

Subject: Amendment to SEBI (Buy-back of Securities) Regulations, 2018

1. Objective

1.1. This memorandum seeks the approval of the Board to amend the existing regulatory framework for buy-back of listed securities, as prescribed under the existing SEBI (Buy-back of Securities) Regulations, 2018 (“**Buy-back Regulations, 2018**”).

2. Background

2.1. SEBI (Buy-back of Securities) Regulations, 2018 were notified on September 11, 2018, replacing the erstwhile SEBI (Buy-back of Securities) Regulations, 1998. The extant Buy-back Regulations permit companies to undertake buy-back offers through three routes, which are as under-

2.1.1. On a proportionate basis through tender offer from the existing shareholders or other specified securities holders, or

2.1.2. From the open market through-

- i. Book-building process,
- ii. Stock Exchange.

2.1.3. From odd-lot holders.

2.2. As per data of buy-backs undertaken from FY 2018 till FY 2022, it is observed that 151 companies have undertaken buy-back through tender offer route and 66 companies have undertaken through stock exchange route of open market and NIL buy-backs have been undertaken through book-building process and odd lot holders.

2.3. Over the last few years, SEBI has been receiving from time to time, several policy suggestions from the market participants, industry associations, listed companies etc. with respect to certain substantive provisions as well as suggestions for providing more flexibility in relation to buy-backs including reduction in the time gap between the two successive buy-backs, increasing the thresholds for undertaking buy-back, amongst others.

- 2.4. As a part of SEBI's constant endeavour to align regulatory requirements with the changing market dynamics as well as to suitably address the suggestions received from the stakeholders, SEBI constituted a sub-group, under the chairmanship of Shri K.K. Mistry, Vice Chairman & CEO, HDFC Ltd., and comprising members from Primary Market Advisory Committee ("**PMAC**").
- 2.5. The recommendations made by the sub-group along with the proposals of SEBI, pursuant to internal discussions, were deliberated by the PMAC in its meetings dated May 19, 2022, August 04, 2022 and on November 09, 2022 after which, it was suggested by PMAC that public comments be sought on the said proposals.
- 2.6. Accordingly, a consultation paper was placed on the website of SEBI, for public comments to be submitted by December 01, 2022. The consultation paper is placed at **Annexure-I** for reference.
- 2.7. 14 Commenters have given their comments on various proposals. These include stakeholders such as Industry Associations, Law Firm, Merchant Bankers, Market Intermediaries, Companies, etc. The compilation of the public comments is placed at **Annexure – II**.

3. Key Proposals proposed in the consultation paper

- 3.1. The following paragraphs describe the existing provisions, issues for consideration, recommendations of the PMAC, public comments, analysis of such comments and final proposals for the consideration of the Board.

A. Open Market Buy-backs through Stock Exchanges

- 3.2. **Introduction of a glide path for reduction in the maximum limit and time period for completion of buy-back offer through Stock Exchange route**

3.2.1. Existing provisions:

- i. Proviso to Regulation 4(iv) provides that the buy-back size from open market through stock exchange shall be less than fifteen per-cent of the paid-up capital and free reserves of the company, based on both standalone and consolidated financial statements of the company.

- ii. Further, Regulation 17(ii) provides a time period of six months from the date of opening of the offer, for the buy-back offer to be closed.

3.2.2. Issue for consideration

- i. Under the stock exchange route, there is a possibility of the entire sell order of any shareholder of the relevant listed entity, getting matched with the purchase order placed by the company, irrespective of the fact if the said selling shareholder intended to offer his/her shares to the said company pursuing its buy-back on the exchange. Further, one such shareholder’s entire sell order getting matched with the purchase order placed by the company tantamount to depriving other shareholders, who want to avail the benefit of buy-back including the tax benefit embedded therein, which runs contrary to the underlying principle of equitable treatment of all shareholders that forms the bedrock of all the corporate actions.
- ii. Further, an extended period of six-months’ time permitted to the listed entities for keeping the buy-back offer open through the stock exchange route, may result in artificial demand being created on the exchange platform for the relevant company’s shares for a long period of time, thereby, preventing efficient price discovery of that scrip.

3.2.3. Recommendations of the PMAC

- i. To address the aforesaid challenges associated with buy-back through stock exchange route, PMAC recommended that the option of buy back through exchange route is not desirable in the long run hence, should be phased out. In this direction, PMAC recommended to introduce a glide path up to F.Y.2024-25 with respect to both reductions in the maximum limit and the time period, as proposed below-

Parameter	w.e.f April 01, 2023	w.e.f April 01, 2024	w.e.f April 01, 2025
Maximum Limit	10%	5%	0%
Time Period for completion of buy-back offer	66 working days	22 working days	NA

3.2.4. Public comments

- i. 18 comments have been received on this proposal. Majority of the commenters have desired that the buy-back through stock exchange route should be retained.
- ii. These commenters have primarily argued that undertaking buy-back exercise through this route is a quicker alternative as compared to the tender offer. Further, it has been contended that globally there is a liberalised regulatory framework available for effecting buy-back through open market hence, dispensing with this alternative may put Indian companies in a disadvantageous position as compared to their foreign counterparts. Some commenters have also highlighted that reducing the time limit may place constraints on companies that have low trading volumes on the exchange.

3.2.5. **Analysis**

- i. As regards reference to foreign jurisdictions made by the commenters, it is noted that in foreign jurisdiction, companies have various options for treating such bought back shares. The companies can hold on to such shares as part of their “treasury” stocks indefinitely, or they may reissue those bought back shares at a later date to the public at revised terms and conditions including pricing or they may cancel those shares. However, as per the Indian law, shares that are bought back are required to be extinguished and reduced from share capital. The option to hold and reissue cannot be exercised. Further the Companies Act 1956 and the later Companies Act 2013 continue to bar a company from buying its own shares for any other purpose other than the buy-back route as prescribed therein, hence the comparison with the flexibility available in foreign jurisdictions is misplaced on facts and cannot be held as a valid ground.
- ii. Further, it is worth noting that buy-back through exchange route is proposed to be made applicable only for frequently traded scrips, hence, the concern with respect to possible constraints on companies having low trading volume is irrelevant as such companies in any case will henceforth not be able to carry out buy back on exchange platform because of low liquidity of their scrips. Further, commenters’ views that buy back exercise through stock exchange route is a quicker alternative

as compared to the tender offer route will no longer remain the same as this issue of shortening of time period of tender offer route has been suitably addressed in this Board Memo in subsequent paragraph by proposing to remove the requirement of filing of draft letter of offer with SEBI, SEBI's observation on the same, reduction in duration of the tendering period, payment of consideration to the shareholders, etc. as referred under 3.24

- iii. It is worth stating that acceptance of shares from the shareholders offering their shares under buy-back through tender offer route is more equitable (than the stock exchange route) as the shares are accepted from the shareholders in a proportionate manner as against stock exchange route, where acceptance of shares offered under the buy-back offer of a company, is more of a matter of chance due to price-time order matching mechanism of the stock exchange platform. Further, it is also worth stating that, the companies generally buy-back shares at a price, which seems advantageous to the company rather than offer a price which shall be beneficial to its shareholders.
- iv. Evidently, these aspects have not been appreciated by the commentators who have opined to retain the stock exchange route only on the ground that such a route is quick and flexible as compared to the tender offer route, which in any case are being addressed and resolved in subsequent paragraphs of this memorandum.
- v. Incidentally, in terms of provisions of section 115QA of the Income Tax Act, the listed companies are under obligation to pay the buy-back tax and there is no tax liabilities in the hands of those shareholders on the gains made by them, who are successful in selling their shares under the buy-back offer of a listed company. Therefore, under the buy-back exercise through the stock exchange route, while some shareholders will be able to offload their entire shareholding because of their sell orders entirely matching with the buy orders placed by the listed entity and will not have to pay any tax on their gains, other shareholders who also want to offer their shares to the said company but their offers could not match with the purchase orders placed by the company under its buy-back offer, remain deprived of the benefits expected by them from the said

buy back offer of the company thereby rendering the stock exchange route iniquitous.

- vi. Considering the aforesaid drawbacks associated with buy-backs through stock exchange route which does not serve the best interest of the investors, it has been recommended to encourage buy-back through tender offer route to ensure that the benefit of such vital corporate actions like buy-back is equitably available to every shareholder and disincentivize buy-back through stock exchange route.

3.2.6. **Proposal**

- i. It is proposed to undertake the following glide path for gradual reduction in maximum limit and time period required for completion of buy-back offer through stock exchange route, as indicated below-

Parameter	w.e.f April 01, 2023	w.e.f April 01, 2024	w.e.f April 01, 2025
Maximum Limit	10%	5%	0%
Time Period for completion of buy-back offer	66 working days	22 working days	NA

3.3. **Minimum utilization of the amount earmarked for buy-back**

3.3.1. **Existing provisions:**

- i. Regulation 15 requires companies to ensure that at least 50% of the amount earmarked for a buy-back through stock exchange route, as specified in the resolution of the board of directors or shareholders, is utilized.
- ii. However, relaxation in respect of such a requirement prescribed under Regulation 20(viii) is granted in certain situations which are specified below:
 - a. If the volume weighted average market price of the specified securities of the company during the buy-back period was higher than the buy-back price;
 - b. If sell orders from shareholders were inadequate despite the buy orders placed by the company; or

- c. If there existed such circumstances which were beyond the control of the company and in the opinion of the SEBI merit consideration.

3.3.2. **Issue for consideration**

- i. It is stated that the requirement of utilizing atleast 50% of the amount earmarked for buy-back was imposed in the SEBI (Buy-back of Securities) Regulations, 1998, by way of amendment in 2013. This was consequently carried forward in the SEBI (Buy-back of Securities) Regulations, 2018. Given the passage of time, the threshold may now be suitably enhance to 75%. This shall also prevent companies from announcing buy-backs in cases where there is no real intention to complete the buy-back for the entire amount announced.

3.3.3. **Recommendation of the PMAC**

- i. Considering that there are exceptions available in the extant Buy-back Regulations, PMAC recommended that-
 - a. Companies should utilize at least 75% of the amount earmarked for a buy-back, as specified in the resolution of the board of directors or shareholders, and
 - b. Companies should undertake at least 40% of the amount earmarked for buy-back within half of the time period permitted for completion of such buy back through the stock exchange route.

3.3.4. **Public comments**

- i. Seven comments have been received on the above proposal with respect to enhancing the mandatory utilization of the minimum amount earmarked for buy-back from existing 50% to 75%. Majority of the commenters have agreed with the proposal.
- ii. Ten comments have also been received on the proposal with respect to undertaking at least 40% of the amount earmarked for buy-back within half of the time period permitted for completion of buy-back through stock exchange route. The commenters have argued against the proposal stating that completion of at least 40% of the amount earmarked for buy-back within half of the time period prescribed, may be difficult for the companies having less trading volume and have suggested to leave the implementation to the discretion of the company.

3.3.5. **Analysis**

- i. It has been observed in the past that companies after announcing their buy-back offer through the stock exchange route, tend to purchase shares towards the close of the buy-back period which sometime results in artificial impact on the price discovery of the scrip. Therefore, in order to arrest such a practice and to ensure that shares are bought back on a consistent basis in a staggered manner over the course of the buy-back period without affecting the price discovery mechanism on the stock exchange platform, the proposal to mandate utilization of at least 40% of the amount earmarked for buy-back within half of the duration of the buy-back period as specified under the proposed glide path appears to be reasonable and logical. Further, it is reiterated that buy-back through this route is proposed to be made applicable only for frequently traded scrips and thus, the concerns expressed with respect to constraints that may be faced by the companies having low trading volume to comply with the above proposal are misplaced on facts hence, irrelevant.

3.3.6. **Proposal**

- i. In view of the aforesaid, it is proposed that-
 - a. Companies should utilize at least 75% of the amount earmarked for a buy-back, as specified in the resolution of the board of directors or shareholders.
 - b. Companies should undertake at least 40% of the amount earmarked for buy-back within half of the duration of buy back period.

3.4. **Restrictions on Volume and Price**

3.4.1. **Existing provisions**

- i. Currently, there are no pricing-related restrictions specified under the Buy-back Regulations in respect of buy-backs undertaken through the stock exchanges.

3.4.2. **Issue for consideration**

- i. Absence of any restrictions may result in situations where the trading price of the company's shares is exaggerated due to ongoing buy-back of shares by a company.

3.4.3. **Recommendation of the PMAC**

- i. To address the aforesaid concern, PMAC recommended the following restrictions to be placed on the listed entities who choose to undertake buy-backs through stock exchange route-
 - a. On any particular trading day, the company shall not purchase more than twenty-five per cent of the average daily trading volume (in value) of its shares or other specified securities in the ten trading days preceding the day in which such purchases are to be made.
 - b. The company shall not participate in first thirty minutes and the last thirty minutes of the regular trading session.
 - c. The buyback price shall not exceed the higher of-
 - i. The highest current independent published bid; or
 - ii. The last independent sale price reported.

3.4.4. **Public comments**

- i. 10 comments have been received on the aforesaid three sub-proposals, with 5 commenters agreeing fully or partially with these sub-proposals. However, some of the commenters have raised the concerns that these proposals may prove to be a hindrance in the process of buy-back along with posing challenges in its implementation. Further, some commenters have stated that the sub-proposal at (c), mentioned above, may lead to operational mistake and possibility of it being considered as a malafide.

3.4.5. **Analysis**

- i. The first two sub-proposals mentioned under paragraph no. 3.4.3 aim at preventing any intervention in the price discovery or disruption in the market integrity of the scrip that may be caused due to buy back orders being placed on the stock exchange platform hence deserve to be introduced into the buy-back regulations. As regards the third sub-proposal aimed at keeping the buy-back offer price in sync with the current market price of the scrip, the apprehension raised with respect to

the price dynamics of stock market and the possibility of operational mistakes that may be committed by the company while placing bids in compliance with such condition, that may invite penal action appears plausible hence, the suggestions from the commenters for removing the said proposal at (c) may be acceded to. However as against the above condition, after consultation with Stock Exchanges, it is proposed to put a condition that the purchase orders to be placed by the listed entity undertaking buy back through stock exchange route should fall within the range of (+/-) 1% from the ruling market price in similar line with the stipulation made in the prevailing mechanism applicable under block deal.

- ii. Further, certain suggestions received with respect to modification in language of the aforesaid proposals are also accepted.

3.4.6. **Proposal**

- i. Keeping the aforesaid in view, it is proposed that, on any particular trading day-
 - a. The company shall not purchase more than 25% of the average daily trading volume (in value) of its shares or other specified securities in the ten trading days preceding the day in which such purchases are made.
 - b. The company shall not place bids in the pre-open market, first thirty minutes and the last thirty minutes of the regular trading session.
 - c. The company's purchase order price should be within the range of (+/-) 1% from the last traded price.

3.5. **Eligibility for companies to undertake buy-back**

3.5.1. **Existing provisions**

- i. Currently, there is no eligibility requirement specified and all the listed companies can undertake buy-back through this route.

3.5.2. **Issue for consideration**

- i. It is observed that the buy-backs through stock exchanges are efficient in cases where the shares of the relevant company are frequently traded. In such cases, the trading price is reflective, by and large, of the market

value of the company's shares, which is not the same in respect of listed companies whose shares are not frequently traded.

- ii. Further, it may also be noted that it will not be possible to implement the pricing restrictions, as proposed above in para 3.4.6, in case of the companies whose shares are not frequently traded.

3.5.3. Recommendation of the PMAC

- i. Considering the aforesaid issue, PMAC recommended that the option to undertake buy-back through stock exchanges may be made available only to those companies whose shares are frequently traded.

3.5.4. Public comments

- i. Six comments have been received. While two commenters have agreed with the proposal, the other commenters have asserted that buy-back offer in case of an infrequently traded scrip shall help in providing liquidity and facilitate exit to investors.

3.5.5. Analysis

- ii. In this regard, it is agreed that, while buy-back provides an opportunity to the shareholders of infrequently traded scrip to exit from the company, however, it will be erroneous to suggest that the objective of buy back through stock exchange route should be to impart liquidity to an infrequently traded scrip. Therefore, it is all the more important that each shareholder is given an equal opportunity to tender their shares, which is possible if the company undertakes buy-back through tender offer route rather than stock exchange route.

3.5.6. Proposal

- i. It is proposed to restrict the buy-back through stock exchange route to only those companies whose shares are frequently traded, as defined under regulation 2(j) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

3.6. Creating separate window on stock exchange for undertaking buy-back

3.6.1. Existing provisions

- i. Currently, a listed company undertakes buy-back through stock exchange route by purchasing from sellers on the stock exchange(s)

having nationwide trading terminals through an order matching mechanism.

3.6.2. **Issue for consideration**

- i. Since shares are bought back at the prevailing market prices, acceptance of shares under buy-back is a matter of chance for most of the shareholders as the trading platform of stock exchange offers no clarity as to whether shares sold by the shareholders on the stock exchange platform have been accepted under a buy-back offer or they were sold in open market as a regular trade and in the process, the shareholders are unable to avail the benefits arising out of buy-backs.

3.6.3. **Recommendation of the PMAC**

- i. In order to address the issue, PMAC recommended to create a separate window on stock exchange to undertake buy-back through stock exchange route and to harmonize with the recommendation proposed with respect to glide path as proposed under para 3.2.6 supra.

3.6.4. **Public comments**

- i. Five comments have been received, and all the commenters have agreed with the above proposal.

3.6.5. **Proposal**

- i. It is proposed to create a separate window on stock exchanges to undertake buy-back through this route and to harmonize it with the proposal of glide path as proposed in para 3.2.6.

B. Buy-backs through tender offers

3.7. Revision of Offer Price

3.7.1. **Existing provisions**

- i. Currently, there is no provision in the Buy-back Regulations which allow companies to revise the maximum buy-back price once approved by the board of directors or shareholders, as applicable.

3.7.2. **Issue for consideration**

- i. As per the timelines prescribed for various activities under the extant Buy-back Regulations, there is a substantial delay between the time

when the buy-back is approved by the board or shareholders, as may be applicable, and the time when the buy-back offer is actually opened but despite such time gap, the buy-back price remains the same as was approved by the board or shareholders and there is no provision for allowing the company to revise the offer price subsequently.

3.7.3. **Recommendation of the PMAC**

- i. PMAC took note of the above shortcoming in the Buy Back regulations and recommended that the board of directors may be allowed a flexibility to revise the buy-back price until one working day prior to the opening of the buy-back offer, in-line with the flexibility already granted under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and the SEBI (Delisting of Equity Shares) Regulations, 2021.

3.7.4. **Public comments**

- i. 8 comments have been received on the aforesaid proposal. While all the commenters have welcomed the proposal for permitting upward revision of buy-back price, some commenters have suggested to link the time period for revision of buy-back price with the record date rather than with the proposed opening of the offer.

3.7.5. **Analysis**

- i. In this regard, it is agreed that any increase in buy-back price will cause corresponding reduction in number of shares to be bought back, thus leading to change in the entitlement ratio of the shareholders, and if the offer price is allowed to be changed just prior to opening of the buy-back offer, it may cause uncertainty amongst the shareholders. In order to neutralise this possibility, the suggestion of the commenters to link the upward revision of price with the record date (not prior to opening of offer) may be accepted.

3.7.6. **Proposal**

- i. It is proposed to permit upward revision of buy-back price until one working day prior to record date.

3.8. **Review of Letter of Offer by SEBI**

3.8.1. **Existing provisions**

- i. Regulation 8(1)(a) requires the company, through a merchant banker, to file a draft letter of offer (“DLOF”) with SEBI and subsequently, SEBI has provided a window of seven working days (extendable to the seventh working day from the date of satisfactory reply to the clarification or additional information sought) to submit its comments on the same.

3.8.2. **Issue for consideration**

- i. A need is felt to simplify the process and to reduce the timelines so as to ensure that buy-back offer starts promptly.
- ii. Further, currently there is no requirement of review of letter of offer by SEBI in case of buy-back from open market.

3.8.3. **Recommendation of the PMAC**

- i. PMAC acknowledged this aspect and recommended that the review process by SEBI may be dispensed with and that the merchant bankers be allowed to directly disseminate the Letter of Offer to the shareholders.
- ii. However, PMAC recognized that certain checks and balances need to be prescribed so that the merchant bankers act impartially while certifying compliance with the regulations. Accordingly, it was recommended that the Merchant Bankers, who are not associates of the company, should certify compliance with the buy-back regulations in the letter of offer to the shareholders that will be submitted to the SEBI prior to the opening of a buy-back offer.

3.8.4. **Public comments**

- i. Six comments have been received. While majority of the commenters have welcomed the above proposal, a couple of commenters have insisted that SEBI should continue monitoring the documents in order to ensure that the disclosures are adequate and are consistent. Further, suggestions have also been made to provide more time for dispatch of letter of offer to the shareholders in the light of the requirement of having gap of at least seven working days (excluding the date of intimation and the record date) for specifying the record date, in terms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

3.8.5. **Analysis**

- i. In this regard, under the extant regulations, in case of the buy-back from open market (stock exchange route), there is no requirement for submission of draft letter of offer with SEBI and review of the same by SEBI.
- ii. Further, SEBI has already prescribed a standard format for letter of offer, to which all the merchant bankers have to comply with. Additionally, as proposed above, Merchant Bankers can be henceforth, required to certify compliance with the Buy-back Regulations and inform SEBI about the same prior to the opening of an offer. Therefore, the suggestion by some commenters for SEBI to continue monitoring the documents in order to ensure that the disclosures are adequate and are consistent, is not weighty enough to be accepted.
- iii. With respect to timeline associated for dispatching the letter of offer, it is stated that, presently the regulations prescribe that letter of offer along with tender form needs to be dispatched to the eligible shareholder, not later than five working days from the receipt of communication of comments from SEBI. However, now since it is proposed to dispense with the requirement of filing a DLOF with SEBI and subsequent requirement of SEBI's comments, the timeline with respect to dispatch of letter of offer needs to be relooked into.
- iv. In this regard, it is worth highlighting that under Regulation 42 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015, there is requirement of giving notice in advance of atleast seven working days (excluding the date of intimation and the record date) of record date and thus the suggestion with respect to prescribing timeline, deserves to be acceded to.

3.8.6. **Proposal**

- i. It is therefore proposed that-
 - a. Requirement of filing a draft letter of offer with SEBI and subsequent requirement of SEBI providing its comments on the same, may be dispensed with.
 - b. Merchant Bankers, who are not associates of the company, to certify compliance with the Buy-back Regulations in the letter of offer.

- c. Letter of offer to be dispatched through electronic mode in accordance with the provisions of the Companies Act, within 2 working days from the record date and on receipt of a request from any shareholder to receive a copy of the letter of offer in physical form, the same shall be required to be provided. Disclosures of the same have to be mandatorily made in the public announcement.
- d. Copy of the public announcement, letter of offer and other relevant announcements shall be submitted to all Stock Exchanges, where the shares of the company are listed.
- e. Copy of the public announcement, letter of offer and other relevant announcements shall be placed in the respective website of the stock exchange(s), merchant banker and the company.

C. Other Matters (relevant for all the routes of buyback)

3.9. Escrow Account

3.9.1. Existing provisions

- i. Currently, the buy-back regulations require the company to open an escrow account towards security for performance of its obligations under the regulations, before the opening of the offer.
- ii. Further, the escrow account may be in form of cash deposited with any scheduled commercial bank or a bank guarantee issued by any scheduled commercial bank in case of buy-back through open market. Along with the these, an additional means of depositing acceptable securities (with appropriate margin) is also permitted in case of buy-back through tender offer.

3.9.2. Issue for consideration

- i. Buy-back regulations do not specify an exact date of opening of an escrow account as provided under other regulations, viz. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Delisting of Equity Shares) Regulations, 2021.
- ii. Further, a need is felt to align the different modes of deposit in the escrow account prescribed across all the routes of buy-back.

3.9.3. Recommendation of the PMAC

- i. An escrow account may be opened within two working days from the date of public announcement of Buy Back by a listed company.
- ii. Certain additional forms/modes of deposit may also be prescribed to provide flexibility to the company to commit its security for performance of its obligations towards the buy-back.

3.9.4. **Public comments**

- i. 8 comments have been received, with 4 commenters agreeing with the proposals. The remaining commenters have suggested to permit opening of an escrow account prior to the opening of buy-back offer rather than after the public announcement citing administrative difficulties of the listed companies.

3.9.5. **Analysis**

- i. With regard to concern expressed regarding administrative difficulties that may be faced by the listed companies, it is stated that under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and the SEBI (Delisting of Equity Shares) Regulations, 2021, an escrow account is already mandated to be opened within two working days from the date of public announcement and thus, there seems to be no reason for a listed entity for not adhering to the same, in case of buy-back offers.

3.9.6. **Proposal**

- i. It is therefore proposed that-
 - a. Company shall be required to open an escrow account, within two working days of the public announcement.
 - b. The escrow account shall consist of-
 - a. cash including bank deposits, deposited with any scheduled commercial bank, or;
 - b. government securities, or;
 - c. units of mutual funds invested in gilt funds and overnight schemes, or;
 - d. bank guarantee issued in favour of the merchant banker by any scheduled commercial bank, or;

- e. deposit of frequently traded and freely transferable equity shares or other freely transferable securities, or;
- f. a combination of above.

The securities mentioned above shall be subject to appropriate margin as specified by SEBI.

3.10. Post buy-back compliance

3.10.1. Existing provisions

- i. Under Regulations 11 and 21 of the Buy-back Regulations, companies are required to extinguish the shares and physically deface the certificates relating to shares which have been bought back, within a specified period of time. This is required to be undertaken in the presence of the merchant banker or the company's statutory auditor.

3.10.2. Issue for consideration

- i. The company's secretarial auditor is better placed to ensure post buy-back compliance rather than the company's statutory auditor.

3.10.3. Recommendation of the PMAC

- i. Company's secretarial auditor may undertake post buy-back compliance instead of company's statutory auditor.

3.10.4. Public comments

- i. 5 comments have been received. While 4 commenters have agreed with the proposal, the sole commenter, who has disagreed with the proposal has not offered any cogent reason for disagreeing and has suggested to leave the discretion with the company.

3.10.5. Analysis

- i. In this regard, it is notable that secretarial auditor conducts the secretarial audit of the company and ensures better compliance in terms of SEBI regulations and other allied laws.

3.10.6. Proposal

- i. It is proposed that, companies will undertake extinguishment of share certificates and make other closure compliances through the companies' secretarial auditor, instead of statutory auditor.

D. Miscellaneous proposals

- 3.11. There are also other proposals recommended by the PMAC, with the objective of harmonizing the provisions of the buy-back regulations with the Companies Act, maintaining consistency, ease of doing business, etc.
- 3.12. The majority of the comments received were in favour of those proposals hence, the said proposals may be accepted along with suitable modifications.
- 3.13. A summary of such proposals is presented below-
- 3.13.1. **Dispensing with the requirement of undertaking buy-back through odd-lots-** The Companies Act, 2013 does not permit buy-backs to be effected through odd-lots. Further, the marketable lot of securities on the main board is, any case, one share.
- 3.13.2. **Prior consent of lenders is required for buy-back, in case there is any breach of covenant with the company's lender(s) and disclosure about the same in letter of offer-** Before undertaking buy-back, company shall be required to take approval from company's lender in case there is any breach of covenants with the company's lender(s) and letter of offer should disclose the approval so obtained from such lender.
- 3.13.3. **Specifying the maximum limit of buy-back in the proviso to Regulation 4(iv) for buy-back through stock exchange route instead of earlier mentioned open market-** The maximum limit of 15% for undertaking buy-back should be made applicable to buy-backs that are undertaken through stock exchange alone and not to those which are undertaken through the book-building process.
- 3.13.4. **Dispensing with the need of submitting physical documents and instead permitting submission of soft-copies to SEBI-** To promote ease of doing business and leverage the advancement in technology, it is proposed that the company shall submit to SEBI, all the relevant documents as specified in the Regulations, digitally signed by the company secretary of the company or the person authorized by the board of the company, undertaking buy-back.

- 3.13.5. Rationalizing certain requirements in case of an escrow account across all routes of Buy-back-** Where part of an escrow account is in the form other than cash, making the requirement of depositing cash of at least 2.5% of the total amount earmarked for buy-back uniform across all applicable routes of buy-back, viz: through open market and through the tender offer, and also extending the validity of bank guarantee till all the obligations are completed or 30 days from expiry of buy-back period, whichever is later.
- 3.13.6. Harmonizing the requirement of payment of fees to SEBI on the date of public announcement across all available routes under buy-back.**
- Presently, company is required to pay fees to SEBI on the date of filing draft letter of offer in case of buy-back through tender offers and in case of open market, at the time of filing of copy of public announcement. Since, it is proposed to dispense with the requirement of filing draft letter of offer with SEBI in case of tender offers, it is now proposed to harmonize the requirement of payment of fees to SEBI on the date of submission of copy of public announcement to SEBI across all applicable routes of buy-back.
- 3.13.7. Timeline for opening of the Buy-back through tender offer-** The date of opening of the offer shall not be later than four working days from the record date.

E. Taxation Matters

3.14. Background

- i. With effect from July 05, 2019, the provisions of section 115QA of the Income Tax Act, 1961 were amended to levy buyback tax on the income distributed by the listed company through buyback of equity shares of the said listed company, thus changing the incidence of tax from the hands of shareholders (who offer their shares under the buy back) to that of the listed company. In subsequent amendment to the Finance Act, 2020, dividend distribution tax was abolished, thereby shifting the incidence of tax on dividends in the hands of recipients at the applicable rates.

3.15. Issue

- i. The current mechanism of buyback tax appears to be tilted in favour of those shareholders who tender their shares and take exit (partially or fully) from the company and adversely impacts the interest of shareholders who do not wish to tender their shares under buyback.
- ii. As a result, all the continuing shareholders have to share the burden of tax payable by the listed company on the buyback proceeds of the shares tendered by exiting/tendering shareholders. In other words, the tax under section 115QA has been paid by the company from its free reserves on behalf of the exiting shareholders and promoters at the cost of continuing shareholders.

3.16. **Recommendation of the PMAC**

- i. PMAC has acknowledged that, buy-backs are taxed in the hands of the company rather than in the hands of the shareholders who have tendered their shares and earned profit thereon, hence, the tax burden of the exiting shareholders is being borne by the remaining shareholders, i.e., those who have not opted to tender their shares.
- ii. In view of the aforesaid, it was therefore recommended that SEBI should make a reference to the Ministry of Finance recommending necessary amendments to the relevant provisions in the Income Tax Act thereby shifting the incidence of tax to the hands of the shareholders who offer their shares for sale under buy back.

3.17. In view of the recommendation of PMAC, SEBI has proposed to the Government of India to shift the incidence of tax on buyback from company to the hands of shareholders.

F. Proposals which require amendment in the Companies Act, 2013

3.18. PMAC has also recommended certain proposals to liberalize and incentivize buy-back through tender offers. However, to give effect to such recommendations, relevant provisions as specified under Companies Act, 2013 need to be amended, only after which, the Buy-back regulation can be amended if found suitable. For this purpose, SEBI will engage with Ministry of

Corporate Affairs to seek their views. These proposals, as specified under para 3.19 and 3.20, are as follows-

3.19. Limits for Buy-backs

3.19.1. Existing provisions

- i. Section 68(2)(c) of the Companies Act, 2013 provides that the company can buy-back its shares up to twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company.
- ii. In similar lines, regulation 4(i) of the Buyback Regulations, 2018 provides that the maximum limit of any buy-back through tender offer route shall be twenty-five cent or less of the aggregate of paid-up capital and free reserves of the company, based on both standalone and consolidated financial statements of the company.

3.19.2. Issue for consideration

- i. Since buy-backs through tender offers are an efficient way of returning surplus funds to the shareholders, the maximum limit may be enhanced.

3.19.3. Recommendation of the PMAC

- i. In view of the aforesaid, it has been recommended to increase the limit of buy-backs undertaken through tender offers upto 40% of the aggregate of paid-up capital and free reserves of the company, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount.

3.20. Cooling-off period between two successive buy-backs

3.20.1. Existing provisions

- i. Proviso to section 68(2)(g) of the Companies Act, 2013 mentions that no offer of buy-back shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.
- ii. Accordingly, regulation 4(vii) of the Buyback Regulations, 2018 also restricts company from undertaking any offer of buy-back within a period of one year reckoned from the date of expiry of buy-back period of the preceding offer of buy-back, if any.

3.20.2. Issue for consideration

- i. It is observed that there may be some companies, who may need to return surplus cash to their shareholders more than once within a period of one year reckoned from the date of expiry of buy-back period of the preceding offer of buy-back which should be facilitated under the regulations.

3.20.3. **Recommendation of the PMAC**

- i. Keeping in view the aforesaid, following has been recommended-
 - a. Companies should be allowed to undertake up to two buy-backs within a period of one financial year provided that such buy-backs are undertaken through the tender offer route only and such buy-backs shall be subject to the annual limit of 40% of the paid-up capital and free reserves of the company. Moreover, only such companies which are net debt free may be permitted to undertake more than one buy-back in a financial year.
 - b. Hence a cooling-off period of six months may be included.
 - c. Shareholders' approval should be required where ten percent limit is exceeded as a result of more than one buy-back being undertaken in a financial year.

3.21. **Buy-back through Book-building process**

3.21.1. **Background**

- i. The extant buy-back regulations also permit company to undertake buy-back from the open market through book-building process.

3.21.2. **Issue for consideration**

- i. Though, the framework for effecting open market buy-backs through the book-building process has been provided under the Buy-back Regulations since 1998, it is rarely being used by the companies as a mode of effecting buy back.

3.21.3. **Recommendation of the PMAC**

- i. The PMAC considered this aspect and, proposed a revised mechanism for effecting open market buy-backs through the book building process. The revised mechanism is provided in **Annexure-III**.

3.21.4. **Public Comments**

- i. 6 comments have been received on this proposal, of which 1 commenter has suggested to discontinue this route for undertaking buy-back. Other commenters have suggested to test the framework in light of the revised guidelines before being discontinued.

3.21.5. **Analysis**

- i. In this regard, it is noted that companies have not preferred this route for undertaking buy-backs, and except for one company (in the year 1998), no other company has undertaken buy-back through this route till date. However, in view of the recommendations of PMAC and the comments received, it is proposed to introduce the revised framework, initially for one year from the date of notifications, after which the framework shall be reviewed.

3.21.6. **Proposal**

- i. It is proposed to accept the recommendations of the PMAC with respect to the suggested framework, as provided, under **Annexure-III**. The summary of proposals is provided below-
 - a. Announcement -The public announcement relating to the buy-back will be published within two working days of the date of board or shareholders' approval, as the case may be.
 - b. Opening of the Offer- The book building process will commence within seven working days from the date of public announcement.
 - c. Buy-back Price
 - 1. In the public announcement, the company will disclose:
 - I. the maximum buy-back price approved by the company's board of directors or shareholders; and
 - II. the book value of the company's securities.
 - 2. Further, in the offer opening announcement, a price range will be disclosed.
 - d. Retail Participation- Retail investors will have the option to bid at the cut-off price.

- e. Promoter participation- Promoters along with their associates will not be permitted to participate in such method of buy-back.
- f. Payment- The payment of consideration to shareholders will need to be completed within a period of five working days following the closure of the buy-back offer.
- g. Withdrawal- Once the public announcement is made, the buy-back cannot be withdrawn or terminated.

G. Ease of Doing Business- Reduction of Timelines:

Background

- i. The Buy-back Regulations, 2018, inter-alia, prescribe timelines for various procedural steps involved under the buy-back, which have remained untouched since 1998. Considering the advancements in technology and changes that have been made in the manner of tendering and settlement of shares, a need was felt to review the said timelines to shorten the total duration involved in tendering period and payment of consideration to the shareholders.
- ii. In this regard PMAC after due deliberations, agreed with the aforesaid proposals, and, a consultation paper seeking public comments was placed on the website of SEBI on March 25, 2022. The consultation paper is placed at **Annexure-IV** for reference.

Key Proposals proposed in the consultation paper with respect to Buy-back offer

- i. The following paragraphs describe into the existing provisions, issues for consideration, recommendations of the PMAC, public comments and its analysis and proposals for the consideration of the Board.

3.22. Duration of the tendering period

3.22.1. Existing provisions

- i. Regulation 4(vi) states that the offer for buy-back shall remain open for a period of ten working days.

3.22.2. **Issue for consideration**

- i. In terms of SEBI (Delisting of Equity Shares) Regulations, 2021, the duration of the tendering period in case of voluntary delisting offers is five working days.
- ii. Accordingly, a need was felt to harmonize the duration of the tendering period under buy-backs in line with the delisting offers and reduce the duration of the tendering period from ten working days to five working days.

3.22.3. **Recommendations of the PMAC**

- i. PMAC agreed to the proposals with respect to reduction in the duration of tendering period.

3.22.4. **Public Comments and its analysis**

- i. Two entities have offered their comments on the proposal of reduction in the duration period. Both the entities have raised concerns that foreign investors may have issues coordinating with various trading desks to obtain broker details, submitting the correct bids to the broker, sending instructions to custodians to tender shares, coupled with time pressures due to time zone differences.
- ii. In this regard, it is worth mentioning that information regarding the buy-back of a company shall be in the public domain since the date of public announcement, which shall be at least 13 days (at least 9 days for fixing the record date and 4 days in opening of the offer from such record date) prior to the opening of the buy-back offer. Further, it is pertinent to state that foreign investors participate in Initial Public Offering (IPO), wherein the window remains open for even smaller duration i.e. for 3 days and thus the proposal for keeping the tendering period in case of buy-back offer for 5 days is sufficient.

3.22.5. **Proposal**

- i. The offer for buy-back shall remain open for a period of five working days.

3.23. **Payment of consideration to the shareholders**

3.23.1. **Existing provisions**

- i. Regulation 10(ii), inter-alia, requires company to make payment of consideration to those holders of securities whose offer has been accepted within seven working days of the closure of the offer.

3.23.2. **Issue for consideration**

- i. SEBI, vide circular dated August 13, 2021, has streamlined the process of tendering of shares in open offers, buy-back offer and delisting offer and the shares tendered by the shareholders are now being blocked in the demat account of the shareholders as against the earlier practice of transferring physical shares to the clearing corporation, which ensures the transfer of funds/securities happens in a secure, seamless and prompt manner.
- ii. Further, the period for payment of consideration period in the delisting offers is already five working days.

3.23.3. **Recommendation of the PMAC**

- i. PMAC agreed with the proposal of expediting the payment of consideration to the shareholders, whose shares have been accepted under the buy-back offer.

3.23.4. **Public comments and its analysis**

- i. No comments were received on this proposal.

3.23.5. **Proposal**

- i. The payment of consideration shall be completed within five working days after the closure of the tendering period.

3.24. Revised timeline for buy-back through tender offer-

- i. Pursuant to various proposals relating to reduction in timelines and as mentioned under 3.2.5 supra, the revised timelines for buy-back through tender offers are provided below for easy reference. As can be observed from below, there shall be a reduction of 18 days from the date of public announcement to the date of payment of consideration:

Broad Activities in the Buy-back (timeline in working days)	Existing	Proposed	Change
Public Announcement	T	T	--
Submission of the Draft Letter of Offer with SEBI	T+7	-	-7
Tentative day of receipt of observations from SEBI	T+14	-	-7
Last day for dispatch of the Letter of Offer to the shareholders	T+19	T+11 (*Record Date +2)	--
Start of the tendering/bidding period	T+24	T+13 (*Record Date +4)	--
Closure of the tendering/Bidding Period	T+34	T+18	-5
Last day for payment of consideration to the shareholders	T+41	T+23	-2
Total Reduction in days		18 days	

*As per SEBI (LODR) Regulations, notice has to be given atleast seven working days in advance (excluding the date of intimation and the record date) for the record date.

4. Proposal for consideration of the Board:

4.1. The summary of the proposals is provided below for the consideration of the Board-

A. Open Market Buy-backs through Stock Exchanges

- 1. Introduction of a glide path for reduction in the maximum limit and time period for completion of buy-back offer through Stock Exchange route-**Company to undertake the following glide path, for gradual reduction in maximum limit and time period required for completion of buy-back offer through stock exchange route, as indicated below (Please refer para 3.2.6)-

Parameter	w.e.f April 01, 2023	w.e.f April 01, 2024	w.e.f April 01, 2025
Maximum Limit	10%	5%	0%
Time Period for completion of buy-back offer	66 working days	22 working days	NA

- 2. Minimum utilization of the amount earmarked for buy-back-** Companies should utilize at least 75% of the amount earmarked for a buy-back, as specified in the resolution of the board of directors or shareholders and companies should undertake at least 40% of the amount earmarked for buy-back within half of the duration of buy back period (Please refer para 3.3.6)
- 3. Restrictions on Volume and Price-** On any particular day
 - The company shall not purchase more than 25% of the average daily trading volume (in value) of its shares or other specified securities in the ten trading days preceding the day in which such purchases are to be made.

- b. The company shall not place bids in the pre-open market, first thirty minutes and the last thirty minutes of the regular trading session.
- c. The company's purchase order price should be within the range of (+/-) 1% from the last traded price.

(Please refer para 3.4.6)

- 4. **Eligibility for companies to undertake buy-back-** Restricting the buy-back through stock exchange route to only those companies whose shares are frequently traded, as defined under Regulation 2(j) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. (Please refer para 3.5.6)
- 5. **Creating separate window on stock exchange for undertaking buy-back-** To create a separate window on stock exchanges to undertake buy-back through this route and harmonize it with the proposal of glide path as proposed above in para 1. (Please refer para 3.6.5)

B. Buy-backs through tender offers

- 6. **Revision of Offer Price-**Permit upward revision of buy-back price until one working day prior to record date. (Please refer para 3.7.6)
- 7. **Review of Letter of Offer by SEBI-**
 - a. Requirement of filing a draft letter of offer with SEBI and subsequent requirement of SEBI providing its comments on the same, may be dispensed with.
 - b. Merchant Bankers, who are not associates of the company, to certify compliance with the Buy-back Regulations in the letter of offer.
 - c. Letter of offer to be dispatched through electronic mode in accordance with the provisions of the Companies Act, within 2 working day from the record date and on receipt of a request from any shareholder to receive a copy of the letter of offer in physical

form, the same shall be required to be provided. Disclosures of the same have to be mandatory made in the public announcement.

- d. Copy of the public announcement, letter of offer and other relevant announcements shall be submitted to all Stock Exchanges, where the shares of the company are listed.
- e. Copy of the public announcement, letter of offer and other relevant announcements shall be placed in the respective website of stock exchange(s), merchant banker and the company.

(Please refer para 3.8.6)

C. Other Matters (relevant for all the routes of buyback)

8. Escrow Account -

- a. Company shall be required to open an escrow account, within two working days of the public announcement.
- b. The escrow account shall consist of-
 - i. cash including bank deposits, deposited with any scheduled commercial bank, or;
 - ii. government securities, or;
 - iii. units of mutual funds invested in gilt funds, and overnight schemes, or;
 - iv. bank guarantee issued in favour of the merchant banker by any scheduled commercial bank, or;
 - v. deposit of frequently traded and freely transferable equity shares or other freely transferable securities or;
 - vi. a combination of above.

The securities mentioned above shall be subject to appropriate margin as specified by SEBI. (Please refer para 3.9.6)

9. **Post buy-back compliance-** Companies will undertake extinguishment of share certificates and make other closure compliances through the companies' secretarial auditor, instead of statutory auditor. (Please refer para 3.10.6)

D. Miscellaneous proposals

10. Summary of the miscellaneous proposals are as follows (Please refer para 3.13)-

- a. Dispensing with the requirement of undertaking buy-back through odd-lots.
- b. Prior consent of lenders is required for buy-back, in case there is any breach of covenant with the company's lender(s) and letter of offer should disclose the approval so obtained from such lender.
- c. Specifying the maximum limit of 15% for undertaking the buy-back through stock exchange route and not to those undertaken through book-building process.
- d. Dispensing with the need of submitting physical documents and instead permitting submission of soft-copies, digitally signed by the company secretary or the person authorized by the board of the company undertaking buy-back, to SEBI.
- e. Rationalizing certain requirements in case of an escrow account across all routes of Buy-back.
- f. Harmonizing the requirement of payment of fees to SEBI on the date of public announcement across all available routes under buy-back.
- g. The date of opening of the offer shall not be later than four working days from the record date.

E. **Buy-back through book-building process-** Adoption of revised framework for undertaking buy-back through book-building process. (Please refer para 3.21.6)

F. **Ease of Doing Business- Reduction of Timelines:**

11. **Duration of the tendering period-** The offer for buy-back shall remain open for a period of five working days. (Please refer 3.22.5)

12. **Payment of consideration to the shareholders-** The payment of consideration shall be completed within five working days after the closure of the tendering period. (Please refer 3.23.5)

4.2. The Board is requested to consider and approve the proposals mentioned at paras 3.2.6, 3.3.6, 3.4.6, 3.5.6, 3.6.5, 3.7.6, 3.8.6, 3.9.6, 3.10.6, 3.13, 3.21.6, 3.22.5 and 3.23.5. The draft regulations are placed at **Annexure- V**.

4.3. The proposed amendments shall come into force on the thirtieth day from the date of their publication in the official gazette.

4.4. Chairperson may be authorized to take consequential and incidental steps to give effect to the decision of the Board.

Annexure-I

Consultation paper is available on SEBI Website

Annexure-II

This has been excised on the reasons of confidentiality.

Open Market Buy-backs through the Book-building Process

- **Announcement**
 - The public announcement relating to the buy-back will be published within two working days of the date of board or shareholders' approval, as the case may be.
 - The book building process will commence within seven working days from the date of public announcement.
 - An intimation will be made to the stock exchanges before 5 pm on the day immediately prior to the date of the commencement of the buy-back ("**Notice**").
 - An email and SMS intimation will be sent to the shareholders two working days prior to the date of the Notice ("**Identified Date**") to the extent available as per the records of the depositories.
 - The offer opening announcement will be published on the date of commencement of the buy-back.

- **Buy-back Price**
 - In the public announcement, the company will disclose:
 - (a) the maximum buy-back price approved by the company's board of directors or shareholders; and
 - (b) the book value of the company's securities.
 - Further, in the offer opening announcement, a price range will be disclosed.
 - In case of frequently traded securities, the lower end of the price range shall not be less than the higher of: (i) the closing price of the company's equity shares on the date of the Notice; and (ii) the volume weighted average market price of the company's equity shares in the 15 trading days prior to the date of the intimation of the meeting of the board of directors approving the buy-back
 - In the case of infrequently traded securities, the lower end of the price range shall not be less than the price of the company's securities determined based on a report from a registered valuer.
 - The actual buy-back price will depend upon the price discovered through the bids received from the shareholders within the price range.

- **Retail Participation**
 - Retail investors will have the option to bid at the cut-off price.
 - Retail investors means shareholders who hold shares of the company worth up to INR 200,000 calculated on the basis of the

closing price as of the Identified Date.

- Promoter participation
 - **Promoters along with their associates** will not be permitted to participate in such method of buy-back.
- The payment of consideration to shareholders will need to be completed within a period of seven working days following the closure of the buy-back offer.
- Acceptance Methodology
 - The buy-back offer will be kept open for a minimum of two trading days.
 - Shareholders can submit bids for any number of shares (not exceeding the total number of shares in the relevant category) at a price within the price range.
 - If the bids are more than the buy-back size:
 - The price at which 100% of the buy-back size is reached will be the clearing price; and
 - Shares tendered at or below the clearing price will be accepted at the clearing price (and in proportion to the size of the bids received).
 - If the bids are less than the buy-back size, all the shares tendered will be accepted at the highest bid price.
 - Bids once placed cannot be withdrawn.
- Flexibility in availing tax benefits
 - This method of effecting buy-backs will be completed through a special window created by the stock exchanges (similar to offers for sale).
 - Shareholders can thus be certain of the tax treatment to which they will be subject when tendering their shares unlike in the case of buy-backs through stock exchanges where there is uncertainty as to whether shares tendered will be purchased in the secondary market or by the company.
 - Since, tax is already exempted at the hands of shareholders whose shares are accepted under buy-backs through tender offers or through the stock exchange mechanism, parity in terms of taxation shall continue under the book building process as well.
- Withdrawal: Once the public announcement is made, the buy-back cannot be withdrawn or terminated.
- Regulatory Changes: Once the above proposals are accepted,

corresponding changes to the regulations governing buy-backs through the book-building process will be made.

Annexure-IV

Consultation paper is available on SEBI Website.

Annexure-V

This shall be notified at later stage.