



# **AMENDMENTS TO THE RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION RULES ON SHARE BUY-BACK**

## **1. RULE 109B – Rules Relating to Acquisition of Own Shares by Companies**

The title of Rule 109B is amended to read “Rules relating to share buy-back”.

### **Rule 109B(1) is amended as follows:**

These rules shall apply to publicly quoted companies.

Rule 109B(3) (i) is deleted and subsequent sub-sections renumbered.

### **Rule 109B(3) (ii) is amended to be Rule 109B(3) (i) and shall read as follows:**

The aggregate number of shares to be bought back shall not exceed 15% of its existing issued and paid-up equity capital in any given financial year.

### **Rule 109B(3) is amended with the addition of the following new sub-sections:**

iv. The resolution of the company authorizing the share buy-back shall be by a special resolution as provided in the Companies and Allied Matters Act (CAMA).

v. The notice of the general meeting to authorize the share buy-back shall be published in at least two national daily newspapers and evidence of the publication shall be filed with the Commission.

vi. Shares shall only be re-purchased out of share premium account and or accumulated profit of the company which would otherwise be available for dividends and shall be reflected in the latest audited accounts. The latest audited accounts shall not be more than nine (9) months old.

vii. The buy-back shall be either through the Open Market or through Self-Tenders Offer.

viii. The residual debt-equity ratio shall not exceed 2:1 after the buy-back, the equity for this purpose is the shareholders' fund.

ix. The buy-back shall be a direct purchase made only by the company and the beneficiary shall be the Company.

x. The shares bought back shall be cancelled in accordance with the procedures set out in CAMA.

xi. The maximum time allowed for the completion of the buy-back process shall not be more than twelve (12) months from the date of the shareholders' resolution.

xii. A declaration of solvency shall be filed with the Commission by the Board of Directors of the company that they believe that the Company would remain solvent in the foreseeable future.

xiii. The buy-back shall not be made if the company is illiquid (i.e. a Company defaulting in payments of its obligations including dividend payment). A letter from the Auditors on the going concern status of the Company shall be filed with the Commission.

xiv. For open market buy-back, the price of the shares to be bought back shall be at the current market price and for self-tenders offer, the price shall be determined by the Board of Directors and shall not

be more than 5% above the average market price over the last 5 days.

xv. The Company shall make a public announcement in at least two national daily newspapers, at least 5 days to the commencement of the program, disclosing relevant information to the public, such as proposed size, nature, duration and the potential impact on the Company's financial position. A similar announcement shall also be made at the conclusion of the exercise.

xvi. The Company and the financial adviser shall file a monthly report not later than 5 working days after the end of each month indicating the number of shares bought, the total amount paid, minimum and maximum price, and the number of shares cancelled.

xvii. Redeemable shares shall not be purchased at a price greater than the lowest price at which they are redeemable or shall be redeemable at the next date thereafter at which they are due or liable to be redeemed.

xviii. Any two buy-back programs shall be separated by a minimum period of 365 days after the end of the preceding buy-back even where they are of different classes.

xix. The source of funding the buy-back shall be disclosed.

xx. After any buy-back, the shareholders' fund of the company shall not fall below any legally prescribed minimum for the line of business.

xxi. For the purpose of the buy-back through open market, the Company shall not use more than two stockbroking firms for each programme. The stockbroking firm shall not be a subsidiary of the company.