buyback. On the other hand, the restriction for not raising further capital after the completion of the said buyback has been extended from 6 months to 12 months as against subsisting 6 months under section 77A (8) of the Companies Act, 1956. This move is mainly driven by the understanding that companies resorting to buyback have idle cash resources with no attractive investment opportunities in the foreseeable future.

To further curtail the fraudulent and frivolous buybacks backing promoter's interest, SEBI has restricted the listed entities to come up with two buybacks only with a minimum gap of one year from the closure of the preceding buyback. The regulator has mandated companies if they are buying-back 15% or more of capital (paid-up capital and free reserves) the same should only be done by way of tender offer.

On the better side for the companies, SEBI has also relaxed extant requirement of newspaper publications by the companies offering a buyback scheme. The companies would be required to give disclosure of the bought back shares, only on their websites and to the stock exchange(s) only on a daily cumulative basis.

Opening out options for the procedure for the buyback of physical shares, the same has been modified by the regulator which includes creation of separate window in the trading system for tendering the shares which include requirement of verification documents. The promoters of the company have also been specifically prohibited to execute any transaction, either on-market or off-market during the buyback period.

THE EFFECTS

The whole lot of amendments in the regulations of buyback of securities is aimed at controlling the manipulative activities by the frivolous promoters under the disguise of buy backs. The stock price of the company often starts moving upwards when a buyback offer is announced. After a period, liquidity of the stock dries up, causing losses to the stakeholders. SEBI has tried to resolve this issue vide these amendments.

The data from a financial research company shows that 13 out of the 37 companies making open offers since January 2011 did not meet half their offer size. The compliance of opening an Escrow account having a minimum requirement would assist the regulator in curbing such frivolous and unorganised proposals of buyback.

However, the genuine proposals of buyback would also have to follow the stringent rules for the same. This step by the regulator would surely slash down the numbers of buyback as the proposing company has to have an eighteen month view for cash flow requirements in present volatile market conditions. Further, failure of the same would attract a penalty of 2.5% of the proposed buyback amount. The sigh of relief for the promoters is relaxation from issuing a public notice in the newspapers.

On the other side, SEBI has also made amendments so as to encourage foreign investment and have given its approval for creation of single category of overseas investors namely the foreign portfolio investor (FPI), which would include foreign institutional investors (FIIs) as well as qualified foreign investors (QFIs).

FPIs' stake in the company should not be more than 10%. Purchases above that percentage will be regulated under the foreign direct investment rules. The industry as well as the various Stakeholders awaits positive results out of all the aforesaid amendments by SEBI.

VOICE

SRINIVAS KOTNI
Founder & Managing Partner

The Securities and Exchange Board of India ("SEBI"), is tightening share buy-back rules, apparently to discourage companies from announcing frivolous buy-back offers. To do so, SEBI has made it mandatory for companies to buy-back at least 50 per cent of the proposed offer size against 25 per cent earlier. Further, a penalty of 2.5 per cent will be charged on companies failing to do so. In my view, imposition of penalty should be linked to intentional defaults. An offer can fail for various reasons on which the Company has no control. For instance, if there are no shareholders who come forward to accept the buy-back offer of the company for whatever reason, it is unfair to saddle a penalty of 2.5% on the company. There should be reasonable basis and adjudication before determining the culpability of the company offering to buy-back and before imposition of any penalty.

Further it has also been mandated that the companies offering to buy-back their shares will also have to keep 25 per cent of the buy-back amount in a separate escrow account and complete the share buy-back process within six months, as compared to a period of one year prescribed earlier.

ABOUT AUTHOR

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