



भारतीय प्रतिभूति  
और विनियम बोर्ड  
Securities and Exchange  
Board of India

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SEBI/HO/CFD/DCR1/OW/P/2020/ 4442/1  
February 03, 2020

M/s Infosys Limited  
44, Infosys Avenue  
Electronics City  
Hosur Road, Bengaluru

Dear Sir,

**Sub: Request for informal guidance by way of an 'Interpretative Letter' under the SEBI (Informal Guidance) Scheme, 2003 in relation to provisions of SEBI (Buy-back of Securities) Regulations, 2018 ("Buyback Regulations") and SEBI (Share Based Employee Benefits) Regulations, 2014 ("SBEB Regulations") by M/s Infosys Limited**

1. This has reference to your letter dated January 06, 2020, wherein, you have sought informal guidance by way of an 'Interpretative Letter' under the SEBI (Informal Guidance) Scheme, 2003.
2. In your letter under reference, you have, inter-alia, represented as under:
  - 2.1. Infosys Limited ("Company") is a company incorporated under the Companies Act, 1956 and has its equity shares of face value of Rs. 5/- each ("Equity Shares") listed on BSE Limited and NSE Limited (collectively referred to as "Stock Exchanges"). The American Depository Receipts ("ADRs") of the Company are listed on New York Stock Exchange.
  - 2.2. The Company has, in terms of SBEB Regulations, implemented the "2015 Incentive Compensation Plan" ("2015 Plan") for grant and administering of stock options, stock appreciation rights and restricted stock units ("ESOPs") which was approved by the Board of Directors and the shareholders of the company on October 12, 2015 and March 31, 2016 respectively.
  - 2.3. The Company had vide letter dated January 29, 2019 sought informal guidance by way of interpretive letter from SEBI on whether the Company can issue Grant Letters granting ESOPs to eligible employees during the Buyback Period.
  - 2.4. SEBI vide its letter dated March 12, 2019 informed that the company may issue grant letters granting ESOPs to employees during the buyback period. However, the stock

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अनुवर्ती:  
Continuation :

भारतीय प्रतिभूति  
और विनियम बोर्ड 4442  
Securities and Exchange  
Board of India

options/ conversion would vest/ happen only after the conclusion of the Buyback offer and subject to Regulation 18(1) of SBEB Regulations.

- 2.5. The Company has in terms of SBEB Regulations, implemented the Expanded Stock Ownership Program- 2019 ("2019 Plan") to provide share-based incentives to eligible employees of the Company and its subsidiaries. The 2019 Plan has been approved by the shareholders on June 22, 2019 in the annual general meeting of the Company.
- 2.6. Accordingly, under the 2019 Plan, the board of directors of the company, based on the recommendations of the Nomination and Remunerations Committee granted performance based restricted stock units ("RSUs") for the financial year 2020 under the 2019 plan to the company's chief executive officer & managing director ("CEO & MD") and chief operating officer & whole time director ("COO & WTD") respectively. These RSUs will vest upon the achievement of performance parameter's as determined by the nominations and remuneration committee (and have a vesting period of at least one year in accordance with SBEB Regulations).
- 2.7. The Company had recently concluded the buyback of equity shares on August 29, 2019. The buyback of equity shares was approved by the shareholders through the postal ballot which concluded on March 12, 2019. The buyback was offered to all the eligible shareholders of the Company (other than the promoters, the promoter group and the persons in control of the Company) from the open market through stock exchanges in India. The buyback of equity shares commenced on March 20, 2019 and concluded on August 29, 2019.

### Queries

3. In view of the above, you have sought guidance from SEBI, specifically, on the following:
- Whether the Company can allot equity shares upon exercise of vested "restricted stock units" (RSUs) after completion of the one year vesting period,, i.e. on June 21, 2020, prior to the one year period from the end of the buy-back period. (as Regulation 24(i) (f) of the Buy-back Regulations prohibits a Company to raise further capital for a period of one year from the expiry of buy-back, except for the discharge of its subsisting obligations.)*
  - Whether the company can consider ESOPs granted during the buy-back period, as subsisting obligations as on the closure of the buy-back under Regulation 24(1)(f) of the Buy-back Regulations.*

### Our Comments

4. In this regard, it may be noted that we have considered the submissions made by you in your letter under reference and without necessarily agreeing to your analysis, our views on the queries raised by you are as under:



अनुवर्ती:  
Continuation :

भारतीय प्रतिभूति  
और विनियम बोर्ड 4442  
Securities and Exchange  
Board of India

4.1. Reference is drawn to the following provisions of Buyback Regulations, SBEB Regulations and Companies Act, 2013 ("Companies Act")

Regulation 24 (i)(f) of the Buyback Regulations reads as under: -

*The company shall ensure that, 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.*

Regulation 18(1) of the SBEB Regulations reads as under: -

*There shall be a minimum vesting period of one year in case of ESOS:  
Provided that in case where options are granted by a company under an ESOS in lieu of options held by a person under an ESOS in another company which has merged or amalgamated with that company, the period during which the options granted by the transferor company were held by him shall be adjusted against the minimum vesting period required under this sub-regulation.*

Section 68(8) of Companies Act, 2013 reads as under: -

*Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.*

4.2. In this regard, the following may also be noted:

- a. Regulation 24 (i)(f) of the Buyback Regulations restricts further issue of capital for a period of one year from the expiry of buyback period, except in discharge of its subsisting obligations.
- b. Section 68(8) of the Companies Act, 2013 places a restriction on further issue of the same kind of shares or other specified securities, including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities for a period of six months from the date of conclusion of buyback period except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares. Therefore, subsisting obligations include conversion of stock option schemes.
- c. Therefore, the interpretation of "*subsisting obligations*" used in Buyback Regulations may be considered as same as provided in the Companies Act, 2013.

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अनुवर्ती:  
Continuation :

भारतीय प्रतिभूति  
और विनियम बोर्ड 4442  
**Securities and Exchange  
Board of India**

- d. In view of the above, the issuance of shares pursuant to conversion of RSUs would be considered as *subsisting obligations* as indicated in Regulation 24(i)(f) of Buyback Regulations and the applicant may issue the equity shares after the completion of one year vesting period as stipulated under Regulation 18(1) of the SBEB Regulations, subject to compliance of other provisions of SBEB Regulations, Buyback Regulations and Companies Act, 2013.
5. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the questions referred.
6. You may also note that the above views are expressed only with respect to the clarification sought in your letter under reference with respect to the aforementioned provisions of Buyback Regulations and SBEB Regulations and do not affect the applicability of any other provisions or requirements of the said Regulations and any other SEBI Regulations, Guidelines and Circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,

  
Rajesh Gujjar