

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

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

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 10000["the Companies (Amendment) Act, 1999 (21 of 1999)"]the Board, hereby, makes the following regulations, namely :-

**CHAPTER 1**

**PRELIMINARY**

**1. Short title and commencement :-**

(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.

## **2. Definitions :-**

(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;

(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 <sup>2</sup>['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 <sup>2</sup>["specified securities"] in accordance with these regulations;

(f) 'Companies Act' means Companies Act, 1956 (1 of 1956) as inserted by <sup>3</sup>["Companies (Amendment) Act, 1999 (21 of 1999)"];

(g) 'insider' means an insider as defined in clause (e) of regulation 2 of 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 the <sup>4</sup>["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);

(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 <sup>5</sup>["specified securities"] through a letter of offer from the holders of the <sup>6</sup> ["specified securities"] of the company.

(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.

[10003]Substituted for "shareholders", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10005]Substituted for "Companies (Amendment) Ordinance, 1998 (19 of 1998)", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti. No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10006]Substituted for "Companies (Amendment) Ordinance, 1998 (19 of 1998)", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti. No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10002]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in

S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]  
[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

## CHAPTER 2

### CONDITIONS OF BUY-BACK

#### **3. Applicability :-**

These regulations shall be applicable to buy-back of equity <sup>7</sup> ["specified securities"] of a company listed on a stock exchange.

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

#### **4. Company may buy-back Its own ["specified securities"]**

:-

**1.**

(1) A company may buy-back its <sup>1/FNR</sup>["specified securities"] by **any one of the following methods :-**

**(a) from the existing 10['security-holders'] on a proportionate basis through the tender offer;**

**(b) from open market through-**

**(i) book-building process,**

**(ii) stock exchange,**

**(c) from odd-lot holders.**

(2) A company shall not buy-back its <sup>1</sup>["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 <sup>12</sup> ["specified securities"] of the company.

[10003]Substituted for "shareholders", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

#### **5. Special resolution :-**

(1) For the purposes of passing a special resolution under sub-section (2) of section 77 A of the Companies Act, 1956, the explanatory statement to be annexed to the notice for the general meeting pursuant to section 173 of the Companies Act, 1956, shall contain disclosures as specified in Schedule 1.

(2) A copy of the resolution passed at the general meeting under sub-section (2) of section 77 A of the Companies Act, 1956, shall be filed with the Board and the stock exchanges where the <sup>13</sup> ["specified securities"] of the company are listed, within seven days from the date of passing of the resolution.

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

#### **5A. Board resolution. :-**

**14**

(1) A company, authorised by a resolution passed by the Board of Directors at its meeting, to buy back its securities under first proviso to clause (b) of sub-sec. (2) of Sec. 77-A of the Companies Act, 1956 as inserted by the Companies (Amendment) Ordinance, 2001 (No.7 of 2001), may buy back its 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 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,

(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 securities, shall be filed with the Board and the stock exchanges where the securities of the company are listed, within two days of the date of the passing of the resolution."

After regulation 5, a new regulation 5A shall be inserted by Securities and Exchange Board of India (Buy Back of Securities) (Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001, dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

### CHAPTER 3

#### BUY-BACK THROUGH TENDER OFFER

#### **6. Buy-back from existing [security-holders] :-**

**1.** A company may buy-back its <sup>16</sup>["specified securities"] from its existing <sup>17</sup> ['security-holders'] on a proportionate basis in accordance with the provisions of this Chapter.

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10003]Substituted for "shareholders", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

## **7. Additional disclosures :-**

The explanatory statement annexed to the notice under section 173 of the Companies Act <sup>4</sup>["or the public notice under sub-regulation (1) of regulation 5-A"] shall contain the disclosures mentioned in regulation 5 <sup>4</sup>[or regulation 5A]and also the following disclosures:-

(a) The<sup>4</sup>['maximum price']at which the buy-back of <sup>21</sup>["specified securities"] shall be made <sup>22</sup>["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 he made at the appropriate time"];

(b) If the promoter intends to offer their <sup>23</sup>["specified securities"],

(i) the quantum of <sup>24</sup>["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 <sup>25</sup> ["specified securities"] acquired, the price and the date of acquisition.

In regulation 7, after the words "the Companies Act" and before the words "shall contain the disclosures" the words shall be inserted by Securities and Exchange Board of India (Buy Back of Securities) (Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001, dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

In regulation 7, after the words "regulation 5" and before the words "and also the following" the words shall be inserted by Securities and Exchange Board of India (Buy Back of Securities) (Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001, dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

[10007]Substituted for " price ", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10010]Inserted vide " SECURITIES AND EXCHANGBOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti. No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4,

No. 576 [F. No. SEBI/LE/17999/99] [L]  
[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt. 21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No. SEBI/LE/17999/99] [L]

### **8. Filling of offer document, etc :-**

(1) The company which has been authorised by a special resolution <sup>3</sup>["or a resolution passed by the Board of Directors at its meeting" ] shall before buy back of <sup>27</sup>["specified securities"] make a public announcement in at least one English National Daily, one Hindi National Daily and 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.

(2) The public announcement shall specify a date, which shall be the 'specified date' for the purpose of determining the names of the <sup>28</sup>['security-holders'] to whom the letter of offer shall be sent.

(3) The specified date shall not be earlier than thirty days and not later than forty-two days from the date of the public announcement.

(4) The company shall within seven working days of the public announcement shall file with the Board a draft-letter of offer 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.

(6) The letter of offer shall be despatched 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 despatched to the <sup>29</sup> ['security-holders'].

(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, 1956.

In regulation 8, sub-regulation (1) after the words "authorised by a special resolution" and before the words "shall before buy back" the words shall be inserted by Securities and Exchange Board of India (Buy Back of Securities) (Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001, dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10003]Substituted for "shareholders", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

## **9. Offer procedure :-**

(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 <sup>1</sup>['security-holders'] so as to reach the <sup>1</sup>['security-holders'] before the opening of the offer.

(4) In case the number of <sup>2</sup>["specified securities"] offered by the <sup>1</sup>['security-holders'] is more than the total number of <sup>1</sup>["specified securities"] to be bought back by the company, the acceptances per <sup>2</sup>['security-holders'] shall be equal to the acceptances tendered by the <sup>2</sup>['security-holders'] divided by the total acceptances received and multiplied by the total number of <sup>37</sup>["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 <sup>38</sup>

["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.

[10003]Substituted for "shareholders", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

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#### **10. Escrow account :-**

(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 approval 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 <sup>1</sup>['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 <sup>1</sup>['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 <sup>41</sup> ['security-holders'] who accepted the offer and balance, if any, shall be utilised for investor protection.

[10003]Substituted for "shareholders", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

## **11. Payment to [security-holders] :-**

**1.**

(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 therein, such sum as would, together with 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.

(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 <sup>1</sup>['security-holders'] whose offer has been accepted or return the <sup>44</sup>['security certificates'] to the <sup>45</sup> ['security-holders'].

[10004]Substituted for "share certificates", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

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## **12. Extinguishment of certificate :-**

(1) The company shall extinguish and physically destroy the <sup>2</sup>['security certificates'] so bought back in the presence of a Registrar or the Merchant Banker, and the Statutory Audit or within seven days from the date of acceptance of the <sup>1</sup>["specified securities"].

(2) The <sup>2</sup>["specified securities"] offered for buy-back if already dematerialised shall be extinguished and destroyed in the manner specified under Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and the bye-laws framed thereunder.

(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.

(4) The particulars of the <sup>1</sup>['security certificates'] extinguished and destroyed under sub-regulation (1) shall be furnished to the stock exchanges where the <sup>50</sup>["specified securities"] of the company are listed within seven days of extinguishment and destruction of the certificates.

(5) The company shall maintain a record of <sup>51</sup> ['security certificates'] which have been cancelled and destroyed as prescribed in sub-section (9) of section 77A of the Companies Act, 1956.

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10004]Substituted for "share certificates", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

### **13. Odd-lot Buy-back :-**

The provisions pertaining to buy-back through tender offer as specified in this Chapter shall be applicable mutatis mutandis to odd-lot <sup>52</sup> ["specified securities"].

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

## CHAPTER 4

### BUY-BACK FROM THE OPEN MARKET

### **14. Buy-back from open market :-**

(1) A company intending to buy back its <sup>1</sup>["specified securities"] from the open market shall do so in accordance with the provisions of this Chapter.

(2) The buy-back of <sup>54</sup> ["specified securities"] from the open market may be in any one of the following methods:

(a) through stock exchange

(b) Book-building process.

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

**15. Buy-back through stock exchange :-**

A company shall buy-back its <sup>1</sup>["specified securities"] through the stock exchange as provided hereunder:

(a) <sup>1</sup>["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 5-A"] shall specify the maximum price at which the buy-back shall be made;

(b) the buy-back of the <sup>1</sup>["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;

(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 <sup>1</sup>["specified securities"] would be made;

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

(h) the buy-back of <sup>59</sup>["specified securities"] shall be made only through the order matching mechanism except 'all or none' order matching system;

(i) the company and the merchant banker shall give the information to the stock exchange on a daily basis regarding the <sup>60</sup> ["specified securities"] purchased for buy-back and the same shall be published in a national daily;

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

In regulation 15, clause (a) the words ["The special resolution referred to in regulation 5"] shall be substituted by Securities and Exchange Board of India (Buy Back of Securities)(Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001,dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

#### **16. Extmguishment of certificates :-**

(1) Subject to the provisions of sub-regulations (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.

#### **17. Buy-back through book building :-**

A company may buy-back its <sup>3</sup>["specified securities"] through the book-building process as provided hereunder:

(1)

(a) The special resolution referred to in regulation 5<sup>1</sup>["or the resolution passed by the Board of Directors at its meeting, as referred to in regulation 5-A"] 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:

(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 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 <sup>63</sup>['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 <sup>64</sup>['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 <sup>65</sup> ["specified securities"] have been accepted for buy-back.

(2) The provisions of sub-regulation (5) of regulation 9 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.

In regulation 17, sub-regulation (1) clause (a) after the words

["The special resolution referred to in regulation 5"] the words shall be added by Securities and Exchange Board of India (Buy Back of Securities) (Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001, dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

[10003]Substituted for "shareholders", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

### **18. Extinguishment of certificates :-**

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

#### CHAPTER 5

#### GENERAL OBLIGATIONS

### **19. Obligations of the company :-**

(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 <sup>2</sup>["or public notice referred to in clause (a) of sub-regulation (1) of regulation 5-A" ]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 <sup>2</sup>["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 <sup>2</sup>["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.

(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 <sup>2</sup>['security certificates'] extinguished and destroyed shall be furnished by the company to the stock exchange where the <sup>2</sup>["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 <sup>2</sup>["specified securities"] and non-transferable <sup>2</sup>["specified securities"] till the pendency of the lock-in or till the <sup>2</sup>["specified securities"] become transferable.

(6) [**\*\*2\***]

(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 <sup>75</sup>["specified securities"] bought;

(ii) price at which the <sup>76</sup>["specified securities"] bought;

(iii) total amount invested in buy-back;

(iv) details of the <sup>77</sup>['security-holders'] from whom <sup>78</sup>["specified securities"] exceeding one per cent of total <sup>79</sup> ["specified securities"] 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.

In regulation 19, sub-regulation (1) clause (a) after the words ["publicity material"] before the words ["shall contain"] the word

shall be added by Securities and Exchange Board of India (Buy Back of Securities) (Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001, dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

[10004]Substituted for "share certificates", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10008]Omitted for "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. ", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti. No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10003]Substituted for "shareholders", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

## **20. Obligations of the Merchant Banker :-**

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;

(h) the merchant banker shall ensure compliance of section 77A and section 77B of the Companies Act, 1956 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.

## **21. Action against intermediaries :-**

(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 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 6**

### **PENALTIES AND PROCEDURE**

## **22. Power of the Board to order investigation :-**

(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 Investi- gating 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.

**23. Duty to produce records, etc. :-**

(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 book, 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 copies of such books, accounts and records which, in 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 corporation as may be required in connection with the investigation and to 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.

**24. Submission of Report to the Board :-**

(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 may be empowered to do so in the interests of investors and the securities market.

**25. Power of the Board to issue directions :-**

(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 **80** ["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 Board in accordance with the Regulations applicable to it;

(e) prohibiting the persons concerned, its director, partners, members, employee and associates of such person, from accessing the securities market;

(f) disgorgement of any ill-gotten gains or profit 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 Securities and Exchange Board of India (Insider Trading) Regulations, 1992 and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995.

[10001]Substituted for "shares", vide "SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

#### CHAPTER 7

#### MISCELLANEOUS

### **26. Power of the Board to remove the difficulties :-**

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.

#### SCHEDULE 1

#### CONTENTS OF EXPLANATORY STATEMENT

#### **1. . :-**

the date of the Board meeting at which the proposal for buy-back was approved by the Board of Directors of the company;

#### **2. . :-**

the necessity for the buy-back;

#### **3. . :-**

the method to be adopted for the buy-back;

#### **4. . :-**

the maximum amount required under the buy-back and the sources of funds from which the buy-back would be financed;

#### **5. . :-**

the basis of arriving at the buy-back price;

**6. . :-**

the number of securities that the company proposes to buy-back;

**7. . :-**

(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 <sup>82</sup>["or the Meeting of the Board of Directors"];

(b) aggregate number of equity <sup>83</sup> ["specified securities"] purchased or sold by person 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.

In scheduled 1 clause (a) item (vii) and (x) after the word ["the general meeting"] the word shall be added by Securities and Exchange Board of India (Buy Back of Securities)(Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001,dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

**8. . :-**

intention of the promoters and persons in control of the company to tender <sup>1</sup>["specified securities"] for buy-back indicating the number of <sup>85</sup> ["specified securities"], details of acquisition with dates and price;

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F.

No.SEBI/LE/17999/99] [L]

**9. . :-**

a confirmation that there are no defaults subsisting in repayment of deposits, redemption of debentures or preference <sup>86</sup> ["specified securities"] or repayment of term loans to any financial institutions or banks;

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

**10. . :-**

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 <sup>87</sup> ["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);

In scheduled 1 clause (a) item (vii) and (x) after the word ["the general meeting"] the word shall be added by Securities and Exchange Board of India (Buy Back of Securities)(Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001,dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

**11. . :-**

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

**88**(iii) The company may specify in the explanatory statement to the notice that the **89** ['security-holders'] 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.

[10009]Substituted for " (iii) the Board of directors have formed the opinion as specified in clause (x) on reasonable grounds and that the company, having regard to its state of affairs, will not be rendered insolvent within a period of one-year from that date. ", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti. No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

[10003]Substituted for "shareholders", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

**SCHEDULE 2**

**CONTENTS OF THE PUBLIC ANNOUNCEMENT**

**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. <sup>90</sup> ["or the contents of public notice issued after the passing of the resolution by the Board of Directors authorising the buy back"]

In scheduled II, item (5) after the word ["approving the buy back was passed" ] the word shall be added by Securities and Exchange Board of India (Buy Back of Securities)(Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001,dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

**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 at 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 date 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.

**14. . :-**

Present capital structure (including the number of fully paid and partly paid securities) and shareholding pattern.

**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 equity <sup>91</sup> ["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.

[10001]Substituted for "shares", vide " SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

**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 should be dated and signed by the Board of Directors of the company.

SCHEDULE 3

DISCLOSURES TO BE MADE IN THE LETTER OF OFFER

**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. <sup>92</sup> ["or the contents of public notice issued after the passing of the resolution by the Board of Directors authorising the buy back"]

In scheduled III, item (6) after the word ["approving the buy back was passed" ] the word shall be added by Securities and Exchange Board of India (Buy Back of Securities)(Amendment) Regulations, 2001. Noti. No. F.No. SEBI/LGL/40935/2001,dated. 28/11/2001, Gaz. of India. Exty.. Part II, Sec. 3(ii), No. 874, dated . 28/11/2001 part.4.

**7.** . :-

The necessity for the buy-back.

**8.** . :-

The process to be adopted for the buy-back.

**9.** . :-

The process to be adopted for 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 un-audited 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 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 equity<sup>93</sup> ["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.

[10001]Substituted for "shares", vide "SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

**19. . :-**

Management discussion and analysis on the likely impact of buy-back on the company's earnings, public holdings, holdings of NRIs/Flls, etc., promoters holdings and any change in management structure.

**20. . :-**

The details of statutory approval 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 whole time directors that there are no defaults subsisting in repayment of deposits, redemption of debentures or preference<sup>94</sup> ["specified securities"] or repayment of a term loans to any financial institutions or banks.

(2) A declaration to be signed by at least two whole time directors, one of whom shall be the managing director 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).

[10001]Substituted for "shares", vide "SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998" Dt.21st September, 1999 Published in S.E.B.I., Noti.No. S.O. 776(E), dated September 21, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st September, 1999, pp. 3-4, No. 576 [F. No.SEBI/LE/17999/99] [L]

**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.

**26. . :-**

The offer document should be dated and signed by the Board of Directors of the company.

SCHEDULE 4

SECURITIES ANDEXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 1998

**1. . :-**

**95** 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:-

<b>Offer size</b>	<b>Fee (Rs.)</b>
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
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"

In the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998, in Schedule IV, paragraph (1), shall be substituted in place Of :- "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 :- " Size of the buy-back offer Proposed fee (Rs.) upto 5 crores 25,000 more than 5 crores and upto 10 crores 50,000 more than 10 crores and upto 50 crores 75,000 more than 50 crores and upto 100 crores 1,00,000 more than 100 crores and upto 500 crores 2,00,000 more than 500 crores 5,00,000 by the Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations, 2006.

**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.