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Indian Securities Regulator Consults on Changes to ESG Disclosure and Ratings Regulation

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The Securities and Exchange Board of India (SEBI) launched a [consultation paper](#) (Consultation Paper) last month seeking public comment on three topics: (1) ESG disclosure; (2) ESG ratings; and (3) ESG investing by mutual funds. The comment period closed on March 6, 2023, with SEBI seeking [additional comments](#) on the regulatory framework for ESG ratings providers. By way of explaining the need for and goals of the consultation, SEBI stated that “as ESG Investing becomes mainstream, companies have been urged by both investors and regulators to make detailed ESG related disclosures to their stakeholders. The use of ESG ratings and rating products is also growing, as investors increasingly factor ESG parameters in their investment decisions. In this backdrop, securities market regulators have felt a need to streamline these three areas of ESG Disclosures, ESG Ratings and ESG Investing.”

First, SEBI outlines heightened disclosure requirements under India’s ESG disclosure framework. Introduced in 2021, the [Business Responsibility and Sustainability Report](#) (BRSR) mandates disclosure from the top 1,000 listed companies by market capitalization against the nine core principles of the [National Guidelines on Responsible Business Conduct](#), divided into essential indicators (for mandatory reporting) and leadership indicators (for voluntary reporting). Although the BRSR requires only disclosure starting from FY 2022–23, more than 175 companies voluntarily disclosed pursuant to the framework for FY 2021–22. Recognizing the likelihood of reliance on the BRSR disclosures by investors and ESG ratings providers, the Consultation Paper seeks comments on the assurance of sustainability disclosures and the introduction of limited, gradually expanding disclosures at the supply-chain level. To that end, SEBI proposes a BRSR Core framework to “achieve the twin objectives of

improving credibility and limiting the cost of compliance.” This framework, outlined in greater detail at Annexure 1 to the Consultation Paper, includes Key Performance Indicators (KPIs) for “E,” “S,” and “G” attributes and “specifies the methodology to facilitate reporting by [corporations] and verification of the reported data by an assurance provider.” The KPIs are outcome-oriented and aimed at India-specific factors, but are also quantifiable and contain intensity ratios to enable comparability across jurisdictions.

Second, the Consultation Paper seeks comments on the regulatory framework for ESG ratings providers currently being developed by SEBI. Recognizing that “emerging markets have a different set of environmental [and] social challenges” when compared to developed jurisdictions, Annexure 2 to the Consultation Paper lists 15 India-specific ESG parameters for ratings providers to consider when assessing a company’s ESG risks, opportunities, and impact. These include whether a company has operations in or around ecologically sensitive areas, creates jobs for and makes available infrastructure accessible to the “differently-abled,” and the frequency with which the company engages in related party transactions. Similar to the BRSR Core framework, SEBI proposes a Core ESG rating framework aimed at assured and reliable ESG ratings.

Third, SEBI proposes expanded disclosure for ESG funds “to improve transparency, with a particular focus on mitigation of risks of mis-selling and greenwashing and other related areas.” To that end, SEBI recommends enhanced stewardship reporting for ESG funds, including voting disclosures and disclosure of engagements and outcomes for any ESG-specific objectives. SEBI also recommends measures to address greenwashing, such as a requirement that 65% of the mutual fund’s AUM be invested in companies reporting per the BRSR and providing assurance through BRSR Core disclosures. Another proposed measure to combat greenwashing is a requirement for third-party assurance that the portfolio is in compliance with its stated ESG strategy and objectives, to be provided on a “comply or explain” basis. Finally, SEBI proposes additional measures to increase transparency, such as standardized classifications for ESG funds, and disclosure of the ESG ratings provider(s) used and ESG ratings/scores given.

Taking The Temperature: Analysts have recognized India’s developing ESG reporting framework as being “in line with international norms and regulations.” Even the leading international norms and regulations, however, have been criticized for lack of uniformity and transparency, and many jurisdictions are working to improve disclosure and fight greenwashing. If adopted, SEBI’s proposals outlined in the Consultation Paper will bring India into closer alignment with jurisdictions, such as the EU, that seek broad-ranging and detailed ESG disclosures and have more well-developed regulatory schemes. The proposed regulation of ESG ratings is also consistent with other jurisdictions’ initiatives, such as the UK Financial Conduct Authority’s development of a code of conduct for ESG rating providers, aimed at promoting greater transparency regarding the methodologies employed and data considered by ratings providers.