

## SEBI Streamlines the process of Buy-back of securities

With the intent to simplify the Buy-back process of securities, level the playing field for investors, and encourage ease of doing business, the Securities & Exchange Board of India ("SEBI") has relaxed certain norms in the SEBI (Buy-back of Securities) Regulations, 2018 pursuant to SEBI (Buy-back of Securities) (Amendment) Regulations, 2023. Further, Operational Guidance on Buy-back was issued by SEBI on 8th March 2023. The amended regulation has come into force w.e.f 9th March, 2023.

### Background

Currently, Buy-back Regulations specifies various methods for Buy-back of securities being:

- a) Tender offer to existing shareholders on a proportionate basis
- b) Open market mechanism through
  - i. Book Building process
  - ii. Stock Exchange
- c) Purchase of shares from Odd-Lot Holders.

To streamline the Buy-back procedures, it has been recommended that Buy-back from the Open market via the Stock Exchange be phased down progressively by 31 March 2025 (Part A). Amendments are also made in Buy-back via Tender offer (Part B).

The method of buying back from the open market via the Book Building process has also been updated (Part C) whilst method of purchasing shares from Odd-lot holders has been omitted (Part D).

### I. Amendment in conditions for Buy-back of shares and specified securities

- The maximum limit of any buy-back (i.e. up to 25% of the aggregate of the paid-up capital + free reserves of the company) and Debt Equity ratio (2:1) will now be based on the Standalone OR Consolidated Financial Statements ('CFS') of the company, whichever is lower.
- SEBI has also introduced the maximum limit in terms of 'number of equity shares' by clarifying that in respect of equity shares bought back in any financial year, the maximum limit will be 25% and will be construed with respect to the total paid-up capital of the company in that financial year.

## II. Amendments in modes of Buy-back

### Part A: Phasing out of Buy-back from Open Market through Stock Exchange

Sr. No	Particulars	Existing Regulations	Amended Regulations
1	<b>Phasing out with Maximum Cap</b>	<ul style="list-style-type: none"> <li>Buy-back regulations prescribes buy-back from open market to be less than 15% of the paid-up capital + free reserves of the company</li> </ul>	<ul style="list-style-type: none"> <li>Buy-Back from Open Market through stock exchanges is being slowly phased out in the following manner:               <ul style="list-style-type: none"> <li>(i) 15% of the paid-up capital + free reserves of the company till 31 March 2023;</li> <li>(ii) 10% of the paid-up capital + free reserves of the company till 31 March 2024;</li> <li>(iii) 5% of the paid-up capital + free reserves of the company till 31 March 2025;</li> <li>(iv) Buy-back from open market will not be permitted w.e.f. 1 April 2025</li> </ul> </li> </ul>
2	<b>Time Period for completion of Buy-back offer</b>	<ul style="list-style-type: none"> <li>Buy-back regulations specifies buy-back offer shall open within a maximum 7 working days from the date of public announcement and shall close within 6 months from the date of opening of the offer</li> </ul>	<ul style="list-style-type: none"> <li>Buy-back offer shall open within maximum 4 working days from the record date and shall close within the following time frame:               <ul style="list-style-type: none"> <li>(a) Within 6 months, if the buy-back offer is opened on or before 31 March 2023;</li> <li>(b) Within 66 working days, if the buy-back offer is opened during the period 1 April 2023 to 31 March 2024; and</li> <li>(c) Within 22 working days, if the buy-back offer is opened during the period 1 April 2024 to 31 March 2025</li> </ul> </li> </ul>
3	<b>Buy-back from open market through Stock Exchange</b>	<ul style="list-style-type: none"> <li>Current regulations do not provide for any distinction for buy-back in case of frequently or infrequently traded shares</li> </ul>	<ul style="list-style-type: none"> <li>Buy-back through stock exchange can be made only in cases of frequently traded shares</li> </ul>
4	<b>Increase in utilization of earmarked amount</b>	<ul style="list-style-type: none"> <li>The company to ensure minimum 50% of the amount earmarked for buy-back (specified in the resolution of the BOD or the special resolution), is utilized for buying-back shares or other specified securities</li> </ul>	<ul style="list-style-type: none"> <li>The Minimum limit of utilization of the earmarked amount for Buy-back has been increased from 50% to 75%</li> <li>Further, 40% of the amount earmarked for buy-back (specified via resolution of board of directors or special resolution) is to be utilized within the initial half of the specified duration</li> </ul>

## Restrictions on the buy-back through open-market have been imposed (Introduced via Operational Guidance - Amendment to Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018:

- The company shall not purchase more than 25% of the average daily trading volume of its shares or other specified securities in the 10 trading days prior to the day in which such purchases are made.
- Companies cannot make bids in the pre-open market (i.e., the first thirty minutes and the final thirty minutes of the normal trading session).
- Companies to set their purchase order prices within the range of  $\pm 1\%$  of the most recent trading price.

### Appointment of broker for compliances:

Company and its appointed broker must ensure compliance with the aforesaid provisions. The stock exchange shall monitor their compliance and in case of any instance of such non-compliance, shall impose appropriate fines and/or other enforcement actions as it deems fit.

## Part B: Buy-Back through Tender offer

Sr. No	Particulars	Existing Regulations	Amended Regulations
1	Subsequent revision of Buy-back price	<ul style="list-style-type: none"> <li>Nothing prescribed in the current regulation</li> </ul>	<ul style="list-style-type: none"> <li>The amended Buy-back Regulations provides the following flexibilities to the Board of Directors ('BOD'):               <ol style="list-style-type: none"> <li>Can make an upward revision in the buy-back price; and</li> <li>Can decrease the maximum number of securities to be brought back</li> </ol> </li> <li>These changes can be made up to one working day prior to Buy-back date. However, the aggregate buy-back size shall remain unchanged.</li> </ul>
2	Revision in time lines for offer procedure	<ul style="list-style-type: none"> <li>Date of opening of offer shall be within maximum 5 working days from the date of dispatch of the letter of offer</li> <li>Offer for Buy-back shall remain open for a period of 10 working days</li> <li>Payment of consideration to securities holders whose offer has been accepted and returning the remaining securities to the securities holders is to be done within 7 working days of the closure of the offer</li> </ul>	<ul style="list-style-type: none"> <li>Date of opening of offer shall now be within maximum 4 working days from the record date</li> <li>Offer for Buy-back shall now remain open for a period of 5 working days</li> <li>Payment of consideration to those holders of securities whose offer has been accepted and returning the remaining securities to the securities holders is now to be done within 5 working days of the closure of the offer</li> </ul>

### Additional Amendments

- Mode of Dispatch of Documents:** Explanation to Regulation 9(ii) has been amended requiring the letter of offer and tender form to be dispatched only in electronic form to the security holders within 2 working days from the record date.
- Filing of letter of offer for buy-back:** A company is required to file the final letter of offer with SEBI through a merchant banker within 2 working days of the public announcement. Earlier, draft version was required to be filed within 5 working days of the public announcement which has been discontinued.

## Part C: Buy-Back from open market through Book-building process

To restructure Buy-back from open market through Book-building process, SEBI has revised regulation 22 and has inserted regulations 22A, 22B, 22C, 22D and 22E. The key provisions include:

### Timelines

- Book building process to commence within 7 working days from the date of the public announcement;
- Public announcement to be made within 2 working days from the date of approval from the BOD or shareholders, as the case may be;
- Buy-back offer to be kept open for a minimum of 2 trading days, and the payment of the consideration should be made within a period of 5 working days from the date of closure of the offer; and
- Once public announcement is made, the Buy-back can not be withdrawn or terminated and once bids are placed, it cannot be withdrawn.

### Restriction on participation in Buy-back

- Retail investors will have the option to bid at the buy-back price; and
- Promoters, along with their associates, will not be permitted to participate in buy-back through book building.

### Methodology for acceptance of Bids

- Security holders can submit bids for any number of shares or other specified securities, not exceeding the total number of securities at a price within range;
- If the bid size is more than the buy-back size, the price at which 100% buy price is reached will be the buy-back price and shares or other securities tendered at or below buy-back price will be accepted at the buy-back price and in proportion to bids size received;
- If the bids are less than the buy-back size, all the shares or other specified securities will be accepted at the highest bid price; and
- The SEBI has prescribed the price range for the buy-back in case of frequently traded and infrequently traded securities.

## Part D: Buy-back of Tender offer through Odd-Lot Holders

The method of buy-back of shares or other specified securities through odd-lot holders has now been deleted.

## III. Other General Amendments

### Escrow Account

#### Timelines

- The SEBI has specified that the deposit to the escrow account should be made within 2 working days of the public announcement.

## Modes for creation of Escrow account

- Escrow accounts will now be subject to margins specified by the SEBI Board. Escrow Account consist of
  - a. Cash with any scheduled bank; or
  - b. Bank guarantee by any scheduled commercial bank; or
  - c. Deposit of acceptable securities with appropriate margin, with the merchant banker.
- Following alterations are made to Escrow Account's composition:
  - a. Bank Deposits have been included;
  - b. It is clarified that Bank guarantees should be issued in favor of Merchant banker by scheduled commercial bank;
  - c. Deposits of Acceptable securities have now been substituted for frequently traded and freely transferable equity shares or other freely transferable securities; and
  - d. Government securities or units of mutual funds invested in gilt funds and overnight schemes or combination of both have also been included.

## Part of Escrow account in a form other than cash

- A sum of at least 2.5% of the total amount earmarked for buy-back as specified in the Board Resolution or Special Resolution should be deposited in an escrow account opened with a scheduled commercial bank. Previously, the requirement was 1% of the total consideration payable.
- Merchant Banker is advised to ensure that the adequate amount after the applicable haircut is available in escrow account till the completion of all formalities of buy-back.

## IV. Other Miscellaneous Amendments

- Explanation to Regulation 16(i) of the Buy-back Regulations has been inserted that requires creation of a separate window by the concerned stock exchange for facilitating buy-back through stock exchanges.
- SEBI has prescribed that all the timelines will be in terms of working days.
- All SEBI filings will be done digitally which will be either signed by Company Secretary or person authorized by the board of the company.
- The destruction and extinguishment of share certificate will require the approval of Secretarial Auditor instead of Statutory Auditor. Further, the Secretarial Auditor is also required to issue a certificate of compliance which needs to be filed by the company with the SEBI.
- Additional requirement of obtaining prior consent of lender(s) in case of breach of any covenant with such lender(s).

## RBSA Comments

These amendments are designed to enhance the efficiency of listed companies' buy-back processes while also trying to curb loopholes. On one hand, it strives to bring convenience to the listed companies, yet on the other hand, it does not compromise the interests of stakeholders.

The method of Buy-back from open market through stock exchange is being phased out by SEBI in the interest of the stakeholders, especially retail shareholders.

The amendment of revision of Buy-back price till 1 working day prior to Buy-back date has largely come into effect due to the time-gap between the BOD/shareholders' approval and the actual commencement of Buy-back offer.

SEBI is seeking to establish a revamped procedure for Buy-back from open market on Book-building process, offering more clarity and consistency in pricing and bid acceptance criteria. One would need to evaluate whether the elimination of the Buy-back from open market through the stock exchange route would revive the Book-building buy-back process.

RBSA Advisors has consistently been ranked amongst the leading Merger & Acquisition Advisory Firms in the league table by both MergerMarkets and Venture Intelligence

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