Securities Management and Compliances – An Umbrella Mechanism to Ensure Better Corporate Governance in Securities Market

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Abstract
The Indian economy has consciously shifted from a controlled one to a market driven one. In the process, several developments have unfolded. Indian corporates need to assimilate these developments in order to survive and flourish amidst global competition. They can aspire to reach their goals with success if they pursue the right means. Good governance is the means to that end. Corporate governance extends far beyond the confines of corporate law. The quality, quantity and frequency of financial disclosures, the extent of exercise of fiduciary responsibilities and duties by the boards towards shareholders and stakeholders, accountability and transparency in corporate functioning for maximizing shareholders, wealth are the progressive elements and indeed the underlying spirit of corporate governance. Corporate governance today is a strategic necessity where focus is on quality of governance. Capital and investments from international investors are available to corporates demonstrating good governance practices and thus helping them both in procuring capital at competitive rates and also in employing and retaining the intellectual capital.

Keywords: Corporate Governance, Compliances, Companies Act, SEBI, Securities Management.

Introduction
Globalisation has opened up vast opportunities for domestic players but is also fraught with various challenges. Foreign institutional investors too demand greater professionalism in corporate activities. All these and many other related developments have brought the issue of corporate governance to centre stage. Corporate governance, therefore, has become imperative for good functioning and success. The primary participants in a corporation are the tripod of shareholders, management-led by the CEO and the Board of Directors. There are other participants as well such as the employees, customers, suppliers, creditors and the community. Keeping in view the interests of various stakeholders in a company, corporate governance is concerned with effective management of relationship. It requires the formulation of the value framework, the ethical framework and the moral framework which will guide the decision making process.

Securities Management and Compliances is not a new concept in the Indian securities market. It exists in different forms of certifications, verifications, etc. However, in view of reforms in capital market, the increase in corporate population, aberrations in capital market and investors’ grievances, Securities Management and Compliances has become an imperative for ensuring good governance in capital market and investor confidence.

SEBI was established with the twin objectives of protecting the interest of the investors in securities and also regulating and promoting the development of the securities markets. SEBI, in order to achieve its objectives, has formulated various Rules and Regulations along with guidelines applicable to all the players of capital market both primary and secondary market. However, inspite of existence of a number of Rules, Regulations and Guidelines the markets remained vulnerable to the non-compliances and its shareholders grievances.

At present, the transactions in securities are governed, regulated and controlled by Companies Act 2013, Securities and Exchange Board of India Act 1992, Securities Contracts (Regulations) Act 1956, Foreign Exchange Management Act 1999, Depositories Act 1996, Stamp Act 1899, Information Technology Act 2000, Competition Act 2002 including rules, regulations made and guidelines and directions issued thereunder and bye-laws of stock exchanges and Listing Agreement, etc. Inspite of plethora of statues, Rules, Regulations and Guidelines, there is no mechanism to ensure proper and comprehensive compliances, monitoring and management of these statutory provisions in relation to securities. In order to provide a mechanism to comprehensively of all provisions relating to securities, to redress the grievances of investors, strengthen the faith of investors in capital market, ensure the growth of capital market, prevent the fraudulent and unfair trade practices, instill professional discipline and to protect the interest of investors, it is necessary to introduce the mechanism of “Securities Management Compliances”.

Securities - Concept and Interpretation
The term ‘securities’ has been defined under Securities Contracts (Regulations) Act 1956; Securities and Exchange Board of India Act 1992 and Foreign Exchange Management Act 1999.

As per Section 2(1)(i) of the Securities And Exchange Board of India Act 1992 ‘securities’ has the meaning assigned to it in Section 2 of the Securities Contracts (Regulations) Act 1956.

As per Section 2(aa) of the Securities Contracts (Regulation) Act 1956, Derivative includes-
(a) A security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;
(b) A contract which derive its value from the prices or index of prices, of underlying securities.

A derivative is a product whose value is derived from the value of underlying asset, index, etc. The underlying assets can be equity, forex commodity, or any other asset.

As per Section 2(81) of the Companies Act 2013 ‘securities’ means securities as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act 1956.

As seen from the above term ‘securities’ as defined in Companies Act 2013 and Securities Exchange Board of India Act, 1992 is mainly dependent on the definition given in Securities Contract (Regulation) Act, 1956.

As per Section 2(h) of the Securities Contract (Regulation) Act, 1956 securities include
(i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
(ii) Derivative;
(iii) units or any other instruments issued by any collective investment scheme to the investors in such scheme;
The term "security" means shares, stocks, bonds and debenture, as defined in Section 2 of the Securities Contract (Regulation) Act, 1956. The definition of "security" includes shares, debentures, government securities, units and rights and interest in securities.

As per Section 2(b) of the Securities Contract (Regulation) Act, 1956, 'government security' means a security created and issued, whether before or after the commencement of this Act, by the Central Government or a State Government for the purpose of raising a public loan and having one of the forms specified in clause (2) of section 2 of the Public Debt Act, 1944.

Many terms have been used in order to define the term securities. However, Securities Contract (Regulation) Act, 1956 defines only the terms ‘derivatives’ and ‘government securities’ out of all terms used in defining the term ‘securities’.

As per Section 2(za) of the Foreign Management Act, 1999, ‘security’ means shares, stocks, bonds and debenture, government securities as defined in the Public Debt Act, 1944, savings certificates to which the Government Savings Certificates Act, 1959 applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under Sub-section (1) of Section 3 of Unit Trust of India Act, 1963 or of any mutual fund and includes certificates of title of securities, but does not include bills of exchange or promissory notes other than government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of the Act.

As per Section 2(33) of the Companies Act, 2013, 'derivative' has the same meaning as in clause (ac) of Section 2 of the Securities Contract (Regulations) Act, 1956.

Hybrid securities means securities which have some of the attributes of both debt securities and equity securities. A type of security which, in the form of a debenture, contains elements of indebtedness and elements of equity stock also is an example of a hybrid.

The terms share and debenture used in the definition of securities have been defined in the Section 2(84) and 2(33) of Companies Act, 2013, respectively. Share means share in the share capital of a company, and includes stock except where a distinction between stock and share is expressed or implied. A share reflects the contribution of a shareholder towards the share capital of the company. As per Section of the Companies Act, 2013, share is movable property. A share is a right to a specified amount of the share capital of a company, carrying with it certain rights and liabilities, while the company is a going concern and in the winding-up of the company, the interest of the holder measured for purposes of liability and divided by a sum of money. A share is the interest of a shareholder in the company measured for the purpose of liability in the first place and of the interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders interest.

Debenture means a document which either creates or acknowledges a debt. It is also a method of raising loans. As per Section of the Companies Act, 2013, debenture includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not.

Debenture stock is of the same nature as debentures but instead of each lender having a separate debenture bond, he gets a certificate entitling him to a specified portion of one large loan. Debenture stock is consolidated borrowed capital which may be divided into and is transferable in convenient units of fixed amount.

Considering all the above mentioned definitions it can be inferred that the term ‘security’ includes shares, debentures, government securities, derivatives, units and rights and interest in securities.

**Securities Management and Compliances - Concept and Scope**

The functions, operation and management of a company are governed by various Acts, Rules and Regulations. The Companies Act, 2013 is one of the major legislations dealing with various activities of a company, and it has to be complied with even before the company comes into existence. Every company needs funds for the smooth functioning of its business, to expand its business, diversify its business etc. The company has to issue various types of securities to meet its requirement of funds. The issuance of any kind of security is again subject to the compliances of various Acts, Rules, Regulations and Guidelines. Once the securities have come into existence, the transactions in the securities are also governed by various Acts, Rules and Regulations. Not only the issuer of the securities but also the holder of the securities are required to comply with the statutory provisions to transact in the securities of the company.

The concept of Securities Management and Compliances thus signifies and includes in its ambit examination, verification or checking of registers, records, forms, returns and documents relating to securities issued by a company and certification of timely and proper compliance of all statutory provisions related to securities applicable to a company.

Inspite of it, serious securities scams have been committed and there has been an increase in investor grievances and litigations. This lays an emphasis on implementation of the laws, not only in letter but also in spirit which helps in achieving intensely compliance of the statutory provisions. Not only imputability of the Government but also of the corporate world to ensure the proper compliances of statutory provisions. The corporate world should not treat the compliance as burden on it but should be self motivated to ensure the compliances of statutory provisions in spirit.

Furthermore, in the era of liberalization and globalization, government has accepted the policy of rule by exception. As a consequence, the concept of certification has been introduced in many areas relaxation has been made. Various procedural requirements have been simplified and greater confidence in relation to compliance has been posed on the
Corporate world itself. The self regulation in securities related matters can be achieved with a comprehensive mechanism of Securities Audit. Securities audit ensures self regulation and compliance of statutory provisions governing securities related matters. As securities audit ensures the timely and proper compliances of all statutory provisions and early detection of errors and frauds, it provide trustworthy mechanism relieving the company and its directors from the consequences of mechanism relieving the company and its directors from the consequences of unintended non-compliances of statutory provisions. Securities audit is also a powerful tool for proper compliance of all obligations and also for investors.

Advantages of Securities Management and Compliances
Misstatement/fraud may not only be committed by company or its directors/employees etc. but also by the persons holding the securities. If the Securities Management and Compliances are undertaken as an ongoing process, it would be possible to eliminate the chances of fraud in relation to securities of the company as and when they arise. Securities Management and Compliances ensures proper maintenance and updation of register of members etc. hence, dividends, bonus shares, right shares and other entitlements relating to the securities are received by the persons entitled to them. It is commonly said that, ‘To err is human’. The persons entrusted with the responsibility of and dealing in matters relating to securities may commit mistakes by either providing security related entitlements to wrong persons, or by entering the name of a person, who is not the shareholder, in the register of members; or removing the name of a member from the register of members even if he is holding the shares or issuing the share certificate or refund order to the person not entitled to it and so on. All such unintended mistakes committed with respect to securities can be detected and made good with the mechanism of Securities Management and Compliances. Speedy disposal of investors’ grievances can be ensured with the introduction of Securities Management and Compliances. Therefore, litigations arising out of investors, grievances can be prevented to a large extent with the help of this mechanism. Reduction in securities related litigations also save valuable time and energy of judiciary, which in turn help courts in expeditious disposal of cases.

A number of prosecutions are instituted by regulatory authorities against companies and their officers in default for violation of various statutory provisions relating to securities. As the mechanism of Securities Management and Compliances ensures proper compliance of statutory provisions, unintended violation of statutory provisions can be prevented with the professional support of securities, auditors. Securities Management and Compliances assist the management of companies in complying with various statutory and procedural requirements and also acts as a preemptive check to monitor such compliances. Hence, securities related matters can be smoothly handled by the management of the company when the mechanism of Securities Management and Compliances is in operation.

Conclusion

Considerable reduction in investors, grievances, smooth processing of securities related matters and negligible chances of fraud will help restore the sustained confidence of investors which will encourage them to have interest in the securities market and also in the company resorting to the mechanism of Securities Management and Compliances. The concept of securities management, compliances and audit thereof, has therefore assumed added significance in the changing paradigm, as it leads to extended investor satisfaction and good corporate governance. In fact, the due compliance of laws and adherence to higher ethical standards become imperatives for corporates the worldover to usher in a new era of good corporate citizenship, thereby rejuvenating the trust of investors, government and the society in the institution of business.

References

4. Securities and Exchange Board of India Act 1992
5. Securities Contracts (Regulations) Act 1956
6. Foreign Exchange Management Act 1999
11. CFA Institute (2007), "Self-Regulation in Today's Securities Markets: Outdated System or Work in Progress?"
13. Website: http://worldbank.org/lpd/cmcg
15. Sanjeev Aggarwal – Guide to Indian Capital Market
17. V.K. Bhalia – Investment Management-Security Analysis and Portfolio Management