

Capital Markets Hotline

February 17, 2023

CAPITAL MARKETS HOTLINE: SEBI (BUY-BACK OF SECURITIES) (AMENDMENT) REGULATIONS, 2023

The Securities and Exchange Board of India ("SEBI") vide its notification dated February 7, 2023¹ ("Notification") amended the SEBI (Buy-Back of Securities) Regulations, 2018² ("Buy-back Regulations"). The amendment shall come into force on the thirtieth day from the date of publication in the official gazette. SEBI had in its board meeting held on December 20, 2022, inter alia approved various amendments to the Buy-back Regulations based on the considerations received from stakeholders. These amendments aim to streamline the process of buyback, create a level-playing field for investors and promote the ease of doing business³.

Vide the Notification, amendments have been made to the price, conditions and requirements for buy-back of shares, limits for buy-backs from the open markets in the forthcoming years and revamped the buy-back through book-building process. SEBI has decided that buy-back through the stock exchange route should be phased out in a gradual manner.

BACKGROUND:

Buy-back is a corporate action wherein corporates, having excess capital, resort to buying back their own shares from the existing shareholders. Indian regulations require companies to cancel the shares that it buys back. Over a period owing to the growth and complexity of the market the Buy-back Regulations have evolved.

KEY AMENDMENTS:

In this section we have set out the key changes being implemented through the Notification.

- Maximum limit of buy-back – To calculate the maximum limit of buyback (including for calculation of the debt-equity ratio), standalone or consolidated financial statements, whichever sets out a lower amount shall be used.
- Phasing out of Buy-back from the open market through stock exchanges– Open market buy-backs through stock exchanges will be completely phased out from April 1, 2025. The gradual phase-out of the open market buy-backs through stock exchanges, shall be achieved by limiting the quantum of buy back permitted to less than: (a) fifteen percent of the paid up capital and free reserves of the company till March 31, 2023; (b) ten percent of the paid up capital and free reserves of the company till March 31, 2024; and (c) five percent of the paid up capital and free reserves of the company till March 31, 2025.
- Buy-back through Tender Offer
 - Increase in buy-back prices and decrease in buy-back securities – Listed entities undertaking buy-back through the tender offer may, increase the maximum buy-back price and decrease the number of securities proposed to be bought back, until one working day prior to the record date, so long as there is no change in the aggregate size of buy-back.
 - Disclosures, filing requirements– (a) The requirement to file a draft letter of offer with SEBI and comments from SEBI thereon has been done away with, (b) a merchant banker, who is not an associate of the company (as defined in the SEBI (Merchant Bankers) Regulations, 1992) shall issue a certificate certifying that the buy-back is in compliance with the Buy-back Regulations and that the letter of offer is in order. This should materially ease the compliance burden and associated timelines.
 - Offer Procedure– The public announcement shall disclose that a letter of offer shall be dispatched through electronic mode within 2 working days from the record date.
 - Timelines – The timelines for the dispatch of the offer letter, buy-back period offer, creation of escrow account, closure of the buy-back offer have been made amended and made more stringent.
- Minimum Buy-back utilization for Buy-back from Open Market – At least 75 (seventy-five) percent of the amount earmarked for buy-back (as specified in the board or special resolution) as against 50 (fifty) percent under the current Buy-back Regulations shall be utilized for buying back shares or securities. Further, SEBI has now prescribed that at least 40 (forty) percent of the amount earmarked for buy-back is utilized within initial half of the specified duration.
- Buy-back from the Open Market through Stock Exchanges
 - Separate Window – A separate window shall be created by the concerned stock exchange which shall remain open for the period specified in the Buy-back Regulations.
 - Frequently traded shares – Buy-back through stock exchanges shall only be conducted in respect of frequently

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- traded shares (shall have the meaning ascribed to the term under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011).
- Opening of the offer on the stock exchange – The buy-back offer shall open not later than four working days from the record date and shall close (a) within six months, if the buy-back offer is opened on or before March 31, 2023; (b) within 66 working days, if the buy-back offer is opened on or after April 1, 2023 and till March 31, 2024; and (c) within 22 working days, if the buy-back offer is opened on or after April 1, 2024 and till March 31, 2025. With effect from April 1, 2025, buy-back through the stock exchange shall not be available (except for any buy-back open offers has opened before April 1, 2025).
 - Other Conditions – Buy-back shall be subject to restrictions on placement of bids, price and volume as may be specified by SEBI.
 - Buy-back from the Open Market through Book Building – The process of buy-back through the book building has been replaced in entirety as follows.
 - Disclosure, filing requirement and timelines for public announcement – A listed company shall appoint a merchant banker and make a public announcement (as per Schedule 2 of the Buy-back Regulations) within 2 (two) working days from the date of approval by the board of directors or shareholders of such company. The book building process shall commence within 7 (seven) working days from the date of the public announcement. Once the public announcement is made, the buy-back shall not be withdrawn or terminated.
 - Offer Procedure – The buy-back price shall be discovered through the bids received from the shareholders within the price range. The Company shall (a) disclose maximum buy-back price (being the upper end of the price range) and the book value of the shares or specific securities, (b) publish the offer opening announcement on the date of commencement of buy-back. The Notification also lays down the lower end of the price range for frequently traded securities as well as infrequently traded securities. In case of frequently traded shares, the lower end of the price range shall not be less than the higher of (i) the closing price of the securities on the date of the Notice (as defined below) or (ii) the volume weighted average of market price of the shares or other specified securities of the listed entity in the fifteen trading days prior to the date of intimation of the board of directors of the company approving such buy-back.
 - Payment to holders of shares – The payment of consideration shall be made within a period of five working days from the date of closure of the buy-back.
 - Participation – (a) retail investors (holding securities upto a value of INR 2 lacs in value on the basis of the Closing Price) shall have the option to bid at the buy-back price and (b) promoters (along with their associates) shall not participate in the buy-back through book building process). The intent of the definition of 'retail investor' and permissibility of participation by other security holders that do not meet the requirement set out under the definition of 'retail investor', is not entirely clear. Given the increased participation by retail investors in the markets in the recent past and the increasing income and savings of Indian households, the limit of INR 2 lacs seems unhelpful.
 - Methodology for acceptance of bids – The buy-back offer shall be kept open for two trading days. The Notification lays down the methodology for acceptance of bids. In case the bids are more than the buy-back size, the price at which hundred percent of the buy-back size is reached shall be the buy-back price and shares or other specified securities tendered at or below the buy-back price shall be accepted at the buy-back price and in proportion to the size of the bids received. It is not immediately clear the methodology to be followed if the number of shares tendered multiplied by the floor price is higher than the buy-back size. We expect that the rule of proportionality will be applied in such a case. In the event that the bids are less than the buy-back size, all the shares or other specified securities tendered shall be accepted at the highest bid price.
 - Methodology to be adopted prior to the opening of an offer (Schedule VI) – An intimation shall be sent to (i) the stock exchanges before 5 pm on the day immediately preceding the date of commencement of the buy-back ("Notice") and (ii) shareholders 2 (two) working days preceding the date of the Notice through email and SMS.
 - Public Announcement – Along with the public announcement in newspapers as per Regulation 7(i) and Regulation 16(iv) of the Buy-back Regulations, a copy of the public announcement shall also be filed in electronic mode, with SEBI and the stock exchanges on which the shares or other specified securities of such entity are listed.
 - Escrow Account – A listed entity shall, within two working days of the public announcement, create an escrow account for such escrow amount as set out in the Buy-back Regulations, towards security for performance of its obligations. The escrow account shall, subject to the margins of SEBI, consist of (a) cash including bank deposits, deposited with any scheduled commercial bank; (b) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank; (c) frequently traded and freely transferable equity shares or other freely transferable securities; (d) government securities; (f) units of mutual funds invested in gilt funds and overnight schemes; or (g) a combination of the above. Where part of the escrow account is in a form other than cash, the listed entity will deposit two and half percent of the amount earmarked for buy-back, as security. The bank guarantee shall be returned only upon completion of obligations under the Buy-back Regulations.

OTHER AMENDMENTS:

In this section we have set out certain other changes being implemented through the Notification.

- Lender Consent – As a condition to buy-back, a prior lender consent shall be obtained in case of a breach of any covenant with such lender and a disclosure of the consent shall form part of the letter of offer.
- Electronic mode – Filings pertaining to buy-backs with SEBI shall be in electronic mode after being digitally signed by the Company Secretary or any person authorized by the board of directors.
- Working days - SEBI has accepted the terminology of 'working days' in buyback regulations as against 'days' used earlier. Accordingly, the listed entities would have more time to undertake certain compliances or disclosures under the Buy-back regulations.
- Secretarial Auditor – References to statutory auditor have been replaced with Secretarial Auditor (as defined in the

NDA OPINION:

In order to safeguard the interest of the investors, SEBI has curtailed the timelines for closure and payment to securities holder and streamlined the process of buyback thus expediting the completion of compliances by the listed companies. The amendment also accentuates the usage of electronic mode for filing and reporting under the Buy-back Regulations.

The move towards buy-back under the tender route entirely with a stricter timeline and an ability to revise the price upwards until a later stage makes the buy-back scheme much more robust and investor friendly. The Notification can be considered as an effort by SEBI to increase its vigilance and empower itself for maximum investor protection and benefits.

– Khyati Dalal & Ratnadeep Roychowdhury

You can direct your queries or comments to the authors

¹<https://egazette.nic.in/WriteReadData/2023/243516.pdf>

² SEBI Buy-Back Regulations, 2018 available at https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-buy-back-of-securities-regulations-2018_40327.html

³ https://www.sebi.gov.in/media/press-releases/dec-2022/sebi-board-meeting_66407.html

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