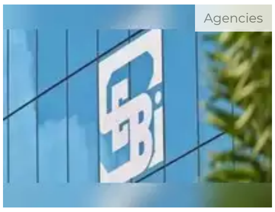
Buyback norm changes among proposals on Sebi board agenda

By Reena Zachariah, ET Bureau Last Updated: Dec 19, 2022, 06:44 AM IST

Synopsis
Based on the findings of the Keki Mistry report, the regulator has proposed phasing out share buybacks from the open market through stock exchanges as these are prone to misuse.



The panel advised that the functions of MIIs should be categorised into three verticals - critical operations; regulatory, compliance and risk management; and other functions including business development.

Mumbai: The Securities and Exchange Board of India (Sebi) board is set to clear several proposals including sweeping changes to share buyback norms, tighter disclosure rules for listed companies, stronger governance at market infrastructure institutions (MIIs) such as stock exchanges and a regulatory framework for fintech platforms providing execution services in direct plans of mutual fund schemes to investors. The board of the regulator is scheduled to meet on December 20 to discuss these proposals, said two people close to the development.

Based on the findings of the Keki Mistry report, the regulator has proposed phasing out share buybacks from the open market through stock exchanges as these are prone to misuse.

"Under the stock exchange route, there is a possibility of one shareholder's entire trade getting matched with the purchase order placed by the company and thus depriving other shareholders to avail the benefit of buyback," according to the report. "This runs contrary to the underlying principle of equitable treatment."

Sebi rules currently provide that buybacks from the open market should be less than 15% of the paid-up capital and free reserves of the company and a timeline of six months from the date the offer opens.

"The proposed changes to the buyback regulations are dramatic and likely to have far reaching impact on buybacks - some intended and some possibly unintended," said Mehul Savla, partner, RippleWave Equity Advisors.

Glide Path Suggested

"The changes indicate a distinct discomfort around potential misuse of buyback through the stock market route and effectively make this route complex and ultimately unavailable to companies and nudge them towards adopting the proposed book-building route," said Savla.

The Sebi panel suggested a glide path - reducing the threshold limit and the time for completion of the buyback offer to 10% and 66 days from April 01, 2023, and then to 5% and 22 days from April 1, 2024. The open market option will be closed for buyback offers from April 2025, as per this.

The panel also proposed companies must spend at least 75% of the amount that they have announced for a buyback from the existing 50%. This is aimed at preventing companies from announcing buybacks in cases where there is no real intention to purchase the entire amount. This restriction would apply to buybacks undertaken through stock exchanges and not through other mechanisms.

The panel proposed changes to tender offer route to streamline the process and reduce timelines.

"However, it remains to be seen whether the book-building route will help in achieving the objective of wider shareholder participation and prevent or reduce potential misuse," Savla said. "For example, a few large shareholders can tender shares at the last moment at the lower end of the buyback price range and squeeze out or deprive a large number of small shareholders who have bid at higher levels. While retail shareholders can bid at the cut-off price, like in IPOs, there is no reserved portion in market buyback for retail shareholders."

The panel suggested that the offer price could be revised by the board of directors of the company. It also suggested allowing companies to undertake two buybacks in a year from the one now.

"Allowing revision of buyback price up to the opening date provides flexibility to companies but at the same time introduces a speculative element till that date and since the onus is on the board of directors to take this decision, the governance framework for the same would have to evolve along with the legal enablers to override the buyback price that may have been approved by shareholders," Savla of RippleWave Equity Advisors said.

Disclosure Norms

The Sebi board will also discuss tightening of disclosure rules for listed companies, including mandating the top 250 listed companies to confirm or deny any information reported in the mainstream media that may have material effect on stocks.

"This proposal is slightly aggressive given the socio environment in which we are operating today," said Sangeeta Jhunjhunwala, partner, corporate and regulatory specialist, Khaitan Legal Associates. "It may actually lead to a scenario where such listed companies have key people investing time to deal with responding to nuisance value given the size of entities."

The regulator has proposed that if key managerial personnel (KMP) or senior management members quit, the letter of resignation along with detailed reasons should be disclosed to the stock exchanges within seven days. If the chief executive is not available to perform his roles and responsibilities for a period of more than a month, this should be disclosed to the investors.

Also proposed is a minimum threshold for the disclosure of information on material events based on the value or the expected quantitative impact. It has also recommended a reduction in the timeline to 12 hours from the occurrence of the event from the existing 24 hours for disclosing to stock exchanges.

"The proposal to reduce the quantitative criteria of minimum threshold to 2% on a standalone basis in determining materiality of an event is a step forward to narrow the objective criteria, thereby reducing the threshold which generally listed companies apply in the range of 8% to 12%," Jhunjhunwala of Khaitan Legal Associates said. "The proposal intends to bring in uniformity in the materiality policy across listed entities."

Information on decisions taken at board meetings should be disclosed within 30 minutes of their conclusion, as per the proposals under consideration.

MII Governance

The regulator's board will also consider the report of G Mahalingam, former whole-time member of Sebi, on strengthening governance at market infrastructure institutions such as stock exchanges. The panel was formed after the regulator found governance lapses at National Stock Exchange (NSE) while Chitra Ramkrishna was at the helm.

The panel advised that the functions of MIIs should be categorised into three verticals - critical operations; regulatory, compliance and risk management; and other functions including business development.

It suggested that at least two-thirds of the board members of MIIs should comprise public interest directors (PIDs) to ensure greater independence. The PIDs should meet twice a year and submit to Sebi a periodic report highlighting issues of importance to MIIs. It also proposed to change the definition of key managerial personnel to cover employees based on the importance of activities carried out by them and their relative hierarchy within the MII. The panel also suggested that video and audio recordings of MII board meetings be made mandatory. The committee has also recommended that all KMPs should have a salary structure with the variable component at a minimum 25% and a maximum 50%.

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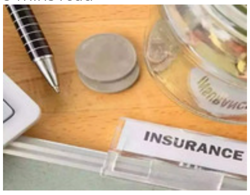

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