19 June 2024

By online submission to SEBI

Dear Sir/Madam,

Re: Consultation on Recommendations from the Expert Committee for Facilitating Ease of Doing Business

The Asian Corporate Governance Association (ACGA) is a non-profit membership association founded in 1999. We conduct research on corporate governance and ESG in 12 markets in Asia-Pacific and advocate at the regulatory and corporate level across the region to improve standards and practices. ACGA is entirely funded by a network of 101 member firms from 18 markets, of which 80% are institutional investors with more than US$40 trillion in assets under management globally.

ACGA and its India Working Group welcomes the opportunity to provide comments on this consultation.

Summary

We are concerned that some of the proposed amendments will significantly lower the standards SEBI has already set for sustainability reporting, potentially having a negative impact on the market and participants views on regulatory direction.

The Indian government has been proactively seeking to move the needle on greening the country and meet the country's Paris Agreement commitments but without accurate, transparent, comparable and verified disclosures that will not be possible. In that regard, ACGA has welcomed SEBI's leadership role on improving ESG disclosure and transparency, which has been noted globally. It is important to maintain this commitment and leadership position as regulators around the world step up efforts to ensure companies assure ESG information.

Moreover, the International Federation of Accountants' report "The State of Play: Sustainability Disclosure and Assurance 2019-2022 Trends & Analysis" showed that 60% of Indian companies obtained assurance on some of their ESG information, well above both Singapore and Hong Kong and only ranking below Japan and South Korea.

Specific Concerns

We will only address two of the proposals, which in our view pose significant issues: proposals 7.1.3 and 7.1.4, seeking to replace "comply or explain" with "voluntary"; and proposal 7.3 recommending the replacement of the word "assurance" with "assessment" or "assessment or assurance".

Generally, with regard to the definition of value chain (VC) partners, we are in agreement that reporting on a large volume of value chain partners is burdensome and would not be in the best interest of the market. We suggest a straightforward approach that:

- Encompasses the top 10 upstream and downstream VC partners; or
- The top 10 VC partners that have the highest emissions.

Value chain disclosures and assurance
However, the sub-clause, 7.1.3 and 7.1.4, recommending “voluntary” over “comply-or-explain” for disclosures and assurance for VC partners is problematic in our opinion, and not in the best interest of the market either.

We understand the arguments put forth regarding the current lack of readiness to report on VC partners since data systems are not in place, which has led to concerns about non-compliance. Therefore, clause 7.1.3 regarding the need for voluntary disclosure approach for the previous year data during the first year of reporting, FY2024-25, is fair in our view.

However, the subsequent clause 7.1.4 stating “ ‘Voluntary’ disclosures approach in place of ‘comply or explain’ approach for ESG disclosures for value chain and assurance thereof” indicates that the “comply-or-explain” approach would be scrapped on a more permanent basis. We recommend the “voluntary” approach for the first year of reporting and subsequently companies should need to adopt on a “comply-or-explain” basis.

Assessment versus Assurance
The revision from “assurance” to “assessment or assurance” is, for a number of our investor members, more disconcerting. Globally, reasonable or limited assurance is what stakeholders are expecting from companies because it provides a high degree of trust in a company’s sustainability information. Assessment, on the other hand, does not require the same level of input, is not universally defined, and therefore the information provided by companies will be less credible. Given a choice, companies would always opt for assessment over assurance since it would be less burdensome, as SEBI notes in the consultation.

Having set high market expectations in 2023 with “reasonable assurance” for BRSR Core, we note that moving from “assurance” to “assessment” could be construed as backpedalling by the regulator and have a negative impact on market confidence and market participants’ perceptions on the direction of regulatory change.

The Expert Committee provided two main arguments for this amendment:

- One of IOSCO’s guiding principles is that “third-party assessment of sustainability-related corporate disclosures should remain independent of any specific profession”; and
- That the term “assurance” was “inadvertently” aligned with the audit profession.

Our view is that there is a significant difference between assurance and audit and the misalignment in the minds of some should not prevent SEBI from ensuring the quality of sustainability reporting validation.

With regard to IOSCO's principles, globally we find non-audit firms are increasingly providing ESG assurance. Additionally, ISAE 3000 (revised) (international standard on Assurance Engagements) and ISSB 5000 (General Requirements for Sustainability Assurance Engagements) – the final standard which will be issued at the end of 2024 – are both professionally agnostic. Therefore, we do not see a need for SEBI to ease the requirements on reasonable assurance for companies.

However, ACGA understands that limited assurance for VC disclosures could be challenging in the near future, hence we would be in agreement with companies providing "assessments", which might have lower standards, of these for the time being.

Recommendations
Given the views above, our key recommendations are the following:

- Companies should provide "reasonable assurance" for their own data in BRSR core, following the glide path SEBI has set out;
- Assessment for the VC disclosure to commence FY2024-25 for the following four to five years.

Thank you for the opportunity to provide our response to the consultation and we would be pleased to discuss further on any questions on the above.

Yours truly,

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