Open all hours

STEPHEN NORTON EXAMINES HOW TREASURERS CAN EXECUTE SHARE BUYBACKS DURING CLOSE PERIODS.

Executive summary

- Share buybacks have entered common parlance but maybe not so well known is the fact that UK Listing Authority rules allow companies to buy back shares during close periods. The key is that the buyback programme has to be managed independently of the company.

The term ‘share buyback’ refers to a purchase by a company of its ordinary shares to be held in treasury for cancellation. Share buybacks have entered common parlance as a useful financial tool for returning capital to a company’s shareholders in a tax-efficient manner. They have generally found favour with the markets and been welcomed by investors as a good use of excess cash, and confirmation that the company concerned does not need the cash to fund future commitments such as capital expenditure or interest payments. Companies will often choose to return cash to shareholders through the use of share buybacks as well as through the payment of an ordinary dividend.

However, corporate treasurers may not be aware that UK Listing Authority rules allow companies to buy back shares during close periods, when dealing in shares is normally prohibited. The key section of the listing rules is paragraph 12.2.1R, which permits companies to purchase their own shares during a close period where a buyback programme is managed independently of the company.

Paragraph 12.2.1(2) sets out the exemption which will apply if “the company has in place a buyback programme managed by an independent third party which makes its trading decisions in relation to the company’s securities independently of, and uninfluenced by, the company”. Perhaps surprisingly, the means to effect buybacks is not as complex as might be expected, and from a standing start this option is being taken up by an ever-increasing number and range of companies.

A company contemplating a share buyback programme must obtain a general authority from its shareholders to repurchase shares. The listing rules enable a company to make a purchase in accordance with an agreement where the date, amount and price of the securities are fixed outside a closed period. Information about each share purchase must then be posted as a regulatory news service announcement with the London Stock Exchange, and posted on its website.

While a number of companies have made arrangements direct with their brokers to facilitate share buybacks, others have sought assistance from a third party with the experience and knowledge to assist by acting as an independent non-conflicted third party (rather than as a trustee per se).

For instance, my company has a longstanding relationship with Vodafone, as its trustee. Historically, Vodafone has considered that purchasing in close periods has been necessary given the size of its buyback programme. However, in seeking to make such purchases it had concerns about delivering instructions to only one broker given that such instructions are likely to be price-sensitive considering the magnitude of its closed period purchases, and sought our assistance to allay these concerns.

Accordingly, we entered into an agreement with Vodafone to effect hand delivery of confidential irrevocable instructions to purchase shares to a named bank/broker at specific times and specific dates, thereby ensuring delivery immediately prior to the market opening for trading. This approach minimises the information to which a specific broker is privy, given that it enables different brokers to be used during a close period.

Where Vodafone have gone, others are likely to follow.

Stephen Norton is Director of Marketing at Law Debenture.
Stephen.norton@lawdeb.co.uk
www.lawdeb.co.uk