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The Smart Investor

QUICK TAKE: ACC'S MARGINS MA

Shares of ACC fell gains seen a day major's Q2 result reported below due to high cost However, the br and higher volu

New issue pricing onus may put independent directors in a spot

Experts feel Sebi diktat may deter those with non-financial background from joining boards

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Market regulator Securities and Exchange Board of India's (Sebi's) diktat for independent directors to justify IPO pricing may put them in a tight spot.

The move shall require them to upskill or depend on third-party agencies. The latest move by Sebi is one of the many regulatory changes that have increased accountability and put additional responsibilities on independent directors, who are said to be representatives of minority investors.

According to experts, many independent directors on company boards come from various non-financial domains of expertise. Sebi's move may deter them from taking such positions in certain cases as they may not be equipped or have the expertise to arrive at IPO pricing, governance experts said.

"Committee of independent directors shall recommend that the price band is justified based on quantitative factors or key performance indicators (KPIs) vis-à-vis the weighted average cost of acquisition (WACA) of primary issuance or secondary transaction(s)," Sebi said last month in a release.

The new framework will become effective when the market regulator amends the regulations, which is expected next month.

Sebi has also tightened norms for IPOs, asking companies to disclose KPIs, along with the traditional metrics of their financial statements. Independent directors will have to justify the pricing based on these KPIs.

"Usually for not undertaking due diligence or canvassing in the offer document, Sebi holds up merchant bankers, along with executive directors of the company. A legislative approach expecting independent directors to give their assessment on quantitative factors or KPIs vis-à-vis the WACA of primary issuance would bring new civil and criminal liabilities on non-executive directors who include independent directors. Interestingly, qualification for being an independent director itself does not require such an ability to assess issue price bands," said Sumit Agrawal, founder, Regstreet Law Advisors and former Sebi officer.

ILLUSTRATION: BINAY SINHA

MORE WORK AT HAND

- Committee of independent directors will have to justify IPO pricing
- Move will bring new civil and criminal liabilities on directors, say legal experts
- Dependency on third-party valuers may increase
- Experts on board from specific sectors may lack technical know-how of IPO pricing
- Added responsibilities may act as a deterrent to joining a board
- Independent directors act as watchdogs, keep a check on corporate governance, and are a voice of minority shareholders

Industry experts are of the opinion that this will be another deterrent for people to join India Inc board, which is grappling with an inadequate number of independent directors.

"On one side we want diversification on board with people from varied specialised experience, and on the other, we want them to be equipped to be skilled in justifying the issue price. One cannot have holistic expertise in all areas. An agriculture or manufacturing company may have people with that expertise as independent directors. This is good governance, but technical capability would be an issue. Liabilities of independent directors will have to be clearly defined," explained Sethurathnam Ravi, former chairman of BSE and founder of Ravi Rajan & Co.

Elaborating on the decision after the board meeting, Sebi Chairperson Madhabi Puri Buch said that independent directors, being people of competent stature, can call upon any resource to arrive at their judgment. "If we are of the belief that retail investors can use the information and make an informed decision on the issue price, surely board members will be able to exercise it as well," she added.

Independent directors act as watchdogs, keeping a check on corporate governance and various risks. They are often seen as the ones who can resist pressure from owners and take decisions in key appointments, manage conflicts, and bring an objective view. "In my opinion, it should not deter independent directors from joining the board. However, they will surely take the help of third parties like merchant bankers and valuers for justifying the issue price. This may not bring about any dramatic change but will add one more safeguard. It is just to add another check and balance, so that PEs and founders don't price it outrageously, a hint of which we have seen in some issues over the past year," said Shriram Subramanian, founder & MD, InGovern Research Services.

According to data shared by PRIME Database, 6,266 individuals occupy 7,991 independent directorship positions on 1,970 NSE-listed companies. Among them, 104 are foreign nationals and 82 hold independent directorships in five or more companies. Being on boards of more than one company will add to the responsibility of individuals holding multiple positions.