

**SECURITIES AND EXCHANGE BOARD OF INDIA (BUY BACK OF SECURITIES)
REGULATIONS, 1998**

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SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION

Mumbai, the 14th November, 1998

SECURITIES AND EXCHANGE BOARD OF INDIA
(BUY BACK OF SECURITIES) REGULATIONS, 1998

S.O. 975 (E). 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 77A of the Companies Act, 1956 (1 of 1956), as inserted by ¹[the Companies (Amendment) Act, 1999 (21 of 1999)], the Board hereby makes the following regulations, namely:—

CHAPTER I
PRELIMINARY

Short title and commencement

1. (a) These regulations shall be called the Securities and Exchange Board of India (Buy Back of Securities) Regulations, 1998.
- (b) These regulations shall come into force on the date of their publication in the Official Gazette.

Definitions

2. (1) 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 another company;
 - (c) 'Board' means the board as defined in clause (a) of sub-section (1) of section 2 of the Act;

¹ Substituted for the words "*the Companies (Amendment) Ordinance, 1998 (19 of 1998)*" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

- (d) 'control' shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or ²[security-holders] or voting agreements or in any other manner;
- (e) 'company' includes a company registered under the Companies Act, 1956 (1 of 1956) any buys or intends to buy its own ³[shares or other specified securities] in accordance with these regulations;
- (f) 'Companies Act' means the Companies Act, 1956 (1 of 1956), as inserted by ⁴[the Companies (Amendment) Act, 1999 (21 of 1999)];
- (g) 'insider' means an insider as defined in clause (e) of regulation 2 of the Securities and Exchange Board of India (Insider Trading) Regulations, 1992;
- (h) 'merchant banker' means a merchant banker registered under section 12 of the Act;
- (i) 'Ordinance' means ⁵[the Companies (Amendment) Act, 1999 (21 of 1999)];
- (j) 'promoter' means 'promoter' as defined in clause (h) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
- (k) 'registrar' means a registrar to an issue and includes a share transfer agent registered under section 12 of the Act;
- (l) 'securities' means 'securities' as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- ⁶[(la) 'small shareholder' means a shareholder of a listed 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

² Substituted for the word "shareholders" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

³ Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

⁴ Substituted for the words "the Companies (Amendment) Ordinance, 1998 (19 of 1998)" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

⁵ Substituted for the words "the Companies (Amendment) Ordinance, 1998 (19 of 1998)" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

⁶ Inserted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

highest trading volume in respect of such security, as on record date is not more than two lakh rupee;]

(m) 'statutory auditor' means an auditor appointed by a company under section 224 of the Companies Act, 1956 (1 of 1956);

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

(o) 'tender offer' means an offer by a company to buy-back its ⁷[shares or other specified securities] through a letter of offer from the holders of the ⁸[shares or other specified securities] of the company;

⁹[(p) 'working day' means any working day of the Board.]

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

CHAPTER II CONDITIONS OF BUY-BACK

¹⁰**[Applicability**

3. (1) These regulations shall be applicable to buy-back of shares or other specified securities of a company listed on a stock exchange.

(2) Notwithstanding anything contained in sub-regulation (1), a company listed on a stock exchange shall not buy-back its shares or other specified securities so as to delist its shares or other specified securities from the stock exchange.]

7 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

8 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

9 Inserted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

10 Regulation 3 substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004. Prior to its substitution, it read as under:-

"3. Applicability. – These regulations shall be applicable to buy-back of equity shares of a company listed on a stock exchange"

Company may buy-back its own ¹¹[shares or other specified securities]

4. (1) A company may buy-back its ¹²[shares or other specified securities] by any one of the following methods :—

- (a) from the existing ¹³[security-holders] on a proportionate basis through the tender offer;
- (b) from the open market through—
 - (i) book-building process,
 - (ii) stock exchange;
- (c) from odd-lot holders.

(2) A company shall not buy-back its ¹⁴[shares or other specified securities] from any person through negotiated deals, whether on or of the stock exchange or through spot transactions or through any private arrangement.

(3) Any person or an insider shall not deal in securities of the company on the basis of unpublished information relating to buy-back of ¹⁵[shares or other specified securities] of the company.

Special resolution

5. (1) For the purposes of passing a special resolution under sub-section (2) of section 77A of the Companies Act, the explanatory statement to be annexed to the notice for the general meeting pursuant to section 173 of the Companies Act shall contain disclosures as specified in ¹⁶[Schedule II, Part A].

11 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words “specified securities”, which had earlier been substituted for the word “shares” by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

12 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words “specified securities”, which had earlier been substituted for the word “shares” by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

13 Substituted for the word “shareholders” by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

14 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words “specified securities”, which had earlier been substituted for the word “shares” by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

15 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words “specified securities”, which had earlier been substituted for the word “shares” by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

16 Substituted for the word “Schedule I” by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004.

(2) A copy of the resolution passed at the general meeting under sub-section (2) of section 77A of the Companies Act, shall be filed with the Board and the stock exchanges where the ¹⁷[shares or other specified securities] of the company are listed, within seven days from the date of passing of the resolution.

¹⁸**[Board resolution**

5A. 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 first proviso to clause (b) of sub-section (2) of section 77A of the Companies Act, 1956, as inserted by the Companies (Amendment) Act, 2001, 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.]

17 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

18 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012. for the following:

Board resolution

5A. (1) A company, authorised by a resolution passed by the Board of Directors at its meeting, to buy back its 18[shares or other specified securities under first proviso to clause (b) of sub-section (2) of section 77A of the Companies Act, 1956, as inserted by the Companies (Amendment) Act, 2001, may buy back its shares or other specified securities subject to the following conditions:

- (a) before making a public announcement under sub regulation (1) of regulation 8, a public notice shall be given in atleast one English national daily, one Hindi national daily and a regional language daily, all with wide circulation at the place where the registered office of the company is situated,
- (b) the public notice shall be given within 2 days of the passing of the resolution by the Board of Directors;
- (c) the public notice shall contain the disclosures as specified in schedule I.

(2) A copy of the resolution, passed by the Board of Directors at its meeting, authorising buy back of its shares or other specified securities, shall be filed with the Board and the stock exchanges where the shares or other specified securities of the company are listed, within two days of the date of the passing of the resolution.

In the above substituted regulation the words "securities" wherever occurring was substituted by the words "shares and other specified securities" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004.

CHAPTER III

BUY-BACK THROUGH TENDER OFFER

Buy-back from existing ¹⁹[security-holders]

6. A company may buy-back its ²⁰[shares or other specified securities] from its existing ²¹[security-holders] on a proportionate basis in accordance with the provisions of this Chapter:

²²[Provided that fifteen percent 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.]

Additional disclosures

7. The explanatory statement annexed to the notice under section 173 of the Companies Act, ²³[***] shall contain the disclosures mentioned in regulation 5 ²⁴[***] and also the following disclosures:—

- (a) the ²⁵[maximum] price at which the buy-back of ²⁶[shares or other specified securities] shall be made ²⁷[and whether the Board of Directors of the company are being authorised at the general meeting to determine subsequently the specific price at which the buy-back may be made at the appropriate time];

19 Substituted for the word "shareholders" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

20 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

21 Substituted for the word "shareholders" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

22 Inserted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

23 Words "or the public notice under sub-regulation (1) of regulation 5A" omitted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

24 Words "or regulation 5A" omitted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

25 Inserted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

26 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

27 Inserted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

- (b) if the promoter intends to offer their ²⁸[shares or other specified securities],
- (i) the quantum of ²⁹[shares or other specified securities] proposed to be tendered, and
 - (ii) 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 ³⁰[shares or other specified securities] acquired, the price and the date of acquisition.

Filing of offer document, etc.

8. ³¹[(1) The company which has been authorised by a special resolution or a resolution passed by the Board of Directors at its meeting shall make a public announcement within two working days from the date of resolution in at least one English National Daily, one Hindi National Daily and a Regional language daily all with wide circulation at the place where the Registered office of the company is situated and shall contain all the material information as specified in Schedule II, Part A.]

28 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

29 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

30 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

31 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012. for the following:

(1) The company which has been authorised by a special resolution or a resolution passed by the Board of Directors at its meeting] shall before buy back of shares or other specified securities make a public announcement in at least one English National Daily, one Hindi National Daily and a Regional language daily all with wide circulation at the place where the Registered office of the company is situated and shall contain all the material information as specified in schedule II.

In the substituted sub-regulation (1) above,

the words "or a resolution passed by the Board of Directors at its meeting" inserted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2001 w.e.f. 28.11.2001.

the words 'shares and other specified securities' were substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

³²[(1A) A copy of the public announcement along with the soft copy, shall also be submitted to the Board simultaneously through a merchant banker.]

(2) ³³[***]

(3) ³⁴[***]

(4) The company shall within ³⁵[five working days] of the public announcement file with the Board a draft-letter of offer ³⁶[, along with soft copy,] containing disclosures as specified in Schedule III through a merchant banker who is not associated with the company.

(5) The draft letter of offer referred to in sub-regulation (4) shall be accompanied with fees specified in Schedule IV.

³⁷[(6)The Board may give 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 buyback 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:

32 Inserted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

33 Omitted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012. Before omission sub-regulation (2) read as under:

(2) The public announcement shall specify a date, which shall be the 'specified date' for the purpose of determining the names of the 33[security-holders] to whom the letter of offer shall be sent.

In the substituted sub-regulation (2) above, the words 'security holders' were substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999 w.e.f. 21-09-1999 for the words 'shareholders',

34 Omitted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012. Before omission sub-regulation (2) read as under:

(3) The specified date shall not be later than thirty days from the date of the public announcement.

35 Substituted for the words "seven working days" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

36 Inserted by the by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

37 Sub-regulation (6) substituted by by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.for the following:

(6) The letter of offer shall be dispatched not earlier than twenty-one days from its submission to the Board under sub-regulation (4):

Provided that if, within twenty-one days from the date of submission of the draft letter of offer, the Board specifies modifications, if any, in the draft letter of offer, (without being under any obligation to do so) the merchant banker and the company shall carry out such modifications before the letter of offer is dispatched to the security-holders.

In the substituted sub-regulation (6) above, the words 'security holders' were substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999 w.e.f. 21-09-1999 for the words 'shareholders'.

Provided further that in the event the Board specifies any changes, the merchant banker to the buyback offer and the company shall carryout such changes in the letter of offer before it is dispatched to the shareholders.]

(7) The company shall file along with the draft letter of offer, a declaration of solvency in the prescribed form and in a manner prescribed in sub-section (6) of section 77A of the Companies Act.

Offer procedure

³⁸[9. (1) A company making a buyback offer shall announce a record date for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buyback offer.

(2) The letter of offer along with the tender form shall be dispatched to the security holders who are eligible to participate in the buyback offer, not later than five working days from the receipt of communication of comments from the Board.

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

38 regulation 9 has been substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.for the following:

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

(2) The date of the opening of the offer shall not be earlier than seven days or later than thirty days after the specified date.

(3) The letter of offer shall be sent to the security-holders so as to reach the security- holders before the opening of the offer.

(4) In case the number of shares or other specified securities offered by the security-holders is more than the total number of shares or other specified securities to be bought back by the company, the acceptances per security-holders shall be equal to the acceptances tendered by the security-holders divided by the total acceptances received and multiplied by the total number of shares or other specified securities to be bought back.

(5) The company shall complete the verifications of the offers received within fifteen days of the closure of the offer and the shares or other specified securities lodged shall be deemed to be accepted unless a communication of rejection is made within fifteen days from the closure of the offer.

In the substituted regulation 9 above,

the words 'security holders' where ever occurring were substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999 w.e.f. 21-09-1999 for the words 'shareholders',

the words 'shares or other specified securities' where ever occurring were substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

- (4) The offer for buy back shall remain open for a period of ten working days.
- (5) The company shall accept shares or other specified securities from the security holders on the basis of their entitlement as on record date.
- (6) The shares proposed to be bought back shall be divided in to 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.
- (7) 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 security holders in that category and thereafter from security holders who have tendered over and above their entitlement in other category.]

Escrow account

- 10.** (1) 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 sub-regulation (2).
- (2) The escrow amount shall be payable in the following manner,—
- (i) if the consideration payable does not exceed Rs. 100 crores - 25 per cent of the consideration payable;
 - (ii) if the consideration payable exceeds Rs. 100 crores - 25 per cent upto Rs. 100 crores and 10 per cent thereafter.
- (3) The escrow account referred in sub-regulation (1) shall consist of,
- (a) cash deposited with a scheduled commercial bank, or
 - (b) bank guarantee in favour of the merchant banker, or
 - (c) deposit of acceptable securities with appropriate margin, with the merchant banker, or
 - (d) a combination of (a), (b) and (c) above.
- (4) 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 issue a banker's cheque or demand draft for the amount lying to the credit of the escrow account, as provided in the regulations.

(5) Where the escrow account consists of bank guarantee, such bank guarantee shall be in favour of the merchant banker and shall be valid until thirty days after the closure of the offer.

(6) 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.

(7) 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.

(8) 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 fulfilment of the obligations under the regulations by the company.

(9) On payment of consideration to all the ³⁹[security-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.

(10) The Board in the interest of the ⁴⁰[security-holders] may in case of non-fulfilment of obligations under the regulations by the company forfeit the escrow account either in full or in part.

(11) The amount forfeited under sub-regulation (10) may be distributed pro rata amongst the ⁴¹[security-holders] who accepted the offer and balance, if any, shall be utilised for investor protection.

Payment to ⁴²[security-holders]

11. (1) 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

39 Substituted for the word "shareholders" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

40 Substituted for the word "shareholders" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

41 Substituted for the word "shareholders" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

42 Substituted for the word "shareholders" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

therein, such sum as would, together with ⁴³[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.

⁴⁴[(2) The company shall complete the verifications of offers received and make payment of consideration to those security holders whose offer has been accepted or return the shares or other specified securities to the security holders within seven working days of the closure of the offer.]

Extinguishment of certificate

12. ⁴⁵[(1) The company shall extinguish and physically destroy the security 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 the last date of completion of buy - back.]

43 Inserted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004

44 Sub-regulation (2) substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.for the following:

(2) The company shall within seven days of the time specified in sub-regulation (5) of regulation 9 make payment of consideration in cash to those security holders whose offer has been accepted or return the shares or other specified securities to the security holders.

In the substituted regulation 9 above,

the words 'security holders' where ever occurring were substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999 w.e.f. 21-09-1999 for the words 'shareholders',

the words 'shares or other specified securities' were substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

45 Sub-regulation (1) substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the following:

"The company shall extinguish and physically destroy the security certificates so bought back in the presence of a Registrar or the Merchant Banker, and the Statutory Auditor within seven days from the date of acceptance of the specified securities."

In the above substituted sub-regulation (1):

the words "security certificates" appearing after the words "destroy the" and before the words "so bought back" were substituted for the words "share certificates" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

the words "specified securities" appearing at the end, after the words "acceptance of the", were substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

(2) The ⁴⁶[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 framed thereunder.

⁴⁷[(3)(a) The company shall, furnish a certificate to the Board certifying compliance as specified in sub-regulation (1) and duly certified and verified by -

- (i) the registrar and whenever there is no registrar by the merchant banker;
- (ii) two directors of the company one of whom shall be a managing director where there is one;
- (iii) the statutory auditor of the company,

(b) The certificate required under clause (a) shall be furnished to the Board on a monthly basis by the seventh day of the month succeeding the month in which the securities certificates are extinguished and destroyed.]

⁴⁸[(4) The company shall furnish, the particulars of the security certificates extinguished and destroyed under sub-regulation (1), to the stock exchanges where the shares of the company are listed on a monthly basis by the seventh day of the month succeeding the month in which the securities certificates are extinguished and destroyed.]

46 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

47 Sub-regulation (3) substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the following:

"(3) The company shall furnish a certificate to the Board duly verified by —

- (a) the registrar and whenever there is no registrar through the merchant banker;
- (b) two whole-time Directors including the Managing Director and,
- (c) the statutory auditor of the company, and certifying compliance as specified in sub-regulation (1), within seven days of extinguishment and destruction of the certificates."

48 Sub-regulation (4) substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the following:

"The particulars of the security certificates extinguished and destroyed under sub-regulation (1) shall be furnished to the stock exchanges where the specified securities of the company are listed within seven days of extinguishment and destruction of the certificates."

In the above substituted sub-regulation (1):

the words "security certificates" appearing after the words "particulars of the" and before the word "extinguished" were substituted for the words "share certificates" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

the words "specified securities" appearing at the end, after the words "exchanges where the", were substituted for the words "of the company" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

(5) The company shall maintain a record of ⁴⁹[security certificates] which have been cancelled and destroyed as prescribed in sub-section (9) of section 77A of the Companies Act.

Odd-lot Buy-back

13. The provisions pertaining to buy-back through tender offer as specified in this Chapter shall be applicable mutatis mutandis to odd-lot ⁵⁰[shares or other specified securities].

CHAPTER IV BUY-BACK FROM THE OPEN MARKET

Buy-back from open market

14. (1) A company intending to buy-back its ⁵¹[shares or other specified securities] from the open market shall do so in accordance with the provisions of this Chapter.

(2) The buy-back of ⁵²[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.

Buy-back through stock exchange

15. A company shall buy-back its ⁵³[shares or other specified securities] through the stock exchange as provided hereunder :

49 Substituted for the words "share certificates" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

50 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

51 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

52 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

53 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

- (a) ⁵⁴[The special resolution referred to in regulation 5 or the resolution passed by the Board of Directors at its meeting as referred to in regulation 5A] shall specify the maximum price at which the buy-back shall be made;
- (b) The buy-back of the ⁵⁵[shares or other specified securities] shall not be made from the promoters or persons in control of the company;
- (c) The company shall appoint a merchant banker and make a public announcement as referred to in regulation 8;
- (d) The public announcement shall be made at least seven days prior to the commencement of buy-back ⁵⁶[, and shall contain disclosures as specified in Schedule II, Part B];
- (e) 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 IV;
- (f) The public announcement shall also contain disclosures regarding details of the brokers and stock exchanges through which the buy-back of ⁵⁷[shares or other specified securities] would be made;
- ⁵⁸[(g) The buy-back shall be made only on stock exchanges having nationwide trading terminals;]
- (h) The buy-back of ⁵⁹[shares or other specified securities] shall be made only through the order matching mechanism except 'all or none' order matching system;
- ⁶⁰[(i) The company and the merchant banker shall submit the information regarding the shares or other specified securities bought-back, to the stock exchange on a

54 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2001, w.e.f. 28-11-2001 for the words "The special resolution referred to in regulation 5".

55 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

56 Inserted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

57 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

58 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the following:

"(g) The buy-back shall be made only on stock exchanges with electronic trading facility;"

59 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

daily basis and publish the said information in a national daily on a fortnightly basis and every time when an additional five per cent of the buy-back has been completed:

Provided that where there is no buy back during a particular period the company and the merchant banker shall not be required to publish the details in a national daily.]

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

Extinguishment of certificates

16. (1) Subject to the provisions of sub-regulation (2), the provisions of regulation 12 pertaining to extinguishment of certificates shall be applicable mutatis mutandis.

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

Buy-back through book building

17. A company may buy-back its ⁶¹[shares or other specified securities] through the book-building process as provided hereunder:

(1) (a) The special resolution referred to in regulation 5 ⁶²[or the resolution passed by the Board of Directors at its meeting, as referred to in regulation 5A] shall specify the maximum price at which the buy-back shall be made.

(b) The company shall appoint a merchant banker and make a public announcement as referred to in regulation 8.

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

(d) Subject to the provisions of sub-clauses (i) and (ii) the provisions of regulation 10 shall be applicable :

60 Clause (i) substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the following:

“The company and the merchant banker shall give the information to the stock exchange on a daily basis regarding the shares purchased for buy-back and the same shall be published in a national daily;”

61 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words “specified securities”, which had earlier been substituted for the word “shares” by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

62 Inserted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2001, w.e.f. 28-11-2001.

- (i) The deposit in the escrow account shall be made before the date of the public announcement.
- (ii) The amount to be deposited in the escrow account shall be determined with reference to the maximum price as specified in the public announcement.
- (e) 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 IV.
- (f) 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 ⁶³[security-holders] pursuant to the public announcement and the details of bidding centres.
- (g) The book-building process shall be made through an electronically linked transparent facility.
- (h) The number of bidding centres shall not be less than thirty and there shall be at least one electronically linked computer terminal at all the bidding centres.
- (i) The offer for buy-back shall remain open to the ⁶⁴[security-holders] for a period not less than fifteen days and not exceeding thirty days.
- (j) The merchant banker and the company shall determine the buy-back price based on the acceptances received.
- (k) The final buy-back price, which shall be the highest price accepted shall be paid to all holders whose ⁶⁵[shares or other specified securities] have been accepted for buy-back.
- (2) The provisions of ⁶⁶[sub-regulation (2) of regulation 11] pertaining to verification of acceptances and the provisions of regulation 11 pertaining to opening of special account and payment of consideration shall be applicable mutatis mutandis.

63 Substituted for the word "shareholders" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

64 Substituted for the word "shareholders" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

65 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

66 Substituted for the words "sub-regulation (5) of regulation 9" by the by the by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

Extinguishment of certificates

18. The provisions of regulation 12 pertaining to extinguishment of certificates shall be applicable mutatis mutandis.

CHAPTER V GENERAL OBLIGATIONS

Obligations of the company

19. (1) The company shall ensure that,—

- (a) the letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material ⁶⁷[***] shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accepts the responsibility for the information contained in such documents;
- (b) the company shall not issue any ⁶⁸[shares or other specified securities] including by way of bonus till the date of closure of 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 or the person shall not deal in the ⁶⁹[shares or other specified securities] of the company in the stock exchange during the period of the buy-back offer is open.

(2) 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.

⁶⁷ The words “or public notice referred to in clause (a) of sub-regulation (1) of regulation 5A” omitted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

⁶⁸ Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words “specified securities”, which had earlier been substituted for the word “shares” by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

⁶⁹ Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words “specified securities”, which had earlier been substituted for the word “shares” by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

(3) 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.

(4) The particulars of the ⁷⁰[security certificates] extinguished and destroyed shall be furnished by the company to the stock exchanges where the ⁷¹[shares or other specified securities] of the company are listed within seven days of extinguishment and destruction of the certificates.

(5) The company shall not buy-back the locked-in ⁷²[shares or other specified securities] and non-transferable ⁷³[shares or other specified securities] till the pendency of the lock-in or till the ⁷⁴[shares or other specified securities] become transferable.

(6) ⁷⁵[***]

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

(i) number of ⁷⁶[shares or other specified securities] bought;

(ii) price at which the ⁷⁷[shares or other specified securities] bought;

70 Substituted for the words "share certificates" by the by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

71 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

72 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

73 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

74 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

75 Sub-regulation (6) omitted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999. Prior to its omission, sub-regulation (6) read as follows:

"Where the shares have been bought back otherwise than out of the proceeds of an earlier issue other than a fresh issue of shares made specifically for the purpose of buy-back then a sum equal to the nominal value of shares bought back out of free reserves shall be transferred to reserve account to be called the capital buy-back reserve account.

provided that the capital buy back reserve account may be applied by the company in paying up un-issued shares of the company to be issued to members of the company as fully paid bonus shares."

76 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

- (iii) total amount invested in the buy-back;
 - (iv) details of the ⁷⁸[security-holders] from whom ⁷⁹[shares or other specified securities] exceeding one per cent of total ⁸⁰[shares or other specified securities] were bought back; and
 - (v) the consequent changes in the capital structure and the shareholding pattern after and before the buy-back.
- (8) 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

20. The merchant banker shall ensure that—

- (a) the company is able to implement the offer;
- (b) the provision relating to escrow account as referred to in regulation 10 has been made;
- (c) firm arrangements for monies for payment to fulfil the obligations under the offer are in place;
- (d) the public announcement of buy-back is made in terms of the regulations;
- (e) the letter of offer has been filed in terms of the regulations;
- (f) the merchant banker shall furnish to the Board a due diligence certificate which shall accompany the draft letter of offer;
- (g) the merchant banker shall ensure that 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;

77 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

78 Substituted for the word "shareholders" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

79 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

80 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

- (h) the merchant banker shall ensure compliance of section 77A and section 77B of the Companies Act, and any other laws or rules as may be applicable in this regard;
- (i) upon fulfilment of all obligations by the company under the regulations, the merchant banker shall inform the bank with whom the escrow or special amount has been deposited to release the balance amount to the company;
- (j) the merchant banker shall send a final report to the Board in the form specified within 15 days from the date of closure of the buy-back offer.

Action against intermediaries

21. (1) The Board may, on failure of the merchant banker to comply with the obligations or failing to observe due diligence initiate action against the merchant banker in terms of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.

(2) The Board may on the failure of a registrar or a broker to comply with the provisions of these regulations or failing to observe due diligence initiate action against the registrar or the broker in terms of the regulations applicable to such intermediaries.

CHAPTER VI PENALTIES AND PROCEDURE

Power of the Board to order investigation

22. (1) The Board may, suo motu or upon information received by it, cause an investigation to be made in respect of the conduct and affairs of any person associated with the process of buy-back, by appointing an officer of the Board :

Provided that no such investigation shall be made except for the purposes specified in sub-regulation (2).

(2) The purposes referred to in sub-regulation (1) are the following, namely :—

- (a) to ascertain whether there are any circumstances which would render any person guilty of having contravened any of these regulations or any directions issued thereunder;
- (b) to investigate into any complaint of any contravention of the regulation, received from any investor, intermediary or any other person.

(3) An order passed under sub-regulation (1) shall be sufficient authority for the Investigating Officer to undertake the investigation and on production of an authenticated copy of the order, the person concerned shall be bound to carry out the duty imposed in regulation 23.

Duty to produce records, etc.

23. (1) It shall be the duty of every person in respect of whom an investigation has been ordered under regulation 22, to produce before the Investigating Officer such books, accounts and other documents in his custody or control and furnish him with such statements and information as the said officer may require from the purposes of the investigation.

(2) Without prejudice to the generality of the provisions of sub-regulation (1), such person shall—

- (a) extend to the Investigating Officer reasonable facilities for examining any books, accounts and other documents in his custody or control (whether kept manually or in computer or in any other form) reasonably required for the purposes for the investigation;
- (b) to provide such Investigating Officer with copies of such books, accounts and records which, in the opinion of the Investigating Officer, are relevant to the investigation or, as the case may be, allow him to take out computer printouts thereof;
- (c) to provide such assistance and co-operation as may be required in connection with the investigation and furnish information relevant to such investigation as may be sought by such officer.

(3) The Investigating Officer shall for the purpose of investigation, have the full powers :

- (a) of summoning and enforcing the attendance of persons;
- (b) to examine orally and to record on oath the statement of the persons concerned, any director, partner, member or employee of such person.

Submission of Report to the Board

24. (1) The Investigating Officer shall, on completion of the investigation, after taking into account all relevant facts and circumstances, submit a report to the Board.

(2) On the receipt of report under sub-regulation (1), the Board may initiate such action as it may be empowered to do in the interests of investors and the securities market.

Power of the Board to issue directions

25. (1) The Board may in the interests of the securities market and without prejudice to its right to initiate action including criminal prosecution by the Board under section 24 of the Act and give such directions as it deems fit including :

- (a) directing the person concerned not to further deal in securities in any particular manner;
- (b) prohibiting the person concerned from cancelling any of the securities bought back in violation of the Companies Act;
- (c) directing the person concerned to sell or divest the ⁸¹[shares or other specified securities] acquired in violation of the provisions of these Regulations or any other law or regulations;
- (d) taking action against the intermediaries registered with the Board in accordance with the Regulations applicable to it;
- (e) prohibiting the persons concerned, directors, partners, members, employees and associates of such persons, from accessing the securities market;
- (f) disgorgement of any ill-gotten gains or profits or avoidance of loss;
- (g) restraining the company from making a further offer for buy-back.

(2) In case any person is guilty of insider trading or market manipulation the person concerned shall be dealt with in accordance with the provisions of the Securities and Exchange Board of India (Insider Trading) Regulations, 1992 and the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995.

CHAPTER VII MISCELLANEOUS

Power of the Board to remove difficulties

81 Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2004 w.e.f. 18-06-2004 for the words "specified securities", which had earlier been substituted for the word "shares" by the SEBI (Buy-back of Securities) (Amendment) Regulations, 1999, w.e.f. 21-09-1999.

26. In order to remove any difficulties in the interpretation or application of the provisions of these Regulations, the Board shall have the power to issue directions through guidance notes or circulars :

Provided that where any direction is issued by the Board in a specific case relating to interpretation or application of any provision of these Regulations, it shall be done only after affording a reasonable opportunity to the concerned parties and after recording reasons for the direction.

82 Schedule I omitted by the by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.

Before omission Schedule I read as under:

Schedule I

Contents of explanatory statement

[under regulation 5(1) and regulation 5A (1)(c)]

The Explanatory statement of the notice for special resolution for buy-back shall, inter alia, contain the following :

- i. the date of the Board meeting at which the proposal for buy-back was approved by the Board of Directors of the company;
- ii. the necessity for the buy-back;
- iii. the company may specify in the explanatory statement to the notice that the shareholders at the general meeting may authorise the Board of Directors of the company to adopt one of the methods referred in sub-regulation (1) of regulation 4 at the appropriate time;
- iv. the maximum amount required under the buy-back and the sources of funds from which the buy-back would be financed;
- v. the basis of arriving at the buy-back price;
- vi. the number of securities that the company proposes to buy-back;
- 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 during a period of six months preceding the date of the Board Meeting at which the buy-back was approved from date till 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;
- viii. the 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 (including prospective and contingent liabilities);
- xi. a report addressed to the Board of Directors by the company's auditors stating that—
 - (i) they have inquired into the company's state of affairs;

⁸³[**SCHEDULE II**
CONTENTS OF THE PUBLIC ANNOUNCEMENT

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- (ii) the amount of the permissible capital payment for the securities in question is in their view properly determined; and
 - (iii) 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, be rendered insolvent within a period of one-year from that date.

83 Schedule II substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.for the following:

Schedule II
Contents of the Public Announcement
[under regulation 8(1)]

The public announcement shall, inter alia, contain the following :

1. Details of the offer including the total number and percentage of the total paid-up capital and free reserves proposed to be bought back and price.
2. The proposed time table from opening of the offer till the extinguishment of the certificates.
3. The specified date.
4. Authority for the offer of buy-back.
5. A full and complete disclosure of all material facts including the contents of the explanatory statement annexed to the notice for the general meeting at which the special resolution approving the buy back was passed or the contents of public notice issued after the passing of the resolution by the Board of Directors authorising the buy back.
6. The necessity for the buy-back.
7. The process and methodology to be adopted for the buy-back.
8. The maximum amount to be invested under the buy-back.
9. The minimum and the 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.
10. Brief information about the company.
11. 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 6 months old from the date of the public announcement together with financial ratios as may be specified by the Board.
12. Details of escrow account opened and the amount deposited therein.
13. 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 the resolution of the Board of directors approving the buy-back; and

1. 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.
2. 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.
3. A full and complete disclosure of all material facts including the following shall be made:

Part A: Disclosures under Regulation 5(1) and 8(1)

- 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 buyback price;
- v. Maximum number of securities that the company proposes to buy back;
- vi. Method to be adopted for buyback as referred in sub-regulation(1) 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

(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.

15. Present capital structure (including the number of fully paid and partly paid securities) and shareholding pattern.
16. The capital structure including details of outstanding convertible instruments, if any, post buy-back.
17. The 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.
18. The aggregate number of shares or other specified securities purchased or sold by persons mentioned in clause 17 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.
19. Management discussion and analysis on the likely impact of buy-back on the company's earnings, public holdings, holding of NRIs/FIIs, etc., promoters holdings and any change in management structure.
20. The details of statutory approvals obtained.
21. Collection and bidding centres.
22. Name of compliance officer and details of investors service centres.
23. Such other disclosures as may be specified by the Board from time to time by way of guidelines.
24. 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

- 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 buyback 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;
- 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 (including prospective and contingent liabilities);
- xi. A report addressed to the Board of Directors by the company's auditors stating that-
 - (i) they have inquired into the company's state of affairs;
 - (ii) the amount of the permissible capital payment for the securities in question is in their view properly determined; and
 - (iii) 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.

Part B: Disclosures under Regulation 15(d)

In addition to the disclosures in Part 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 buyback 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 buyback;
- v. Brief information about the company;
- 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;
- 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 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 buyback;
- 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;
- xiv. Details of statutory approvals obtained;

- xv. Collection and bidding centers;
- xvi. Name of compliance officer and details of investors service centers;
- xvii. Such other disclosures as may be specified by the Board from time to time by way of guidelines.]

⁸⁴[**SCHEDULE III**
[see regulation 8(4)]
DISCLOSURES TO BE MADE IN THE LETTER OF OFFER

84 Schedule III substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012.for the following:

Schedule III
Disclosures to be made in the letter of offer
[Under regulation 8(4)]

The letter of offer shall, inter alia, contain the following :

1. Disclaimer Clause as may be prescribed by the Board.
2. Details of the offer including the total number and percentage of the total paid-up capital and free reserves proposed to be bought back and price.
3. The proposed time table from opening of the offer till the extinguishment of the certificates.
4. The specified date.
5. Authority for the offer of buy-back.
6. A full and complete disclosure of all material facts including the contents of the explanatory statement annexed to the notice for the general meeting at which the special resolution approving the buy back was passed or the contents of public notice issued after the passing of the resolution by the Board of Directors authorising the buy back.
7. The necessity for the buy-back.
8. The process to be adopted for the buy-back.
9. The maximum amount to be invested under the buy-back.
10. The minimum and the 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.
11. Brief information about the company.
12. Audited financial information for the last 3 years and the lead manager shall ensure that the particulars (audited statement and unaudited statement) contained therein shall not be more than 6 months old from the date of the offer document together with financial ratios as may be specified by the Board.
13. Details of escrow account opened and the amount deposited therein.
14. 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 filing the draft letter of offer with the Board which shall be updated till the date of the letter of offer;
 - (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

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- 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 on which 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 offer document 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.
15. Present capital structure (including the number of fully paid and partly paid securities) and shareholding pattern.
 16. The capital structure including details of outstanding convertible instruments, if any, post buy-back.
 17. The 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.
 18. The aggregate number of shares or other specified securities purchased or sold by persons mentioned in clause 17 above during a period of twelve months preceding the date of the public announcement and from the date of public announcement to the date of the letter of offer; the maximum and minimum price at which purchases and sales referred to above were made along with the relevant dates.
 19. 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.
 20. The details of statutory approvals obtained.
 21. Collection and bidding centres.
 22. Name of compliance officer and details of investors service centres.
 23. (1) A declaration to be signed by at least two directors of the company one of whom shall be a managing director where there is one that there are no defaults subsisting in repayment of deposits, redemption of debentures or preference shares or repayment of a term loans to any financial institutions or banks.

(2) A declaration to be signed by at least two directors of the company one of whom shall be a managing director where there is one stating 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) as regards its prospects for the year immediately following the date of the letter of offer 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 and will not be rendered insolvent within a period of one year from that date;
 - (b) 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 (including prospective and contingent liabilities).
 24. The declaration must in addition have annexed to it a report addressed to the directors by the company's auditors stating that—
 - (i) they have inquired into the company's state of affairs; and
 - (ii) the amount of permissible capital payment for the securities in question is in their view properly determined; and they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in the declaration is unreasonable in all the circumstances.
 25. Such other disclosures as may be specified by the Board from time to time by way of guidelines.
- 84[26. 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 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 in Schedule II;
- ii. Disclaimer Clause as may be specified by the Board;
- iii. Record date and ratio of buyback as per the entitlement in each category.”

SCHEDULE IV
SECURITIES AND EXCHANGE BOARD OF INDIA (BUY BACK OF SECURITIES)
REGULATIONS, 1996
[regulations 8(5), 15(e), 17(e)]

⁸⁵[(1) 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:-

85 Substituted by the SEBI (Payment of Fees) (Amendment) Regulations, 2008, w.e.f. 1-4-2008 for the following, as amended by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2007 w.e.f. 28-5-2007:

“(1). 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 (Rs.)
Less than or equal to one crore rupees.	One lakh rupees (Rs. 1,00,000)
More than one crore rupees, but less than or equal to five crore rupees.	Two lakh rupees (Rs. 2,00,000)
More than five crore rupees, but less than or equal to ten crore rupees.	Three lakh rupees (Rs. 3,00,000)
More than ten crore rupees, but less than or equal to one thousand crore rupees.	0.5% of the offer size.
More than one thousand crore rupees, but less than or equal to five thousand crore rupees.	Five crore rupees (Rs. 5,00,00,000) plus 0.125% of the portion of the offer size in excess of one thousand crore rupees. (Rs. 1000,00,00,000).
More than five thousand crore rupees.	Ten crore rupees (Rs.10,00,00,000).”

Prior to the above substitution, paragraph (1), as amended by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2006, w.e.f. 21-8-2006, read as under:

“(1). 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 (Rs.)
Less than or equal to one crore rupees	1,00,000
More than one crore rupees, but less than or equal to five crore rupees	2,00,000

Offer size	Fee (Rs.)
Less than or equal to ten crore rupees	One lakh rupees (Rs. 1,00,000/-).
More than ten crore rupees, but less than or equal to one thousand crore rupees.	0.125% of the offer size.
More than one thousand crore rupees, but less than or equal to five thousand crore rupees.	One Crore twenty five lakh rupees (Rs. 1,25,00,000/-)plus 0.03125 per cent of the portion of the offer size in excess of one thousand crore rupees (Rs. 1000,00,00,000/-)
More than five thousand crore rupees.	A flat charge of three crore rupees (Rs. 3,00,00,000/-).

(2) Fees referred to in clause (1) above, shall be paid in the following manner :

- (a) the fees shall be paid along with the draft of the offer document or public announcement submitted to the Board;
- (b) the fees shall be payable by a draft in favour of Securities and Exchange Board of India at Mumbai.

More than five crore rupees, but less than or equal to ten crore rupees	3,00,000
More than ten crore rupees	0.5% of the offer size."