

SES PROXY ADVISORY GUIDELINES UPDATE: #2/2023-24

1. Dilution as a result of Issuance of Equity Shares/ Convertible Securities

SES, for an interim period, had been allowing proposals for the issue of shares/ convertible securities even with potential dilution exceeding reasonable thresholds considering the need for funds during the recovery phase post pandemic period. However, the present situation does not warrant such a relaxation.

Henceforth, SES will require the fresh equity/ convertible/ dilutive securities issue proposals (except rights issue & OFS/ FPO) with dilution exceeding 5% to be proposed with compelling justification. However, SES will adopt a lenient view in cases where the ultimate beneficial owners of the proposed allottees are un-named general public shareholders, namely Mutual Funds, Insurance companies and Qualified Institutional Buyers who are sovereign Government Institutions, Multilateral Financial Institutions like IFC, etc., provided the dilution does not exceed 10%. SES is of the view that such investments besides increasing institutional participation also bring stability and helps to manage price volatility.

Enabling proposals for the issue of shares/ convertible securities with potential dilution beyond 5% should be supported with compelling justification.

2. Valuation Report in cases of Issuance of Equity Shares/ Convertible Securities to investors where ultimate beneficiaries are public shareholders

SES, as a policy, requires a valuation report to be obtained for the determination of share issue prices in cases where dilution as a result of fresh issuance exceeds 5%. However, for the reasons discussed above, a lenient view may be adopted where the ultimate beneficiaries are Public shareholders (as detailed above) and the proposal is favorable towards the growth of the Company.

3. Non-Compliance with retirement by rotation provisions under Section 152 of the Companies Act, 2013

Legal Provision: The above section lists down 3 compliance requirements:

1. The Board to have a minimum 2/3rd of the Board (excluding Independent Directors) to be liable to retire by rotation.
2. 1/3rd of the retiring directors to be proposed for retirement in an AGM
3. While selecting directors for 1/3rd requirement, consider directors who have been longest in the office.

SES has observed three types of non-compliances with regard to above provisions:

Case 1: Board is non-compliant with requirement of having 2/3rd of the retiring directors on Board.

Case 2: Board is proposing lesser than 1/3rd of retiring directors for retirement at AGM.

Case 3: Board is proposing retirement of either the same retiring director or retiring a director out of turn; despite having other retiring directors who have comparatively served a longer period of office.

The above instances of default have been observed across many companies. And, therefore, SES will express its dissent to such non-compliant process and hold even the retiring directors responsible for the non-compliance.

Effective Date:	Circulation:
With immediate effect from October 5, 2023	All Listed Companies in SES coverage and all SES clients