.in/acts/insideregu.pdf>

³http://www.sebi.gov.in/cms/sebi_data/attachdocs/1441284401427.pdf



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(o) the schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investor simultaneously with submission to the stock exchange”

Further, Part A(A)(15) of Schedule III of the SEBI(LODR) Regulations, 2015 requires the listed entity to disclose the schedule of analyst or institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors without any application of the guidelines for materiality as specified in Regulation 30(4) of the LODR regulations. Additionally, under Part C(8)(e) of Schedule V of the LODR regulations requires the listed entity to disclose the presentations made to the institutional investors or analysts in the section on the corporate governance of the annual report under the head - Means of Communication.

Equity Listing Agreement

Clause 49 VIII (E) (4) also mandates listed companies to upload the presentations made by the Company to analysts on the company’s website or send to the stock exchange to enable the stock exchange to put on its own website.

Corresponding provisions under International Laws:

USA:

Para 2 (Disclosures of Material Nonpublic Information) under Part II(Selective Disclosure: Regulation FD)-B (Discussion of Regulation FD) of the Final rule⁴ with regard to Regulation FD (Fair Disclosure) issued by the Securities and Exchange Commission of the United States provides that an issuer or his official while entering into a private discussion with an analyst who is seeking guidance about earnings estimates, he or she takes on a high degree of risk under Regulation FD. If the issuer official communicates selectively to the analyst nonpublic information that the company's anticipated earnings will be higher than, lower than, or even the same as what analysts have been forecasting, the issuer likely will have violated Regulation FD. However, the intention of the said Regulation FD is not to prohibit the issuer from communicating non-material piece of information to an analyst, even if, unbeknownst to the issuer, that piece helps the analyst complete a "mosaic" of information that, taken together, is material.

⁴ <https://www.sec.gov/rules/final/33-7881.htm>



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Para 2:

“One common situation that raises special concerns about selective disclosure has been the practice of securities analysts seeking “guidance” from issuers regarding earnings forecasts. When an issuer official engages in a private discussion with an analyst who is seeking guidance about earnings estimates, he or she takes on a high degree of risk under Regulation FD. If the issuer official communicates selectively to the analyst nonpublic information that the company’s anticipated earnings will be higher than, lower than, or even the same as what analysts have been forecasting, the issuer likely will have violated Regulation FD. This is true whether the information about earnings is communicated expressly or through indirect “guidance,” the meaning of which is apparent though implied. Similarly, an issuer cannot render material information immaterial simply by breaking it into ostensibly non-material pieces.

At the same time, an issuer is not prohibited from disclosing a non-material piece of information to an analyst, even if, unbeknownst to the issuer, that piece helps the analyst complete a “mosaic” of information that, taken together, is material. Similarly, since materiality is an objective test keyed to the reasonable investor, Regulation FD will not be implicated where an issuer discloses immaterial information whose significance is discerned by the analyst. Analysts can provide a valuable service in sifting through and extracting information that would not be significant to the ordinary investor to reach material conclusions. We do not intend, by Regulation FD, to discourage this sort of activity. The focus of Regulation FD is on whether the issuer discloses material nonpublic information, not on whether an analyst, through some combination of persistence, knowledge, and insight, regards as material information whose significance is not apparent to the reasonable investor.”

Australia:

Principle 6 of Corporate Governance Principles and Recommendations (3rd edition)⁵ pertaining to respecting the rights of security holders read with recommendation 6.1 provides matters to be disclosed on website which include webcasts and/ or transcripts of investor or analyst presentations and copies of any materials distributed at those presentations.

Malaysia:

Guide No. 3.19 of the ‘Corporate Disclosure Guide’⁶ issued by Bursa Malaysia requires the listed issuer to abstain from disclosing material information to analysts, journalists and fund managers.

⁵ <http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>

⁶ http://www.bursamalaysia.com/misc/system/assets/2349/rules_lr_guides_CDBP-final2012.pdf



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“3.19. In dealing with journalists, analysts and fund managers, it is important to keep in mind the principle that a listed issuer may provide any information relating to its business, operations or financial performance, provided that such information is not undisclosed material information.”

Further, Guide no.3.21 requires the listed issuer to immediately announce to Bursa Securities in case any non-public material information has been inadvertently disclosed when responding to analysts, journalists and fund managers.

“3.21 A listed issuer must immediately announce to Bursa Securities any non-public material information which has been inadvertently disclosed when responding to questions or when commenting on draft reports from journalists, analysts or fund managers”

Para 9.21(4) of the Listing Requirements⁷ of Bursa Securities requires the website of the listed issuer to contain all information including analyst’s briefings.

“9.21 Listed issuer to have a website

(4) A listed issuer should ensure that its website is current, informative and contains all information which may be relevant to the listed issuer’s shareholders including analyst’s briefings.”

As provided under Para 9.12 and 9.13 mandates a listed entity to refrain from promotional disclosures activity in any form which may mislead investors or cause unwarranted price movement and activity in listed issuer’s securities. One of the hallmark of promotional activity include seeking out of meetings or interviews with analysts and financial writers, which could have the effect of unduly influencing the market activity in the listed issuer’s securities and are not justified in frequency or scope by the need to disseminate information about actual developments concerning the listed issuer.

Canada:

The Canadian Securities Exchange specifies policies for listed companies. Policy 5⁸ deals with ‘Timely Disclosures’ to be made by the issuer. Para 7.1 provides that disclosure of information shall not be on selective basis. The policy classifies private meetings with analysts, brokers and investors as a good corporate governance activity. However, the policy provides that no material unpublished information is disseminated in such meetings.

⁷ http://www.bursamalaysia.com/misc/system/assets/5949/MAIN_Chap%209_LRPh1%20%2827Jan2015%29.pdf

⁸ <http://www.cnsx.ca/cmsAssets/docs/Listings%20Policies/CSE%20Policy%205%20%20E2%80%93%20Timely%20Disclosure,%20Trading%20Halts%20and%20Posting%20Requirements.pdf>



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“7.1. Disclosure of material information must not be made on a selective basis. The disclosure of material information should not occur except by means that ensure that all investors have access to the information on an equal footing. The Exchange recognizes that good corporate governance involves actively communicating with investors, brokers, analysts, and other interested parties with respect to the corporation’s business and affairs, through private meetings, formal or informal conferences, or by other means. However, when communications of any nature occur other than widely disseminated press releases in accordance with this rule, Listed Issuers may not, under any circumstances, communicate material information to anyone, other than in the necessary course of business, in which case the party receiving the information must be instructed to keep it confidential and not to trade the Listed Issuer’s securities”

Further, Para 7.3 requires the issuer to immediately contact the market regulator and to request a trading halt if any material information is disclosed whether deliberately or inadvertently, other than through a widely disseminated press release in accordance with the rule.

“7.3 Should material information be disclosed, whether deliberately or inadvertently, other than through a widely disseminated press release in accordance with the rule, the Listed Issuer must immediately contact the Market Regulator and request a trading halt pending the widespread dissemination of the information.”

Singapore:

Rule 703(4)⁹ of the Singapore Exchange Listing Rules requires the issuer to observe the Corporate Disclosure Policy¹⁰ as provided under Appendix 7.1. of the Rules. Para 23 under PART VIII of the policy recommends the issuer to observe an "open door" policy in dealing with analysts, journalists, stockholders and others. Further, the issuer is required to abstain from disseminating material information which has not been disclosed to the public before. However, if such material information is inadvertently disclosed at meetings with analysts or others, it must be publicly disseminated as promptly as possible by the means described in Part VIII.

“23. The Exchange recommends that issuers observe an "open door" policy in dealing with analysts, journalists, stockholders and others. However, under no circumstances should disclosure of material information be made on an individual or selective basis to analysts, stockholders, or other persons unless such information has previously been fully disclosed and disseminated to the public. If material information is inadvertently disclosed at meetings with analysts or others, it must be publicly disseminated as promptly as possible by the means described in this Part.”

⁹ http://rulebook.sgx.com/en/display/display.html?rbid=3271&element_id=5068

¹⁰ http://rulebook.sgx.com/en/display/display_viewall.html?rbid=3271&element_id=4830&print=1



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Further, vide 3.1(b) of Practice Note 7.1 (Continuing Disclosure) of the Exchange Listing Rules requires that the issuer must disseminate the material information via SGXNET as promptly as possible if such information has been inadvertently has been disclosed during meetings with analysts, investors etc.

“3.1.(b) Where an issuer inadvertently discloses material, non-public information during these briefings or meetings, the issuer must disseminate the information via SGXNET as promptly as possible. An issuer may, if necessary, request for suspension of trading in its securities or a trading halt (upon implementation by the Exchange)”

Conclusion

Based on the analysis, the brief steps to be followed by the listed entity for scheduled or ad hoc interactions with analysts, institutional investors etc shall be as follows:

- Schedule and presentations to be uploaded on the website of the Company and the same has to be disclosed/submitted to the Stock Exchange as soon as reasonably possible and not later than twenty four hours from the occurrence of the event or information. In case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanations for delay;
- Post meetings, the transcripts or records of proceedings of meetings with analysts and other investor relations conferences shall be uploaded on the website of the Company;
- Such communications with the institutional shareholders through meetings with analysts and discussion between fund and managers and management made shall also be disclosed in the Report on Corporate Governance under the head ‘Means of Communication’

With the Regulators mandating good corporate governance, protection of shareholder’s interests, transparency, timely and equitable disclosure of material events etc, a listed entity is required to be far more vigilant while engaging in scheduled as well as ad hoc interactions with institutional investors, private investors, sell-side and buy-side analysts. The Compliance Officer and/or Chief Investor Relations Officers are primarily responsible for ensuring the aforesaid compliances. With SEBI (LODR) taking effect, ad-hoc interactions and meetings with analyst and investors will no more seem feasible considering the requirements and consequences of default under SEBI regulations.

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