



Consultation Paper

Streamlining the Timelines followed in Open Offers and Buy-back Tender Offers

Objective

1. The objective of this paper is to seek comments / views from various stakeholders including market intermediaries and the public on procedure followed with respect to the timelines of various activities involved in Open Offers and Buy-back offers in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 [hereinafter referred to as "Takeover Regulations"] and SEBI (Buyback of Securities) Regulations, 2018 [hereinafter referred to as Buy-Back Regulations] respectively.
2. The proposed changes in the timelines of procedural activities would help reduce the overall time taken for completion of Open Offer from 62 working days to 42 working days and overall time for completion of Buyback from 43 working days to 36 working days, which would be investor-friendly and make the process more efficient.

Background

3. Existing Takeover Regulations came into effect from September 23, 2011. The existing timelines for the procedural activities under open offers are as per the recommendations of Takeover Regulations Advisory Committee (TRAC) report in 2010 as per the market conditions prevailing at that point of time.
4. Similar to open offers, the timelines of various activities in Buy-back tender offers were prescribed in Buy-Back Regulations in 2018.

Need for Review

5. Considering the technological advancements in digital and fin-tech and changes made in the manner of tendering and settlement of shares, a need was felt to review the overall timelines for procedural activities, including the duration of the tendering period, involved in the open offers and buy-back tender offers so as to conclude the same in a more efficient and time bound manner and also to synchronize the timelines of similar activities across all the tender offers, i.e. Open Offers, Buybacks and Delisting Offers, to the extent possible.
6. Primary Market Advisory Committee ("PMAC") agreed to the proposals and advised SEBI that the change may be done in consultation with the Association of Investment Bankers of India ("AIBI"), as a majority of such procedural activities are being carried out by Manager to the Offer i.e. Merchant Bankers.
7. AIBI welcomed the proposal regarding review of the timelines of various procedural activities in open offers and buyback tender offers. Accordingly, comments are being sought from the public on the following proposed changes in

the timelines of procedural activities involved in the open offer and buy-back process.

Proposals

8. The proposals regarding streamlining the timelines of various procedural activities in the open offers and buyback offers are as under:

A. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

The timelines of various procedural activities involved in the open offers and the proposed timelines are tabulated below. As observed from the table, the proposed amendments would help reduce the overall time required in the open offer process from the existing timeline of 62 working days to proposed timeline of 42 working days.

<i>Particulars of activities in the open offer process</i>	<i>Existing timeline(in working days)</i>	<i>Proposed timeline (in working days)</i>	<i>Change in the timelines</i>
<i>Public Announcement</i>	<i>T</i>	<i>T</i>	<i>--</i>
<i>Publishing of Detailed Public Statement</i>	<i>T+5</i>	<i>T+3</i>	<i>-2</i>
<i>Submission of the Draft Letter of Offer with SEBI</i>	<i>T+10</i>	<i>T+5</i>	<i>-3</i>
<i>Last date for making of a competitive offer (i.e. within 15 working days from the DPS)</i>	<i>T+20</i>	<i>T+18</i>	<i>--</i>
<i>Tentative day of receipt of observations from SEBI</i>	<i>T+25</i>	<i>T+20</i>	<i>--</i>
<i>Last day for dispatch of the Letter of Offer to the shareholders</i>	<i>T+32</i>	<i>T+25</i>	<i>-2</i>
<i>Independent Directors Committee Recommendation(latest by)</i>	<i>T+35</i>	<i>T+28</i>	<i>--</i>
<i>Pre-Offer Advertisement</i>	<i>T+36</i>	<i>T+29</i>	<i>--</i>
<i>Upward revision in the offer price/offer size (latest by)</i>	<i>T+36</i>	<i>T+29</i>	<i>--</i>
<i>Start of the tendering/bidding period</i>	<i>T+37</i>	<i>T+30</i>	<i>--</i>
<i>Closure of Tendering/Bidding Period</i>	<i>T+47</i>	<i>T+35</i>	<i>-5</i>
<i>Last day for payment of consideration to the shareholders</i>	<i>T+57</i>	<i>T+40</i>	<i>-5</i>
<i>Publication of the Post Offer Advertisement</i>	<i>T+62</i>	<i>T+42</i>	<i>-3</i>
<i>[Note: All the times mentioned in the table are in terms of number of working days]</i>			

Extant Provisions vs. Proposed Amendment:

i.	Streamlining the timelines of making of PA, publishing of DPS and submission of DLOF with SEBI	
	Existing Provision	<p>Regulation 13(4) of Takeover Regulations require the Acquirer to publish a <u>Detailed Public Statement (DPS)</u> through the manager to the open offer (MB) in accordance with regulation 14 and regulation 15, not <u>later than five working days</u> of the Public Announcement (PA).</p> <p>Regulation 16(1) of Takeover Regulations requires the Acquirer to file a <u>Draft Letter of Offer (DLOF)</u>, through the Manager to the Offer, with SEBI within <u>five working days from the date of the DPS</u> made under sub-regulation (4) of regulation 13.</p> <p>Regulation 17(1) of Takeover Regulations requires money to be deposited in the escrow account at least <u>two working days</u> prior to the date of DPS.</p>
	Proposal	<p><u>It is proposed that the 5 working days' period required for publishing of DPS from the PA may be reduced to 3 working days and the requirement of DLOF submission to SEBI within 5 working days from the DPS may be changed to 5 working days from the date of PA, i.e. two working days from the date of DPS.</u></p> <p>Further, considering the time constraint involved in creation of escrow account, which is required to be done at least two working days prior to the DPS, <u>it is proposed that deposit of money in the escrow account may be linked with filing of the DLOF with the SEBI and may be effected at least two working days prior to the date of the DLOF.</u></p> <p>Need for Change/Rationale</p> <ul style="list-style-type: none"> (i) PA contains offer details like such as offer size, offer price etc., proposed acquisition, brief details of Acquirer/PACs, brief details of Sellers, Brief details of TC, etc. (ii) DPS contains the information details contained in the PA in a more detailed form and a few additional details like such as salient features of the SPA, justification of the offer price, statutory

		<p>approvals, financial arrangements including escrow details, etc.</p> <p>(iii) DLOF contains the details contained in the DPS in a further more elaborate form and a few additional details such as like Note on Taxation, Procedure for settlement of shares, documents for inspection, declaration by the Acquirer, etc. The additional details contained in the DLOF are generic in nature, which are generally common across all the open offers.</p> <p>(iv) Considering that all the vital information such as details of the Acquirers, offer price, details of the sellers, proposed transaction, etc., which is crucial to the shareholders, is already captured in the PA, the timelines timeframe between PA, DPS and the DLOF can be reduced.</p> <p>(v) Opening of escrow account and deposit of money therein is a time consuming process and since the time for publication of the DPS is proposed to be reduced, provision for escrow is being can be shifted from filing of DPS to filing of DLOF with SEBI.</p> <p>(vi) Reducing the timelines would make the process more efficient and investor friendly and may not have any adverse impact on the shareholders.</p>
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ii. Rationalizing timeline for dispatch of Letter of Offer

Existing Provision	Regulation 18(2) requires that the <u>Letter of Offer (LOF)</u> shall be dispatched to the shareholders whose names appear on the register of members of the target company as of the identified date, not later than <u>seven working days from the receipt of comments from the Board or where no comments are offered by the Board, within seven working days from the expiry of the period</u> stipulated in sub-regulation (4) of regulation 16.
Proposal	It is proposed that the time for dispatch of LOF may be reduced from seven working days to <u>five working days from the date of receipt of SEBI Comments/expiry period in case no comment is received from SEBI.</u>

Need for Change/Rationale

- (i) Considering the advancements in technology and development of logistics, the LOF can now be sent electronically to the shareholders who hold the shares in the demat form, which saves considerable amount of time.
- (ii) SEBI, vide its various circulars/guidelines, advised investors to hold the shares in demat form only. The contact details like email address and mobile number are registered with the DP where shareholder has a demat account. Dispatch of Letter of Offer can be made through email to such shareholders. Dispatch through email requires minimal time.

iii. Duration of Tendering Period

Existing Provision

The tendering period shall start not later than twelve working days from date of receipt of comments from the Board under sub-regulation (4) of regulation 16 and shall remain open for ten working days.

Proposal

It is proposed that tendering period may start not later than ten working days from date of receipt of comments from the Board and remain open for five working days.

Need for Change/Rationale

- (i) An analysis was made on the number of shares tendered on the tendering days in open offers and buybacks for the FY 2020-21.

Open Offers	Tendering in the first five days	8.68% of the total shares tendered in the open offers.
	Tendering in the last five days	91.32% of the total shares tendered in the open offers.
Buy-Backs	Tendering in the first five days	7.99% of the total shares tendered in the buybacks.
	Tendering in the last five days	92.01% of the total shares tendered in the buybacks.

	<p>(ii) Based on the analysis made on tendering of shares in the open offer and buy-backs tender offers for the FY 2020-21, it was observed that 91.38% shares and 92.01% shares respectively were tendered during the last five days of the tendering period.</p> <p>(iii) Further, Pre-Offer Advertisement is made one working day before the start of tendering period. Therefore, shareholders can get information about the revision in the offer price (in case of open offers), if any through such advertisement.</p>
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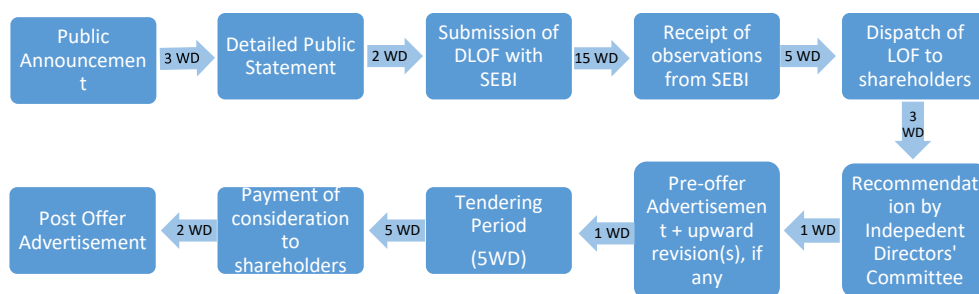
iv Payment of consideration to the Shareholders who have tendered their shares in the open offer

Existing Provision	In terms of Regulation 18(10), the acquirer shall, <u>within ten working days from the last date of the tendering period</u> , complete all requirements under these regulations and other applicable law, relating to the open offer, including payment of consideration to the shareholders who have accepted the open offer.
Proposal	<p>It is proposed that the period for <u>payment of consideration may be reduced to five working days</u> as against earlier of ten working days from the closure of tendering period.</p> <p>Need for Change/Rationale</p> <p>(i) The advancements in digital and fin-tech technology has facilitated the settlement of shares through Stock Exchange settlement mechanism, i.e. on the T+2th day, which may soon progress to T+1 day. Due to such advancement, the transfer of funds/securities takes place in a secure, seamless and prompt manner.</p> <p>(ii) SEBI, vide circular dated August 13, 2021 streamlined the process of tendering of shares in open offer, buy-back offer and delisting offer and the shares tendered are blocked in the account of the shareholders as against transfer of shares to CC earlier.</p> <p>(iii) Considering the tendering period of five days' in the delisting offers also, the same may be adopted in open offers also.</p>

v Publication of post offer public advertisement/announcement

Existing Provision	In terms of Regulation 18(12), the acquirer shall issue a post offer advertisement in such form as may be specified <u>within five working days after the offer period</u> , giving details including aggregate number of shares tendered, accepted, date of payment of consideration.
Proposal	It is proposed that Post Offer PA may be made within <u>two working days from the expiry of the offer period</u> . Need for Change/Rationale The details captured in the Post-Offer Public Announcement include the number of shares tendered, the number of shares accepted, pre-offer shareholding of the Acquirer, pre and post open offer shareholding of the public in absolute terms and in % terms, etc. Such details are already available on the closure of the tendering period, based on which payment of consideration is made to the shareholders.

THE PROPOSED FLOW-CHART OF THE ACTIVITIES INVOLVED IN THE OPEN OFFER PROCESS [Note: WD denotes Working days]



B. SEBI (Buyback of Shares) Regulations, 2018

The following changes have been proposed in the timelines of various procedural activities involved in the buy-back tender offers, which would help reduce the overall time required in the open offer process from 43 working days to 36 working days.

<i>Broad Activities in the Open Offer (timeline in working days)</i>	<i>Existing</i>	<i>Proposed</i>	<i>Change</i>
<i>Public Announcement</i>	<i>T</i>	<i>T</i>	<i>--</i>

Submission of the Draft Letter of Offer with SEBI	T+7	T+7	--
Tentative day of receipt of observations from SEBI	T+14	T+14	--
Last day for dispatch of the Letter of Offer to the shareholders	T+19	T+19	--
Start of the tendering/bidding period	T+24	T+24	--
Closure of Tendering/Bidding Period	T+34	T+29	-5
Last day for payment of consideration to the shareholders	T+41	T+34	-2
Publication of the Post Offer Advertisement	T+43	T+36	--
<i>Note: All the times mentioned in the table are in terms of number of working days</i>			

Extant Provisions vs. Proposed Amendment:

i. Duration of Tendering Period	
Existing Provision	Regulation 9(vi) provides that the offer for buy-back shall remain open for a period of <u>ten working days</u> .
Proposal	Considering that the same is being proposed in case of open offers, we may implement the same in Buy-Back Offers also. Therefore, it is proposed that <u>tendering period may remain open for five working days</u> .
ii. Payment of consideration to the Shareholders who have tendered their shares in the open offer	
Existing Provision	In terms of Regulation 10(ii), consideration shall be paid/securities be returned <u>within seven working days of the closure of offer</u> .
Proposal	Considering that the same is being proposed in case of open offers, we may implement the same in Buy-Back Offers also. Therefore, it is proposed that the period for <u>payment of consideration may be reduced to five working days</u> as against earlier of ten working days from the closure of tendering period.

Public Comments

9. Considering the implications of the said matter on the market participants including issuer companies and investors, public comments are invited on the proposal at Paragraph 8 above.
10. Comments may be sent by email or through post, in the following format:

Title of the Consultation Paper:			
Name of entity/ person/ intermediary:			
Name of Organization (if applicable):			
Contact details/Email Id:			
Sr. No.	Reference to para number	Comments / Suggestions	Rationale

11. While sending email, kindly mention the subject as “**Streamlining the timelines followed in Open Offer and Buyback Tender Offers.**”
12. The comments may be sent by e-mail to dcrconsultation@sebi.gov.in or sent by post at the following address latest by April 15, 2022:

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