GNLU CENTRE FOR LAW & ECONOMICS

Policy Recommendations

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Comments to the Securities and Exchange Board of India on their Consultation Paper on Review and Rationalization of (Buy-Back of Securities) Regulations, 2018.

Comments on behalf of the Policy Inputs Research Group, GNLU Centre for Law & Economics

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I. INTRODUCTION

The GNLU Centre for Law & Economics is an inter-disciplinary research center at Gujarat National Law University, Gandhinagar that specializes in applying economic analysis to issues concerning law, regulations, and public policies. The Research Group at the Centre conducts research that lies at the interface of welfare economics, institutions, and corporate regulation, in particular, capital markets and financial law.

These comments have been provided on behalf of the Research Group of the Centre in response to the Consultation Paper issued by the Securities and Exchange Board of India ("**SEBI**"), dated May 8, 2026, on the Review and rationalization of the SEBI (Buy-Back of Securities) Regulations, 2018 ("**Consultation Paper**").

The Consultation Paper covers seven separate proposals relating to shareholder communication, offer timing, trading arrangements, promoters' conduct, compliance with minimum public shareholding requirements, frequency of consecutive buy-backs, and the employment of Merchant Bankers. Each of these proposals has been analysed in terms of law and economics principles including theories of information asymmetry, signalling, transaction cost economics, principal-agent relations, and behavioural finance, depending on the area which each proposal touches.

The Centre does not hold any institutional view on buy-back regulation. Rather, the Centre attempts to evaluate whether each proposal is based on sound economic reasoning, whether it is a proper means of addressing its intended regulatory problem, and whether the outcome will be as expected by SEBI. Whenever the Centre endorses a particular proposal, this is done only on the basis of its economic merits. Conversely, if there is any concern about a particular proposal or if it needs modification, it stems from identified economic shortcomings of the respective proposal as formulated in the Consultation Paper.

II. GENERAL COMMENTS

Taken together, the Consultation Paper is an interesting and reasonably well-thought-out attempt at reintroducing the open-market buyback scheme in a version adapted to present-day market realities. The fact that stock exchange operations had been shut down in April 2025 was, in turn, a reaction to the problems of market integrity and the practice of tax arbitrage. These proposals represent an attempt to make the scheme work again, and the Centre agrees with that. There are certain issues that emerge throughout the seven proposals which require closer consideration.

The first important structural problem is the lack of adequate balancing of procedural simplification against investor protection in this paper. There are a number of proposed solutions reducing the issuer's compliance costs by eliminating or internalizing roles and procedures which, until now, served the purpose of independent monitoring. Elimination of the Merchant Banker mandate is the most evident example. Simplification is a legitimate goal of regulatory action, and this is not questioned by the Centre. But this is the issue – there is no indication in the Consultation Paper whether or not the monitoring function is compensated for through the adoption of some other measures.

Another structural problem concerns a different type of policy shift. Specifically, in regard to the issue of promoter restrictions (Issue 3.4), the paper proposes shifting from the current conduct regulation based on penalization to imposing structural restrictions via freezing at the depository level, and it does not offer any statistics indicating inefficiency of the current regulation mechanism. It goes without saying that, from the law and economics perspective, structural limitations imposed on a particular group are more difficult to justify than general conduct requirements.

In contrast, consideration of the time-frame question regarding the offer (Question 3.2) shows evidence of internal analysis. The Centre considers the SEBI preference for the 66 working days period over the six-month recommendation by PMAC as being economically justified, reasons provided in the subsequent comments. Likewise, the recommendations for MPS to conform to the Buy-Back Regulations (Question 3.5) and to match the interval period in the Companies Act (Question 3.6) deal with legitimate gaps in regulation and can be accepted outright.

While the Consultation Paper is moving in the right direction, a more systematic proportionality approach could help in certain areas. The following specific comments provide individual analysis along with suggestions for modification, where relevant.

III. SPECIFIC COMMENTS

Sl. No.	Issue	Summary of Proposal	Comments/ Suggestions	Rationale/ Analysis
1.	3.1 Intimation to Shareholders Regarding Buy-Back Offer	SEBI proposes to mandate companies to send an electronic intimation regarding the buy-back offer to all shareholders as on the date of the public announcement, within one working day of such announcement. This requirement is in addition to the existing obligation of a public announcement to be made within two working days under Regulation 16(iv)(b).	The proposal is broadly sound and is endorsed, subject to the following refinements: 1. Define 'electronic mode' precisely. The regulation should specify that 'electronic mode' includes registered email address and/or SMS to the registered mobile number held by the depository. A residual category of physical notice should be preserved for shareholders who have not registered electronic details with the depository. 2. Standardise the content and format. SEBI should prescribe a minimum-content template for the	1. Information Asymmetry and the Rationale for Direct Notification The foundational justification for this proposal lies in the economics of information asymmetry. Akerlof's canonical analysis of markets with asymmetric information demonstrated that, absent adequate disclosure, uninformed parties systematically under-value the assets they trade.[1] In the buy-back context, the corporation possesses material non-public information about the company's true intrinsic value and the rationale for the buy-back. Retail shareholders, by contrast,

[1] George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q.J. ECON. 488 (1970).

			intimation, including: (a) the proposed buy-back price or price band; (b) total size of the buy-back; (c) the offer opening and indicative closing dates; (d) the method of buy-back (open market or tender); and (e) the hyperlink to the full public announcement. 3. Address the beneficial-ownership gap. Shares held through brokers in a nominee/pooled structure (e.g., many retail investors using brokerage apps) may not have a recorded beneficial-owner email in the depository. SEBI should require depositories and registered brokers to pass the intimation through to beneficial owners as a condition of the one-working-day timeline.	rely entirely on the information environment created by mandatory disclosures. A public announcement disseminated through stock exchange websites and the company website is, in theory, accessible to all. In practice, however, the Grossman-Stiglitz paradox demonstrates that not all market participants are equally equipped to monitor and retrieve publicly posted information.[2] The cost of information acquisition is heterogeneous: sophisticated institutional investors have Bloomberg terminals and compliance alerts; the retail shareholder does not. Direct electronic intimation reduces the marginal cost of information acquisition to near zero for the individual shareholder, bringing the information environment closer to the competitive ideal.

[2] Sanford J. Grossman & Joseph E. Stiglitz, *On the Impossibility of Informationally Efficient Markets*, 70 AM. ECON. REV. 393 (1980).

				2. Signalling Theory and the Credibility Premium In the signalling literature pioneered by Spence and extended to corporate finance by Bhattacharya and Vermaelen, a buy-back announcement serves as a costly signal of managerial confidence in undervaluation.[3] The signal's value to the market is a function of its reach: a signal that does not reach all shareholders generates a partial equilibrium outcome in which the information benefit of the signal accrues disproportionately to institutional participants who already monitor exchange disclosures. The direct intimation requirement proposed under Section 3.1 universalises the reach of the signal. This is economically efficient: it eliminates the differential information rent that

[3] Michael Spence, *Job Market Signaling*, 87 Q.J. ECON. 355 (1973); Sudipto Bhattacharya, *Imperfect Information, Dividend Policy, and "The Bird in the Hand" Fallacy*, 10 BELL J. ECON. 259 (1979); Theo Vermaelen, *Repurchase Tender Offers, Signaling, and Managerial Incentives*, 19 J. FIN. & QUANT. ANALYSIS 163 (1984).

				sophisticated participants currently extract during the gap between the public announcement and the moment retail shareholders become aware of it.[4] From a welfare standpoint, narrowing this gap reduces the transfer from uninformed to informed traders which would be a straightforward improvement in distributional equity without any corresponding loss in market efficiency. 3. Behavioural Economics: Limited Attention and the Need for Active Push-Notification Classical disclosure theory assumes that publicly available information is processed by rational, fully attentive investors. The behavioural economics literature challenges this assumption fundamentally. Kahneman's dual-process theory and the 'limited attention hypothesis'

[4] *See generally* Albert S. Kyle, *Continuous Auctions and Insider Trading*, 53 ECONOMETRICA 1315 (1985) (on informed-trader rents in asymmetric-information markets).

				developed by Hirshleifer and Teoh establish that investors have bounded cognitive capacity and tend to under-react to information that requires active retrieval.[5] Exchange website postings and company website disclosures are paradigmatic 'pull' mechanisms: the investor must go looking for the information. Direct electronic intimation is a 'push' mechanism that bypasses the attention barrier. The distinction is not merely one of convenience, it is likely to be outcome-determinative for a substantial segment of the retail investor base. The implication is that the proposal will likely produce a measurable increase in retail shareholder participation in buy-back offers, improving price discovery and reducing the tendency for buy-back windows to be dominated by

[5] Daniel Kahneman, *Thinking, Fast and Slow* (2011); David Hirshleifer & Siew Hong Teoh, *Limited Investor Attention and Stock Market Misreactions to Accounting Information*, 17 REV. ACCT. STUD. 1 (2003).

				algorithmic and institutional selling. 4. Investor Protection and Constitutional Dimensions The SEBI Act, 1992 mandates investor protection as one of SEBI's three foundational objectives (alongside market development and regulation). The proposal operationalises this mandate by ensuring that all shareholders receive timely and actionable information about a material corporate event. This is consistent with the principle articulated in SEBI v. Sahara India Real Estate Corporation Ltd. that disclosure obligations must be substantively effective and not merely formal. A disclosure that is technically made but practically inaccessible to the investors it is meant to protect does not fulfil the legislative purpose.
2.	3.2	SEBIs proposed 66-working-day buy-back is economically	1. Retain the 66-working-day framework and the	The difference between SEBI's preference for a maximum duration of 66

	Opening of the offer on Stock Exchange	more reasonable than PMAC's suggested 6-month buy-back. A shorter execution period will improve signalling credibility and curb opportunistic managerial timing. Moreover, retaining the 40% utilisation requirement strengthens market confidence; however, it is suggested that limited flexibility should be granted in exceptional circumstances.	40% front-loading requirement 2. Permit a narrowly tailored, one-time extension in exceptional illiquidity situations, subject to prior board approval and enhanced disclosure obligations.	days and PMAC's preference for a maximum duration of 6 months is not merely procedural; it is a trade-off between issuer flexibility and market efficiency.[6] Under the signalling model, a buy-back notification signals to the market that management believes the stock is undervalued. The credibility of this signal is liable to decay over time due to market changes. A six-month open window would thus weaken this signal. Markets will not be able to distinguish between a genuine undervaluation signal and opportunistic timing over a long-time window. A tighter window, as prescribed by SEBI, which is 66 days, preserves this signal by forcing the issuer to act with greater promptness. Therefore, from an information economics perspective, a shorter

[6] Sudipto Bhattacharya, *Imperfect Information, Dividend Policy, and "The Bird in the Hand" Fallacy*, 10 BELL J. ECON. 259 (1979). Theo Vermaelen, *Repurchase Tender Offers, Signaling, and Managerial Incentives*, 19 J. FIN. & QUANTITATIVE ANALYSIS 163 (1984).

				execution window will reduce noise in price discovery. The six-month window also creates a time-inconsistency problem: once rational issuers have announced a buyback, they may delay execution if the price rises, making the action hollow and leaving shareholders in prolonged uncertainty.[7] This is precisely what behavioural economics is all about. Protracted ambiguity means shareholders are subject to status quo bias. They have to choose whether to hold, sell or wait with a six-month horizon and an open corporate action. The 66-day gap also serves as a commitment device, as SEBI suggests, reducing management's discretion and aligning stated intent with actual execution. Because the buy-back window is longer, management can exercise

[7] George Loewenstein & Drazen Prelec, *Anomalies in Intertemporal Choice: Evidence and an Interpretation*, 107 Q.J. ECON. 573 (1992).

				only when prices are favourable, at no direct cost to the firm. But it is not costless from the standpoint of social welfare. It distorts normal trading behaviour and transfers the risk of uncertainty to retail shareholders. The asymmetry of the benefit that would have gone entirely to the issuer is corrected by a window limitation that reduces management's opportunistic behaviour. The retention of a minimum utilisation of 40% in the first half of the offer period is economically sound as it corrects an externality arising from back-load execution. The Pigouvian Constraint supports this.[8] Without the same, the issuers could announce buy-backs and enjoy short-term price appreciation from the announcement, and defer the actual purchases. The 40%

[8] Bruce C. Greenwald & Joseph E. Stiglitz, *Externalities in Economies with Imperfect Information and Incomplete Markets*, 101 Q.J. ECON. 229 (1986).

				floor makes the announcement more credible and better signals the market. Front-loading mandates internalise the reputational and market-efficiency costs that delayed execution imposes on the market. The six-month window creates greater aggregate transaction costs from a Coasian perspective: longer escrow periods, longer compliance monitoring, and continued uncertainty for brokers and depositories.[9] The 66-working-day framework reduces these friction costs system-wide as part of SEBI's ease-of-doing-business objective. In conclusion, SEBI's proposal is economically superior to PMAC's recommendation from a law-and-economics perspective. The 66-day gap balances out the tension between issuer flexibility and efficiency costs of drawn-out corporate

[9] Ronald H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960).

				actions. This maintains the integrity of the market signal and removes the free option that would have been provided by the 6 months. The fact that the 40% front-loading requirement is retained adds further credibility. However, SEBI may consider allowing a limited extension of one-time duration, approved by the board, in exceptional circumstances, which would provide sufficient flexibility for large-cap issuers in illiquid conditions. The paper argues that SEBI's proposed 66-working-day buy-back framework is economically superior to PMAC's six-month recommendation. A shorter execution window preserves signalling credibility, reduces market uncertainty, curbs opportunistic managerial timing, and lowers transaction costs. Retaining the 40% utilisation requirement strengthens market confidence, though

				limited flexibility may be granted in exceptional illiquidity conditions.
3.	3.3 Separate Trading Window	The Consultation Paper proposes dispensing with the requirement of maintaining a separate trading window and the removal of the display of corporate identity on the electronic display in the case of open market buy-back transactions via the stock exchange mechanism. The proposal is based on the rationale that the separate window was primarily introduced for differential tax treatment, which no longer exists.	The proposal is good and will certainly make the buyback process easier by reducing unnecessary procedural and operational requirements. Carrying out the buyback transactions through the normal trading system might also increase market efficiency and reduce compliance burdens for companies and intermediaries. Nonetheless, abolishing the separate trading window altogether might create issues regarding transparency, investors' knowledge, and market surveillance. This is due to the fact that it might be difficult for investors to differentiate between normal market demand and company-driven buybacks when all the purchase transactions have been fully integrated into the	This proposal can be explained using the principles of transaction cost economics, information asymmetry, and market efficiency. To begin with, the discontinuation of the separate trading window reduces any transaction and compliance costs related to having a distinct mechanism for handling buy-back transactions. Since the original tax-related distinction between ordinary trades and buy-back trades no longer exists, continuing with a separate trading window may impose unnecessary procedural burdens upon companies, intermediaries, and stock exchanges. Hence, the integration of buy-back transactions in the ordinary trading mechanism promotes operational efficiency and

			market trading system. So, SEBI can take certain protective measures as well while implementing the proposed change. The companies undertaking buy-backs should provide periodic disclosures relating to the total number of shares that have been bought back, the average cost per share, progress achieved in the buy-back process and buy-back capacity remaining. Additionally, even after the removal of the separate trading window, the stock exchange needs to maintain an audit trail and a record of all the buy-back activities. Furthermore, SEBI may request real-time or periodic reports about the buy-back operations that are taking place at stock exchanges during the buy-back period.	simplifies market processes. Secondly, the proposed policy poses some concerns pertaining to information asymmetry. Information asymmetry arises when there is a difference in the amount of information available to both parties involved in the business. In buy-back transactions, the organisation will have more information regarding the timing, quantity, and strategy of buy-back purchases. In case the buyback transactions become similar to ordinary marketing activities, it would be hard for the investor to know whether any movement in market price is based on investor demand or by issuer-led purchases. This may reduce transparency and affect informed decision-making by investors. The third reason for having a separate trading window is that it carries out an important function of market

				surveillance. It allows regulators and stock exchanges to separately monitor company-led trading activity during the buy-back. The elimination of this procedure without any other means of regulation might result in higher chances of price manipulation or market manipulation. Hence, although simplifying procedures is good, adequate disclosure and surveillance requirements should continue in order to preserve market integrity and investor protection. In light of the Kaldor-Hicks theory of efficiency, the proposal results in an efficient situation in the markets because the benefits resulting from reduced compliance and transaction costs exceed the disadvantages arising from a separate trading process. This kind of efficiency can be useful provided there are adequate checks and

				balances. Hence, there is a need to adopt a new approach so that duplication of processes can be avoided and, at the same time, both surveillance systems are maintained.
4.	3.4 Restrictions on Promoter/Promoter Group Participation During Buy-Back Period	The current Buy-Back Regulations (Regulations 24(i)(e)) restrict dealing in the Company's shares during the buy-back period by all means, but are merely conduct rules prescribed through penalties. The PMAC recommended, and now SEBI proposes to add another level of protection for all securities belonging to the relevant company that are held by the promoters and associates during the	There are three concerns raised in the proposal that need to be addressed before the regulation can be finalised. Firstly, the evidence is lacking for the shift from a conduct rule to a structural restraint. The PMAC's description of the freeze as an "additional safeguard" suggests that this regulatory requirement has been less than effective, but the Consultation Paper provides no evidence of any breaches, failure to meet the requirement in practice, or penalties issued against it. A structural constraint on a defined class is more heavily burdened to justify it than a	The proposal changes the regulatory paradigm from deterrence to prophylaxis without the supporting evidence or legal basis for this change. The law and economics literature has shown that such structural restraints can only be justified if the effectiveness of the conduct rules has been demonstrated to have failed, meaning that the negative impact that the prophylactic measures have on individual liberty outweighs the positive effect they have on the system.[10] Such evidence has not been provided here. Constitutionally, in the case of Pradeep Mehta v. Union of India, the Bombay High Court ruled that a depository

[10] *Hindustan Steel Ltd. v. State of Orissa*, (1969) 2 SCC 627.

		buy-back period, in the form of a structural ISIN-level freeze. The company must give the depositors the instructions they need to carry out the freezing. Limited carve-out is made available for the tender offer method, where promoters keep the right to tender the shares with the additional tax under the Finance Act, 2026.	conduct constraint. This burden has not been lifted. Before this proposal is finalised, SEBI should publish its record of enforcement under Regulation 24(i)(e). Secondly, the extension for associates is not legally justified. Associates are not covered by the company's depository agreement, and the Depositories Act, 1996, does not expressly give listed companies the authority to make "freeze" instructions on third-party accounts. No statutory basis is identified in the Consultation Paper for this. The concept of "associate" in the Takeover Regulations is a closed concept, strictly for the concert party context of takeover law and cannot be readily translated to the buy-back context. If there is no reference date to determine associate status, complex group structures	freeze imposed by SEBI that goes beyond the promoter's holding in the listed company infringe on the right to property as guaranteed by Article 300A of the Constitution of India. The contemporary danger in the current proposal is the fact that the freeze is extended to associates that have not been individually adjudicated and will be restricted just because of their status. A pre-emptive restriction on third parties on the basis of a property claim without first hearing or possibility of challenge is grounded upon principles of procedural due process and proportionality which mandate that any measure imposing property restrictions be no wider than is necessary to meet its regulatory purpose.[11] In addition, the promoters, as designated persons, are already under the existing PAN-ISIN freeze under the

[11] *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1.

			will lead to over-inclusion/under-inclusion with no corrective mechanism. The final regulation should designate the statutory authority to handle third-party freeze instructions, establish a defined reference date for associate classification and set up a procedure for associates who object to their classification. Third, the carve-out for tender offer participation is operationally impractical. NSDL/CDSL freeze at the ISIN level will impact the entire holding in the specified demat account. It has not been standardised so far to permit tendering of a certain percentage of shares, leaving the rest locked up. The carve-out, as drafted, gives rise to a right which is simultaneously extinguished by the freeze. Before notification of this	PIT Regulations, which is in addition to this new freeze.[12] A key concept in regulatory theory of concurrent enforcement regimes is that overlapping regulations, with overlapping trigger conditions and release mechanisms, cause compliance uncertainty and system operational risks, especially if enforcement is shared, as it is in the case of depository levels. As currently drafted, the proposal is incomplete with regard to its legal justifications, it is unclear how it will work and it is constitutionally suspect when it comes to associates.

[12] SEBI (Prohibition of Insider Trading) Regulations, 2015, reg. 2(1)(i), No. SEBI/LAD-NRO/GN/2015/008, Gazette of India, Extra., Pt. III, § 4 (Jan. 15, 2015) (defining "designated person" to include promoters of listed companies).

			regulation, SEBI shall, in consultation with NSDL and CDSL, establish an operational protocol on lifting and re-freezing the freeze.	
5.	3.5 Minimum Public Shareholding Compliance	There is at present no clause within the Buy Back Regulations which stipulates compliance by the Buy Backs with the Minimum Public Shareholding (MPS) criteria as mandated under the Securities Contracts (Regulation) Rules, 1957 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. SEBI has now recommended the inclusion of a specific restriction on the announcement of any Buy Back, be it through open offer or	The proposal deserves unequivocal endorsement. Lack of any cross-referencing between the Buy-Back Regulations and the MPS guidelines does constitute a real problem for regulatory compliance, and the implications for behavior cannot be trivialized. A static ban at the moment of issuance, however, is by itself not enough. SEBI should supplement this rule by stipulating that the Designated Stock Exchange must watch the public shareholding level continuously throughout the offer period, and stop the company from carrying out open market buy-backs if the level gets close to the	The existence of both the Buy-Back Regulations and the MPS regime independent of one another represents an example of horizontal fragmentation. When two separate sets of regulations apply to the same transaction but have no formal means of coordination, compliance uncertainty amounts to de facto reduction in deterrence, the corporation that relies on the LODR regime alone will not see non-compliance during a buy-back as a LODR violation, and this understanding is not illogical, but rational.[13] The rationale behind the mandatory MPS is the maintenance of sufficient float for the purposes of

[13] Louis Kaplow, *Rules versus Standards: An Economic Analysis*, 42 DUKE L.J. 557 (1992).

		tender offer, which leads to non-compliance with MPS criteria.	MPS limit. Free float constitutes a dynamic quantity within the span of the offer (66 working days), and the level of MPS at the moment of announcement can be considered a mere snapshot. The resolution adopted by the Board regarding the buy-back program must contain a statement to the effect that the proposed volume of buy-back, at the highest possible buy-back price, will not constitute an MPS breach. Such an approach will shift the burden of compliance to the parties concerned.	price discovery. A buy-back resulting in float below the MPS will reduce available liquidity, increase bid-ask spread and impose costs on other participants in the market – an externality, where the corporation takes private benefit while imposing costs on the system at large.[14] The suggested ban is the solution to this problem. However, one important limitation applies here, while a static prohibition of announcements will not solve the dynamic nature of float, SEBI's Regulation 31 of the LODR requiring quarterly disclosure of shareholdings[15] provides too little time to monitor compliance. Real-time compliance monitoring is required to effectively implement the ban.

[14] Yakov Amihud & Haim Mendelson, *Asset Pricing and the Bid-Ask Spread*, 17 J. FIN. ECON. 223 (1986).
[15] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 31.

6.	3.6 Interval between two Buy-Back offers	Regulation 4(vii) of the Buy-Back Regulations currently provides for a cooling-off period of one year between two successive buy-back offers, starting from the end date of the previous buy-back period. SEBI intends to amend this provision so that it will refer to the time interval provided for unlisted companies under the Companies Act, 2013. This will mean that an amendment to the Companies Act provision will be automatically taken into consideration under the Buy-Back Regulations without an amendment to the latter.	The recommendation is, in principle, supported. Dynamic alignment is good regulatory drafting practice, and would resolve the inconsistency introduced by the amendments to the Companies Act interval under the Finance Act, 2026. Nonetheless, the modified Regulation 4(vii) needs to specify the relevant provision in the Companies Act, 2013 to which dynamic alignment is sought, including a cross-reference. Failure to do so, referring generally to "the Companies Act interval" instead, results in dynamic delegation, not dynamic referencing, thus recreating the regulatory uncertainty sought to be avoided. SEBI ought to consider a provision for transitional	Cooling-off periods between successive share buy-backs have two effects. They preserve the integrity of the signal as well as the costly nature of the decision: the buy-back signal is documented in the literature as such, and if a company can repeat its signal immediately after a completed buy-back offer, it is a cheap signal as it simply amounts to sustaining a floor on prices rather than returning capital.[16] Additionally, a continuous cash surplus makes firms prone to abusing the share repurchase process in order to artificially support prices instead of reducing excess capital.[17] The fact that the existing requirement of one year set out in Regulation 4(vii) is inconsistent with the Companies Act has created a problem with the nature of

[16] Theo Vermaelen, *Repurchase Tender Offers, Signaling, and Managerial Incentives*, 19 J. FIN. & QUANT. ANALYSIS 163 (1984); David Ikenberry, Josef Lakonishok & Theo Vermaelen, *Market Underreaction to Open Market Share Repurchases*, 39 J. FIN. ECON. 181 (1995).
[17] Michael C. Jensen, *Agency Costs of Free Cash Flow, Corporate Finance, and Takeovers*, 76 AM. ECON. REV. 323 (1986).

			application in the event companies undertook a buy-back just before the amended Regulation was notified, with respect to the earliest possible date of their next buy-back offer based on the one year rule or the new interval set forth in the Companies Act.	transaction costs under Coase's reasoning; the transaction has to be planned for with respect to both laws.[18] The Finance Act 2026 amendment to the Companies Act renders the matter particularly urgent. The use of dynamic referencing rather than fixing the period via a hard code is justified because, if the co-ordinate measure can be amended continuously, a static reproduction of the same in the subordinate statute will create a two-tier problem of amendments, leading to the very problem that the alignment seeks to address. The only shortcoming of the proposal is the lack of cross-reference; alignment without identifying the relevant provision of the Companies Act simply passes the problem down the line.
7.	4.1	The current regime requires that the	Such a proposal cannot be accepted in its existing	MB provision has been established on the basis of

[18] Ronald H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960).

	Appointment of Merchant Banker	appointment of a Merchant Banker (MB) be compulsory in relation to any buy-back proposal irrespective of its magnitude. The MB has various duties such as the lodging of the letter of offer, dissemination related functions, management of the escrow account, due diligence confirmation, among others. After thorough deliberations, SEBI has proposed that this requirement of compulsory appointment be done away with altogether and that the roles played by the MB should now be taken care of by other parties.	unqualified form. The automatic exemption of MB from all buy-backs irrespective of offer size treats different economic regulatory classes as identical. This would be an excessive response. A quantitative threshold approach can be adopted where the mandatory MB stipulation would apply only to buy-back offers above a specific amount say, ₹250 crore or 2% of paid-up equity share capital, whichever is less. Below this threshold, companies could have an option to appoint MB, which is in line with the very comparison drawn by SEBI in the Consultation Paper itself. The transfer of functions pertaining to the monitoring of the escrow account to Designated Stock Exchanges in respect of bank guarantee	gatekeeper theory where independent intermediaries act as investor protectors by putting a third party with an incentive to monitor between the issuer and the market, taking advantage of their ability to notice any violation during the deal process.[19] The importance of the gatekeeper role increases with the size and complexity of the offer as well as its market implications, both of which depend upon the size of the offer. In small cases of buyback from listed companies operating under SEBI's Continuous Disclosure Policy, there is little need for MB, whereas in case of large offers, it becomes crucial. The general exemption proposed does not consider this aspect of difference in nature, while the comparison drawn by SEBI with rights issues does not help much either.[20] The deeper concern lies in the internalization of the

[19] Reinier H. Kraakman, *Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy*, 2 J.L. ECON. & ORG. 53 (1986).
[20] John C. Coffee Jr., *Gatekeepers: The Role of the Professions in Corporate Governance* (2006).

			invocation, SEBI directions relating to forfeitures, and partial release decisions needs to be reconsidered. These functions are discretionary, case-by-case determinations and are quite unlike the standardized functions that stock exchanges are ideally placed to discharge. Such a proposal needs to be piloted before adoption. Currently, the due diligence certification process under the MB regulations of 8(i)(aa) and 25(vi) is proposed to be transferred to the Secretarial Auditor. The Securities and Exchange Board of India (SEBI) needs to determine whether the qualifications of the Secretarial Auditor as specified under the Institute of Company Secretaries of India include those related to the substantive aspects of due	gatekeeping function. The discussion of separation between the functions of risk bearing and control, provided by Fama and Jensen, shows that a monitoring agency chosen by and compensated by the entity it monitors is not, economically speaking, independent.[21] The MB will bear the reputational risk and regulatory liability arising out of faulty certification while the Compliance Officer, being an employee of the corporation, will not. In the case of large-scale buy-backs, this is no minor difference since it determines whether certification is a genuine compliance measure or just another formality. The process of placing the transferred shares in escrow at Designated Stock Exchanges is potentially the riskiest part of Annexure-I. From Williamson's theory of asset specificity, it can be

[21] Eugene F. Fama & Michael C. Jensen, *Separation of Ownership and Control*, 26 J.L. & ECON. 301 (1983).

			diligence necessary for a buy-back letter of offer.	seen that, in the case of buy-backs, escrow management entails discretion and ad hoc decisions such as invocation of bank guarantees, SEBI directions for forfeiting the shares, and gradual release of shares. This is clearly unsuited for the standardized processing system of the stock exchange.[22]

[22] Oliver E. Williamson, *The Economic Institutions of Capitalism* (1985).