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SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, September 11, 2018

SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 2018

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No. SEBI/LAD-NRO/GN/2018/32. - 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, the Board hereby makes the following regulations, namely:-

CHAPTER I
PRELIMINARY

Short title and commencement

1. (i) These regulations may be called the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018.

(ii) These regulations shall come into force on the date of their publication in the Official Gazette.

Definitions

2. (i) In these regulations, unless the context otherwise requires:—

a) ‘Act’ means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

b) ‘associate’ includes a person,—

i) who directly or indirectly by himself or in combination with relatives, exercise control over the company or,

ii) whose employee, officer or director is also a director, officer or employee of company;

c) “Board” means the Securities and Exchange Board of India established under section 3 of the Act;

d) ‘Buyback period’ means the period between the date of board of directors resolution or date of declaration of results of the postal ballot for special resolution, as the case may be, to authorize buyback of shares of the company and the date on which the payment of consideration to shareholders who have accepted the buyback offer is made;

e) ‘control’ has the same meaning as defined in clause (e) of sub-regulation (1) of regulation (2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

f) ‘company’ means a company as defined under the Companies Act, whose shares or other specified securities are listed on a Stock Exchange and which buys or intends to buy such shares or other specified securities in accordance with these regulations;

g) ‘Companies Act’ means the Companies Act, 2013.

h) ‘insider’ means an insider as defined in clause (g) of sub-

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regulation (1) of regulation 2 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;

i) ‘merchant banker’ means a merchant banker as defined in clause (cb) of regulation 2 of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 and registered under section 12 of the Act;

j) ‘odd lots’ mean the lots of shares or other specified securities of a company, whose shares are listed on a recognised stock exchange, which are smaller than such marketable lots, as may be specified by the stock exchange;

k) ‘promoter’ means promoter as defined in clause (s) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

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l) ‘registrar’ means a registrar to an issue and includes a share transfer agent, registered under section 12 of the Act;

m) ‘securities’ mean securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(n) ‘small shareholder’ means a shareholder of a 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 securities, as on record date is not more than two lakh rupee;

n) ‘specified securities’ includes employees’ stock option or other securities as may be notified by the Central Government from time to time;

o) ‘statutory auditor’ means an auditor appointed by a company under section 139 of the Companies Act;

p) ‘stock exchange’ means a stock exchange which has been granted recognition under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

q) ‘tender offer’ means an offer by a company to buy-back its own shares or other specified securities through a letter of offer from the holders of the shares or other specified securities of the company;

r) ‘unpublished price sensitive information’ has the same meaning as defined in clause (n) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;

s) ‘working day’ means any working day of the Board.

(ii) All other expressions unless defined herein shall have the same meaning as has been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956, or Companies Act or any statutory modification or re-enactment thereof, as the case may be.

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CHAPTER II
CONDITIONS OF BUY-BACK

Applicability:

3. These regulations shall be applicable to buy-back of shares or other specified securities of a company in accordance with the applicable provisions of the Companies Act.

[1][Explanation: For the purposes of these regulations, the term “shares” shall include equity shares having superior voting rights.]

Conditions and requirements for buy-back of shares and specified securities:

4. (i) The maximum limit of any buy-back shall be twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company:

***Explanation*:** In respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this regulation shall be construed with respect to its total paid-up equity capital in that financial year;

(ii) The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back shall not be more than twice the paid-up capital and free reserves.

Provided that if a higher ratio of the debt to capital and free reserves for the company has been notified under the Companies Act, 2013, the same shall prevail.

(iii) All shares or other specified securities for buy-back shall be fully paid-up.

(iv) A company may buy-back its shares or other specified securities by any one of the following methods:

a) from the existing share holders or other specified securities holders on a proportionate basis through the tender offer;

b) from the open market through—

i) book-building process,

ii) stock exchange;

[1] Inserted by the Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations, 2019 w.e.f. 29.07.2019.

c) from odd-lot holders:

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.

(v) A company shall not buy-back its shares or other specified securities so as to delist its shares or other specified securities from the stock exchange.

(vi) A company shall not buy-back its shares or other specified securities from any person through negotiated deals, whether on or off the stock exchange or through spot transactions or through any private arrangement.

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(vii) A company shall not make any offer of buy-back within a period of one year reckoned from the date of expiry of buyback period of the preceding offer of buy-back, if any.

(viii) A company shall not allow buy-back of its shares unless the consequent reduction of its share capital is effected.

(ix) A company may undertake a buy-back of its own shares or other specified securities out of—

(*a*) its free reserves;

(*b*) the securities premium account; or

(*c*) the proceeds of the issue of any shares or other specified securities:

Provided that no such buy-back shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(x) No company shall directly or indirectly purchase its own shares or other specified securities:

(a) through any subsidiary company including its own subsidiary companies;

(b) through any investment company or group of investment companies; or

(c) if a default is made by the company in the repayment of deposits accepted either before or after the commencement of the Companies Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

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General compliance and filing requirements for buy-back:

5. (i) The company shall not authorise any buy-back (whether by way of tender offer or from open market or odd lot) unless:

a) The buy-back is authorised by the company's articles;

b) A special resolution has been passed at a general meeting of the company authorising the buy-back:

Provided that nothing contained in this clause shall apply to a case where the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and such buy-back has been authorised by the board of directors by means of a resolution passed at its meeting.

(ii) Every buy-back shall be completed within a period of one year from the date of passing of the special resolution at general meeting, or the resolution passed by the board of directors of the company, as the case may be.

(iii) The company shall, after expiry of the buy-back period, file with the Registrar of Companies and the Board, a return containing such particulars relating to the buy-back within thirty days of such expiry, in the format as specified in the Companies (Share Capital and Debentures) Rules, 2014.

(iv) Where a special resolution is required for authorizing a buy-back, the explanatory statement to be annexed with the notice for the general meeting pursuant to section 102 of the Companies Act shall contain mandatory disclosures mentioned therein and the following disclosures:

a) Disclosures under sub-section 3 of section 68 of the Companies Act—

i) a full and complete disclosure of all material facts;

ii) the necessity for the buy-back;

iii) the class of shares or securities intended to be purchased under the buy-back;

iv) the amount to be invested under the buy-back; and

v) the time-limit for completion of buy-back.

b) Additional disclosures under these regulations as provided in **Schedule I**,

c) Provided that where the buy-back is through tender offer from existing securities holders , the explanatory statement shall contain the following additional disclosures:

i) the maximum price at which the buy-back of shares or other specified securities shall be made and whether the board of directors of the company is being authorised at the general meeting to determine subsequently the specific price at which the buy-back may be made at the appropriate time;

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ii) if the promoter intends to offer his shares or other specified securities, the quantum of shares or other specified securities proposed to be tendered and the details of their transactions and their holdings for the last six months prior to the passing of the special resolution for buy-back including information of number of shares or other specified securities acquired, the price and the date of acquisition.

(v) A copy of the resolution passed at the general meeting under sub-section (2) of section 68 of the Companies Act shall be filed with the Board and the stock exchanges where the shares or other specified securities of the company are listed, within seven days from the date of passing of the resolution.

(vi) Where the buy-back is from open market either through the stock exchange or through book building, the resolution of board of directors shall specify the maximum price at which the buy-back shall be made:

Provided that where there is a requirement for the Special Resolution as specified in clause (b) of sub-regulation 1 of regulation 5 of these Regulations, the special resolution shall also specify the maximum price at which the buy-back shall be made.

(vii) 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 the proviso to clause (b) of sub-section (2) of section 68 of the Companies Act, 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.

(viii) No insider shall deal in shares or other specified securities of the company on the basis of unpublished price sensitive information relating to buy-back of shares or other specified securities of the company.

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CHAPTER III
BUY-BACK THROUGH TENDER OFFER

6. A company may buy-back its shares or other specified securities from its existing securities holders on a proportionate basis in accordance with the provisions of this Chapter:

Provided that fifteen per cent 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.

Disclosures, filing requirements and timelines for public announcement:

7. (i) The company which has been authorised by a special resolution or a resolution passed by the board of directors, as the case may be, shall make a public announcement within two working days from the date of declaration of results of the postal ballot for special resolution/board of directors resolution in at least one English National Daily, one Hindi National Daily and one Regional language daily, all with wide circulation at the place where the Registered Office of the company is situated and the said public announcement shall contain all the material information as specified in **Schedule II**.

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

Disclosures, filing requirements and timelines for draft letter of offer

8. (i) The company shall within five working days of the public announcement file the following with the Board:

a) a draft letter of offer, along with a soft copy, containing disclosures as specified in **Schedule III** through a merchant banker who is not associated with the company.

b) a declaration of solvency in specified form and in a manner provided in sub-section (6) of section 68 of the Companies Act.

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c) fees specified in **Schedule V**.

(ii) The Board may provide 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 buy-back 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 buy-back offer and the company shall carryout such changes in the letter of offer before it is dispatched to the shareholders.

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Offer procedure

9. (i) A company making a buy-back offer shall announce a record date in the public announcement for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buy-back offer.

(ii) The letter of offer along with the tender form shall be dispatched to the securities holders who are eligible to participate in the buy-back offer as per sub regulation (i), not later than five working days from the receipt of communication of comments from the Board.

***Explanation*:** (a) Letter of Offer may also be dispatched through electronic mode in accordance with the provisions of the Companies Act.

(b) On 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) The aforesaid shall be disclosed in the letter of offer.

(iii) Even if an eligible public shareholder does not receive the tender

offer/offer form, he may participate in the buy-back offer and tender shares in the manner as provided by the Board.

(iv) An unregistered shareholder may also tender his shares for buy-back by submitting the duly executed transfer deed for transfer of shares in his name, along with the offer form and other relevant documents as required for transfer, if any.

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

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

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(vii) The company shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism in the manner as provided by the Board.

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

(ix) The shares proposed to be bought back shall be divided into 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.

> *'**Explanation**:* Holdings of multiple demat accounts would be clubbed together for identification of small shareholder if sequence of Permanent Account Number for all holders is matching. Similarly, in case of physical shareholders, if the sequence of names of joint holders is matching, holding under such folios should be clubbed together for identification of small shareholder.'

(x) 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 securities holders in that category and thereafter from securities holders who have tendered over and above their entitlement in other category.

(xi) Escrow account

(a) The company shall, as and by way of security for performance of its obligations under the regulations, on or before the opening of the offer, deposit in an escrow account such sum as specified in clause (b);

(b) The escrow amount shall be payable in the following manner:

(i) if the consideration payable does not exceed Rupees 100 crores; 25 per cent of the consideration payable;

(ii) if the consideration payable exceeds Rupees 100 crores; 25 per cent upto Rupees 100 crores and 10 per cent thereafter.

(c) The escrow account referred to in this regulation shall consist of,

(i) cash deposited with a scheduled commercial bank, or

(ii) bank guarantee in favour of the merchant banker, or

(iii) deposit of acceptable securities with appropriate margin, with the merchant banker, or

(iv) a combination of (i), (ii) and (iii).

***Explanation*:** The cash component of the escrow account may be maintained in an interest bearing account, provided that the merchant banker ensures that the funds are available at the time of making payment to shareholders.

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(d) Where the escrow account consists of deposit with a scheduled commercial bank, the company shall, while opening the account, empower the merchant banker to instruct the bank to make payment the amount lying to the credit of the escrow account, as provided in the regulations.

(e) Where the escrow account consists of a bank guarantee, such bank guarantee shall be in favour of the merchant banker and shall be valid until thirty days after the expiry of buyback period.

(f) The company shall, in case the escrow account consists of securities, empower the merchant banker to realise the value of such escrow account by sale or otherwise and if there is any deficit on realisation of the value of the securities, the merchant banker shall be liable to make good any such deficit.

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(g) In case the escrow account consists of bank guarantee or approved securities, these shall not be returned by the merchant banker till completion of all obligations under the regulations.

(h) Where the escrow account consists of bank guarantee or deposit of approved securities, the company shall also deposit with the bank in cash a sum of at least one per cent of the total consideration payable, as and by way of security for fulfillment of the obligations under the regulations by the company.

(i) On payment of consideration to all the securities holders who have accepted the offer and after completion of all formalities of buy-back, the amount, guarantee and securities in the escrow, if any, shall be released to the company.

(j) The Board in the interest of the securities holders may in case of nonfulfillment of obligations under the regulations by the company forfeit the escrow account either in full or in part.

(xii) The amount forfeited under clause (j) may be distributed pro rata amongst the securities holders who accepted the offer and balance, if any, shall be utilised for investor protection.

Closure and payment to securities holders:

10. (i) The company shall immediately after the date of closure of the offer, open a special account with a banker to an issue, registered with the Board and deposit therein, such sum as would, together with ninety per cent of the amount lying in the escrow account, make-up the entire sum due and payable as consideration for buy-back in terms of these regulations and for this purpose, may transfer the funds from the escrow account.

(ii) The company shall complete the verification of offers received and make payment of consideration to those holders of securities whose offer has been accepted and return the remaining shares or other specified securities to the securities holders within seven working days of the closure of the offer.

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Extinguishment of certificate and other closure compliances:

11. (i) The company shall extinguish and physically destroy the securities certificates so bought back in the presence of a registrar to issue or the Merchant Banker and the Statutory Auditor within fifteen days of the date of acceptance of the shares or other specified securities.

Provided that the company shall ensure that all the securities bought-back are extinguished within seven days of expiry of buy-back period.

***Explanation*:** The aforesaid period of fifteen days shall in no case extend beyond seven days of expiry of buy-back period.

(ii) The shares or other specified securities offered for buy-back if already dematerialised shall be extinguished and destroyed in the manner specified under the Securities and Exchange Board of India (Depositories and

Participants) Regulations, 1996, and the bye-laws, the circulars and guidelines framed thereunder.

(iii) The company shall, furnish a certificate to the Board certifying compliance as specified in sub-regulation (i) above, and duly certified and verified by:

a) the registrar and whenever there is no registrar, by the merchant banker;

b) two directors of the company, one of whom shall be a managing director, where there is one; and

c) the statutory auditor of the company,

This certificate shall be furnished to the Board within seven days of extinguishment and destruction of the certificates.

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(iv) The company shall furnish the particulars of the securities certificates extinguished and destroyed under sub-regulation (i), to the stock exchanges where the shares of the company are listed within seven days of extinguishment and destruction of the certificates.

(v) Where a company buys back its shares or other specified securities under these regulations, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed in sub-section (9) of section 68 of the Companies Act.

Odd-lot buy-back

12. The provisions pertaining to buy-back through tender offer as specified in this Chapter shall be applicable mutatis mutandis to odd-lot shares or other specified securities.

CHAPTER IV
BUY-BACK FROM THE OPEN MARKET

13. A company intending to buy-back its shares or other specified securities from the open market shall do so in accordance with the provisions of this Chapter.

14. The buy-back of shares or other specified securities from the open market may be in any one of the following methods:

(a) through stock exchange,

(b) book-building process.

15. The company shall ensure that at least fifty per cent of the amount earmarked for buy-back, as specified in the resolution of the board of directors or the special resolution, as the case may be, is utilized for buying-back shares or other specified securities.

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Buy-back through stock exchange

16. (i) The buy-back shall be made only on stock exchanges having nationwide trading terminals;

(ii) The buy-back of the shares or other specified securities through the stock exchange shall not be made from the promoters or persons in control of the company;

(iii) The buy-back of shares or other specified securities shall be made only through the order matching mechanism except 'all or none' order matching system;

(iv) Disclosures, filing requirements and timelines of public announcement:

a) The company shall appoint a merchant banker and make a public announcement as referred to in regulation 7 pertaining to

tender offer;

b) The public announcement shall be made within two working days from the date of passing the board of directors resolution or date of declaration of results of the postal ballot for special resolution, as relevant and shall contain disclosures as specified in **Schedule IV**;

c) 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 V**;

d) The public announcement shall also contain disclosures regarding details of the brokers and stock exchanges through which the buy-back of shares or other specified securities would be made;

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Explanation: In case of the buy-back from open market, no draft letter of offer/ letter of offer is required to be filed with the Board.

Opening of the offer on stock exchange:

17. (i) The identity of the company as a purchaser shall appear on the electronic screen when the order is placed;

(ii) 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.

Subsequent compliances for open market buy-back through stock exchange:

18. (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;

(ii) The company shall upload the information regarding the shares or other specified securities bought-back on its website on a daily basis.

19. A company may buy-back its shares or other specified securities in physical form in the open market through stock exchange by following the procedure as provided hereunder:

(i) A separate window shall be created by the stock exchange, which shall remain open during the period of buy-back, for buy-back of shares or other specified securities in physical form.

(ii) The company shall buy-back shares or other specified securities from eligible shareholders holding physical shares through the separate window specified in sub-regulation (i), only after verification of the identity proof and address proof by the broker.

(iii) 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.

Escrow account for open market buy-back through stock exchange:

20. (i) 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 resolution of the board of directors or the special resolution, as the case may be.

(ii) The escrow account referred to in sub-regulation (i) 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.

***Explanation*:** The cash component of the escrow account may be maintained in terms of Explanation to clause (c) of sub-regulation (xi) of regulation 9.

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(iii) 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.

(iv) 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 expiry of buyback period 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.

(v) 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 resolution of the board of directors or the special resolution, as the case may be, as and by way of security for fulfillment of the obligations under the regulations by the company.

(vi) The escrow amount may be released for making payment to the shareholders subject to at least 2.5 per cent of the amount earmarked for buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be, remaining in the escrow account at all points of time.

(vii) On fulfilling the obligation specified in regulation 15, the amount and the guarantee remaining in the escrow account, if any, shall be released to the company.

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(viii) In the event of non-compliance with regulation 15, 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 resolution of the board of directors or the special resolution, as the case may be, 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) sell orders were inadequate 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 existed which were beyond the control of the company and in the opinion of the Board merit consideration.

(ix) In the event of forfeiture for non-fulfillment of obligations specified in sub-regulation (viii) of this regulation, the amount forfeited shall be deposited

in the Investor Protection and Education Fund of Securities and Exchange Board of India.

Extinguishment of certificates for open market buy-back through stock exchange:

21. (i) Subject to the provisions of sub-regulation (ii) and (iii), the provisions of regulation 11 pertaining to the extinguishment of certificates for tender offers shall apply for extinguishment of certificates under this Chapter.

(ii) The company shall complete the verification of acceptances within fifteen days of the payout.

(iii) The company shall extinguish and physically destroy the securities 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 expiry of buy-back period.

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Buy-back through book building

22. A company may buy-back its shares or other specified securities through the book-building process as provided hereunder:

(i) The Special resolution or the board of directors resolution, as the case may be, shall be passed in accordance with regulation 5.

(ii) Disclosures, filing requirements and timelines for public announcement:

(a) The company shall appoint a merchant banker and make a public announcement as referred to in regulation 7.

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

(c) The public announcement shall be made at least seven days prior to the commencement of buy-back.

(iii) Subject to the provisions of clause (a) and clause (b) of this sub-regulation, the provisions of sub-regulation (xi) of regulation 9 shall apply:

(a) The deposit in the escrow account shall be made before the date of the public announcement.

(b) The amount to be deposited in the escrow account shall be determined with reference to the maximum price as specified in the public announcement.

Explanation: The cash component of the escrow account may be maintained in terms of the Explanation to clause (c) of sub-regulation (xi) of regulation 9.

(iv) A copy of the public announcement shall be filed with the Board within two days of such announcement along with the fees as specified in **Schedule V**.

(v) The public announcement shall also contain the detailed methodology of the book-building process, the manner of acceptance, the format of acceptance to be sent by the securities holders pursuant to the public announcement and the details of bidding centres.

(vi) The book-building process shall be made through an electronically linked transparent facility.

(vii) The number of bidding centers shall not be less than thirty and there shall be at least one electronically linked computer terminal at all the bidding centers.

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(viii) The offer for buy-back shall remain open to the securities holders for a period not less than fifteen days and not exceeding thirty days.

(ix) The merchant banker and the company shall determine the buy-back price based on the acceptances received.

(x) The final buy-back price, which shall be the highest price accepted shall be paid to all holders whose shares or other specified securities have been accepted for buy-back.

(xi) The provisions of sub-regulation (ii) of regulation 10 pertaining to verification of acceptances and the provisions of regulation 10 pertaining to opening of special account and payment of consideration shall be applicable mutatis mutandis.

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Extinguishment of certificates

23. The provisions pertaining to extinguishment of certificates for tender offer shall be applicable mutatis mutandis to the buy-back through book building.

CHAPTER V
GENERAL OBLIGATIONS

Obligations of the company for all buy-back procedure:

24. (i) The company shall ensure that,—

a) the letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the

information contained in such documents;

b) the company shall not issue any shares or other specified securities including by way of bonus till the date of expiry of buyback period for the offer made under these regulations;

c) the company shall pay the consideration only by way of cash;

d) the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with the Board or public announcement of the offer to buy-back is made;

e) the promoter(s) or his/their associates shall not deal in the shares or other specified securities of the company in the stock exchange or off-market, including inter- se transfer of shares among the promoters during the period from the date of passing the resolution of the board of directors or the special resolution, as the case may be, till the closing of the offer.

f) the company shall not raise further capital for a period of one year from the expiry of buyback period, except in discharge of its subsisting obligations.

(ii) No public announcement of buy-back shall be made during the pendency of any scheme of amalgamation or compromise or arrangement pursuant to the provisions of the Companies Act.

(iii) The company shall nominate a compliance officer and investors service centre for compliance with the buy-back regulations and to redress the grievances of the investors.

(iv) The particulars of the security certificates extinguished and destroyed shall be furnished by the company to the stock exchanges where the shares or other specified securities of the company are listed within seven days of extinguishment and destruction of the certificates.

(v) The company shall not buy-back the locked-in shares or other specified securities and non-transferable shares or other specified securities till the pendency of the lock-in or till the shares or other specified securities become transferable.

(vi) The company shall within two days of expiry of buy-back period issue a public advertisement in a national daily, inter alia, disclosing:

a) number of shares or other specified securities bought;
b) price at which the shares or other specified securities bought;
c) total amount invested in the buy-back;
d) details of the securities holders from whom shares or other specified securities exceeding one per cent of total shares or other specified securities were bought back; and
e) the consequent changes in the capital structure and the shareholding pattern after and before the buy-back.

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(vii) The company in addition to these regulations shall comply with the provisions of buy-back as contained in the Companies Act and other applicable laws.

Obligations of the merchant banker:

25. The merchant banker shall ensure that—

(i) the company is able to implement the offer;
(ii) the provision relating to escrow account has been complied with;
(iii) firm arrangements for monies for payment to fulfill the obligations under the offer are in place;
(iv) the public announcement of buy-back is made in terms of the regulations;
(v) the letter of offer has been filed in terms of the regulations;
(vi) a due diligence certificate along with the draft letter of offer has been furnished to the Board;
(vii) the contents of the public announcement of offer as well as the

letter of offer are true, fair and adequate and quoting the source wherever necessary;

(viii) due compliance of sections 68, 69 and 70 of the Companies Act and any other laws or rules as may be applicable in this regard has been made;

(ix) the bank with whom the escrow or special amount has been deposited releases the balance amount to the company only upon fulfillment of all obligations by the company under the regulations;

(x) a final report is submitted to the Board in the form specified within fifteen days from the date of expiry of buyback period.

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CHAPTER VI
MISCELLANEOUS

Powers of the Board to issue directions

26. (i) The Board may, without prejudice to its right to initiate any other enforcement action, including prosecution under section 24 of the Act, give such directions in the interest of investors in securities and the securities market, as it deems fit, including:

(a) prohibiting the person concerned from cancelling any of the securities bought back in violation of the provisions of these regulations or the Companies Act;

(b) directing the person concerned to sell or divest the shares or other specified securities acquired in violation of the provisions of these regulations or any other law or regulations;

(c) restraining the company from making a further offer for buy-back;

(ii) A copy of such direction issued by the Board shall also be forwarded to Registrar of Companies.

Power of the Board to remove difficulties

27. In order to remove any difficulties in the interpretation or application of the

provisions of these regulations, the Board may issue clarifications or guidelines from time to time.

Power to relax strict enforcement of the regulations.

28. (i) The Board may, in the interest of investors and the securities market, relax the strict enforcement of any requirement of these regulations except the provisions incorporated from the Companies Act, if the Board is satisfied that:

(a) the requirement is procedural in nature; or

(b) the requirement may cause undue hardship to investors;

(ii) For seeking relaxation under sub-regulation (i), the company shall file an application with the Board, supported by a duly sworn affidavit, giving details and the grounds on which such relaxation has been sought.

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(iii) The company shall along with the application referred to under sub-regulation (ii), pay a non-refundable fee of rupees fifty thousand, by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

(iv) The Board may after affording reasonable opportunity of being heard to the applicant and after considering all the relevant facts and circumstances, pass a reasoned order either granting or rejecting the relaxation sought as expeditiously as possible.

Repeal and savings

29. (i) The Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998, shall stand repealed from the date on which these regulations come into force.

(ii) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done

or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any violation committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any buy-back offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(iii) After the repeal of Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference made to the corresponding provisions of these regulations.

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SCHEDULE - I

[Regulation 5(iv)(b)]

Contents of the Explanatory Statement

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 buy-back price;

v) Maximum number of securities that the company proposes to buy- back;

vi) Method to be adopted for buy-back as referred to in sub-regulation (iv) 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 buy-back 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;

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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 or Companies Act or the Insolvency and Bankruptcy Code 2016 (including prospective and contingent liabilities);

xi) A report addressed to the Board of Directors by the company's auditors stating that-

a) they have inquired into the company's state of affairs;

b) the amount of the permissible capital payment for the securities in question is in their view properly determined; and

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c)	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.

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SCHEDULE - II

[Regulation 7(i) and Regulation 22(ii)(b)]

Disclosures in the Public Announcement for buy-back through tender offer and from odd lot holders and from the open market through book building process

Particulars	Content
Public Announcement	i) 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. ii) A full and complete disclosure of all material facts including the disclosures mentioned in **Schedule I** shall be made.

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SCHEDULE - III

[Regulation 8(i)(a)]

Disclosures in the Letter of Offer for buy-back through tender offer and from odd lot holders

Particulars	**Content**
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 as mentioned in **Schedule - IV**; ii) Disclaimer Clause as may be specified by the Board; iii) Record date and ratio of buy-back as per the entitlement in each category.

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SCHEDULE - IV

[Regulation 16(iv)(b)]

Public Announcement for Open Market Buy-Back through Stock Exchange

Particulars	Content
Public Announcement	i) 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. ii) A full and complete disclosure of all material facts including the disclosures mentioned in **Schedule I**. iii) In addition to the disclosures in Schedule 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 buy-back 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 buy-back; v) Brief information about the company;

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Particulars	Content
	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 more than 6 months old from the date of the public announcement together with financial ratios as may be specified by the Board; *Explanation:* Ensure that the un-audited financial results, if any disclosed, should be certified / limited review by statutory auditors. 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

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Particulars	Content
	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 buy-back; 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;

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Particulars	Content
	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.

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SCHEDULE - V

FEES

[Regulation 8(i)(c), 16(iv)(c) and 22(iv)]

Every merchant banker shall while submitting the offer document or a copy of the public announcement to the Board, pay fees as set out below:

Offer Size	Fee (Rupees)
Less than or equal to rupees ten crore	5,00,000/-
More than rupees ten crore but less than or equal to rupees one thousand crore	0.5 per cent of the offer size
More than rupees one thousand crore	5,00,00,000/- plus 0.125 per cent of the portion of offer size in excess of rupees one thousand crore

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The fees shall be payable by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by a demand draft in favour of Securities and Exchange Board of India at Mumbai.

Sd/-

AJAY TYAGI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA