Our Views

Buy-back of securities to become easier – much needed boost!

Capital optimization is an important area for a corporate. At times, this requires returning of the excess capital back to the shareholders. In situations where excess capital is available, corporates resort to buy-back of its own shares from the shareholders. Earlier a company was prohibited from buying its own shares. In 1998-99, the laws changed, both Companies Act and SEBI guidelines made provisions for companies to buy-back its own shares. Indian regulations require companies to cancel the shares that it buys back unlike in some other countries where it's allowed to keep those shares alive on its own Balance Sheet.

Over a period, buy-back regulations have also evolved with the growth and complexity of the market. Initially buy-back was allowed only from open market through stock exchanges. Subsequently Tender method for buy-back was also introduced. It was felt that stock exchange route is less efficient as it may be difficult to buy-back through this route the full quantity without affecting the share price, also it may take a long time to complete it. Further 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. Therefore, a time bound program under the tender route was considered as a superior method.

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.

Considering the constraints of the buy-back through stock exchange route SEBI at its Board meeting held on December 20, 2022 decided that the buy-back through stock exchange route to be phased out in a gradual manner. Also the process of the tender route is further liberalised.

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.

Therefore SEBI board has proposed the following changes.

1. Reduction in timeline for completion of Buyback by 18 days by removing the requirement of filing draft letter of offer with SEBI and its observations thereof, and reduction of the duration of the tendering period and period available for payment of consideration to the shareholders

2. Permitting upward revision of buy-back price until one working day prior to the record date

3. Making it mandatory to place the relevant advertisements/ documents with respect to buyback, such as, copy of the public announcement, letter of offer etc. in the respective website of the stock exchange(s), merchant banker and the company for better dissemination of information to shareholders

I believe that the new regime to move to one 100% tender route for buy-back with a shorter timeline and ability to revise the price upwards until the late stage will make the buy-back scheme much more robust, market and investors friendly.

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