



news flash

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RATIONALISATION OF BUYBACK OF SECURITIES

The SEBI (Buy-Back of Securities) Regulations, 1998 (“**Regulations**”) has recently been amended by Securities and Exchange Board of India (“**SEBI**”) vide Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations, 2012 (“**Amendment Regulations**”). The amendments inter alia provide for streamlining the process for the buyback and protection of retail investors in listed companies.

Under the Amendment Regulations, SEBI has created a *reserved category* for small shareholders whereby all listed companies proposing to buy-back its securities through the tender offer route are required to reserve of 15 per cent for *small shareholders*. The term ‘*small shareholder*’ is defined to mean a shareholder holding securities whose market value (on the basis of closing price of securities), on the recognized stock exchange (with the highest trading volume in respect of such security) as on record date, is not more than Rupees two lakhs. Further, this reservation for small shareholders will be made for 15 per cent of the number of securities which the company proposes to buy back or number of securities that the *small shareholders* are entitled to as per their shareholding, whichever is higher.

The Amendment Regulations have significantly modified the basis of entitlement in a buy-back through the tender offer. Earlier, the Regulations required the listed company to provide for a ‘*specified date*’ in its public announcement for the purpose of determining the security holders eligible for the offer. Instead of the foregoing, the Amendment Regulations require that the company proposing to make a buyback offer shall announce a record date for determining the entitlement and the names of the security holders entitled to participate in the proposed buyback offer. The company will accept securities from the security holder **only on the basis of their entitlement as on record date**. This is a vast departure from the earlier position, wherein a listed company would consider securities tendered for buy-back from shareholders, irrespective of whether such shareholder was registered with the company as on the ‘*specified date*’ or has obtained delivery of the same after the ‘*specified date*’ or held in street name (securities held through a brokerage account opened with a broker).

Further, the Amendment Regulations provide that the securities proposed to be bought back are to be divided into two categories: (a) the reserved category for small shareholders; (b) the general category for other shareholders. The shareholders are free to tender securities over and above their entitlement. After accepting the securities tendered by the shareholders of a category (on the basis of their entitlement), if there are any further securities available for buy-back in that category (“**Further Securities**”), then the company must buy-back additional securities tendered over and above their shareholders’ entitlement in the same category, in proportion to the securities or other specified securities tendered over and above their entitlement. Only thereafter can the company buy-back such Further Securities from security holders who have tendered securities over and above their entitlement in the other category.

The other welcome changes ushered in by the Amendment Regulations pertain to the curtailing of the time limits for each activity involved in the buy-back process. The revised time lines that would enable completion of the buy-back within a definite timeframe are as stated herein below:

- a company authorised by board/shareholders' resolution to buy-back its securities would have to make the '*public announcement*' in newspapers within 2 days from the date of such resolution and simultaneously, submit it to SEBI;
- the time for filing the draft letter of offer with SEBI has been reduced from 7 to 5 working days, from the date of the public announcement;
- SEBI is required to give its comments on the draft letter of offer within 7 days of its receipt;
- The letter of offer approved by SEBI must be dispatched to the eligible shareholders, within 5 working days from date of receipt of SEBI's comments;
- The buy-back offer must open no later than 5 days from the date of dispatch of letter of offer and should remain open only for 10 working days; and
- The company should complete the verification of offers received and make the payment or return the securities to the security holders within 7 working days from closure of offer.

Analysis

The amendment to the Regulations is an attempt by SEBI to protect and safeguard the interest of the small shareholders and to improve the efficiency in buy-back process by substantial reduction in the time for the same. As can be seen from the above, SEBI has implemented changes only to buy-back under the tender offer route, perhaps in order to encourage genuine buy-back offers under this mechanism. For the retail investor looking to benefit from buy-back exercise, the amendments have indeed brought many positive changes, such as reservation of securities and the concise manner of implementing the buy-back.

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