

- क) 29 जुलाई, 2019 को भारतीय प्रतिभूति और विनियम बोर्ड [प्रतिभूतियों को क्रय द्वारा वापस लेना (बाय-बैक)] (संशोधन) विनियम, 2019, सं. सेबी/एलएडी-एनआरओ/जीएन/2019/26, द्वारा,
- ख) 19 सितम्बर, 2019 को भारतीय प्रतिभूति और विनियम बोर्ड [प्रतिभूतियों को क्रय द्वारा वापस लेना (बाय-बैक)] (दूसरा संशोधन) विनियम, 2019, सं. सेबी/एल.ए.डी.-एन.आर.ओ./जीएन/2019/33, द्वारा,
- ग) 3 अगस्त, 2021 को भारतीय प्रतिभूति और विनियम बोर्ड (रेग्युलेटरी सैंडबॉक्स) (संशोधन) विनियम, 2021, सं. सेबी/एलएडी-एनआरओ/जीएन/2021/30, द्वारा

संशोधित हुए थे।

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 7th February, 2023

SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) (AMENDMENT) REGULATIONS, 2023

No. SEBI/LAD-NRO/GN/2023/120.—In exercise of the powers conferred by sub-sections (1) and (2) of section 11 and 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 68 of the Companies Act, 2013 (18 of 2013), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations, 2023.
2. They shall come into force on the thirtieth day from the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018, -
 - I. in regulation 2, in clause (i), —
 - a. after sub-clause (g) and before sub-clause (h), the following sub-clause (ga) shall be inserted, namely:—

“(ga) ‘frequently traded shares’ shall have the same meaning as assigned to them under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;”
 - b. sub-clause (j) shall be omitted;
 - c. after sub-clause (l) and before sub-clause (m), the following sub-clause (la) shall be inserted, namely:—

“(la) ‘secretarial auditor’ means an auditor as defined in the Secretarial Standards – I issued by the Institute of Company Secretaries of India;”.
 - II. In regulation 4, —
 - a. in clause (i),
 - i. the words and symbol “, based on both standalone and consolidated financial statements of the company”, shall be substituted by the words and symbol “, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount”;
 - ii. the Explanation shall be substituted by the following, namely:—

“Explanation: In respect of the number of equity shares bought back in any financial year, the maximum limit shall be twenty-five per cent and be construed with respect to the total paid-up equity share capital of the company in that financial year.”

b. in clause (ii), —

i. in sub-clause (a) and sub-clause (b), the words “both standalone and consolidated financial statements of the company”, shall be substituted by the words and symbol “the standalone or consolidated financial statements of the company, whichever sets out a lower amount”;

c. in clause (iv),—

i. sub-clause (c) shall be omitted;

ii. the proviso shall be substituted by the following provisos, namely:—

“Provided that the buy-back from the open market through stock exchanges, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount, shall be less than:—

(i) fifteen per cent of the paid up capital and free reserves of the company till March 31, 2023;

(ii) ten per cent of the paid up capital and free reserves of the company till March 31, 2024;

(iii) five per cent of the paid up capital and free reserves of the company till March 31, 2025:

Provided further that buy-back from the open market through the stock exchange shall not be allowed with effect from April 1, 2025.”

III. In regulation 5, —

a. in clause (i),

i. the words “or odd lot” shall be omitted;

ii. in the proviso appearing after sub-clause (b), the words and symbol “, based on both standalone and consolidated financial statements of the company”, shall be substituted by the words and symbol “, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount”;

iii. after the proviso appearing after sub-clause (b), the following sub-clause (c) and Explanation shall be inserted, namely:—

“(c). It has obtained the prior consent of its lenders in case of a breach of any covenant with such lender(s).

Explanation: The letter of offer to be prepared by the company in accordance with these regulations shall contain a specific disclosure of the consent obtained by the company from its lender(s).”

b. in clause (v), the words “seven days” shall be substituted by the words “seven working days”;

c. after clause (vi) and before clause (vii), the following clause (via) shall be inserted, namely: —

“(via) In case of a buy-back through tender offer, the Board of Directors of the company may, till one working day prior to the record date, increase the maximum buy-back price and decrease the number of securities proposed to be bought back, such that there is no change in the aggregate size of the buy-back.”

d. after clause (viii), the following clause (ix), shall be inserted, namely:—

“(ix) For the purpose of these regulations, all the filings to the Board shall be made only in electronic mode after being digitally signed by the company secretary or the person authorized by the board of the company.”

- IV. In regulation 7, —
- a. clause (ii) shall be substituted by the following, namely: —

“(ii) The company shall, simultaneously with the public announcement made in terms of clause (i), along with the fees specified in Schedule V, file a copy of the public announcement in electronic mode, with the Board and the stock exchanges on which its shares or other specified securities are listed.”
 - b. after the substituted clause (ii), the following clauses (iii) and (iv) shall be inserted, namely:—

“(iii) The stock exchanges shall forthwith disseminate the public announcement to the public.

(iv) A copy of the public announcement shall be placed on the respective websites of the stock exchange(s), merchant banker and the company.”
- V. In regulation 8,—
- a. in the heading, the word “draft” shall be omitted;
 - b. in clause (i)—
 - i. the words “five working days of the public announcement file the following”, shall be substituted by the words and symbol “two working days from the record date, file the following in electronic mode”;
 - ii. sub-clause (a) shall be substituted by the following namely:—

“(a) a letter of offer, containing disclosures as specified in **Schedule III**, through a merchant banker who is not an associate of the company.”
 - iii. after sub-clause (a) and before sub-clause (b), the following sub-clause (aa) and the Explanation shall be inserted, namely:—

“(aa) a certificate in the form specified by the Board, issued by the merchant banker, who is not an associate of the company, certifying that the buy-back offer is in compliance of these regulations and that the letter of offer contains the information required under these regulations.

Explanation: The term “associate” shall have the meaning assigned to it in regulation 21A of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, as amended from time to time.”
 - iv. sub-clause (c) shall be omitted;
 - v. After the omitted sub-clause (c), the following Explanation shall be inserted, namely:—

“**Explanation:** In case of buy-back through tender offer, no draft letter of offer is required to be filed with the Board.”
 - c. clause (ii) and the provisos thereto shall be omitted.
- VI. In regulation 9,—
- a. in clause (ii), the words and symbols “as per sub regulation (i), not later than five working days from the receipt of communication of comments from the Board”, shall be omitted;
 - b. the Explanation to clause (ii) shall be substituted by the following, namely:—

“**Explanation:** The public announcement shall disclose that the dispatch of the letter of offer, shall be through electronic mode in accordance with the provisions of the Companies Act, within two working days from the record date and that in the case of receipt of a request from any shareholder to receive a copy of the letter of offer in physical form, the same shall be provided.”
 - c. in clause (v), —
 - i. the words “five working days from the date of dispatch of the letter of offer” shall be substituted by the words “four working days from the record date”;

- d. in clause (vi), the word “ten”, shall be substituted by the word “five”;
- e. in clause (xi), —
- i. in sub-clause (a), —
- (a) after the words and symbol “company shall,” and before the words “as and by way of,” the words and symbol “within two working days of the public announcement,” shall be inserted;
- (b) the words and symbol “on or before the opening of the offer,” shall be omitted;
- ii. in sub-clause (c),—
- (a) after the word “shall” and before the word “consist”, the words and symbols “, subject to appropriate margin as specified by the Board,” shall be inserted;
- (b) in point (i), the words “cash deposited with a scheduled commercial bank” shall be substituted with the words “cash including bank deposits deposited with any scheduled commercial bank”;
- (c) in point (ii), the words “in favour of the merchant banker” shall be substituted by the words “issued in favour of the merchant banker by any scheduled commercial bank”;
- (d) in point (iii), the words and symbol “acceptable securities with appropriate margin, with the merchant banker” shall be substituted by the words “frequently traded and freely transferable equity shares or other freely transferable securities”;
- (e) after point (iii), the following points (iiia) and (iiib) shall be inserted namely:—
- “(iiia) government securities, or
(iiib) units of mutual funds invested in gilt funds and overnight schemes,
or”
- (f) in point (iv), the alphabets and symbols “(i), (ii) and (iii)” shall be substituted by the word “above”;
- (g) in sub-clause (e), the words “thirty days after the expiry of buy-back period” shall be substituted by the words and symbol “thirty working days after the expiry of buy-back period or until the completion of all obligations under these regulations, whichever is later”;
- iii. after sub-clause (e), the following Explanation shall be inserted, namely:—
- “Explanation:** The bank guarantee shall not be returned by the merchant banker until the completion of all obligations under these regulations.”
- iv. in sub-clause (g), the words “bank guarantee or” shall be omitted;
- v. sub-clause (h) shall be substituted by the following, namely:—
- “(h) Where part of the escrow account is in a form other than cash, the company shall deposit with a scheduled commercial bank, in cash, a sum of not less than two and half per cent of the total amount earmarked for buy-back as specified in the resolution of the Board of Directors or the special resolution, as the case may be, as security for the fulfilment of its obligations under the regulations.”
- VII. in regulation 10, in clause (ii), the word “seven”, shall be substituted by the word “five”;
- VIII. in regulation 11,—
- a. In clause (i), —

- i. the words “registrar to issue” shall be substituted by the words “registrar to an issue” and the words “Statutory Auditor”, shall be substituted by the words “secretarial auditor”;
 - ii. in the proviso, the words “seven days” shall be substituted by the words “seven working days”;
 - iii. in the Explanation, the words “fifteen days” shall be substituted by the words “fifteen working days” and the words “seven days” shall be substituted by the words “seven working days”;
- b. In clause (iii),—
- i. in sub-clause (c), the words “Statutory Auditor” shall be substituted by the words “secretarial auditor”;
 - ii. the words and symbol “This certificate shall be furnished to the Board within seven days of extinguishment and destruction of the certificates.”, appearing after sub-clause (c), shall be substituted with the following Explanation namely:—

“Explanation: This certificate shall be furnished to the Board within seven working days of the extinguishment and destruction of the certificates.”
- IX. Regulation 12 shall be omitted.
- X. in regulation 15,—
- a. the existing text shall be numbered as clause (i);
 - b. in clause (i), the words “fifty per cent”, shall be substituted by the words “seventy-five per cent”;
 - c. after clause (i), the following clause (ii) shall be inserted, namely:—

“(ii) The company shall ensure that at a minimum of forty per cent of the amount earmarked for the buy-back, as specified in the resolution of the Board of Directors or the special resolution, as the case may be, is utilized within the initial half of the specified duration.”
- XI. in regulation 16,—
- a. after clause (i), the following Explanation shall be inserted, namely:—

“Explanation: For the purpose of buy-back through stock exchange, a separate window shall be created by the concerned stock exchange and such window shall remain open for the period specified in these regulations.”
 - b. in clause (iv), sub-clause (c) shall be substituted by the following namely:—

“(c) The company shall, simultaneously with the public announcement made in terms of sub-clause (a), along with the fees specified in Schedule V, file a copy of the public announcement in electronic mode with the Board and the stock exchanges on which its shares or other specified securities are listed.”
 - c. in clause (iv), after sub-clause (c), the following sub-clauses (ca) and (cb) shall be inserted, namely:—

“(ca) The stock exchanges shall forthwith disseminate the public announcement to the public.

“(cb) A copy of the public announcement shall be placed on the respective websites of the stock exchange(s), merchant banker and the company.”
 - d. after the Explanation appearing after sub-clause (d) of clause (iv), the following clauses (v) and (vi) shall be inserted, namely:—

“(v) The buy-back through stock exchanges shall be undertaken only in respect of frequently traded shares;

(vi) The buy-back through stock exchanges shall be subject to the restrictions on placement of bids, price and volume as specified by the Board.”

XII. in regulation 17, clause (ii) shall be substituted by the following, namely:—

“(ii) 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:

Provided that with effect from April 1, 2025, the option of open market buy-back through the stock exchange shall not be available to any company except in cases where the buy-back offer has opened on or before March 31, 2025.”

XIII. In regulation 20,—

a. in clause (i), the words “before opening of the offer”, shall be substituted by the words “within two working days of the public announcement”;

b. in clause (ii),

i. After the word “may be” and before the words “in the form”, the words and symbols “, subject to appropriate margin as specified by the Board,” shall be inserted;

ii. After sub-clause (b), the following sub-clauses (c), (d), (e) and (f) shall be inserted, namely:—

“(c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin with the merchant banker; or

(d) government securities; or

(e) units of mutual funds invested in gilt funds and overnight schemes; or

(f) a combination of the above.”

c. In clause (iv), in sub-clause (a), the words “thirty days” shall be substituted by the words “thirty working days”;

d. In clause (v), the words “of a bank guarantee” shall be substituted by the words “other than cash”.

XIV. in regulation 21,—

a. in clause (ii), the words “fifteen days”, shall be substituted by the words “fifteen working days”;

b. in clause (iii), the words “Statutory Auditor” shall be substituted by the words “secretarial auditor”;

c. in the proviso to clause (iii), the words “seven days” shall be substituted by the words “seven working days”.

XV. regulation 22 shall be substituted by the following, namely:—

“22. A company may buy-back its shares or other specified securities from its existing securities holders through the book building process.”

XVI. After regulation 22, the following regulations 22A, 22B, 22C, 22D and 22E shall be inserted namely:—

“Disclosures, filing requirements and timelines for public announcement:

22A (i) The company, which has been authorised by a special resolution or a resolution passed by its Board of Directors, as the case may be, shall appoint a merchant banker and make a public

announcement within two working days from the date of the approval of Board of Directors or of the shareholders, as the case may be.

(ii) The disclosures in the public announcement shall be made in accordance with **Schedule II**.

(iii) The book building process shall commence within seven working days from the date of the public announcement.

(iv) The public announcement shall contain the detailed methodology pertaining to intimation required to be made prior to the opening of the buy-back offer as specified in **Schedule- VI**.

Offer procedure:

22B (i) The company making the buy-back offer shall disclose the maximum buy-back price, being the upper end of the price range, as approved by the Board of Directors of the company or its shareholders, as the case may be and the book value of the shares or other specified securities of the company.

(ii) The company shall publish the offer opening announcement on the date of commencement of the buy-back.

(iii) In case of frequently traded securities, the lower end of the price range shall not be less than the higher of:

(a) the closing price of the securities of the company on the date of the Notice as specified in **Schedule- VI**; and

(b) the volume weighted average market price of the shares or other specified securities of the company in the fifteen trading days prior to the date of the intimation of the meeting of the Board of Directors approving the buy-back.

(iv) In case of infrequently traded securities, the lower end of the price range shall not be less than the price of the securities of the company determined on the basis of the report of a registered valuer.

(v) The buy-back price shall depend upon the price discovered through the bids received from the shareholders within the price range.

Payment to holders of shares or other specified securities:

22C (i) The payment of consideration to holders of shares or other specified securities shall be completed within a period of five working days from the date of closure of the buy-back offer.

Retail and Promoter participation

22D (i) Retail investors shall have the option to bid at the buy-back price.

Explanation: For the purpose of this Chapter, 'retail investors' means securities holders who hold shares or other specified securities of the company up to two lakh rupees in value calculated on the basis of the closing price as on the identified date as specified in **Schedule- VI**.

(ii) Promoters along with their associates shall not be permitted to participate in buy-back through book building.

Methodology of acceptance of bids:

22E. (i) The buy-back offer shall be kept open for a minimum of two trading days.

(ii) Securities holders can submit bids for any number of shares or other specified securities of the company, not exceeding the total number of securities in the relevant category, at a price within the price range.

(iii) In the event that, the bids are more than the buy-back size:

a. The price at which hundred per cent of the buy-back size is reached shall be the buy-back price; and

b. 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.

(iv) 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.

(v) Once the public announcement is made, the buy-back shall not be withdrawn or terminated and bids once placed shall not be withdrawn.”

XVII. in regulation 24,—

a. in clause (iv), the words “seven days”, shall be substituted by the words “seven working days”;

b. in clause (vi), the words “two days” shall be substituted by the words “two working days”.

XVIII. in regulation 25, clause (x) shall be substituted with the following, namely:—

“(x) a final report in the electronic mode shall be submitted to the Board within fifteen working days from the date of expiry of the buy-back period.”

XIX. in Schedule I, after clause (xi), the following clause (xii) shall be inserted namely:—

“(xii) Prior approval obtained from the lenders of the company in case of a breach of any covenant with such lender(s).”

XX. in Schedule II, in the heading, the words “and from odd lot holders” shall be omitted.

XXI. in Schedule III, in the heading, the words “and from odd lot holders” shall be omitted.

XXII. in Schedule V, in the first paragraph, after the words “public announcement” and before the words “to the Board”, the words “in electronic mode” shall be inserted.

XXIII. after Schedule V, the following Schedule VI shall be inserted namely:—

“SCHEDULE – VI

METHODOLOGY TO BE ADOPTED PRIOR TO THE OPENING OF AN OFFER

[Regulation 22A]

- I. An intimation (“Notice”) shall be sent to the stock exchanges before 5 pm on the day immediately preceding the date of the commencement of the buy-back.
- II. An intimation shall be sent to the shareholders two working days preceding the date of the Notice (“identified date”) through email and SMS as per the records of the depositories.”

BABITHA RAYUDU, Executive Director

[ADVT.-III/4/Exty./598/2022-23]

Footnotes:

1. The Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018 were published in the Gazette of India on September 11, 2018 vide notification No. SEBI/LAD-NRO/GN/2018/32.
2. The Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018 were subsequently amended on:
 - a) July 29, 2019 by the Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations, 2019 vide No. SEBI/LAD-NRO/GN/2019/26.
 - b) September 19, 2019 by the Securities and Exchange Board of India (Buy-Back of Securities) (Second Amendment) Regulations, 2019 vide No. SEBI/LAD-NRD/GN/2019/33.
 - c) August 3, 2021 by the Securities and Exchange Board of India (Regulatory Sandbox) (Amendment) Regulations, 2021 vide No. SEBI/LAD-NRO/GN/2021/30.