



N. A. SHAH ADVISORY SERVICES LLP

# BULLETIN

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CAPITAL MARKETS BULLETIN – MARCH 2023

## EXECUTIVE SUMMARY

- ◆ SEBI has introduced various changes in the timelines and procedural requirements and plans to phase out the stock exchange mechanism till 31<sup>st</sup> March 2025. Further, buyback through odd-lots is prohibited.
- ◆ New obligations have been put on the Investment Managers of InvITs and REITs by SEBI.
- ◆ Bidding period for public issue of debt securities and non-convertible redeemable preference shares have been prescribed.
- ◆ SEBI has issued formats of Issue Summary Document and disclosures to be made under SAST Regulations.
- ◆ In order to achieve the minimum public shareholding, SEBI has provided various methods and conditions specific to the methods.
- ◆ To increase the liquidity on Request for Quote (RFQ) Platform, the Alternative Investment Funds (AIFs) are required to undertake atleast 10% of their total secondary market trades in Corporate Bonds by value in a month by placing quote on RFQ platform.

## AMENDMENTS FOR BUYBACK OF SECURITIES

### ◆ General Conditions:

- All the limits for the purpose of buyback shall be based on the company's standalone **or** consolidated financial statements, whichever sets out a lower amount instead of both standalone **and** consolidated financial statements of the company.
- Buyback from odd-lot holders is no longer permitted.
- Obtaining of prior consent of lenders is now mandatory in case of a breach of any covenant with such lender before making buyback offer and the said fact should be disclosed in the letter of offer.
- A listed company shall be required to file the shareholders resolution with the SEBI and the stock exchanges within 7 working days instead of 7 days from the date of passing resolution.
- All the filings to be made to SEBI under the Buyback Regulations shall be in electronic mode and digitally signed by CS or any person authorised by the company.
- Details of security certificates extinguished shall be furnished within 7 working days instead of 7 days of destruction.
- Within 2 working days of expiry, the company shall issue a public advertisement containing details of buyback instead of 2 days.
- A final report in electronic mode shall be submitted with SEBI within 15 working days of the expiry period instead of 15 days.

### ◆ Buyback through Tender Offer:

Particulars	Erstwhile	Amendment
Relaxation to increase the maximum buy-back price and decrease the number of securities proposed to be bought back	No such relaxation	Till one working day prior to the record date, provided there shall be no increase in the offer size
Disclosure in public announcement of timeline for dispatching the offer letter	No such timeline	Within 2 working days from the record date
A copy of the public announcement to be sent to -	SEBI only	1) SEBI 2) Stock exchanges

<b>Particulars</b>	<b>Erstwhile</b>	<b>Amendment</b>
		(Copy shall also be available on the website of stock exchanges, merchant banker and the company)
Submission of draft letter of offer	To be submitted with SEBI	No such requirement. Instead, a certificate certifying the buyback offer is in compliance and letter of offer contains required information to be provided by merchant banker.
Opening date of offer-	Within 5 working days from the dispatch of offer letter	Within 4 working days from the record date
Offer shall be open for-	10 working days	5 working days
Timeline for depositing the requisite amount in the escrow account-	On or before the opening of offer	Within 2 working days of the public announcement
The escrow account shall consist of:	<ol style="list-style-type: none"> <li>1) Cash deposited with scheduled bank</li> <li>2) Bank guarantee in favour of merchant banker</li> <li>3) Acceptable securities with appropriate margin</li> <li>4) Combination of above</li> </ol>	<ol style="list-style-type: none"> <li>1) Cash including bank deposits with scheduled bank</li> <li>2) Bank guarantee issued in favour of merchant banker by scheduled bank</li> <li>3) Frequently traded and freely transferable equity shares or other freely transferable securities</li> <li>4) Government securities</li> <li>5) Units of mutual funds invested in gilt and overnight funds</li> <li>6) Combination of above</li> </ol>
Expiry period of bank guarantee in favour of merchant banker	30 days after the expiry of buyback period	30 working days after the expiry of buyback period or until the completion of

<b>Particulars</b>	<b>Erstwhile</b>	<b>Amendment</b>
		all obligations, whichever is later
In case the escrow account consists of-	Bank guarantee or approved securities, a deposit of at least 1% of the total consideration payable is required	Consideration other than cash, a deposit of at least 2.5% of the total consideration payable as required under the board or special resolution is required
Verification of offers, payment of consideration and returning of balance shares shall be made-	Within 7 working days of the closure of offer	Within 5 working days of the closure of offer
Extinguishment of securities certificates shall take place-	Within 15 days of acceptance of shares before – 1) Registrar to an issue 2) Merchant banker; and 3) Statutory auditor	Within 15 working days of acceptance of shares before – 1) Registrar to an issue 2) Merchant banker; and 3) Secretarial auditor
Last date of extinguishment of securities shall be-	7 days from the expiry of buy-back period	7 working days from the expiry of buy-back period
Certificate of compliance to be made within-	7 days of extinguishment and destruction of the certificates	7 working days of extinguishment and destruction of the certificates

◆ **Buyback from Open Market:**

<b>Particulars</b>	<b>Erstwhile</b>	<b>Amendment</b>
Utilisation of amount earmarked towards buyback in the board or special resolution-	Atleast 50%	Atleast 75%
Utilisation of amount earmarked towards buyback in the board or special resolution within	No such limit	Atleast 40%

<b>Particulars</b>	<b>Erstwhile</b>	<b>Amendment</b>
the initial half of the specified duration		
Window for buy back through stock exchange	No separate window	Separate window which shall be opened for the specified period
A copy of the public announcement to be sent to-	SEBI only	1) SEBI 2) Stock exchanges (Copy shall also be available on the website of stock exchanges, merchant banker and the company)
Restriction for buyback through stock exchanges	No such restrictions	Shall be undertaken only in respect of frequently traded shares and subject to placement of bids, price and volume as specified by SEBI
Opening date of offer-	Within 7 working days from the date of public announcement and shall close within six months from the opening date	Within 4 working days from the record date and shall close- <ul style="list-style-type: none"> <li>- Within 6 months, if the offer is opened till March 31, 2023</li> <li>- Within 66 working days, if the offer is opened between April 1, 2023 and March 31, 2024</li> <li>- Within 22 working days, if the offer is opened between April 1, 2024 and March 31, 2025</li> </ul>
Minimum limit for buyback from the open market-	Through any method- Atleast 15% of Paid-Up Share Capital and Free Reserves	Through the stock exchange mechanism- <ul style="list-style-type: none"> <li>- 15% of Paid up capital and Free reserves till March 31, 2023</li> </ul>

<b>Particulars</b>	<b>Erstwhile</b>	<b>Amendment</b>
		<ul style="list-style-type: none"> <li>- 10% of Paid up capital and Free reserves till March 31, 2024</li> <li>- 5% of Paid up capital and Free reserves till March 31, 2025</li> </ul> <p>Stock exchange mechanism shall not be permitted from April 1, 2025.</p>
Timeline for depositing the requisite amount in the escrow account-	Before the opening of offer	Within 2 working days of the public announcement
The escrow account shall consist of-	<ol style="list-style-type: none"> <li>1) Cash deposited with scheduled bank</li> <li>2) Bank guarantee in favour of merchant banker by scheduled bank</li> </ol>	<ol style="list-style-type: none"> <li>1) Cash deposited with scheduled bank</li> <li>2) Bank guarantee issued in favour of merchant banker by scheduled bank</li> <li>3) Deposit of frequently traded and freely transferable equity shares or other freely transferable securities</li> <li>4) Government securities</li> <li>5) Units of mutual funds invested in gilt and overnight funds</li> <li>6) Combination of above</li> </ol>
Expiry period of bank guarantee in favour of merchant banker	30 days after the expiry of buyback period or until the completion of all obligations, whichever is later	30 working days after the expiry of buyback period or until the completion of all obligations, whichever is later
Deposit of 2.5% of the total consideration payable as required under the board or special resolution is required in	Bank guarantee	Any consideration other than cash

<b>Particulars</b>	<b>Erstwhile</b>	<b>Amendment</b>
case of escrow account consisting of-		
Verification of acceptance shall be completed within-	15 days of payout	15 working days of payout
Extinguishment of securities certificates shall take place-	Before – 1) Merchant banker; and 2) Statutory auditor	Before – 1) Merchant banker; and 2) Secretarial auditor
Last date of extinguishment of securities shall be-	7 days from the expiry of buy-back period	7 working days from the expiry of buy-back period

◆ **Buyback through book building process:**

- The timelines have been prescribed for various events such as making of public announcement, commencement of buyback offer, intimation to stock exchanges, sending notices to shareholders regarding commencement of buyback, payment of consideration, etc.
- It prescribes additional disclosures required to be made in the public announcement in accordance with Schedule II and Schedule VI.
- It specifies the manner in which the buyback price is discovered under the book building process.
- The minimum period for buyback is reduced to 2 working days instead of existing 15 days.
- The promoters along with their associates shall not be allowed to participate in buyback through book building process.

**AMENDMENTS IN ICDS**

- ◆ SEBI has defined “Senior Management” as the officers and personnel of the issuer who are members of its core management team (excluding the board of directors) and shall also comprise all members of the management one level below the CEO or MD or WTD or Manager, functional heads, Company Secretary and the CFO.
- ◆ All the provisions as applicable to “Key Managerial Personnel” shall also apply to Senior Management.



## AMENDMENTS IN RELATION TO INVITS AND REITS (“INVESTMENT FUNDS”)

### ◆ **Definitions:**

- SEBI has amended the definition of change of control to clarify the following:
  - a. body corporate being listed will require to follow the definition of control in SAST Regulations and unlisted are required to follow the definition of control as defined in Companies Act, 2013.
  - b. other than body corporate, any change in its legal formation or ownership or change in controlling interest (at least 50%).
- The terms “Independent Director” and “Senior Management” are defined in line with the same definitions in the LODR and ICDS Regulations, respectively.

### ◆ **Accounts and audit:**

- The auditor of Investment manager being an individual shall not be re-appointed after one term (5 consecutive years) or an audit firm who has completed two terms (5 consecutive years each) unless a cooling period of five years is completed.
- The auditor is required to carry out limited review of entities whose accounts are to be consolidated with Investment funds as per applicable Ind AS.
- Any amount remaining unclaimed or unpaid out of distributions declared, shall be transferred to “Investor Protection and Education Fund”.

### ◆ **Application of the LODR Regulations for Investment Managers:**

- The board of directors shall comprise of atleast 6 directors including 1 woman independent director. The quorum for every meeting shall be 1/3<sup>rd</sup> of total strength or 3 directors, whichever is higher, including atleast 1 independent director.
- A vigil mechanism shall be formulated whose functioning shall be reviewed by the audit committee.
- A secretarial compliance report given by practising company secretary shall be submitted within 60 days from end of financial year along with annual report.
- A quarterly compliance reports to be submitted within 21 days from end of the quarter to recognized stock exchange.

### ◆ **Governance norms**

- SEBI has added a schedule covering governance norms covering minimum information to be placed before the board of directors of the investment manager and compliance certificate which shall be furnished by CEO, CFO, and compliance officer of Investment funds.

## AMENDMENTS FOR ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES

- ◆ SEBI has widened the definition of “Green Debt Security” to include securities issued for investing in projects of pollution prevention & control, blue bonds for sustainable water management, yellow bonds for solar energy generation and transition bonds for transitioning to more sustainable forms of operations.
- ◆ Trust Deeds shall now contain a provision which mandates the issuer to appoint a person nominated by the debenture trustees as a director on its board within one month from the date of receipt of nomination.
- ◆ A public issue of debt securities or non-convertible redeemable preference shares shall be kept open for minimum 3 working days and maximum 10 working days. Extensions for Bidding period is permitted in following cases:
  - Revision of price band or yield – for atleast 3 working days
  - Force majeure, banking strike or other circumstances – no timeline

However, the total bidding period shall not exceed 10 working days.

## INTRODUCTION OF ISSUE SUMMARY DOCUMENT (“ISD”)

- ◆ In order to facilitate consumption of data by stakeholders, relevant information / data points shall be provided by way of ISD to the Stock Exchanges and Depositories in the following scenarios:
  - IPO and FPO of specified securities;
  - Preferential issue, QIPs, rights issue, issue of ADRs, GDRs and FCCBs;
  - Buy-back of equity shares (through tender offer or from open market);
  - Open offer under SAST Regulations;
  - Voluntary delisting of equity shares

The formats of the ISDs are provided at [link](#).


## FORMATS FOR DISCLOSURES UNDER TAKEOVER REGULATIONS

- ◆ SEBI has issued formats of various disclosures to be made under SAST Regulations at [Link](#).

## MANNER OF ACHIEVING MINIMUM PUBLIC SHAREHOLDING

- ◆ In order to achieve the minimum public shareholding by the listed entity, SEBI, has provided the following methods subject to specific conditions:

Methods	Specific conditions
Issuance of shares to public through prospectus;	-
OFS of promoter shares to public through prospectus;	-
OFS of promoter shares through the secondary market;	-
Rights issue to public;	Promoters shall forgo their entitlement arising from such issue
Bonus issue to public;	Promoters shall forgo their entitlement arising from such issue
Allotment of shares under QIP;	-
Sale of promoter shares in the open market in following ways: (i) Upto 2% of total paid-up equity share capital, subject to 5 times average monthly trading volume of shares, (or) (ii) Upto 5% of paid-up capital during a FY subject to further conditions specified by SEBI.	The entity shall atleast 1 day prior to the proposed transfer announce the details to stock exchanges.  Further, the entity shall forward the undertaking from the promoters to the stock exchanges that they shall not buy shares in the open market or shall not subscribe to units of ETFs to which shares are transferred, as the case maybe.
Transfer of promoter shares to an ETF (maximum 5% of paid-up equity share capital)	
Increase in public holding pursuant to ESOP scheme (maximum 2% of paid-up equity share capital)	The promoters shall not be allotted any shares.
Any other method as approved by SEBI.	The entity shall make an application to SEBI and SEBI shall communicate its decision within 30 days.



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