

Sebi Set to End Permanent Board Positions

Reining in special rights, ASBA-like system for stock trades, allowing PEs to become MF sponsors also on agenda

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Mumbai: The Securities and Exchange Board of India (Sebi) is set to clear a number of proposals including putting an end to permanent board memberships, reining in special rights, introducing an ASBA-like system for stock market trades and allowing private equity funds to become sponsors of mutual funds. The Sebi board is scheduled to meet on March 29.

Application Supported by Blocked Amount or ASBA is a mechanism used in initial public offers — the buyer's funds are blocked in the bank account but only flow out once the allotment is confirmed.

The Sebi board will consider a proposal to end the practice of directors occupying permanent board seats at listed companies. This will have to be subject to periodic approval by shareholders, at least once in five years,

SEBI BOARD ALSO LIKELY TO DISCUSS:

A regulatory framework for ESG disclosures by listed cos; ESG ratings in securities mkt and ESG investing by MFs

Proposal to tighten disclosure norms on fin results by newly listed companies



Tightening disclosure norms for listed cos, including mandating top 250 listed cos to confirm or deny any info reported in mainstream media that may have material effect on stocks

according to the proposal.

Permanency gives directors an undue advantage prejudicial to the interest of public shareholders, according to the regulator, which is also taking aim at the practice of promoter-directors continuing on the board even after substantial dilution of their stake and the ceding of control.

Two Ways to Secure Permanent Seat

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A permanent seat is generally secured through two ways—having a clause inserted in the Articles of Association (AoA), enabling appointment of a permanent director or by getting appointed on the board as a director not liable to “retirement by rotation” and without any defined tenure. The issue came into focus after media reports about a startup founder having the right to a permanent seat on the board and the fight between a satellite TV company's former promoters and a lender over a director's not-liable-to-retire tag.

“I am completely in agreement with the proposed changes to more firmly establish good governance norms,” said Shailesh Haribhakti, chairman of Shailesh Haribhakti & Associates. “Certainly, the shareholders must have the democratic right to approve the re-appointment of every director at an interval of five years based on an objective assessment of performance.”

Any director who hasn't obtained shareholders' approval on March 31, 2024, in the past five years will have to get their assent in the first general meeting to be held after April 1, 2024, according to the proposal. From April 1, 2024, shareholder approval will be needed at least once every five years.

“In companies with identifiable promoters or persons in control, the board seat should be permanent, subject to periodic shareholder approval,” said Prime Database chairman Prithvi Haldea. “In widely-held companies, no one should have a permanent seat.”

SPECIAL RIGHTS

The regulator also proposes to review special rights conferred on certain shareholders as per the AoA of a listed entity. Such rights are offered to pre-IPO investors and promoters to attract investments prior to listing. These are included in the shareholders agreements (SHAs) executed between the company and the pre-IPO investors and promoters. These include nomination rights, veto rights, information rights, anti-dilution rights, right of first refusal, tag-along rights and divestment rights.

The regulator observed that SHAs are drafted in such a way that their special rights will continue even after significant dilution of holdings. That's against the principle of rights being proportional to one's holding. Sebi had said in a discussion paper.

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