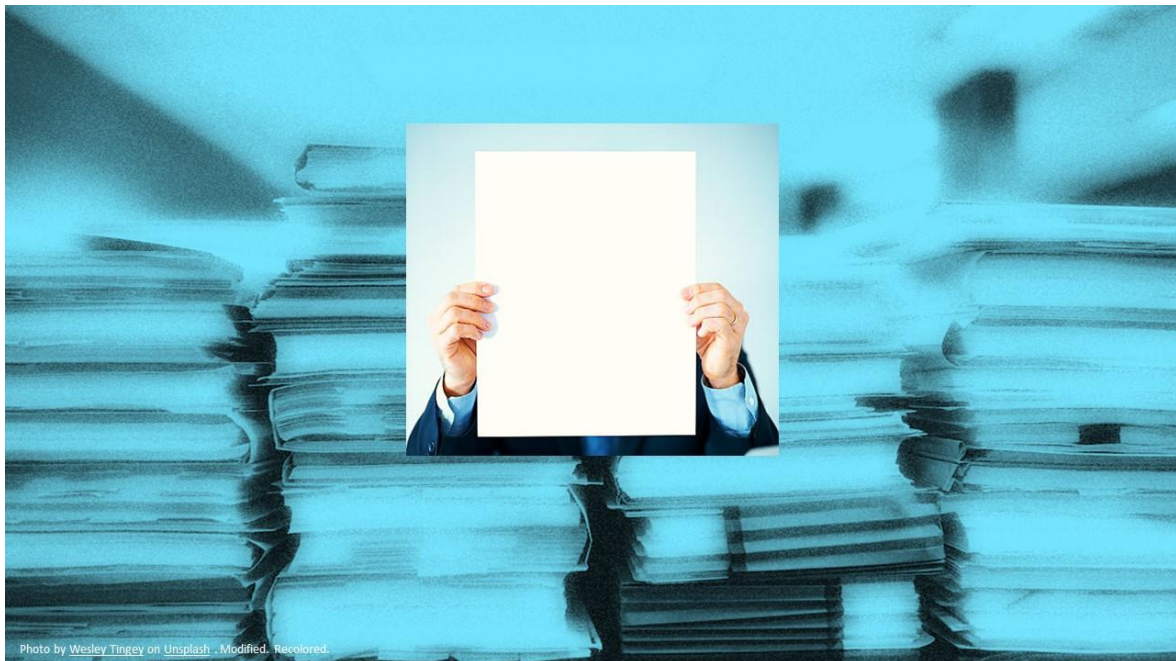


## Its show and tell time for corporate India

*Till case law is established, the new regulations will be a major point of friction between companies and regulators and aggravate intra promoter rivalries. Till then the best test for boards to apply is whether the disclosure of any event or development will make the company more attractive or less attractive to investors or leave its value unchanged.*



The recent circular from the Security and Exchange Board of India's (SEBI) streamlining and enhancing disclosures of material events is aimed at adding 'more' transparency and improving the timelines of corporate disclosures. Furthermore, the disclosure requirements have been extended to include shareholder agreements including family settlements "to the extent that (these) impacts management and control of the listed entity." This notification also expects that with effect from 1 October 2023, India's top 100 listed entities will confirm, deny, or clarify market rumours on the stock exchanges.

Regulation 30 of SEBI's listing regulations required companies to disclose material events. Under the prevailing regulations, events were either categorized as being material and mandatorily were to be disclosed (Para A of the LODR 2015), or events whose disclosure was at the company's discretion based on its materiality policy (Para B). Realizing the lack of uniformity in market practice, SEBI, after an extensive consultation process, has updated the events in Para A, spelling out what information needs to be disclosed at the minimum. It has even provided guidance regarding when an event is considered to have occurred.

Further, SEBI has introduced quantitative minimum thresholds to determine materiality (2% of turnover, 2% of networth or 5% of three-year average profit after tax).

SEBI now expects shareholder agreements, joint venture agreements, and family settlements that impact the management and control of the listed entity to be disclosed. It is difficult to quarrel against enhanced transparency. After all clauses in family settlements relating to non-compete directly impact public shareholders.

Even so, Cyril Shroff has [powerfully argued](#) that SEBI's amendments aimed at strengthening corporate governance fail to reconcile the virtues of public disclosure and protection of private domains.

Companies have begun to disclose family settlements, yet even within a few weeks of the notification, we are seeing divergence in how companies are disclosing these. The current crop of disclosures is mainly by companies where the promoters are squabbling. Kirloskar Brothers Limited has shared two MoU's in their entirety, the first from September/October [2009](#) and the second dating back to [October 1947](#). [TD Power Systems Limited](#) on the other hand believes that as its shareholder agreement was terminated in January 2011- prior to the Company being converted to a public limited company, and as the matter is sub-judice, the agreement need not be disclosed. Hikal Limited has divulged the [extracts](#) received that one set of its promoters believe are relevant for public shareholders. As companies are unlikely to be a party to the agreement, they must rely on what they receive from their 'promoters,' implying there is no way to ensure the completeness of the disclosures. And investors must prepare themselves to deal with more than one version of settlement documents.

Turing now to the requirement for companies (top 100 from 1 October 2023 and top 250 from 1 April 2024) to confirm, deny, or clarify any reported events or information in mainstream media. While the existing regulations gave the discretion to listed entities to confirm or deny any reported event or information to stock exchange(s), boards have had to balance between the need to respond and the need to stay silent. Going forward, companies will have to confirm, deny or clarify any reported events or information, which may have a material effect on the listed entity. They are "expected to do so as soon as reasonably possible and not later than twenty-four hours from the reporting of the event or information." Further if the "listed entity confirms the reported event or information, it shall also provide the current stage of such event or information."

Even in its current form, there are no consequences for companies denying a rumour, only to retract it later. The ['Put Up or Shut Up \(PUSU\)'](#) rule under the UK takeover code might foretell the direction this regulation will go, particularly in the case of M&A, where this is most relevant.

In UK the PUSU rule is triggered pursuant to a leak, following which the bidder is expected to announce a fully financed binding offer within 28 days or announce it will

not be making an offer in which event it is subject to a 6-month standstill. True, the bidder can seek a 4-week extension, but the power dynamics would have shifted.

Till case law is established, the new regulations will be a major point of friction between companies and regulators and aggravate intra promoter rivalries. Leadership teams and boards will spend far more time determining when a deal is imminent, consequences on the target company's price of any statement and the language while denying or even verifying news reports. Not just this, the non-disclosure agreements that the promoter families sign, will all now need greater scrutiny by the board.

Clearly companies and boards have their work cut-out for them. As they grapple with what to disclose and when, the best test for them to apply is whether the disclosure of any event or development will make the company more attractive or less attractive to investors or leave its value unchanged.



*A modified version of this blog was published in Business Standard on 23 August 2023. Subscribers can access the blog by clicking this [link](https://www.business-standard.com/opinion/columns/it-s-show-and-tell-time-for-corporate-india-123082200979_1.html) or typing the following in your url: [https://www.business-standard.com/opinion/columns/it-s-show-and-tell-time-for-corporate-india-123082200979\\_1.html](https://www.business-standard.com/opinion/columns/it-s-show-and-tell-time-for-corporate-india-123082200979_1.html)*

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