

**SEBI (BUY-BACK OF SECURITIES) (AMENDMENT) REGULATIONS, 2012 -
AMENDMENT IN REGULATIONS 2, 5, 6, 7, 8, 9, 11, 15, 17 & 19; SUBSTITUTION OF
REGULATION 5A AND SCHEDULE II & III AND OMISSION OF SCHEDULE I**

NOTIFICATION NO. LAD-NRO/GN/2011-12/36/3187, DATED 7-2-2012

In exercise of powers conferred by sub-section (1) of section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with clause (f) of sub-section (2) of Section 77A of the Companies Act, 1956 (1 of 1956) the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998, namely:-

1. These regulations shall be called the Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations, 2012.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998-
 - (i) in regulation 2, in sub-regulation (1),
 - (a) after clause (l), the following new clause shall be inserted, namely:-

"(la) 'small shareholder' means a shareholder of a listed company, who holds shares or other specified securities whose market value, on the basis of closing price of shares or other specified securities, on the recognised stock exchange in which highest trading volume in respect of such security, as on record date is not more than two lakh rupee;"
 - (b) after clause (o), the following new clause shall be inserted, namely:-

"(p) 'working day' means any working day of the Board."
 - (ii) In regulation 5, in sub-regulation (1) words and figures "Schedule I" shall be substituted with the words and figures "Schedule II, Part A".
 - (iii) regulation 5A shall be substituted with the following, namely:-

"5A. *Board resolution*.—A company, authorized by a resolution passed by the Board of Directors at its meeting to buy back its shares or other specified securities under first proviso to clause (b) of sub-section (2) of section 77A of the Companies Act, 1956, as inserted by the Companies (Amendment) Act, 2001, shall file a copy of the resolution, with the Board and the stock exchanges, where the shares or other specified securities of the company are listed, within two working days of the date of the passing of the resolution."
 - (iv) in regulation 6,-
 - (a) for the full stop, the figure ":" shall be substituted;
 - (b) the following shall be inserted, namely:-

"**Provided** that fifteen percent of the number of securities which the company proposes to buy back or number of securities entitled as per their shareholding, whichever is higher, shall be reserved for small shareholders."
 - (v) in regulation 7, in the opening sentence the words and figures "or the public notice under sub-regulation (1) of regulation 5A" and "or regulation 5A" shall be omitted.
 - (vi) in regulation 8,-
 - (a) sub-regulation (1), shall be substituted with the following namely:-

"(1) The company which has been authorised by a special resolution or a resolution passed by the Board of Directors at its meeting shall make a public

announcement within two working days from the date of resolution in at least one English National Daily, one Hindi National Daily and a Regional language daily all with wide circulation at the place where the Registered office of the company is situated and shall contain all the material information as specified in Schedule II, Part A."

- (b) after sub-regulation (1), the following new sub-regulation shall be inserted, namely:-

"(1A) A copy of the public announcement along with the soft copy, shall also be submitted to the Board simultaneously through a merchant banker."

- (c) sub-regulation (2) and sub-regulation (3), shall be omitted.

- (d) in sub-regulation (4),

(1) the words "seven working days" shall be substituted with the words "five working days"

(2) after the words "a draft letter of offer" and before words "containing disclosures", the sign and words ", along with soft copy," shall be inserted.

- (e) sub-regulation (6), shall be substituted with the following, namely:-

"(6)The Board may give its comments on the draft letter of offer not later than seven working days of the receipt of the draft letter of offer:

Provided that in the event the Board has sought clarifications or additional information from the merchant banker to the buyback offer, the period of issuance of comments shall be extended to the seventh working day from the date of receipt of satisfactory reply to the clarification or additional information sought:

Provided further that in the event the Board specifies any changes, the merchant banker to the buyback offer and the company shall carryout such changes in the letter of offer before it is dispatched to the shareholders."

- (vii) regulation 9, shall be substituted with the following, namely:-

"(1) A company making a buyback offer shall announce a record date for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buyback offer.

(2) The letter of offer along with the tender form shall be dispatched to the security holders who are eligible to participate in the buyback offer, not later than five working days from the receipt of communication of comments from the Board.

(3) The date of the opening of the offer shall be not later than five working days from the date of dispatch of letter of offer.

(4) The offer for buy back shall remain open for a period of ten working days.

(5) The company shall accept shares or other specified securities from the security holders on the basis of their entitlement as on record date.

(6) The shares proposed to be bought back shall be divided in to two categories; (a) reserved category for small shareholders and (b) the general category for other shareholders, and the entitlement of a shareholder in each category shall be calculated accordingly.

- (7) After accepting the shares or other specified securities tendered on the basis of entitlement, shares or other specified securities left to be bought back, if any in one category shall first be accepted, in proportion to the shares or other specified securities tendered over and above their entitlement in the offer by security holders in that category and thereafter from security holders who have tendered over and above their entitlement in other category."
- (viii) in regulation 11, sub-regulation (2), shall be substituted with the following, namely:-
"(2) The company shall complete the verifications of offers received and make payment of consideration to those security holders whose offer has been accepted or return the shares or other specified securities to the security holders within seven working days of the closure of the offer."
- (ix) In regulation 15, clause (d) after the words "commencement of buyback" the words and figures "and shall contain disclosures as specified in Schedule II, Part B" shall be inserted.
- (x) In regulation 17, in sub-regulation (2) words and figures "sub-regulation (5) of regulation 9" shall be substituted with the words and figures "sub-regulation (2) of regulation 11".
- (xi) in regulation 19, in sub-regulation (1), in clause (a) the words and figures "or public notice referred to in clause (a) of sub-regulation (1) of regulation 5A" shall be omitted.
- (xii) Schedule I shall be omitted.
- (xiii) Schedule II shall be substituted with the following, namely:-

"SCHEDULE II

CONTENTS OF THE PUBLIC ANNOUNCEMENT

1. The Public announcement shall be dated and signed on behalf of the Board of Directors of the company by its manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.
2. A full and complete disclosure of all material facts including the following shall be made:

Part A: Disclosures under Regulation 5(1) and 8(1)

- i. Date of the Board meeting at which the proposal for buy back was approved by the Board of Directors of the company;
- ii. Necessity for the buy back;
- iii. Maximum amount required under the buy back and its percentage of the total paid up capital and free reserves;
- iv. Maximum price at which the shares or other specified securities are proposed be bought back and the basis of arriving at the buyback price;
- v. Maximum number of securities that the company proposes to buy back;
- vi. Method to be adopted for buyback as referred in sub-regulation(1) of regulation 4;
- vii. (a) the aggregate shareholding of the promoter and of the directors of the promoters, where the promoter is a company and of persons who are in

- control of the company as on the date of the notice convening the General Meeting or the Meeting of the Board of Directors;
- (b) aggregate number of shares or other specified securities purchased or sold by persons including persons mentioned in (a) above from a period of six months preceding the date of the Board Meeting at which the buyback was approved till the date of notice convening the general meeting;
- (c) the maximum and minimum price at which purchases and sales referred to in (b) above were made along with the relevant dates;
- viii. Intention of the promoters and persons in control of the company to tender shares or other specified securities for buy-back indicating the number of shares or other specified securities ,details of acquisition with dates and price;
- ix. A confirmation that there are no defaults subsisting in repayment of deposits, redemption of debentures or preference shares or repayment of term loans to any financial institutions or banks;
- x. A confirmation that the Board of Directors has made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-
- (a) that immediately following the date on which the General Meeting or the meeting of the Board of Directors is convened there will be no grounds on which the company could be found unable to pay its debts;
- (b) as regards its prospects for the year immediately following that date that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to meet its liabilities as and when they fall due and will not be rendered insolvent within a period of one year from that date; and
- (c) in forming their opinion for the above purposes, the directors shall take into account the liabilities as if the company were being wound up under the provisions of the Companies Act, 1956 (including prospective and contingent liabilities);
- xi. A report addressed to the Board of Directors by the company's auditors stating that-
- (i) they have inquired into the company's state of affairs;
- (ii) the amount of the permissible capital payment for the securities in question is in their view properly determined; and
- (iii) the Board of Directors have formed the opinion as specified in clause (x) on reasonable grounds and that the company will not, having regard to its state of affairs, will not be rendered insolvent within a period of one year from that date.

Part B: Disclosures under Regulation 15(d)

In addition to the disclosures in Part A, the following disclosures shall be made:

- i. Date of shareholders approval for buy back, if applicable;
- ii. Minimum and maximum number of securities that the company proposes to buy back, sources of funds from which the buyback would be made and the cost of financing the buy back;
- iii. Proposed time table from opening of offer till the extinguishment of the certificates;
- iv. Process and methodology to be adopted for the buyback;
- v. Brief information about the company;
- vi. Audited Financial information for the last 3 years and the lead manager shall ensure that the particulars (audited statement and un-audited statement) contained therein shall not be more than 6 months old from the date of the public announcement together with financial ratios as may be specified by the Board;
- vii. Details of escrow account opened and the amount deposited therein;
- viii. Listing details and stock market data:
 - (a) high, Low and average market prices of the securities of the company proposed to be bought back, during the preceding three years;
 - (b) monthly high and low prices for the six months preceding the date of the public announcement;
 - (c) the number of securities traded on the days when the high and low prices were recorded on the relevant stock exchanges during the period stated at (a) and (b) above;
 - (d) the stock market data referred to above shall be shown separately for periods marked by a change in capital structure, with such period commencing from the date the concerned stock exchange recognises the change in the capital structure.(e.g. when the securities have become ex-rights or ex-bonus) ;
 - (e) the market price immediately after the date of the resolution of the Board of directors approving the buy back; and
 - (f) the volume of securities traded in each month during the six months preceding the date of the public announcement along with high, low and average prices of securities of the company, details relating to volume of business transacted should also be stated for respective periods.
- ix. Present capital structure (including the number of fully paid and partly paid securities) and shareholding pattern;
- x. The capital structure including details of outstanding convertible instruments, if any post buyback;
- xi. Aggregate shareholding of the promoter group and of the directors of the promoters, where the promoter is a company and of persons who are in control of the company;
- xii. Aggregate number of shares or other specified securities purchased or sold by persons mentioned in clause xi above during a period of twelve months preceding the date of the public announcement; the maximum

and minimum price at which purchases and sales referred to above were made along with the relevant dates;

- xiii. Management discussion and analysis on the likely impact of buy back on the company's earnings, public holdings, holdings of NRIs/FIIs etc., promoters holdings and any change in management structure;
- xiv. Details of statutory approvals obtained;
- xv. Collection and bidding centres;
- xvi. Name of compliance officer and details of investors service centres;
- xvii. Such other disclosures as may be specified by the Board from time to time by way of guidelines."

(xiv) Schedule III shall be substituted with the following, namely:-

"SCHEDULE III

[see regulation 8(4)]

DISCLOSURES TO BE MADE IN THE LETTER OF OFFER

The letter of offer shall be dated and signed on behalf of the Board of Directors of the company by its manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.

The letter of offer shall, inter-alia, contain the following;

- i. Disclosures in Schedule II;
- ii. Disclaimer Clause as may be specified by the Board;
- iii. Record date and ratio of buyback as per the entitlement in each category."