

THE GAZETTE OF INDIA

EXTRAORDINARY

PART – III – SECTION 4

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SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 8th day of August 2013

SECURITIES AND EXCHANGE BOARD OF INDIA

(BUY BACK OF SECURITIES) (AMENDMENT) REGULATIONS, 2013

No. LAD-NRO/GN/2013-14/16/6348.— In exercise of the powers conferred under 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, 2013.
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 4,
 - (a) in sub-regulation (1), the following proviso shall be inserted, namely,-

"Provided that no offer of buy-back for fifteen per cent or more of the paid up capital and free reserves of the company shall be made from the open market."
 - (b) after sub-regulation (3), the following sub-regulation shall be inserted, namely,-

“(4) A company shall not make any offer of buy-back within a period of one year reckoned from the date of closure of the preceding offer of buy-back, if any.”

- (ii) in regulation 14, after sub-regulation (2), the following new sub-regulation shall be inserted, namely,-

“(3) The company shall ensure that atleast fifty per cent of the amount earmarked for buy-back, as specified in resolutions referred to in regulation 5 or regulation 5A, is utilized for buying-back shares or other specified securities.”

- (iii) in regulation 15,

- (a) in sub-regulation (d), for the words "at least seven days prior to the commencement of buy-back" the words and numbers " within seven working days from the date of passing the resolution referred to in regulation 5 or regulation 5A", shall be substituted.

- (b) sub-regulation (e) shall be substituted with following, namely,-

“(e) Simultaneously with the issue of such public announcement, the company shall file a copy of the public announcement with the Board along with the fees specified in Schedule IV;”

- (c) sub-regulation (i), shall be substituted with the following, namely,-

“(i) the company shall submit the information regarding the shares or other specified securities bought-back, to the stock exchange on a daily basis in such form as may be specified by the Board and the stock exchange shall upload the same on its official website immediately;”

- (d) after sub-regulation (i), the following sub-regulation shall be inserted, namely,-

“(ia) The company shall upload the information regarding the shares or other specified securities bought-back on its website on a daily basis;”

- (e) After sub-regulation (j), the following new sub-regulation shall be inserted, namely,-

"(k) The buy-back offer shall open not later than seven working days from the date of public announcement and shall close within six months from the date of opening of the offer."

(iv) After regulation 15, the following new regulations shall be inserted, namely,-

“Buy-back of physical shares or other specified securities

15A. A company shall buy-back its shares or other specified securities in physical form through open market method as provided hereunder:

- (a) a separate window shall be created by the stock exchange, which shall remain open during the buy-back period, for buy-back of shares or other specified securities in physical form.
- (b) the company shall buy-back shares or other specified securities from eligible shareholders holding physical shares through the separate window specified in clause (a), only after verification of the identity proof and address proof by the broker.
- (c) the price at which the shares or other specified securities are bought back shall be the volume weighted average price of the shares or other specified securities bought-back, other than in the physical form, during the calendar week in which such shares or other specified securities were received by the broker:

Provided that the price of shares or other specified securities tendered during the first calendar week of the buy-back shall be the volume weighted average market price of the shares or other specified securities of the company during the preceding calendar week.

Explanation: In case no shares or other specified securities were bought back in the normal market during calendar week, the preceding week when the company has last bought back the shares or other specified securities may be considered.

15B. Escrow account

- (1) The Company shall, before opening of the offer, create an escrow account towards security for performance of its obligations under these regulations, and deposit in escrow account 25 per cent of the amount earmarked for the buy-back as specified in the resolutions referred to in regulation 5 or regulation 5A.

- (2) The escrow account referred to in sub-regulation (1) may be in the form of,—
 - (a) cash deposited with any scheduled commercial bank; or
 - (b) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank.
- (3) For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the company shall while opening the account, empower the merchant banker to instruct the bank to make payment of the amounts lying to the credit of the escrow account, to meet the obligations arising out of the buy-back.
- (4) For such part of the escrow account as is in the form of a bank guarantee:
 - (a) the same shall be in favour of the merchant banker and shall be kept valid for a period of thirty days after the closure of the offer or till the completion of all obligations under these regulations, whichever is later.
 - (b) the same shall not be returned by the merchant banker till completion of all obligations under the regulations.
- (5) Where part of the escrow account is in the form of a bank guarantee, the company shall deposit with a scheduled commercial bank, in cash, a sum of at least 2.5 per cent of the total amount earmarked for buy-back as specified in the resolutions referred to in regulation 5 or regulation 5A. as and by way of security for fulfillment of the obligations under the regulations by the company.
- (6) The escrow amount may be released for making payment to the shareholders subject to atleast 2.5% of the amount earmarked for buy-back as specified in the resolutions referred to in regulation 5 or regulation 5A remaining in the escrow account at all points of time.
- (7) On fulfilling the obligation specified at sub regulation (3) of Regulation 14, the amount and the guarantee remaining in the escrow account, if any, shall be released to the company.

(8) In the event of non-compliance with sub-regulation (3) of regulation 14, except in cases where,-

- a. volume weighted average market price (VWAMP) of the shares or other specified securities of the company during the buy-back period was higher than the buy-back price as certified by the Merchant banker based on the inputs provided by the Stock Exchanges.
- b. inadequate sell orders despite the buy orders placed by the company as certified by the Merchant banker based on the inputs provided by the Stock Exchanges.
- c. such circumstances which were beyond the control of the company and in the opinion of the Board merit consideration,

the Board may direct the merchant banker to forfeit the escrow account, subject to a maximum of 2.5 per cent of the amount earmarked for buy-back as specified in the resolutions referred to in regulations 5 or 5A.

(9) In the event of forfeiture for non-fulfillment of obligations specified in sub-regulation (8), the amount forfeited shall be deposited in the Investor Protection and Education Fund of Securities and Exchange Board of India.”

(v) in regulation 16,

(a) in sub-regulation (1), after the words, figures and numbers “provisions of sub-regulation (2)” the words, figures and numbers “and sub-regulation (3)”, shall be inserted.

(b) after sub-regulation (2), the following shall be inserted, namely:-

“(3) The company shall extinguish and physically destroy the security certificates so bought back during the month in the presence of a Merchant Banker and the Statutory Auditor, on or before the fifteenth day of the succeeding month:

Provided that the company shall ensure that all the securities bought-back are extinguished within seven days of the last date of completion of buy-back.”

(vi) In regulation 19,

(a) sub-regulation (1), in clause (e),

1. after the words, " of the company in the stock exchange" the words "or off-market, including inter-se transfer of shares among the promoters", shall be inserted.
2. for the words, "of the buy-back offer is open" the words and numbers "from the date of passing the resolution under regulation 5 or regulation 5A till the closing of the offer", shall be substituted.

(b) after clause (e), the following clause shall be inserted, namely,-

“(f) the company shall not raise further capital for a period of one year from the closure of buy-back offer, except in discharge of its subsisting obligations.”

U.K. SINHA
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

Footnotes:

1. Securities and Exchange Board of India (Buy-back of Securities) Regulations, 1998, the principal regulations, were published in the Gazette of India on November 14, 1998; vide S.O. No. 975 (E).

2. It was subsequently amended –

(a) on September 21, 1999 by SEBI (Buy-Back of Securities) (Amendment) Regulations, 1999 vide S.O. 776 (E).

(b) on November 28, 2001 by SEBI (Buy-Back of Securities) (Amendment) Regulations, 2001 vide S.O. 1181(E).

(c) on June 18, 2004 by SEBI (Buy-Back of Securities) (Amendment) Regulations, 2004 vide S.O. 745 (E).

(d) on August 21, 2006 by SEBI (Buy-Back of Securities) (Amendment) Regulations, 2006 vide S.O. No. 1331 (E).

(e) on May 28, 2007 by SEBI (Buy-Back of Securities) (Amendment) Regulations, 2007 vide No.11/LC/GN/2007.

(f) on March 31, 2008 by SEBI (Payment of Fees)(Amendment) Regulations, 2008 vide F. No. 11/LC/GN/2008/21669.

(g) on February 07, 2012 by SEBI (Buy-Back of Securities) (Amendment) Regulations, 2012 vide LAD-NRO/GN/2011-12/36/3187.