

Date: January 29, 2019

Securities and Exchange Board of India
Corporation Finance Department
Division of Corporate Restructuring
SEBI Bhavan, Plot No. C4-A, 'G Block'
Bandra Kurla Complex
Bandra (East)
Mumbai 400051



Dear Madam / Sir,

Sub: Request for interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("Informal Guidance Scheme") in relation to the provisions of the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018 ("Buyback Regulations")

This is to request for an interpretive letter under paragraph 5(ii) of the Informal Guidance Scheme on the basis of the submissions below.

1. Factual Background

- a) Infosys Limited ("**Company**") is a company incorporated under the Companies Act, 1956, and has its equity shares of face value of ₹ 5 each ("**Equity Shares**") listed on BSE Limited and National Stock Exchange of India Limited (collectively, "**Stock Exchanges**"). The American Depositary Receipts ("**ADRs**") of the Company are listed on New York Stock exchange.
- b) The Company is proposing to undertake a buyback of its Equity Shares from the members of the Company under the open market route through the Stock Exchanges, in accordance with the Companies Act, 2013 and the Buyback Regulations ("**Buyback**").
- c) The board of directors of the Company has approved the Buyback by way of a board resolution dated January 11, 2019, subject to the approval of the shareholders of the Company. Accordingly, in terms of the Buyback Regulations, the Buyback period shall commence from the date of declaration of results of the postal ballot notice for the special resolution, which is presently expected to take place on or around March 15, 2019, until the last date on which the payment of consideration for the Equity Shares bought back by the Company is made ("**Buyback Period**").
- d) The Company has, in terms of the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014, as amended ("**SBEB Regulations**"), implemented the "2015 Incentive Compensation Plan" ("**Plan**") for grant and administering of stock options, stock appreciation rights and restricted stock units ("**ESOPs**"), which was approved by the board of directors and shareholders of the Company on October 12, 2015 and March 31, 2016, respectively.

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- e) The Company has been issuing stock options grant letters (“**Grant Letters**”) to eligible employees from time to time during the course of the year to retain and attract talent and, consistent with those practices, the Company is proposing to issue Grant Letters granting ESOPs to eligible employees pursuant to the Plan during the Buyback Period.
- f) Pursuant to the exercise of ESOPs/ADRs, Equity Shares are provided to the eligible employees in the following manner:
 - i) for the employees based in India, the Infosys Employee benefits trust, which holds the existing Equity Shares, transfers the Equity Shares to the eligible employees pursuant to exercise of ESOPs and, accordingly, no new Equity Shares are issued by the Company upon the exercise of ESOPs;
 - ii) for the employees based outside India, pursuant to exercise of ESOPs, fresh equity shares are allotted and issued to the Depository/Custodian, subsequently these shares are converted into ADR’s by the Depository and finally transferred to the eligible employees.

2. Legal Framework

a) Buyback Regulations

- i) Regulation 24(i)(b) of the Buyback Regulations provides that “*the company shall not issue any shares or other specified securities including by way of bonus till the date of expiry of buyback period for the offer made under these regulations.*”
- ii) Regulation 24(i)(f) of the Buyback Regulations provides that “*the company shall not raise further capital for a period of one year from the expiry of buyback period, except in discharge of its subsisting obligations.*”
- iii) Regulation 2(i)(n) of the Buyback Regulations defines ‘specified securities’ as “*specified securities’ includes employees’ stock option or other securities as may be notified by the Central Government from time to time.*”
- iv) Regulation 2(2) of the erstwhile Securities and Exchange Board of India (Buy Back of Securities) Regulations, 1998 (“**Erstwhile Buyback Regulations**”) stated that “*All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956, or the Companies Act, 1956, or any statutory modification or re-enactment thereof, as the case may be.*”

b) SBEB Regulations

- i) There are no restrictions placed on issuance of ESOPs on account of buyback of the equity shares of the Company under the SBEB Regulations.



- ii) Regulation 18(1) of the SBEB Regulations imposes a minimum vesting period of one year for employee stock options.
- c) *Companies Act, 2013 and Companies Act, 1956*
 - i) Explanation I to Section 68 of the Companies Act, 2013 clarifies that *"specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time."*
 - ii) Explanation to Section 77A of the Companies Act, 1956 clarified that *"specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time."*

3. Request for interpretive letter

A. Issue of Grant Letters during the Buyback Period

- i) The relevant provisions of the Buyback Regulations, the SBEB Regulations, the Companies Act, 2013 and the Companies Act, 1956 do not specifically prohibit the Company from issuing Grant Letters granting ESOPs to eligible employees during the Buyback Period.
- ii) Further, Regulation 24(i)(b) of the Buyback Regulations uses the word 'or' between 'shares' and 'specified securities', which seems to indicate that the restrictions for issue of shares or specified securities apply to the same kind of security that is being bought back, which means that the restriction applies to equity shares when the buyback is of equity shares, applies to preference shares when the buyback is of preference shares, and to ESOPs when the buyback is of ESOPs. If the intent was to restrict all types of issuances of securities even if any security was bought back, the word used in the Buyback Regulations should have been 'and' and not 'or'.
- iii) The Erstwhile Buyback Regulations did not have a definition of 'specified securities', the definition of specified securities existed in the Companies Act, 1956 and the Companies Act, 2013. The Erstwhile Buyback Regulations referred to the Companies Act for expressions undefined in the Erstwhile Regulations in Regulation 2(2), as set out in paragraph 2 (a)(iv) above. The Buyback Regulations provides for the definition of 'specified securities' which is same as mentioned in Companies Act, 1956 and Companies Act 2013. Hence, there is no change in legal position in this matter.
- iv) In the informal guidance in the matter of Mastek Limited dated August 22, 2008 bearing reference no. CFD/DCR/IG/AK/2008 ("**Mastek Guidance**"), SEBI had taken a view that Mastek Limited could continue to issue grant letters for employee stock options during the period of an ongoing buyback being undertaken by a company.
- v) We seek your considered informal guidance on whether the Company can issue Grant Letters granting ESOPs to eligible employees in accordance with the Plan, the SBEB Regulations



and the Companies Act, 2013, during the Buyback Period, in the context of Regulation 24(i)(b) of the Buyback Regulations.

B. Computation of minimum vesting period under the SBEB Regulations

- i) Given the Buyback, in the event that Equity Shares are issued by the Company pursuant to exercise of ESOPs granted during the Buyback Period, we seek your considered informal guidance on whether the minimum vesting period of one year, as stated in Regulation 18(1) of the SBEB Regulations, is to be computed from the date of grant of such ESOPs or from the date being one year from the expiry of the Buyback Period.
- ii) Further, with respect to Equity Shares transferred by the Infosys Employee benefits trust to the eligible employees pursuant to exercise of ESOPs granted during the Buyback Period (there being no new Equity Shares issued by the Company upon the exercise of such ESOPs), as stated in paragraph 1(f)(i) above, we trust that the minimum vesting period of one year is to be computed from the date of grant of such ESOPs.

We shall be pleased to furnish any additional information as may be required in support of this application. Any request for further information may be addressed to:

A.G.S. Manikantha

Address: Electronics city, Hosur Road, Bengaluru 560 100

Tel: 9180-41167778

Email: manikantha_ags@infosys.com

4. Compliance with Paragraph 6 of the Informal Guidance Scheme

- a) In accordance with paragraph 6 of the Informal Guidance Scheme, this request for informal guidance is accompanied with a demand draft number 448007 for Rs. 25,000 dated January 25, 2019 in favour of Securities and Exchange Board of India drawn on Kotak Mahindra Bank payable at Mumbai towards fees for informal guidance.
- b) All material facts, circumstances and legal provisions which in our opinion are relevant for the purposes of determination of this request are stated herein.

Thanking you,

Sincerely,

For **Infosys Limited**

A.G.S. Manikantha
Company Secretary



Encl: as above