

## Client Alert

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## OJK's Further Clarification on Share Buyback Procedures Amidst the Coronavirus Outbreak

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### Recent Developments

In a previous [Client Alert](#) we discussed the Financial Services Authority ("**OJK**")'s latest policy to allow public companies to conduct buybacks of shares without a prior GMS. That became effective as of the issuance of Circular Letter No. 3/SEOJK.04/2020 ("**SEOJK 3**") on 9 March.

On 16 March, OJK issued Circular Letter No. S-89/D.04/2020 ("**Clarification Letter**") to clarify and flesh out the buyback procedure set out under both SEOJK 3 and OJK Rule No. 2/POJK.04/2013 ("**POJK 2**"). In this Client Alert, we outline the two key aspects addressed in the Clarification Letter, namely (i) the deadline to make a disclosure; and (ii) refloat/re-sale requirements.

### What the Clarification Letter Says

#### Deadline to make a Disclosure

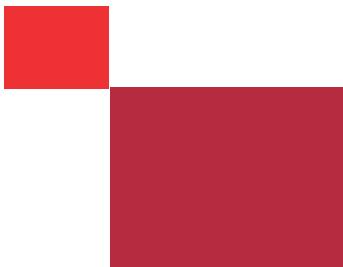
Article 6(2) of POJK 2 stipulates that public companies before conducting buybacks of shares must submit certain information to OJK and the Indonesian Stock Exchange ("**IDX**") no later than seven exchange days after the occurrence of the significantly fluctuating market condition. There were questions on whether the "seven exchange days" deadline is counted from the date OJK declared that we are experiencing a "significantly fluctuating market condition" (i.e., 9 March 2020) or after SEOJK 3 is revoked by OJK in the future.

The Clarification Letter made it clear that the answer is actually the latter. The deadline for public companies to make a disclosure of information and submit it to OJK and the IDX is actually seven exchange days after SEOJK 3 is revoked in the future. That means public companies have plenty of time to implement share buyback using POJK 2.

#### Refloat/re-sale Requirements

#### **Sale Price of Treasury Shares**

Articles 10(2)(b) and 13 of POJK 2 stipulate that the price at which a public company may resell its treasury (bought back) shares must be the shares' closing price in the regular market of the IDX one day before the date of sale of





the treasury shares. But there is no mention of the price of treasury shares if they are to be traded in the negotiated market of the IDX.

The Clarification Letter clarified that public companies intending to sell their treasury shares in the negotiated market of the IDX cannot sell their shares below the following price (whichever is higher):

- (a) average price at which the shares are repurchased by the relevant public company
- (b) average closing price for 90 consecutive exchange days in the IDX before the date of the sale of the treasury shares

### ***Disclosure of the Purchaser's Identity***

The Clarification Letter stipulates that the identity of the purchaser (i.e., the party purchasing the treasury shares from the public company as referred to in Article 16(3)(a) of POJK 2) should be disclosed if the transaction is conducted outside the IDX. If the transaction is conducted in the regular or negotiated markets of the IDX, the identity of the purchasers does NOT need to be disclosed.

### ***Maximum Shares that Can Be Sold***

Under Article 17(c) of POJK 2, the maximum amount of treasury shares that can be sold in a day is 20% of the total treasury shares. The Clarification Letter clarifies that this limit only applies to transactions conducted in the regular market of the IDX, and does not apply to transactions conducted in the negotiated market of the IDX.

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