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SEBI's clarification on submission of unaudited accounts creates confusion: Clause 41 of the Listing Agreement



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SEBI had vide its circular dated April 11, 2012¹ (April 2012 Circular) over-ridden the effect of the circular dated October 05, 2011² (October 2011 Circular) on Clause 41 of the Listing Agreement (LA) to the extent that the listed companies now have to submit their last quarter un-audited results within 45 days from the end of the quarter and thereafter the audited accounts as soon as they are approved by the Board of Directors (BoD). This amendment was made, after receiving umpteen representations from the companies as well as auditing fraternities, with a view to reduce burden on the companies due to the Revised Schedule VI requirements as the companies were going through a transition for adoption of the Revised Schedule VI. If we are to recollect the provisions of October 2011 Circular we would realize that as on date there is a confusion with regards to the applicability of the October 2011 Circular and April 2012 Circular. In this write-up we discuss the amendments, their after-effects and the issues the companies face today.

Amendments

Position prior to amendment by April 2012 Circular (i.e. position post October 2011 Circular)³

Upon amendment to Clause 41(d) of LA under the October 2011 Circular regarding submission of accounts by the companies, the companies were supposed to file only their audited accounts within period of 60 days and there was no scope for filing of unaudited results. The figures of the last quarter in this case were supposed to be the balancing amount of the three quarter deducted from the annual figure.

Situation post the April 2012 Circular

Whilst the Clause 41(d) amended by the October 2011 Circular still exists, a new Clause 41 (eaa) was inserted by the April 2012 Circular that read as follows:

“Submit limited reviewed Q4 results within 45 days from end of the quarter and thereafter submit annual audited results as soon as they are approved by the Board.

(or)

Submit annual audited results within 60 days from the end of fourth quarter along with Q4 results which would be a balancing figure.”

The April 2012 Circular clearly stated that such provision inserted as Clause 41(eaa) was only a one-time measure and that the position will be reviewed at a later stage. The

¹ <http://www.bseindia.com/downloads/whtsnew/file/Clause%2041%20Circular.pdf>

² <http://www.bseindia.com/downloads/whtsnew/file/SEBI%20Circular%20dt%20Oct%2005%202011.pdf>

³ supra



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amendment was brought in concurrence with the provisions appearing even before the October 2011 Circular where the companies had the option to submit their unaudited accounts within 45 days or audited accounts within 60 days of the end of the quarter.

However, with the amendment brought vide April 2012 Circular the companies could submit their unaudited results within 45 days and thereafter there was no specified period to submit their audited results as the same was subject to time when the Board approves the same. Hence, the companies were relaxed to the extent of first time hassle being caused due to implementation of Revised Schedule VI. Therefore, it appears that the aforesaid Cl 41 (eaa) was inserted as an alternative to Cl 41 (d) for FY 2-11-12.

Current issue

The moot question is whether the April 2012 Circular still holds relevance? If the answer is yes, then the second question that arises is how do the companies ensure compliance of the same? In the absence of any review that was to happen at a 'later stage', this becomes a critical question as the companies may default in compliance with the requirement to submit accounts in due time i.e. submit audited accounts within 60 days of the end of quarter.

Analysis

Clearly, the review of the April 2012 Circular missed the attention of the regulator as there was no sunset clause put in the LA. The present LA still refers to the April 2012 Circular which may be argued to not be in effect due to its intent of limited introduction as a 'one time measure'. In essence therefore, the April 2012 Circular is no more relevant and effective and hence there is no question of submission on un-audited accounts for the FY 2013 onwards unless the regulator brings in any further amendments to the same.

Why then is it at all important to probe into the issue? Assuming a case where a company opts to change its accounting year, say for a period of 9 months ending on March 31 after elapse of such date i.e. March 31. In such a case assuming the April 2012 Circular was still effective, one would have submitted un-audited accounts for the quarter ended March 31 within 45 days i.e. within May 15 and thereafter post deciding such change in the accounting year would have published its audited results as soon as approved by the Board. But, due to the inadvertence of the regulator the companies may fail to analyse that the April 2012 Circular is no more applicable and hence, in this situation what the company could possibly do is to change its accounting year and thereafter it may possibly file the audited accounts itself for the period ending March 31.



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Interestingly, the regulator has sought to send reminders to the companies for compliance of the Clause 41 (d) pursuant to October 2011 Circular but on the other hand has completely missed on the review of the amendment brought in vide April 2012 Circular so as to clear the perplexity involved. Well atleast with this reminder mail either one can be sure of the legal position that the audited accounts have to be submitted within 60 days only or get baffled at the thought that why such a reminder when I have an alternative option. This is now a buzzing issue for several corporates but hopefully this phase of confusion will fade soon, irrespective of regulator's correction of the slip.

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The article was also published in moneylife on April 23, 2013 and can be viewed at the link below:
<http://www.moneylife.in/article/sebis-clarification-on-submission-of-unaudited-accounts-creating-confusion/32350.html>