



Consultation Paper  
on  
Review of SEBI (Buyback of Securities) Regulations, 2018

**Objective**

1. The objective of this consultation paper is to seek comments/views/suggestions from the public on the different proposals to amend the extant SEBI (Buyback of Securities) Regulations, 2018 (*hereinafter referred to as "Buyback Regulations"*).

**Background**

2. Buyback Regulations were first notified on November 14, 1998. Thereafter, SEBI had reviewed the Buyback mechanism through tender offers and through open market purchases in two phases in the year 2012 and 2013 respectively.
3. Subsequently in 2018, SEBI undertook a review of the extant SEBI (Buyback of Securities) Regulations, 1998 with an aim to make recommendations on simplifying the language, removing redundant provisions and inconsistencies, updating various references in the Buyback Regulations to the provisions of new Companies Act, 2013 and other new SEBI Regulations. Further, the relevant circulars, FAQs and informal guidances issued so far under the Buyback Regulations 1998, were sought to be incorporated in the Regulations, without making any policy changes or major departures in the extant regulations.
4. In line with the aforesaid mandate, the Board in its meeting held on June 21, 2018 approved the proposal to replace the extant SEBI (Buyback of Securities) Regulations, 1998 with the new SEBI (Buyback of Securities) Regulations, 2018.

**Constitution of the Sub-Group**

5. Over the last few years, SEBI has been receiving several suggestions and representations from market participants requesting for a review of certain substantive provisions pertaining to the buyback of specified securities, buyback through tender offer as well as from open market through stock exchange mechanism, etc.



6. As a part of SEBI's constant endeavour to align regulatory requirements with the changing market dynamics as well as to enhance efficiency of the buyback process so as to ensure that the buyback exercises remain reflective of prevailing market conditions, SEBI constituted a sub-group under the chairmanship of Shri K.K. Mistry, Vice Chairman & CEO, HDFC Ltd. and comprising of the members from Primary Market Advisory Committee (*hereinafter referred to as "PMAC"*) with the following Terms of Reference-
- 6.1. Streamlining the process of buy-backs from the open market, that is, through the book-building process and through stock exchanges, with a view to making such process robust, efficient, transparent and shareholder-friendly;
  - 6.2. Refining the process of buy-backs through tender offers;
  - 6.3. Review of timelines for buy-backs; and
  - 6.4. Aligning the said Regulations with Companies Act, 2013.
7. The Sub-group after extensive deliberations in its several rounds of meetings has submitted its report to SEBI on May 03, 2022 setting out various policy recommendations in this regard. Subsequently, the report was also placed for consideration before PMAC, wherein PMAC recommended to most of the proposals and also advised SEBI to seek comments from the stakeholders on various recommendations made in the report. The Sub-Group's report is appended at [Annexure-A](#).

## Proposals

8. The Sub- Group, based on the terms of reference and its deliberations, has made proposals as set out in the following sections: -
- 8.1. Section I deals with the recommendations where the sub-group has proposed amendments to certain existing provisions under Buyback Regulations. Those proposed amendments are highlighted therein as "proposed changes."
  - 8.2. Section II deals with the new proposals made by the sub-group for inclusion in the Buyback Regulations.

9. The proposals recommended by sub-group were also deliberated internally by SEBI and the report has been modified accordingly.

### Public comments

10. Comments may be sent by email to [consultationcfid@sebi.gov.in](mailto:consultationcfid@sebi.gov.in) no later than **December 01, 2022**. While sending the email, kindly mention the subject as “**Comments on consultation paper on review of SEBI (Buyback of Securities) Regulations, 2018.**”
11. The comments should be sent by email in MS Excel file in the following format only: [link to download the format.](#)

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भारतीय प्रतिभूति और विनिमय बोर्ड  
Securities and Exchange Board of India

**REPORT OF THE SUB- GROUP  
ON THE  
SECURITIES AND EXCHANGE BOARD OF  
INDIA (BUY-BACK OF SECURITIES)  
REGULATIONS, 2018**

OCTOBER 20, 2022



भारतीय प्रतिभूति और विनिमय बोर्ड  
Securities and Exchange Board of India

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## Section I

### Chapter 1: Introduction

#### A. The Sub-Group on the Buy-back Regulations

##### *I. Composition of the Sub-Group*

The sub-group to review the existing provisions of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 ("**Buy-back Regulations**"), was constituted on December 24, 2021 with the following members:

<b>S. No.</b>	<b>Member Name</b>	<b>Organisation and designation</b>	<b>Capacity</b>
1.	Shri Keki Mistry	Vice Chairman & CEO, HDFC Ltd.	Chairman
2.	Shri Prithvi Haldia	Chairman and MD, Prime Database	Member
3.	Shri Sandip Bhagat	Partner, S&R Associates	Member
4.	Shri J.N. Gupta	Co- Founder & Managing Director, Stakeholders Empowerment Services	Member
5.	Shri Sunil Sanghai	Co-Founder & CEO, NovaDhruva Capital Private Limited	Member
6.	Shri Anay Khare	Chairperson, Association of Investment Bankers of India	Member
7.	Shri Sanjeev Krishnan	Chairman, PwC India	Member
8.	Shri Ramesh Srinivasan	MD & CEO, Kotak Investment Banking	Member
9.	Shri Achal Singh	General Manager, SEBI	Member (Ex-officio)

##### *II. Terms of Reference of the Sub-Group*

With the aim of reviewing the Buy-back Regulations and ensuring that they remain reflective of market realities, the Sub-Group was requested to make recommendations to the Securities and Exchange Board of India ("**SEBI**") on the following issues:

1. Streamlining the process of buy-backs from the open market, that is, through the book-building process and through stock exchanges, with a view to making such process robust, efficient, transparent and shareholder-friendly;
2. Refining the process of buy-backs through tender offers;
3. Review of timelines for buy-backs; and
4. Aligning the said Regulations with the Companies Act, 2013.

### **III. Approach**

The sub-group had six meetings over a period of four months with the first meeting held on January 5, 2022 and the last on April 20, 2022. The sub-group deliberated on the terms of reference specified above.

The sub-group relied on feedback from various stakeholders, including listed companies that had undertaken buy-backs, industry associations and stock exchanges, to reach a conclusion on the various issues considered by it.

This report ("**Report**") sets out recommendations of the sub-group to the SEBI, which include proposed amendments to certain provisions of the Buy-back Regulations.

The Report was discussed at a meeting of the SEBI's Primary Markets Advisory Committee ("**PMAC**") on May 19, 2022 and August 04, 2022, and includes feedback from the PMAC.

### **B. Acknowledgements**

The sub- group expresses its gratitude to the Kotak investment banking team, including Mr. Gopal Khetan and Mr. Anup Poddar for their valuable inputs on the Buy-Back Regulations and in particular, on the book-building process. Special thanks are due to Mr. T. Venkateshwarlu, Deputy General Manager, Mr. Manish Bundel, Deputy General Manager, and Mr. Abhijeet Srivastava, Assistant Manager at the SEBI for their efforts and dedication in assisting the sub-group in its deliberations and in preparing the report. Special thanks are also due to Mr. Sarangan Rajeshkumar, Associate, S&R Associates for assistance with drafting.

## **Chapter 2: Open Market Buy-backs through Stock Exchanges**

This chapter of the report sets out the recommendations of the sub-group with respect to buy-backs from the open-market through stock exchanges.

### ***1. Introduction of glide path for reduction in the maximum limit and time period for completion of buyback offer***

#### ***a. Maximum Limit***

The Buy-back Regulations currently provide that buy-back 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. Under the stock exchange route, there is a possibility of one shareholder's entire trade getting matched with the purchase order placed by the company and thus depriving other shareholders to avail the benefit of buyback. This runs contrary to the underlying principle of equitable treatment which forms the basis of all the corporate actions.

#### ***b. Time Period***

The Buy-back Regulations currently provide a time period of six months from the date of opening of the offer for the buy-back offer to be closed. This may result in artificial demand being created for the relevant company's shares during such extended period of time and trading of shares occurring at an exaggerated price. Allowing for an extended buy-back period thus prevents efficient price discovery.

In view of the aforesaid drawbacks associated with buyback under stock exchange mechanism enumerated above, it is proposed to introduce a glide path with respect to reduction in the maximum limit and the time period for such an offer under stock exchange mechanism-

<b>Parameter</b>	<b>Current thresholds</b>	<b>w.e.f April 01, 2023</b>	<b>w.e.f April 01, 2024</b>	<b>w.e.f April 01, 2025</b>
<b>Maximum Limit</b>	<b>15%</b>	<b>10%</b>	<b>5%</b>	<b>0%</b>
<b>Time Period for completion of buyback offer</b>	<b>6 months</b>	<b>66 working days</b>	<b>22 working days</b>	<b>NA</b>

Further, it is also noted that since shares are bought back at prevailing market price, acceptance of shares under buyback is matter of chance for most shareholders and thus there is no clarity as to whether shares are accepted under buyback or sold in open market and thus shareholders are unable to claim the benefits arising out of buybacks. In order to remove this ambiguity, **a separate window on stock exchange may be created for undertaking buyback through this route and harmonize it**



with the aforesaid proposal of glide path. The same shall be put in place in consultation with Stock Exchanges.

## **II. Minimum amount to be utilized**

Regulation 15 of the Buy-back Regulations requires companies to ensure that at least 50% of the amount earmarked for a buy-back, as specified in the resolution of the board of directors or shareholders, is utilized. In the event that companies fail to do so, SEBI is permitted to direct the merchant banker to forfeit the amount deposited in an escrow account. However, relaxation is granted in certain cases in respect of such requirement. These include cases where:

- (a) 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) sell orders were inadequate despite the buy orders placed by the company; or
- (c) there existed such circumstances which were beyond the control of the company and in the opinion of the SEBI merit consideration.

Considering that there are exceptions available (as set out above), the sub-group was of the view that the minimum threshold of 50% can be increased to 75%. This will prevent companies from announcing buy-backs in cases where there is no real intention to complete the buy-back for the entire amount announced. The sub-group also proposes that such restriction should only apply to buy-backs undertaken through stock exchanges and not through other mechanisms. The company should not be penalized if shareholders do not tender their shares in the book-building process.

Further, to reduce volatility in the trading price of the company's securities (as explained in (IV) below), it is proposed that additional restrictions are prescribed in the case of buy-backs through stock exchanges so that the buy-back is undertaken in similarly-sized tranches through the course of the buy-back period.

Companies should also be required to trickle their purchases into the market – detailed regulations will need to be set out in this regard.

<b>Current Provision in the Buy-back Regulations</b>	<b>Proposed Changes</b>
<p>Regulation 15</p> <p>The company shall ensure that at least fifty per cent of the amount earmarked for buy-back, as specified in the resolution of the board of directors or the special resolution, as the case may be, is utilized for buying-back shares or other specified securities.</p>	<p><b><i>Buy-back through stock exchange</i></b></p> <p>Regulation 15</p> <p><b><i>In case of buy-backs through the stock exchanges:</i></b></p> <p>(i) The company shall ensure that at least <b><i>seventy-five</i></b> per cent of the amount earmarked for buy-back, as specified in</p>

Current Provision in the Buy-back Regulations	Proposed Changes
<b>Buy-back through stock exchange</b>	<p>the resolution of the board of directors or the special resolution, as the case may be, is utilized for buying-back shares or other specified securities.</p> <p><b>(ii) The company shall ensure that at least forty per cent of the amount earmarked for buy-back, as specified in the resolution of the board of directors or the special resolution, as the case may be, is utilized within half of the duration specified as per the glide path mentioned under Chapter 2 of Section 1.</b></p>

### III. Eligibility

Buy-backs through stock exchanges, as a general matter, are efficient in cases where the shares of the relevant company are frequently traded. It is in the case of such companies that the trading price is reflective, by and large, of the value of the company's shares. For companies whose shares are not frequently traded, it is not possible to implement the pricing restrictions set out in (IV) below. Accordingly, it is the recommendation of the sub-group that the option to undertake open market buy-backs through stock exchanges should only be available to companies whose shares are frequently traded. The sub-group recognizes that definition of "frequently traded" may need to be separately reviewed to prevent manipulative practices such as sales and purchases of shares occurring with a view to fit the definition of "frequently traded" from a position where the shares are infrequently traded. The sub-group proposes the following changes to the Buy-back Regulations:

Current Provision in the Buy-back Regulations	Proposed Changes
Regulation 16 ...	Regulation 16 .... <b>(v) The buy-back through stock exchanges shall only be undertaken in respect of frequently traded shares.</b>
Regulation 2 ....	Regulation 2 ....

Current Provision in the Buy-back Regulations	Proposed Changes
	<b><i>(gA) “frequently traded shares” shall have the meaning assigned to such term under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011;</i></b>

#### ***IV. Restrictions on Volume and Price***

Currently, there are no pricing-related restrictions specified under the Buy-back Regulations in respect of buy-backs undertaken through the stock exchanges. This results in situations where the trading price of the company’s shares is exaggerated by the buy-back being undertaken. Accordingly, the sub-group proposes certain restrictions in respect of the method and price at which buy-backs can be undertaken through stock exchanges.

Current Provision in the Buy-back Regulations	Proposed Changes
Regulation 16	<p>Regulation 16</p> <p>....</p> <p><b><i>(vi) In any particular day, the company shall not purchase more than twenty-five percent 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.</i></b></p> <p><b><i>(vii) The company shall not participate in first thirty minutes and the last thirty minutes of the regular trading session.</i></b></p> <p><b><i>(viii) The buy-back price shall not exceed the higher of (a) the highest current independent published bid; or (b) the last independent sale price reported.</i></b></p>

## V. Quantum

The proviso to Regulation 4(iv) of the Buy-back Regulations prescribes that a buy-back undertaken through the open market (whether through the book-building process or through the stock exchanges) cannot exceed 15% of the paid up capital and free reserves of the company, based on both standalone and consolidated financial statements of the company.

The sub-group discussed a revision to such limit and recommends that such limit should be made applicable to buy-backs that are undertaken through stock exchanges alone and not those which are undertaken through the book-building process.

Current Provision in the Buy-back Regulations	Proposed Changes
Regulation 4 (iv) ...  Provided that the buyback from open market 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.	Regulation 4 (iv) ....  Provided that the buyback from open market <b>through stock exchanges</b> 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.

## VI. Escrow Account

For buy-backs through the open market, the Buy-back Regulations require the escrow account to be opened before the opening of the offer but do not specify an exact date. The sub-group proposes a timeline of two working days from the date of the public announcement in this regard.

Current Provision in the Buy-back Regulations	Proposed Changes
Regulation 20  (i) The company shall, before opening of the offer, create an escrow account towards security for performance of its obligations under these regulations, and deposit in escrow account 25 per cent of the amount earmarked for the	Regulation 20  (i) The company shall, <b>within two working days of the public announcement</b> , create an escrow account towards security for performance of its obligations under these regulations, and deposit in escrow account 25 per cent

Current Provision in the Buy-back Regulations	Proposed Changes
<p>buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be.</p> <p>(ii) The escrow account referred to in sub-regulation (i) may be in the form of,--</p> <ul style="list-style-type: none"> <li>a) cash deposited with any scheduled commercial bank; or</li> <li>b) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank.</li> </ul> <p>...</p> <p>(v) Where part of the escrow account is in the form of a bank guarantee, the company shall deposit with a scheduled commercial bank, in cash, a sum of at least 2.5 per cent of the total amount earmarked for buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be, as and by way of security for fulfillment of the obligations under the regulations by the company.</p>	<p>of the amount earmarked for the buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be.</p> <p>(ii) The escrow amount referred to in sub-regulation (i) may be in the form of,--</p> <ul style="list-style-type: none"> <li>a) cash deposited with any scheduled commercial bank; or</li> <li>b) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank.</li> <li>c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin, with the merchant banker, or</li> <li>d) government securities with appropriate margin</li> <li>e) units of mutual funds invested in gilt funds and overnight schemes, or</li> <li>f) a combination of above.</li> </ul> <p>(v) Where part of the escrow amount is in the form <b>other than the cash</b>, the company shall deposit with a scheduled commercial bank, in cash, a sum of at least 2.5 per cent of the total amount earmarked for buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be, as and by way of security for fulfillment of the obligations under the regulations by the company.</p>

## Chapter 3: Buy-backs through Tender Offers

This chapter of the Report sets out the recommendations of the sub-group with respect to buy-backs that are undertaken through the tender offer process.

### *I. Revision of Offer Price*

The Buy-back Regulations currently does not provide for companies to revise the maximum buy-back price once approved by the board of directors or shareholders, as applicable. However, there may be a substantial delay between the time when the buy-back is approved by the board or shareholders and the time when the offer is actually opened. Accordingly, it is proposed that the board of directors should be allowed the flexibility to revise the buy-back price prior to the opening of the buy-back offer. Such flexibility is also granted to acquirers under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and under the SEBI (Delisting of Equity Shares) Regulations, 2021.

Current Provision in the Buy-back Regulations	Proposed Changes
<p>Regulation 5</p> <p>(iv)...</p> <p>(c) Provided that where the buy-back is through tender offer from existing securities holders, the explanatory statement shall contain the following additional disclosures:</p> <p>(i) the maximum price at which the buy-back of shares or other specified securities shall be made and whether the board of directors of the company is being authorised at the general meeting to determine subsequently the specific price at which the buy-back may be made at the appropriate time;</p> <p>...</p>	<p>Regulation 5</p> <p>(iv)...</p> <p>(c) Provided that where the buy-back is through tender offer from existing securities holders, the explanatory statement shall contain the following additional disclosures:</p> <p>(i) the maximum price at which the buy-back of shares or other specified securities shall be made and whether the board of directors of the company is being authorised at the general meeting to determine subsequently the specific price at which the buy-back may be made at the appropriate time;</p> <p><b><i>Provided however that, until one working day prior to the opening of the buy-back offer, the board of directors shall be entitled to increase the maximum buy-back price and accordingly decrease the number of securities proposed to be bought back such that there is no change in the aggregate size of the buy-back.</i></b></p> <p>...</p>

## II. Review of Letter of Offer by SEBI

The Buy-back Regulations require a draft letter of offer (“**DLOF**”) to be submitted to the SEBI for review. A window is provided to the SEBI to submit its comments to the DLOF. The merchant banker is then required to submit a letter of offer (“**LOF**”) incorporating the SEBI’s comments. To simplify the process and reduce timelines, the sub-group proposes that the SEBI review process can be removed and that merchant bankers be allowed to directly disseminate the LOF to the shareholders. Merchant bankers will be required to certify compliance with the Buy-back Regulations in the LOF and to the SEBI prior to the opening of an offer.

The sub-group recognizes that certain checks and balances need to be specified to ensure that merchant bankers act impartially when certifying compliance.

Current Provision in the Buy-back Regulations	Proposed Changes
<p>Regulation 8</p> <p>(i) The company shall within five working days of the public announcement file the following with the Board:</p> <p>a) a draft letter of offer, along with a soft copy, containing disclosures as specified in <b>Schedule III</b> through a merchant banker who is not associated with the company.</p> <p>b) a declaration of solvency in specified form and in a manner provided in sub-section (6) of section 68 of the Companies Act.</p> <p><b>c) fees specified in Schedule V.</b></p> <p>(ii) The Board may provide its comments on the draft letter of offer not later than seven working days of the receipt of the draft letter of offer: <b>Provided</b> that in the event the Board has sought clarifications or additional information from the merchant banker to the buy-back offer, the period of issuance of comments shall be extended to the seventh working day from the date of receipt of satisfactory reply to the clarification or additional information sought:</p>	<p>Regulation 8</p> <p>(i) The company shall within five working days of the public announcement file the following with the Board:</p> <p>a) a letter of offer, along with a soft copy, containing disclosures as specified in <b>Schedule III</b> through a merchant banker who is not associated with the company.</p> <p><b>b) a certificate in form as specified by the Board, issued by the merchant banker, who is not an associate of the company, certifying that the buy-back offer complies with these regulations and the letter of offer contains the information required under these regulations</b></p> <p>c) a declaration of solvency in specified form and in a manner provided in sub-section (6) of section 68 of the Companies Act.</p> <p><b>d) fees specified in Schedule V.</b></p> <p><b><i>The term “associate” shall have the meaning assigned to such term in Regulation 21A of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, as amended from time to time.</i></b></p>

Current Provision in the Buy-back Regulations	Proposed Changes
<p><b>Provided</b> further that in the event the Board specifies any changes, the merchant banker to the buy-back offer and the company shall carryout such changes in the letter of offer before it is dispatched to the shareholders.</p>	

### III. Escrow Account

For buy-backs through the tender offer route, the Buy-back Regulations require the escrow account to be opened before the opening of the offer but do not specify an exact date. The sub-group proposes a timeline of two working days from the date of the public announcement in this regard.

Current Provision in the Buy-back Regulations	Proposed Changes
<p>Regulation 9</p> <p>(xi) Escrow account</p> <p>(a) The company shall, as and by way of security for performance of its obligations under the regulations, on or before the opening of the offer, deposit in an escrow account such sum as specified in clause (b);</p> <p>(b) The escrow amount shall be payable in the following manner:</p> <p>(i) if the consideration payable does not exceed Rupees 100 crores; 25 per cent of the consideration payable;</p> <p>(ii) if the consideration payable exceeds Rupees 100 crores, 25 per cent upto Rupees 100 crores and 10 per cent thereafter.</p> <p>(c) The escrow account referred to in this regulation shall consist of</p>	<p>Regulation 9</p> <p>(xi) Escrow account</p> <p>(a) The company shall, <b><i>within two working days of the public announcement</i></b>, as and by way of security for performance of its obligations under the regulations, deposit in an escrow account such sum as specified in clause (b);</p> <p>(b) The escrow amount shall be payable in the following manner:</p> <p>(i) if the consideration payable does not exceed Rupees 100 crores; 25 per cent of the consideration payable;</p> <p>(ii) if the consideration payable exceeds Rupees 100 crores, 25 per cent upto Rupees 100 crores and 10 per cent thereafter.</p> <p>(c) The escrow account referred to in this regulation shall consist of</p> <p>(i) cash including bank deposits deposited with any scheduled commercial bank;</p>



Current Provision in the Buy-back Regulations	Proposed Changes
<p>(i) cash deposited with a scheduled commercial bank, or  (ii) bank guarantee in favour of the merchant banker, or  (iii) deposit of acceptable securities with appropriate margin, with the merchant banker, or  (iv) a combination of (i), (ii) and (iii).</p> <p><b>Explanation:</b> The cash component of the escrow account may be maintained in an interest bearing account, provided that the merchant banker ensures that the funds are available at the time of making payment to shareholders</p> <p>(d) Where the escrow account consists of deposit with a scheduled commercial bank, the company shall, while opening the account, empower the merchant banker to instruct the bank to make payment the amount lying to the credit of the escrow account, as provided in the regulations.</p> <p>(e) Where the escrow account consists of a bank guarantee, such bank guarantee shall be in favour of the merchant banker and shall be valid until thirty days after the expiry of buyback period.</p> <p>(f) The company shall, in case the escrow account consists of securities, empower the merchant banker to realise the value of such escrow account by sale or otherwise and if there is</p>	<p>(ii) government securities with appropriate margin or  (iii) units of mutual funds invested in gilt funds and overnight schemes;  (iv) bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank;  (v) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with the appropriate margin; or  (vi) a combination of above</p> <p><b>Explanation:</b> The cash component of the escrow account may be maintained in an interest bearing account, provided that the merchant banker ensures that the funds are available at the time of making payment to shareholders.</p> <p>(d) Where the escrow account consists of deposit with a scheduled commercial bank, the company shall, while opening the account, empower the merchant banker to instruct the bank to make payment the amount lying to the credit of the escrow account, as provided in the regulations.</p> <p>(e) Where the escrow account consists of a bank guarantee, such bank guarantee shall be in favour of the merchant banker and shall be valid until thirty days after the expiry of buyback period <b>or until the completion of all obligations under these regulations, whichever is later. The same shall not be returned by the merchant banker until the completion of all obligations under the regulations.</b></p>

Current Provision in the Buy-back Regulations	Proposed Changes
<p>any deficit on realisation of the value of the securities, the merchant banker shall be liable to make good any such deficit.</p> <p>(g) In case the escrow account consists of bank guarantee or approved securities, these shall not be returned by the merchant banker till completion of all obligations under the regulations.</p> <p>(h) Where the escrow account consists of bank guarantee or deposit of approved securities, the company shall also deposit with the bank in cash a sum of at least one per cent of the total consideration payable, as and by way of security for fulfillment of the obligations under the regulations by the company.</p> <p>(i) On payment of consideration to all the securities holders who have accepted the offer and after completion of all formalities of buy-back, the amount, guarantee and securities in the escrow, if any, shall be released to the company.</p> <p>(j) The Board in the interest of the securities holders may in case of nonfulfillment of obligations under the regulations by the company forfeit the escrow account either in full or in part.</p>	<p>(f) The company shall, in case the escrow account consists of securities, empower the merchant banker to realise the value of such escrow account by sale or otherwise and if there is any deficit on realisation of the value of the securities, the merchant banker shall be liable to make good any such deficit.</p> <p>(g) In case the escrow account consists of approved securities, these shall not be returned by the merchant banker till completion of all obligations under the regulations.</p> <p><b>(h) <i>Where part of the escrow account is in the form other than the cash, the company shall deposit with a scheduled commercial bank, in cash, a sum of at least 2.5 per cent of the total amount earmarked for buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be, as and by way of security for fulfilment of the obligations under the regulations by the company.</i></b></p> <p>(i) On payment of consideration to all the securities holders who have accepted the offer and after completion of all formalities of buy-back, the amount, guarantee and securities in the escrow, if any, shall be released to the company.</p> <p>(j) The Board in the interest of the securities holders may in case of nonfulfillment of obligations under the regulations by the company forfeit the escrow account either in full or in part.</p>

## Chapter 4: Miscellaneous Matters

### *I. Total Limit for Buy-backs*

The Buy-back Regulations currently limit the size of any buy-backs to 25% of the paid-up capital and free reserves of the company through tender offer route. This is to be tested based on both the standalone and consolidated financial statements of the company. The sub-group is of the view that while such a limit can continue to exist in respect of buy-backs undertaken through the open market (which are prone to a greater degree of misuse), the limit can be enhanced for buy-backs undertaken through tender offers. Tender offers are an efficient way of returning surplus funds to shareholders. Accordingly, the sub-group recommends that for buy-backs undertaken through tender offers, the limit can be enhanced to 40%.

Further, there is ambiguity when such limit is tested based on both the consolidated as well as standalone financial statements of the company. For the sake of clarity, the sub-group recommends that the Buy-back Regulations should specify that the size of the buy-back cannot exceed more than 25% or 40% (as applicable) of the paid-up capital and free reserves of the company based on the standalone or consolidated financial statements, whichever sets out a lower amount. The SEBI can make a reference to the Ministry of Corporate Affairs to ensure that the amendments set out below are also reflected in Section 68 of the Companies Act, 2013.

<b>Current Provision in the Buy-back Regulations</b>	<b>Proposed Changes</b>
<p>Regulation 4</p> <p>(i) The maximum limit of any buy-back shall be twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company, based on both standalone and consolidated financial statements of the company: <b>Explanation:</b> In respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this regulation shall be construed with respect to its total paid-up equity capital in that financial year;</p> <p>(ii) The ratio of the aggregate of secured and unsecured debts owed by the company to the paid-up capital and free reserves after buy-back shall,</p>	<p>Regulation 4</p> <p>(i) The maximum limit of any buy-back shall be twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company, based on <b>the</b> standalone or consolidated financial statements of the company, <b>whichever sets out a lower amount:</b> <b>Provided however, that in the case of buy-backs undertaken through tender offers, the maximum limit shall be forty per cent of the aggregate 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.</b> <b>Provided further that in the event that the company undertakes more than one</b></p>

Current Provision in the Buy-back Regulations	Proposed Changes
<p>a) be less than or equal to 2:1, based on both standalone and consolidated financial statements of the company: Provided that if a higher ratio of the debt to capital and free reserves for the company has been notified under the Companies Act, 2013, the same shall prevail</p> <p>....</p>	<p><b><i>buy-back through a tender offer in any financial year, the aggregate size of all buy-backs shall not exceed forty per cent of the aggregate 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.</i></b></p> <p><b><i>Explanation:</i></b> In respect of the <i>number of equity shares bought back</i> in any financial year, <b><i>the maximum limit shall be</i></b> twenty-five per cent <b><i>and be construed with respect to the company's</i></b> total paid-up equity capital in that financial year;</p> <p>(ii) The ratio of the aggregate of secured and unsecured debts owed by the company to the paid-up capital and free reserves after buy-back shall,</p> <p>a) be less than or equal to 2:1, based on <b><i>the</i></b> standalone <b><i>or</i></b> consolidated financial statements of the company, <b><i>whichever sets out a lower amount:</i></b></p> <p>Provided that if a higher ratio of the debt to capital and free reserves for the company has been notified under the Companies Act, 2013, the same shall prevail</p> <p>....</p>

## **II. Cooling-off Period between Buy-backs**

The Buy-back Regulations restrict companies from undertaking more than one buy-back in any twelve month period. Since companies may need to return surplus cash to shareholders more than once in such period, the sub-group proposes that companies should be allowed to undertake up to two buy-backs within such period provided that such buy-backs are undertaken through the tender offer route only. Further a cooling-off period of six months between two buy-backs can be included. Such buy-backs will, in any case, be subject to the annual limit of 40% of the paid-up capital and free reserves of the company. A clarification will need to be included in Regulation 5 to state that shareholders' approval will be required where the ten percent limit is exceeded as a result of more than one buy-back being undertaken in a financial year. The sub-group also proposes that only such companies which are net debt free

should be permitted to undertake more than one buy-back in a financial year. The SEBI can make a reference to the Ministry of Corporate Affairs to ensure that the amendments set out below are also reflected in Section 68 of the Companies Act, 2013.

Current Provision in the Buy-back Regulations	Proposed Changes
<p>Regulation 4</p> <p>(vii) A company shall not make any offer of buy-back within a period of one year reckoned from the date of expiry of buyback period of the preceding offer of buy-back, if any.</p>	<p>Regulation 4</p> <p>(vii) A company shall not make any offer of buy-back within a period of one year reckoned from the date of expiry of buyback period of the preceding offer of buy-back, if any.</p> <p><b><i>Provided however that a company which is net debt free shall be permitted to undertake up to two buy-backs in a single financial year subject to both buy-backs being undertaken through tender offers and the second buy-back being undertaken not earlier than six months from the date of expiry of the buy-back period of the preceding offer for buy-back.</i></b></p> <p><b><i>For the purpose of this clause, a company which is “net debt free” means a company whose reserves of cash and cash balances including bank deposits, government securities, units of mutual funds investing in gilt funds and overnight schemes exceeds its borrowed funds and contingent liabilities based on such financial statements of the company, as audited by statutory auditor, which were published not earlier than six months preceding the date of approval of the buy-back offer by the board of directors.</i></b></p>
<p>Regulation 5</p> <p><b>5. (i) The company shall not authorise any buy-back (whether by way of</b></p>	<p>Regulation 5</p>

Current Provision in the Buy-back Regulations	Proposed Changes
<p>tender offer or from open market or odd lot) unless:</p> <p>a) The buy-back is authorised by the company's articles;</p> <p>b) A special resolution has been passed at a general meeting of the company authorising the buy-back:</p> <p><b>Provided</b> that nothing contained in this clause shall apply to a case where the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company, based on both standalone and consolidated financial statements of the company; and such buy-back has been authorised by the board of directors by means of a resolution passed at its meeting.</p>	<p><b>5.</b> (i) The company shall not authorise any buy-back (whether by way of tender offer or from open market or odd lot) unless:</p> <p>a) The buy-back is authorised by the company's articles;</p> <p>b) A special resolution has been passed at a general meeting of the company authorising the buy-back:</p> <p><b>Provided</b> that nothing contained in this clause shall apply to a case where the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company, based on <del>both</del> <b>the</b> standalone and consolidated financial statements of the company, <b>whichever sets out a lower amount</b>; and such buy-back has been authorised by the board of directors by means of a resolution passed at its meeting.</p> <p><b><i>Explanation: A special resolution shall be required where more than one buy-back is undertaken by a company in a single financial year and such buy-backs cumulatively exceed ten percent of the total paid-up equity capital and free reserves of the company.</i></b></p>

### **Chapter 5: Post buy-back Compliance**

Under Regulations 11 and 21 of the Buy-back Regulations, companies are required to extinguish the shares and physically deface 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. The company's secretarial auditor is, however, better placed to ensure compliance with

such requirement. The sub-group proposes to the following changes to the Buy-Back Regulations:

Current Provision in the Buy-back Regulations	Proposed Changes
<p>Regulation 11</p> <p>(i) The company shall extinguish and physically destroy the securities certificates so bought back in the presence of a registrar to issue or the Merchant Banker and the Statutory Auditor within fifteen days of the date of acceptance of the shares or other specified securities.</p> <p><b>Provided</b> that the company shall ensure that all the securities bought-back are extinguished within seven days of expiry of buy-back period.</p> <p><b>Explanation:</b> The aforesaid period of fifteen days shall in no case extend beyond seven days of expiry of buy-back period.</p> <p>(ii) The shares or other specified securities offered for buy-back if already dematerialised shall be extinguished and destroyed in the manner specified under the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, and the bye-laws, the circulars and guidelines framed thereunder.</p> <p>(iii) The company shall, furnish a certificate to the Board certifying compliance as specified in sub-regulation (i) above, and duly certified and verified by:</p> <p>a) the registrar and whenever there is no registrar, by the merchant banker;</p> <p>b) two directors of the company, one of whom shall be a managing director, where there is one; and</p> <p>c) the statutory auditor of the company,</p>	<p>Regulation 11</p> <p>(i) The company shall extinguish and physically destroy the securities certificates so bought back in the presence of <b>the company's secretarial auditor</b> within fifteen <b>working</b> days of the date of acceptance of the shares or other specified securities.</p> <p><b>Provided</b> that the company shall ensure that all the securities bought-back are extinguished within seven <b>working</b> days of expiry of buy-back period.</p> <p><b>Explanation:</b> The aforesaid period of fifteen <b>working</b> days shall in no case extend beyond seven <b>working</b> days of expiry of buy-back period.</p> <p>(ii) The shares or other specified securities offered for buy-back if already dematerialised shall be extinguished and destroyed in the manner specified under the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, and the bye-laws, the circulars and guidelines framed thereunder.</p> <p>(iii) The company shall, furnish a certificate to the Board certifying compliance as specified in sub-regulation (i) above, and duly certified and verified by:</p> <p>a) the registrar and whenever there is no registrar, by the merchant banker;</p> <p>b) two directors of the company, one of whom shall be a managing director, where there is one; and</p> <p>c) the <b>secretarial</b> auditor of the company</p> <p>This certificate shall be furnished to the Board within seven <b>working</b> days of</p>

Current Provision in the Buy-back Regulations	Proposed Changes
<p>This certificate shall be furnished to the Board within seven days of extinguishment and destruction of the certificates.</p>	<p>extinguishment and destruction of the certificates.</p>
<p>Regulation 21</p> <p>(i) Subject to the provisions of sub-regulation (ii) and (iii), the provisions of regulation 11 pertaining to the extinguishment of certificates for tender offers shall apply for extinguishment of certificates under this Chapter.</p> <p>(ii) The company shall complete the verification of acceptances within fifteen days of the payout.</p> <p>(iii) The company shall extinguish and physically destroy the securities certificates so bought back during the month in the presence of a Merchant Banker and the Statutory Auditor, on or before the fifteenth day of the succeeding month:  <b>Provided</b> that the company shall ensure that all the securities bought-back are extinguished within seven days of expiry of buy-back period.</p>	<p>Regulation 21</p> <p>(i) Subject to the provisions of sub-regulation (ii) and (iii), the provisions of regulation 11 pertaining to the extinguishment of certificates for tender offers shall apply for extinguishment of certificates under this Chapter.</p> <p>(ii) The company shall complete the verification of acceptances within fifteen <b>working</b> days of the payout.</p> <p>(iii) The company shall extinguish and physically destroy the securities certificates so bought back during the month in the presence of <b>the secretarial auditor of the company</b>, on or before the fifteenth day of the succeeding month:  <b>Provided</b> that the company shall ensure that all the securities bought-back are extinguished within seven <b>working</b> days of expiry of buy-back period.</p>



## SECTION II

### Chapter 1: Open Market Buy-backs through the Book-building Process

While the framework for effecting open market buy-backs through the book-building process has been provided under the Buy-back Regulations, it has been rarely used. The sub-group has considered this matter and proposes a revised mechanism for effecting 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
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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.

### **Chapter 2: Definition of Specified Securities**

The definition of “specified securities” under the Buy-back Regulations includes employees’ stock option. The sub-group proposes that stock appreciation rights granted to employees in accordance with the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 should also be considered specified securities for parity with stock options. SEBI can also make a reference to the Ministry of Corporate Affairs for the necessary changes to the Companies Act, 2013.

### **Chapter 3: Buy-back from Odd-lot Holders**

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, in any case, one share. The sub-group proposes that this method of undertaking buy-backs, that is, through odd-lots, can be removed from the Buy-back Regulations.

### **Chapter 4: Consent Requirements**

For the sake of transparency, if consents are required from the company’s lenders, a disclosure should be included in the public announcement, the explanatory statement circulated to the company’s shareholders and/or letter of offer to this effect. The sub-group proposes that Schedules I and IV should be amended to include such obligation.

### **Chapter 5: Standardizing Timelines**

The timelines for certain matters are set out in terms of “working days” whereas for other matters, they are set out in terms of calendar days. The sub-group proposes that for consistency, all timelines should be set out in terms of working days.

## **Chapter 6: Method of Submission**

For all documents that need to be submitted to the SEBI, including the public announcement, the letter of offer, and certificates from the merchant banker and from the company, the SEBI can consider creating a dedicated email address to which such submissions can be made.

## **Chapter 7: Taxation Matters**

### **Background**

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 distributed income on buyback of equity shares of a listed company, thus changing the incidence of tax from the hands of shareholders 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 in dividends in the hands of recipients at the applicable rates.

### **Problem Statement**

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. 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.

The listed company resorts to both buybacks and dividends distribution as routes to distribute surplus cash to the shareholders. Given that the incidence of tax in case of distribution of dividends is now shifted to the hands of recipients, accordingly, a realignment of tax incidence in case of distribution of surplus through buyback with that of distribution of dividend is desirable.

### **Analysis**

Based on the available data on buyback exercises undertaken by 68 listed companies during FY 2020, it is seen that in as many as 19 such companies ([Annexure-B](#)), promoters have tendered shares more than their pre-buyback shareholding. As a result, these companies have paid buyback tax not only on the shares tendered by the promoters as per their pre-buyback shareholding, but also on the additional shares tendered by them as some of the existing public shareholders did not tender their shares.

In these 19 companies, the total tax paid by these companies aggregated to Rs. 2988.79 Cr, out of which the tax paid by these companies on the shares tendered by the promoters was Rs. 2734.35 Cr. In any case, in all these exercises, 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.

### **Sub-group's recommendation**

The sub-group has acknowledged that, buy-backs are taxed in the hands of the company rather than 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. The sub-group therefore recommends that SEBI should make a reference to the Ministry of Finance recommending necessary amendments in this regard.

### **SEBI's proposal**

While SEBI is proposing to the Government to shift the incidence of tax on buyback from company to the hands of shareholders, pending the acceptance of that by government, public comments are solicited on the following-

- Should the company be instructed to distribute buyback consideration to the exiting/tendering shareholders including promoters, net of buyback tax payable by the company under section 115QA of Income Tax Act, 1961?

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**Annexure B**

SR No (1)	Promoters shareholding (%age)-pre buyback (2)	Promoters' shares accepted as a %age of total buyback (3)	Difference of promoters buyback to its holding (4)	Public shareholding (%age)-pre buyback (5)	Acceptance of public shares under Buyback (%age) (6)	Total Tax paid by company (In Cr) (7)	Tax paid by company for acceptance of promoter's shares under buyback out of col. (7) (In Cr) (8)
1	69.65	99.94	30.29	30.35	0.06	317	316.82
2	53.02	79.46	26.44	46.98	20.54	16.51	13.12
3	72.67	98.00	25.33	27.33	2.00	1.66	1.63
4	72.4	94.78	22.38	27.6	5.22	3.77	3.57
5	74.01	96.38	22.37	25.99	3.62	2144.5	2066.89
6	51.76	71.48	19.72	48.24	28.52	227.5	162.61
7	74.57	88.63	14.06	25.43	11.37	7.04	6.24
8	69.01	81.72	12.71	30.99	18.28	1.64	1.34
9	33.42	42.72	9.30	66.58	57.28	51.25	21.90
10	60.2	68.18	7.98	39.8	31.82	13.83	9.43
11	74.96	82.14	7.18	25.04	17.66	4.2	3.45
12	71.55	77.43	5.88	28.45	22.57	5.59	4.33
13	74.86	80.06	5.20	25.14	19.94	3.32	2.66
14	58.57	63.62	5.05	41.43	36.38	5.07	3.23
15	62.84	65.50	2.66	37.15	34.50	2.29	1.50
16	51.5	52.88	1.38	48.5	47.12	136.72	72.30
17	99.06	99.99	0.93	0.94	0.01	33.02	33.02
18	74.99	75.75	0.76	25.01	24.25	4.15	3.14
19	73.39	73.64	0.25	26.61	26.36	9.73	7.17