



भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

Deputy General Manager  
Corporation Finance Department  
Division of Corporate Restructuring  
E-mail: [rajeshg@sebi.gov.in](mailto:rajeshg@sebi.gov.in)  
Phone: 022-26449232

SEBI/HO/CFD/DCR1/OW/P/2019/6489/1

March 12, 2019

**M/s Infosys Limited**

44, Infosys Avenue,  
Electronics City,  
Hosur Road  
Bengaluru - 560100

Dear Sir,

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

1. This has reference to your letter dated January 29, 2019 wherein, you have sought informal guidance by way of an "Interpretive letter" from SEBI under the SEBI (Informal Guidance) Scheme, 2003.
2. In your letter under reference, you have, *inter alia*, represented as under:
  - i. Infosys Limited (**Company/Applicant**) 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 National Stock Exchange of India Limited. The American Depository Receipts (**ADRs**) of the company are listed on New York Stock Exchange.
  - ii. The company is proposing to undertake a buyback of its equity shares from the members of the Company under the open market route through the stock exchanges, in accordance with the Companies Act, 2013 and the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 (**Buyback Regulations**).
  - iii. The Board of Directors of the Company has approved the Buyback by way of a Board Resolution dated January 11, 2019, subject to the approval of the shareholders of the Company. Accordingly, in terms of the Buyback Regulations, the Buyback period shall commence from

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.  
दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 26449000 / 40459000 फेक्स : 2644 9019 से 2644 9022 वेब : [www.sebi.gov.in](http://www.sebi.gov.in)

Page 1 of 6



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

the date of declaration of results of the postal ballot notice for the special resolution, which is presently expected to take place on or around March 15, 2019, until the last date on which the payment of consideration for the equity shares bought back by the company is made (**Buyback period**).

- iv. The Company has, in terms of the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014, as amended ("**SBEB Regulations**"), implemented the "2015 Incentive Compensation Plan" ("**Plan**") for grant and administering of stock option, stock appreciation rights and restricted stock units ("**ESOPs**"), which was approved by the board of directors and shareholders of the Company on October 12, 2015 and March 31, 2016, respectively.
- v. The Company has been issuing stock options grant letters ("**Grant Letters**") to eligible employees from time to time during the course of the year to retain and attract talent and, consistent with those practices, the Company is proposing to issue Grant Letters granting ESOPs to eligible employees pursuant to the Plan during the Buyback Period.
- vi. Pursuant to the exercise of ESOPs/ ADRs, equity shares are provided to the eligible employees in the following manner:
  - a) For the employees based in India, the Infosys Employee benefits trust, which holds the existing equity shares, transfers the equity shares to the eligible employees pursuant to exercise of ESOPs and, accordingly, no new equity shares are issued by the Company upon the exercise of ESOPs;
  - b) For the employees based outside India, pursuant to exercise of ESOPs, fresh equity shares are allotted and issued to the Depository/ Custodian, subsequently these shares are converted into ADRs by the Depository and finally transferred to the eligible employees.

**Queries:-**

3. Based on the above facts, you have sought interpretive letter from SEBI, specifically, on the following issues:

***Issuance of ESOPs during Buyback period***

- A. Whether the Company can issue Grant Letters granting ESOPs to eligible employees in accordance with the Plan, the SBEB Regulations and the Companies Act, 2013, during the Buyback Period, in the context of Regulation 24(i)(b) of the Buyback Regulations.

***Minimum vesting period under the SBEB Regulations***

- B. Given the buyback, in the event that equity shares are issued by the Company pursuant to exercise of ESOPs granted during the buyback period, whether the minimum vesting period of one year, as stated in Regulation 18(1) of the SBEB Regulations, is to be computed from



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

the date of grant of such ESOPs or from the date being one year from the expiry of the buyback period.

- C. Further, with respect to equity shares transferred by the Infosys Employee benefits trust to the employees pursuant to exercise of ESOPs granted during the buyback period (there being no new Equity Shares issued by the Company upon the exercise of such ESOPs), Infosys believes that the minimum vesting period of one year is to be computed from the date of grant of such ESOPs.
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 with your analysis, our views on the queries raised by you are as under:

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

***Buyback Regulations***

Definition of Buyback Period (Regulation 2(i)(d)) and specified securities (Regulation 2(i)(n))

- i. *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*
- ii. *'specified securities' includes employees' stock option or other securities as may be notified by the Central Government from time to time.*

Regulation 24(i)(b)

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

...

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;*

...

***SBEB Regulations (Regulation 7(1) and 18(1))***

7. (1) *The company shall not vary the terms of the schemes in any manner, which may be detrimental to the interests of the employees:*

*Provided that the company shall be entitled to vary the terms of the schemes to meet any regulatory requirements.*

18.(1) *There shall be a minimum vesting period of one year in case of ESOS:*



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

*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.*

**Companies Act, 2013 (Section 68)**

*Section 68. Power of company to purchase its own securities*

*(8) 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. Regulation 24(i)(b) of the Buyback Regulations provides that company shall not issue any shares or other specified securities including by way of bonus till the date of expiry of buyback period.
- 4.3. In this regard, the following may also be noted:
- The Buyback regulations are applicable to buyback of shares or other specified securities of a company in accordance with the applicable provisions of the Companies Act. Regulation 24(i)(b) of Buyback Regulations provides that 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. Further, Section 68(8) of the Companies Act, 2013 provides that where a company completes a buy-back of its shares or other specified securities, 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.
  - From perusal of the Regulation 24(i)(b) r/w Section 68(8) of the Companies Act, it is evident that where the law intended to bar issuance of same kind of securities, it has specifically provided so and where it was intended to completely bar issuance of shares or specified securities under the Buyback Regulations the words '*same kind of shares or other securities*' have not been used. Section 68 (8) of the Companies Act has specifically exempted the 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 from the bar of 6 months.

*Kuldeep*



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

- c. The use of words '*including by way of bonus*' in Regulation 24(i)(b) of Buyback Regulations also implies that the prohibition has to be interpreted in a broader manner and not limited to the same kind of securities for which buyback will be made (shares in this case).
- d. Regulation 18(1) of SBEB Regulations provides that there shall be a minimum vesting period of one year in case of ESOS.
- 4.4. Therefore, the prohibition is on issuance of shares as well as other specified securities, irrespective of whether the buyback is for a particular kind of securities (shares in this case), till the date of expiry of buyback period.
- 4.5. The definition of '*specified securities*' provided in Regulation 2(i)(n) of Buyback Regulations includes employees' stock option.
- 4.6. In view of the above, response to the queries raised by Company is as under:

**Reply to query 3(A)** - As per Regulation 24(i)(b) of the Buyback Regulations, 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 the Buyback regulations. Specified securities under Buyback Regulations also includes ESOPs. Thus, the said regulation restricts the Company to issue shares or specified securities under the ESOPs also till the date of expiry of buyback period.

Nonetheless, Regulation 24(i)(b) of the Buyback Regulation does not prohibit the company to issue stock option grant letters to the employees during the buyback period. The Company may issue Grant Letters granting ESOPs to eligible employees during the Buyback Period in accordance with the Plan.

However, the stock options/conversion would vest/happen only after the conclusion of the Buyback offer and subject to Regulation 18(1) of SBEB Regulations. In view of this, if required, applicant may make necessary amendment in the scheme in terms of Regulations 7(1) of the SBEB Regulations.

**Reply to query 3(B)** - The Applicant may issue Grant Letters granting ESOPs to eligible employees during the Buyback Period so long as the conversion of stock option does not take place during the buyback period. The minimum vesting period of one year, as provided under Regulation 18(1) of the SBEB regulations, would be computed from the date of grant letters.

**Reply to query 3(C)** - With respect to equity shares transferred by the Infosys Employee benefits trust to the employees pursuant to exercise of ESOPs granted during the buyback period, the minimum vesting period of one year may be computed from the date of grant of such ESOPs.



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

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 Buyback Regulations and SBEB Regulations as referred above and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI or of the laws administered by any other authority.

Yours sincerely,

  
Rajesh Gujjar