Chapter Five

THE SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI): ITS
ESTABLISHMENT AND PERFORMANCE

This chapter presents the Securities and Exchange Board of India (SEBI). It explains why SEBI was formed, its functions, the Board’s management and its powers as regulator of the Indian Capital Market. In general, the chapter evaluates its establishment and performance as the overseer of the Indian Capital Market.

5.1 The Birth of SEBI

The Securities and Exchange Board of India (SEBI or the Board) is a watchdog organization, put in place by the Central Government of India to help in the regulatory activities of the Indian Capital Market. In 1988 the Securities and Exchange Board of India (SEBI) was established by the Government of India through an executive legislation, and was subsequently upgraded to a fully autonomous body (a statutory Board) in the year 1992, with the passing of the Securities and Exchange Board of India Act (SEBI Act) on 30th January. SEBI’s main task is to control the Capital Market’s working environment. The concern for Capital Issues was introduced in India for the first time in May, 1943, by a rule framed under the Defence of India Act, 1939. It was in 1947 that the Capital Issues Act was enacted and was further placed permanently on the Statute Book in 1956. The Control of Capital Issues was then administered by the Department of Economic Affairs, Ministry of Finance of the Government of India, with the office of the Controller of Capital Issues taking full responsibilities relating to capital issuing practices.

The main objective of the Control of Capital Issues was to ensure a better and healthier growth of the corporate sector in India, with the participation of the Indian public. This was to ensure that:

(a) Investments did not go into wasteful channels, which were not in accordance with investment plans;
(b) Companies must have a capital structure, which was very sound and conducive to public interest, and
(c) There should be no congestion of offers for public subscription during any season of the year.

Later, researches proved that the above objectives were found insufficient and could not be monitored and malpractices in the Stock Markets were not properly checked. The insufficiency of the Control of Capital Issues Act, 1947, was clearly exhibited during the boom of the late 1980s, when investors were misled by companies presenting rosy richness about the security of their investment. Such promising pictures showed that the investors were going to earn high dividends and capital gains, which turned out to be a farce and many small investors lost the savings of their life.

Thus, the late 1980s boom revealed many lapses in the control of the securities markets, in India. There was a growing need to carefully check and control the functioning of the securities markets in order to protect the interest of the investors. With this view in mind the Government of India, through a legislation, formed the Securities and Exchange Board of India, with the main task of promoting a healthy and growth oriented securities market, which could be capable of protecting the interest of the investors. Currently, SEBI takes care of the market development and investor protection in a fair and transparent manner. As a result, the Government of India promoted the practice that the Stock Exchanges should be made liable for their activities and conduct of business in a transparent and effective manner, in the Capital Market. It was found out that a lot of changes and improvements were desired to be brought in. As a result, the SEBI Act, 1992 was enacted and that led to the creation of the Securities and Exchange Board of India. It is a Regulatory Body for the securities market, the Stock Exchanges and related intermediaries are liable to report to it about their activities. The Stock Exchanges were informed to adhere to the rules and regulations and by-laws as designed and developed for implementation from time to time by the Securities and Exchange Board of India.

Now, the Indian Capital Market has only registered Stock Exchanges operating in the Capital Market. Their regulation and recognition is governed under the provisions of the Securities and Contract Act, 1956. There are 24 Regional Stock Exchanges in India. The Bombay Stock
Exchange (BSE) and the National Stock Exchange (NSE) are the pillars of the Indian Capital Market. A large number of Indian companies are registered with the two major Stock Exchanges. As such, they are the busiest of all the Stock Exchanges in India and recording a daily turnover of over Rs.30,000 crores. The Bombay Stock Exchange (BSE) is 134 years old. It was established in the year 1875. The National Stock Exchange (NSE) is 16 years, having been established in 1993, to support the heavy trading activities which were being handled alone by the Bombay Stock Exchange.

The Act of 1992 created the Board and provided specific guidelines as to the management structure. Section 4 states that 9 persons being Principal Officers should be appointed to man the activities of SEBI. Section 5 states the term of office and the conditions of service of the nine appointed members. The term of office and conditions of service of the Chairperson and the members appointed by the Central Government shall be as prescribed. The appointment can be terminated at any time before the expiry of the prescribed period by giving not less than three months’ notice in writing or three months’ salary and allowances in lieu thereof.

As the members of the management team are appointed by Central Government, they can equally be removed by a Central Government order. Section 6 states that the Central Government shall remove a member from office, if he:

(a) Is, or at any time has been adjudicated as being insolvent;
(b) Is of unsound mind as declared by a competent authority;
(c) Has been convicted of an offence involving moral turpitude;
(d) Has so abused his position as to render his continuation in office detrimental to public interest. No staff shall be removed under this clause, unless he has been given a reasonable opportunity of being heard in the matter.

Since its inception SEBI has been working tirelessly in the securities market and is attending to the fulfillment of its objectives with commendable zeal and dexterity. The improvements in the securities markets like capitalization requirements, margining and the establishment of clearing corporations, have been carefully designed to help the smooth functioning of the market. It has reduced the credit risk and has also reduced market malpractices and other ills. SEBI has introduced comprehensive regulatory measures, prescribed registration norms, the eligibility criteria, the code of obligations and the code of conduct for different intermediaries
like, bankers to issues, merchant bankers, brokers and sub-brokers, registrars, portfolio managers, credit rating agencies, underwriters and others. It has framed by-laws, risk identification and risk management systems for clearing houses of Stock Exchanges and surveillance systems which have made dealings in securities both safe and transparent to the end investor. Another significant event was the approval of trading in stock indices, that is, the Nifty and Sensex. A market Index is a convenient and effective product, because of the following reasons:

It acts as a barometer for market behaviour;

It is used to benchmark portfolio performance;

It is used in derivative instruments like index futures and index options;

It can be used for passive fund management as in the case of Index Funds. Two broad approaches of SEBI were to integrate the securities market at the national level and to diversify the trading of products, so that there was an increase in the number of traders including banks, financial institutions, insurance companies, mutual funds and primary dealers to transact through the Stock Exchanges. In this context the introduction of derivatives trading through the Indian Stock Exchanges permitted by SEBI in the year 2000, was a real landmark. SEBI appointed the L. C. Gupta Committee in 1998 to study and recommend the regulatory framework for derivatives trading and to suggest bye-laws for Regulation and Control of Trading and Settlement of Derivatives Contracts. The Board of SEBI in its meeting held on May 11, 1998, accepted the recommendations of the committee and approved the phased introduction of derivatives trading in India, beginning with Stock Index Futures. The Board also approved the "Suggestive Bye-laws" as recommended by the L.C. Gupta Committee for the Regulation and Control of Trading and Settlement of Derivatives Contracts. SEBI then appointed the J. R. Verma Committee to study and recommend Risk Containment Measures (RCM) in the Indian Stock Index Futures Market. The report was submitted in November, 1998. As a result, the Securities Contracts (Regulation) Act, 1956 (SCRA) was amended to include "derivatives" in the definition of securities to enable SEBI to introduce trading in derivatives. The necessary amendment was then carried out by the Government in 1999. The
Securities Laws (Amendment) Bill, 1999 was introduced. In December 1999 the new framework was approved. Derivatives were then accorded the status of 'Securities' and the ban imposed on trading in derivatives in 1969 under a notification issued by the Central Government was revoked. As a result, SEBI formulated the necessary regulations/bye-laws and made them available to the Stock Exchanges in the year 2000. The derivatives trading activities were then allowed to start in India at NSE in the 2000 and BSE started trading in the year 2001.

SEBI is the principal regulator for the securities market in India. It was formed officially by the Government of India in 1992, with the SEBI Act 1992 being passed by the Indian Parliament. It is chaired by C. B. Bhave and has its headquarters in the popular business district of Bandra-Kurla complex in Mumbai. Its operations, nationwide, are supported by its Northern, Eastern, Southern and Western regional offices in New Delhi, Kolkata, Chennai and Ahmedabad.

5.2 Establishment and Incorporation of the Board

The SEBI Act of 1992, provided for the establishment and incorporation of the Board under the following sections:

Section 3(1), states that with effect from such date as the Central Government may, by notification or appoint, there shall be established, for the purposes of this Act, a Board by the name of the Securities and Exchange Board of India.

Section 3(2), states that the Board shall be a body corporate by the name Securities and Exchange Board of India, having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

Section 3(3), states that the Head Office of the Board shall be at Bombay,

Section 3(4), states that the Board may establish offices at other places in India

The Management of the Board at its Head Quarters is provided under the following sections of the SEBI Act of 1992:
Section 4(1), states that The Board shall consist of nine members, namely:

(a) a Chairman;

(b) two members from amongst the officials of the Ministry of the Central Government dealing with Finance and administration of the Companies Act, 1956;

(c) one member from amongst the officials of the Reserve Bank of India;

(d) five other members of whom at least three shall be the whole-time members to be appointed by the central Government.

Section 4(2), states that the general superintendence, direction and management of the affairs of the Board, shall be vested in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board.

Section 4(3), Serve as otherwise determined by regulations, the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by that Board.

Section 4(4), The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank of India respectively.

Section 4(5), The Chairman and the other members referred to in clauses (a) to (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to the securities market or have special knowledge or experience of the law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board (see Appendix III).

The Board has a total of 9 appointed members. The Act of 1992 states that the Board Chairman and the other members shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to the Securities Market or have special knowledge or experience in their various fields which in the opinion of the Central
Government, shall be useful to the Board. The general superintendence, direction and management of the affairs of the Board are vested in the Board. The Chairman of the Board can exercise all powers of the Board in order to serve the interest of the Board and to offer better protection to the investors.

5.3 Term of Office and Conditions of Service of Chairman and Members of the Board

Section 5(1) states that the Term of Office and other conditions of service of the Chairman and the members referred to in clause (d) of sub-section (1) of section 4 shall be such as may be prescribed by Central Government or by this sub-section.

Section 5(2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 4, at any time before the expiry of the period prescribed under sub-section (1), by giving him notice of not less than three months in writing or three months’ salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the expiry of the period prescribed under sub-section (1), by giving to the Central Government notice of not less than three months in writing.

5.4 Removal of a Member from Office

The Central Government shall remove a member from office, if he/she:

(a) is, or at any time has been, adjudicated as insolvent;

(b) is of unsound mind and stands so declared by a competent court;

(c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;

(e) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest. The Act provides that no member shall be removed under this clause, unless he/she has been given a reasonable opportunity of being heard in the matter.
5.5 Meetings

Section 7(1), states that the Board shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

Section 7(2), states that the Chairman or, if for any reason, he is unable to attend a meeting of the Board, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

Section 7(3), states that all questions which come up before any meeting of the Board shall be decided by a majority votes of the members present and voting, and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have a second or casting vote. Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

5.6 Vacancies not to Invalidate Proceedings of the Board

Section 8, states that no act or proceeding of the Board shall be invalid merely by reason of:

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

5.7 Officers and Employees of the Board

Section 9(1), states that the Board may appoint such other officers and employees as it considers necessary, for the efficient discharge of its functions under this Act of 1992.
Section 9(2), states that the term and other conditions of service of officers and employees of the Board appointed under sub-section (1) shall be such as may be determined by regulations.

Chandrasekhar Bhaskar Bhave is the sixth chairman of the Securities Market Regulator, as per, (S.4 (1)(a) of the SEBI Act, 1992). Prior to taking charge as Chairman of SEBI, he had been the chairman of NSDL (National Securities Depository Limited), where he ushered in the paperless securities by dematerialisation. Prior to his stint at NSDL, he had served SEBI as a Senior Executive Director. He is a former Indian Administrative Service officer of the 1975 batch. The two members from the Indian Ministry of Finance are K.P. Krishnan, Joint Secretary, Ministry of Finance and Anurag Goel, Secretary, Ministry of Corporate Affairs. They are members as per, (S.4 (1)(b) of the SEBI Act, 1992). The other members are Dr G Mohan Gopal, Director, National Judicial Academy, Bhopal, MS Sahoo, Whole Time Member, SEBI, Dr KM Abraham, Whole Time Member, SEBI, Mohandas Pai, Director, Infosys and Prashant Saran, Whole Time Member, SEBI, all of them as per, (S.4(1)(d) of the SEBI Act, 1992) (see Appendix III)

5.8 Functions and Responsibilities of the Board

SEBI has to be responsive to the needs of three groups, which constitute the market:

(a) the issuers of securities

(b) the investors

(c) the market intermediaries.

SEBI has three functions rolled into one body quasi-legislative, quasi-judicial and quasi-executive. It designs and drafts regulations in its legislative capacity, it conducts investigation and enforcement action in its executive function and it passes rulings and orders in its judicial capacity. Though this makes it very powerful, there is an appeals process to create accountability. There is a Securities Appellate Tribunal which is a three member tribunal and it is presently headed by a former Chief Justice of a High court - Mr. Justice NK Sodhi. A second appeal lies directly to the Supreme Court.
SEBI has enjoyed success as a regulator by pushing systemic reforms aggressively and successively (e.g. the quick movement towards making the markets electronic and paperless rolling settlement on T+2 basis). SEBI has been active in setting up the regulations as required under law.

SEBI has also been instrumental in taking quick and effective steps in the light of the global meltdown and the Satyam fiasco. It had increased the extent and quantity of disclosures to be made by Indian corporate promoters. More recently, in the light of the global meltdown, it liberalised the takeover code to facilitate investments by removing regulatory structures.

Section 11(1) of the SEBI Act 1992 states that Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for:

(a) regulating the business in stock exchanges and any other securities markets;

(b)(i) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(b)(ii) registering and regulating the working of the depositories, depositories participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;

(c) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;

(d) promoting and regulating self-regulatory organisations;

(e) prohibiting fraudulent and unfair trade practices relating to securities markets;

(f) promoting investors' education and training of intermediaries of securities markets;
(g) prohibiting insider trading in securities;

(h) regulating substantial acquisition of shares and take-over of companies;

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market intermediaries and self- regulatory organizations in the securities market;

(ia) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;

(j) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956(42 of 1956), as may be delegated to it by the Central Government;

(k) levying fees or other charges for carrying out the purposes of this section;

(l) conducting research for the above purposes;

(1a) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;

(m) performing such other functions as may be prescribed.

(2A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange, where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to the securities market.

Notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub-section (2A), the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:
(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;

(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);

(v) issuing commissions for the examination of witnesses or documents.

Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:-

(a) suspend the trading of any security in a recognized stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated
with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made there under:

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made there under shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognized stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market:

This, therefore, was going to be the case, provided, further that the Board shall, either before or after passing such orders, gave an opportunity of hearing, to such intermediaries or persons concerned.

The Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities:

(1) Without prejudice to the provisions of the Companies Act, 1956(1 of 1956), the Board may, for the protection of investors:

(a) specify, by regulations:

(i) the matters relating to the issue of capital, transfer of securities and other matters incidental thereto; and

(ii) the manner in which such matters shall be disclosed by the companies;
(b) by general or special orders:

(i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;

(ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956(42 of 1956), the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.

5.9 The Powers of SEBI

Section 11 of the SEBI Act of 1992 and 2002 specifies that the basic duties of SEBI are to:

(i) Protect the interests of investors in the Securities Market, and

(ii) Promote the development of, and to regulate the Securities Market.

The Act lays down measures which may be taken by SEBI to carefully fulfill its duties. These measures are:

(a) Regulating the business in the Stock Exchanges and any other Securities Markets,

(b) Registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, under writers, portfolio managers, investment advisers and such other intermediaries who may be associated with the Securities Market in any manner.

(c) Registering and regulating the working of depositories participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf.

(d) Registering and regulating the working of Venture Capital Funds and collective investment schemes including Mutual Funds;

(e) Promoting and regulating self-regulatory organisations;

(f) Prohibiting fraudulent and unfair trade practices relating to the Securities Markets;

(g) Promoting investors’ education and training of intermediaries of Securities Markets;

(h) Prohibiting insider trading in securities;
(i) Regulating substantial acquisition of shares and take-over of companies;

(j) Calling for information from, undertaking inspection, conducting inquiries and audits of the Stock Exchanges, Mutual Funds, market intermediaries, self-regulatory organisations and other persons associated with the Securities Market.

(k) Calling for information and record from any bank or any other authority or Board or corporation established or constituted by or under the Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board, Act 2002 (Amended).

(l) Performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation), Act 1956 as may be delegated to it by the Central Government.

(m) Levying fees or other charges for carrying out the purpose of this section.

(n) Conducting research for the above purposes.

(o) Calling from or furnishing to any agencies, as may be specified by the Board such information as may be considered necessary by it for the efficient discharge of its functions.

(p) Performing such other functions as may be prescribed.

The amended Act of 2002 also inserted the following measures:

5.9.1 Power of Inspection

Without prejudice to the provisions contained in sub-section 2, the Board may take measures to undertake inspection of any books, or register, or other documents or records of any listed public company or a public company (not being intermediaries) which intends to get its securities listed on any recognized Stock Exchange where the Board has reasonable grounds to believe that such a company has been indulging in insider trading or fraudulent and unfair trade practices relating to the Securities Market.

5.9.2 Powers of the Court

Unless rules are made by the Government, the Securities and Exchange Board of India cannot make its own regulations. This means that its regulations can be challenged in the
court of law. This may be in contravention of Section 30 of the SEBI Act which gives powers to the Capital Market regulator to make regulations.

However, the Board is having the same powers as are vested in a Civil Court under the code of civil procedure, Section 5 Act 1908, while trying a suit, in respect of the following matters:

(a) The discovery and production of books of account and other documents at such place and such time as may be specified by the Board;
(b) Summarizing and enforcing the attendance of persons and examining them on oath;
(c) Inspection of any books, registers and other documents of any person referred to in Section 12, at any place;
(d) Inspection of any books, or register or other documents or records of the company;
(e) Issuing commissions for the examination of witnesses or documents.
(f) Powers in the interest of investors and Securities Market

The Board may, by an order, for reasons to be recorded in writing, in the interest of investors or Securities Market, take any of the following measures, either such investigation or inquiry namely:

(a) Suspend the trading of any security in a recognized Stock Exchange;
(b) Restrain persons from accessing the Securities Market and prohibit any person associated with the Securities Market to buy, sell or deal in securities;
(c) Suspend any office bearer of any Stock Exchange or self-regulatory organization from holding such position;
(d) Impound and retain the proceeds or securities in respect of any transaction which is under investigation;
(e) Attach after passing of an order on an application mode for approval by the Judicial Magistrate of first class, having jurisdiction, for a period not exceeding one month, one or more bank accounts or accounts of any intermediary or any person associated with the Securities Market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made there under;
Provided that only the bank account(s) or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made there under shall be allowed to be attached;

(f) Direct any intermediary or any person associated with the Securities Market in any manner not to dispose of or alternate an asset forming part of any transaction which is under investigation.

5.9.3 Power Regarding the Protection of Investors

Without prejudice to the provisions of the Companies Act, 1956 (Section 1), the Securities and Exchange Board of India may for the protection of investors:

(a). Specification by regulations

(i) The matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
(ii) The manner in which such matters shall be disclosed by the companies;

(b). By general or special orders

(i) It prohibits any company from issuing of prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
(ii) It specifies the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

It states that without prejudice to the provisions of Sect. 21 of the Securities Contracts (Regulations) Act, 1956 the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.

5.9.4 Power to Issue Directions (Section 11B)

As provided in Section 11, if after making or causing an enquiry to be made, the Board is satisfied that it is necessary:

(i) In the interest of investors, or orderly development of the Securities Market; or
(ii) To prevent the affairs of any intermediary or other persons referred to in Section 12 being conducted in a manner detrimental to the interest of investors or the Securities Market; or

(iii) To secure the proper management of any such intermediary or person, it may issue such directions as:

(a) To any person or class of persons referred to in Section 12, or associated with the Securities Market, or

(b) To any company in respect of matters specified in Section 11A, as may be appropriate in the interests of investors in securities and the Securities Market.

5.9.5 Power to Carry out Investigation (Section 11C)

(i) As provided in Section 11, where the Board has reasonable ground to believe that:

(a) The transactions in securities are being dealt with in a matter detrimental to the investors or the Securities Market; or

(b) Any intermediary or any person associated with the Securities Market has violated any of the provisions of this Act or the rules of the regulations made or directions issued by the Board there under,

It may, at any time by order in writing direct any person (hereafter in the section referred to as the investigating authority) specified in the order to investigate the affairs of such intermediary or persons associated with the Securities Market and to report thereon to the Board.

(ii) Without prejudice to the provisions of Sections 35 to 241 of the Companies Act 1956, it shall be the duty of every manager, managing director, officer and other employees of the company and every intermediary referred to in Section 12 or every person associated with the Securities Market to preserve and to produce to the investigating authority or any person authorized by it in this behalf, all the books, registers, other documents and records of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.
(iii) The investigating authority may require any intermediary or any person associated with the Securities Market in any manner to furnish such information to or produce such books, or registers, or other documents, or records before it or any person authorized by it in this behalf as it may consider necessary, if the furnishing of such information or the production of such books, or registers, or other documents, or records is relevant or necessary for the purposes, of its investigation.

(iv) The investigating authority may keep in its custody any books, registers, other documents and records produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with the Securities Market by whom or on whose behalf the books, registers, other documents and records are produced. Provided that the investigating authority may call for any books, registers, other documents and records, if they are needed again.

Provided further that, if the person on whose behalf the books, registers, other documents and records are produced requires certified copies of the books, registers, other documents and records produced before the investigating authority, it shall give certified copies of such books, registers, other documents and records to such person or on whose behalf the books, registers, other documents and records are produced.

(v) Any person directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, office and other employees of any intermediary or any person associated with the Securities Market in any manner in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

(6) If any person fails without reasonable cause or refuses:

a. To produce to the investigating authority or any person authorized by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

b. To Furnish any information which is his duty under sub-section (3) to furnish; or
c. To appear before the investigating authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the investigating authority in pursuance of that sub-section; or
d. To sign the notes of any examination referred to in sub-section (7), he shall be punishable with imprisonment for a term which may extend to one year, or with a fine which may extend to one crore rupees or with both, and also with a further fine which may extend to five lakh rupees for every day after the first, during which the failure or the refusal continues.

(7) The notes of any examination exercise under sub-section (s) shall be taken down in writing and shall be read over to, or by and signed by, the person examined and may thereafter be used in evidence against him.

(8) Where in the course of investigation, the investigating authority has reasonable ground to believe that the books, registers, other documents and records of, or relating to, any intermediary or any person associated with the Securities Market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the investigating authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and records.

(9) After considering the application and hearing the investigating authority, if necessary, the magistrate may, by order, authorize the investigating authority:

(a) To enter, with such association, as may be required, the place or places where such books, registers, other documents and records are kept;

(b) To search that place or those places in the manner specified in the order; and

(c) To seize books, registers, other documents and records, it considers necessary for the purposes of the investigation.

This should be done provided that the magistrate shall not authorize seizure of books, registers, other documents and record, if any listed public company or a public company (not being the intermediaries specified under 8.12) which, intends to get its securities listed on any recognized Stock Exchange unless such company indulges in insider trading or market manipulation.
(10) The investigating authority shall keep in its custody the books, registers, other
documents and records seized under this section for such period not later than the
conclusion of the investigation as it consider necessary and thereafter shall return the
same to the company or the other body corporate, or as the case may be to the
managing director or the manager or any other person, from whose custody or power
they were seized and inform the magistrate of such return:
Provided that the investigating authority may before returning such books, registers
other documents and record as aforesaid, place identification marks on them or any
part thereof.

(11) Save as otherwise provided in this section, every search or seizure made under this
section shall be carried out in accordance with the Provisions of the Code of Criminal
Procedure, 1973 (Z of 1974), relating to searches or seizures made under that code.

5.10 Cease and Desist Proceedings

Section 11D states that, if the Board funds, after causing and inquiry to be made, that any
person has violated, or is likely to violate, any provisions of this Act, or any rules or
regulations made there under, it may pass on order requiring such person to cease and desist
from committing or causing such violation and states that:

Provided that the Board shall not pass such order in respect of any listed public company or a
public company (other than the intermediaries specified under Section 12) which intends to
get its securities listed on any recognized Stock Exchange unless the Board has reasonable
grounds to believe that such company has indulged in insider trading or manipulation.

5.11 Registration Certificate

Section 12(1) of the Securities Contracts (Regulation) Act 1956 requires that all
intermediaries before Acting as such in the Securities Market must get itself registered with
the Securities and Exchange Board of India. The intermediaries therefore must be registered
with SEBI (see Table 5.1).
Table 5.1: Intermediaries Registered with SEBI

<table>
<thead>
<tr>
<th>S.N</th>
<th>Item</th>
<th>S.N</th>
<th>Item</th>
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<tbody>
<tr>
<td>a</td>
<td>Stock-brokers</td>
<td>i</td>
<td>Share transfer agent</td>
</tr>
<tr>
<td>b</td>
<td>Sub-brokers</td>
<td>j</td>
<td>Depository participant</td>
</tr>
<tr>
<td>c</td>
<td>Banker to an issue</td>
<td>k</td>
<td>Custodians of securities</td>
</tr>
<tr>
<td>d</td>
<td>Trustee of trust deed</td>
<td>l</td>
<td>Foreign institutional investor</td>
</tr>
<tr>
<td>e</td>
<td>Registrar to an issue</td>
<td>m</td>
<td>Credit rating agency</td>
</tr>
<tr>
<td>f</td>
<td>Merchant banker</td>
<td>n</td>
<td>Collective investment scheme</td>
</tr>
<tr>
<td>g</td>
<td>Underwriter</td>
<td>o</td>
<td>Venture capital funds, mutual funds</td>
</tr>
<tr>
<td>h</td>
<td>Portfolio manager</td>
<td>p</td>
<td>See below</td>
</tr>
</tbody>
</table>

Source: SEBI (2005)

(p) Other intermediaries, who may be associated with the Securities Market shall not buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration issued by the Board in accordance with the regulations made under this Act. Provided that the person buying or selling securities or otherwise dealing with the Securities Market as a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with the Securities Market, immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the stipulated period of three months, till the disposal of such application.

Provided further that, a certificate of registration was obtained immediately before the commencement of the securities laws (amendment) Act, 1995, it shall be deemed to have
been obtained from the Board in accordance with the regulations providing for such registration.

Under, Section (1A) no depository, depository participant, custodian of securities, foreign institutional investor, credit rating agency or any other intermediary associated with the Securities Market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the condition of certificate of registration obtained from the Board in accordance with the regulations made under this Act.

Provided that a person buying or selling securities or otherwise dealing with the Securities Market as a depository, depository participant, custodian of securities, foreign institutional investor or credit rating agency immediately before the commencement of the securities laws (Amendment) Act, 1995 for which no certificate of registration was required prior to such commencement, may continue to buy or sell securities or otherwise deal with the Securities Market until such time that the regulations are made under clause (d) of sub-section (2) of Section 30.

Under Section (1B) no person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment schemes including mutual funds, unless the obtains a certificated of registration from the Board in accordance with the registrations.

Provided that any person sponsoring or causing to be sponsored, carrying on or causing to be carried on any venture capital funds or collective investment schemes operating in the Securities Market immediately before the commencement of the securities laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time that the regulations are made under clause (d) of sub-section (2) of Section 30.

Under Section 12(c) every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

Under Section 12(3) the Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations.
Provided that no order under this section shall be made unless, the person concerned must be given a reasonable opportunity of being heard.

5.12 SEBI Efforts towards Investors’ Education

SEBI is working tirelessly towards the proper education of all the investors. Its task is to make sure that investors are aware of the risks which they are taking when opting to invest in the Indian capital market. SEBI has made a lot of progress in the following areas:

i) It has launched intensive investor education exercises.

ii) Help investor in redressal of complaints.

iii) Disseminates information through its websites.

iv) Published number of booklets on policy developments for educating the investors.

v) It distributed booklets titled “A quick reference guide for investor”.

vi) Issued a series of advertisements/public issues in national as well as regional newspapers to educate and caution the investor about the risks associated with the collective investment schemes.

vii) SEBI registered investor associations organized seminars for educating investors on various aspects relating to market. In the reform process it is clearly defined the various authorities that was accountable for and was redressing various kinds of the grievances. Some other steps for investors’ grievances redressed are;

(i) Investor Grievances Cell.

(ii). Investor Protection Fund.

(iii) Investor Service Fund.

(iv) Complaints with consumer’s disputes redressal forums suits in the court of law.

(v) Investor empowerment: timely available of quality and reliable information increases confidence of the investor. Over the past one decade many regulatory requirements have
been imposed on issuers to disclose relevant information to public. Thus investor’s empowerment has become possible.

(vi) Transparency: market transparency refer to the ability of market participants to observe information about the trading process. Information can include prices, volumes, sources of order, identification of counter party to trade etc.

(vii) Mutual Funds: the period between 1987-1992 witnessed the broadening of the base of the industry by the entry of mutual funds sponsored by nationalized banks and public financial institutions. SEBI has been empowered to regulate mutual funds. The SEBI (Mutual Fund) notified regulation in the year 1993, which permitted entry of private mutual funds into the industry, the regulations 1996 cast greater responsibilities on trustees.

5.13 SEBI Regulations for Stock Brokers

SEBI Act 1992 issued regulations for stock brokers in India.

1. Different Nomenclature for the same function.

(a). Stock broker must apply as per regulation 3 as members.

(b). Trading member derivatives Regulation 2 (inserted in 2000).

2. Need for Minimum educational qualification.

(a). Regulation 3 every stock broker of an exchange can apply for grant of SEBI’s registration, (different criteria but no qualification).

(b). No qualification prescribed for registration as trading members, clearing members, self-clearing members 16A (1) and (2).

(c).To make the system to stand on its own qualification required.

3. Time limit to process the applications

(a). Regulation 3 Stock Exchanges to forward application within 30 days to SEBI.

(b). No time limit for SEBI to accept or reject registration.
(c). Only time limit is refusal to be communicated within 30 days of decision to reject.

4. Daily marking –to-Market: Regulation 16 (c) 3 and 4 which require the clearing and self-clearing members- net worth of at least Rs.50 lacs or 100 lakhs.

5. Time limit for SEBI orders in case of default by stock brokers: Regulation 25 default by a stock broker dealt under enquiry and penalty regulations. No time limit for SEBI to pass orders.

6. Clarify the issues leading to conflict of interest: in the event of a conflict interest, the broker shall not consider clients’ interest inferior to his own. SEBI needs to clarify the sale, purchase, advice by the brokers that results in conflict.

7. What constitutes reasonable ground in case of investment advice? Paragraph 7 of schedule II that deals with investment advice by brokers is vague enough confusion as to what constitute a reasonable ground for believing that the recommendation is suitable for such client upon the basis of the facts.

8. Paragraph 7(A) of schedule 11 deals with investment advice with regard to derivatives market.

9. Time limit for sale of membership cards by brokers part XI, paragraph 1(2) of schedule IV prescribes that the validity of prior approval for sale of membership would be 6 months from the date of issue of such approval by SEBI.

10. Voluntary surrender of membership of the exchange: No provisions and regulations to deal with voluntary surrender of SEBI registration of stock brokers. No time limit for SEBI to communicate.

11. Review of SEBI regulation: no validity period for SEBI registration (of stock brokers), should review once in 5 years.
5.14 SEBI (Disclosure and Investor Protection) Guidelines, 2000

(i) The Applicability of the Guidelines
The Disclosure and Investor Protection (DIP) Guidelines are applicable to all public issues by listed and unlisted companies, all offer for sale and rights issues by listed companies. Whose equity share capital is listed, except in the case of rights issues where aggregate value of securities offered does not exceed Rs. 50 lakhs. The guidelines apply to the following types of companies:

(a) Public issue by listed companies
(b) Public issue by unlisted companies
(c) Offer for sale by listed and unlisted companies
(d) Rights issues by listed companies of value exceeding 50 lakhs

These guidelines were originally issued by SEBI in June, 1992 under Section 11 of the SEBI Act, 1992 and Fresh Disclosure and Investor Protection (DIP) Guidelines were issued in 2000 and came into effect on 27 January, 2000. The issue of capital by companies is governed by the DIP Guidelines SEBI has always been introducing amendments/clarifications in these guidelines from time to time aiming at stream living the public issue process for the better protection of the investors.

The SEBI guidelines provide norms relating to eligibility for companies issuing securities, pricing of issues, listing requirements, disclosure norms, lock-in-period for promoters’ contribution, content of offer documents and pre and post listing obligations, etc.

(ii) Eligibility norms for companies issuing securities and some of the important conditions for the issue of securities are as under:

(a) No company shall make any issue of a public issue of securities, unless a draft prospects has been filed with the SEBI, through an eligible Merchant Banker, at least 21 days prior to the filing of the prospectus with the registrar of companies.

(b) No company shall make any issue of securities through a rights issue where the aggregate value of the securities, including a premium, if any exceeds Rs. 50 lakh, unless the letter of offer is filed with the SEBI, through an eligible merchant banker,
at least 21 days prior to the filing of the letter of offer with the Regional Stock Exchange (or a designated Stock Exchange).

(c) The company should not have been debarred from issuing securities by any order or direction of SEBI.

(d) The company shall not make an issue of securities unless it had made an application for listing of these securities in the Stock Exchange(s).

(e) The company shall not make a public or rights issue or an offer for sale of securities unless the company enters into an agreement with a depository for dematerialization of the securities already issued or proposed to be issued to the public or existing shareholders and also gives our option to subscribers/shareholders/investors to receive securities certificates or hold securities in dematerialized form.

(f) Any unlisted company shall not make any public issue of equity shall shares unless the company has:

(1) A track record of distributable profits in terms of Section 205 of the companies Act, 1956 for at least three out of the immediate proceeding five years; and

(2) A pre-issue net worth of not less than rupees one crore in three out of the proceeding five years, with the minimum net worth to be met during immediately preceding two years.

(iii) **Public Issue by listed companies**

(a) A listed company shall be eligible to make a public issue of equity shares or any securities convertible at a later date into equity shares.

(b) Public issue by listed companies which has changed its name to indicate as if it was engaged in the business/activities in information technology sector during a period of three years prior to filling of the offer document with the SEBI shall be eligible to make a public issue of equity shares or securities convertible at a later date into equity shares, if:

(1) It has a track record of distributable profits in terms of Section 205 of the companies Act, 1956 for at least three out of the immediate preceding five (5) years from the information technology business/activities, and
(2) It has a pre-issue net worth of not less than Rs. One crore in three (3) out of the preceding five (5) years with the minimum net worth to be net during the immediate preceding two (2) years.

(c) If the company does not satisfy the requirements specified in clause (a) above, it can make a public issue provided that it satisfies the requirements laid down for unlisted companies.

(iv) Exemptions from eligibility norms: Some exemptions are granted to some companies from some of the above provisions in Case of:

(b) A banking company including a local area bank (a private sector bank) set up under sub-section (C) of Section 5 of the banking regulation.

The exceptions bring part two to an end. Its ending opens the doors for part three where good Corporate Governance and Risk Management practices are carefully discussed.

(iv) **SEBI strengthens on the enforcement of its regulations:**

(i) It began the process of prosecuting companies for misstatements and ensures refunds of application money in several issues on account of misstatements in the prospectus.

(ii) FIIs also permitted to invest in unlisted securities and corporate and Government debt.

(iii) The Depositories Act enacted to facilitate the electronic book entry transfer of securities through depositories.

(iv) Guidelines for Offshore Venture Capital Funds announced. SEBI regulations for venture capital funds become effective.

(v) Stock Exchanges run as brokers clubs; management dominated by brokers.

(vi) Merchant bankers and other intermediaries unregulated.

(vii) No concept of capital adequacy.

(viii) Mutual funds—virtually unregulated with potential for conflicts of interest in structure.

(ix) Poor disclosures by mutual funds; net asset value (NAV) not published; no valuation norms.

(x) Private sector mutual funds not permitted.
(xi) Takeovers regulated only through listing agreement between the stock exchange and the company.
(xii) No prohibition of insider trading, or fraudulent and unfair trade practices.

5.15 The Efficiency of SEBI

SEBI has had a mixed history in terms of its success as a regulator. Though it has pushed systemic reforms aggressively and successively (e.g. the quick movement towards making the markets electronic and paperless), it lacked the legal expertise, till recently. The type of legal expertise needed to sustain prosecutions/enforcement Actions. SEBI has taken its present executive director in charge of enforcement from the market on a contract basis. Besides, several other officers have been taken from leading firms and corporations, also on contract. It has recently inducted around 40 officers from the leading law schools in India. These measures are expected to improve the speed and quality of the success rate of SEBI in courts and most importantly in playing its role as the Capital Market Regulator.

SEBI also affected a flurry of policy changes and outlined several far-reaching measures, giving the impression of being a Regulator on the move. However, well intentioned these changes, some haven’t been thought through or fall short in implementation.

Shunned by criticism of its inability to check rampant speculation and price manipulation, SEBI underwent into an overdrive. In order to ensure that speculation did not go out of hand and imperil the market, it made dematerialized trading mandatory, shortened the trading cycle from a week to a day, and replaced carry-forward trading with derivatives.

The fall of Enron, Tyco International, Adelphia, Peregrine Systems and WorldCom in the United States of America, brought into the public eye the unholy alliance between the rogue corporations, acquiescent auditors and the Capital Market. It raised fresh concerns about good Corporate Governance. This resulted in the passing of Sarbanes-Oxley Act, 2002 that prescribes stringent reporting standards for auditors and corporate management and provides for hefty penalties in case of defaults.
India has had its own share of corporate frauds. The vanishing non-banking finance companies, sinking mutual funds, teak plantation schemes are just a few well known examples.

In a study by Joshi (2002), it was stated that the lack of good Corporate Governance implementation has allegedly become the main cause of financial crisis in most Asian countries. They concluded that if managers in a company commit themselves in highly self-interest action, whilst sidelining the investor interests, the investor expectations regarding the rate of return on investment will significantly decrease. As a result, capital inflows for investment will decrease. There was a decline in share prices leading to stagnation and a slowdown in growth. Corporate Governance implementations vary among corporate bodies depending on corporate policy and management style. This is what is known as the “housekeeping effect”. Some housekeeping effects are detrimental to the investors, while others are beneficial.

5.16 The Survival of SEBI

In spite of the setbacks faced by SEBI, it continued its efforts to introduce more Capital Market reforms in India, making the markets an attractive investment destination for FIIs. According to SEBI, a significant increase was witnessed in the volume and amount of stock transactions done on BSE and NSE. In the fiscal 1993-94, the average amount of total transactions per day was valued at Rs 8 billion, which had increased tenfold to Rs. 80 billion in 1998-99...

Analysts felt that the major reason for SEBI's failure to protect investors against scams was lack of skilled human capital. For instance, they quoted the example of the KP scam in which KP had taken huge positions in ten stocks. In spite of SEBI possessing this information, it could not gauge KP's vested interests in acquiring the securities. In a 2002 poll conducted by Equity Master (an equity research company in India), it was revealed that over 90% of the respondents believed that the regulatory environment was not sufficient to protect the rights of the investors in India. From the results of the poll, SEBI decided that restoring the confidence of retail investors in the market was an important task which SEBI had to
undertake. This objective was to be achieved by focusing on investor education, Corporate Governance, transparency and enforcement of regulations.

5.17 SEBI Guidelines

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control SEBI guidelines share that no person shall directly or indirectly.

(a) Use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed in a recognized Stock Exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made there under:

(b) Employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed in a recognized Stock Exchange.

(c) Engage in any Act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed in a recognized Stock Exchange, in contravention of the provisions of this Act or the rules or the regulations made there under.

(d) Engage any insider trading.

(e) Deal in securities while in possession of any material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made there under;

(f) Acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed in a recognized Stock Exchange in contravention of the regulations made under this Act.

(i). SEBI’s guidelines on penalties and adjudication Sect. 15A

Penalty for failure to furnish information, returns, etc.

If any person who is required under this Act or any rules or regulations made there under:-
(a) To finish any document, returns or report to the Board, fails to furnish the same, he shall be liable to (a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less) for each such failure.

(b) To file any returns or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file returns or furnish the same within the time specified therefore in the regulations, he shall be liable to (a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less)

(ii). SEBI’s guidelines on penalties and adjudication Sect. 15B

Penalty for failure by any person to enter into agreement with clients, if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to (a penalty of one lakh rupees, for each day during which such failure continues or one crore rupees, whichever is less) for every such failure.

(iii). SEBI’s guidelines on penalties and adjudication Sect. 15C

Penalty for failure to redress investors’ grievances, if any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

(iv). SEBI’s guidelines on penalties and adjudication Sect. 15D

Penalty for certain defaults in the case of mutual fund, if any person, who is –

(a) Required under this Act or any rules or regulations made here under to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds sponsors without obtaining such certificate of registration shall be liable to (a penalty of one lakh rupees for each day during which he sponsors or carries on any collective investment scheme including mutual funds or one crore rupees, whichever is less).
(b) Registered with the Board as a collective investment scheme, including mutual funds for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, shall be liable to (a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less).

(c) Registered with the Board as a collective investment scheme, including mutual funds fails to make an application for listing of its scheme as provided for in the regulations governing such listing, shall be liable to (a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less).

(d) Registered as a collective investment scheme, including mutual funds, fails to dispatch unit certificates of any scheme in the manner provided in the regulations governing such dispatch, he shall be liable to (a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less).

(e) Registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to (a penalty of one lakh rupees for each day during which such a failure continues or one crore rupees whichever is less).

(f) Registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to (a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less).

(v). SEBI’s guidelines on penalties and adjudication Sect. 15E

Penalty for failure to observe rules and regulations by an asset management company

Where any asset management company of a mutual fund registered under this Act, fail to comply with any of the regulations providing for restrictions on the Activities of the Asset management companies, such Asset management company shall be liable to (a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less).
(vi). SEBI’s guidelines on penalties and adjudication Sect. 15F

Penalty for default in the case of stock brokers, if any person, who is registered as a stock broker under this Act:

(a) Fails to issue contract notes in the form and the manner specified by the Stock Exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by the broker.

(b) Fails to deliver any security or fails to make payment of the amount due to the period specified in the regulations, he shall be liable to (a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less).

(c) Charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to (a penalty of one lakh rupees) or five times the amount of brokerage charged in excess of the specified brokerage whichever is higher.

(vii). SEBI’s guidelines on penalties and adjudication Sect. 15G

Penalty for insider trading, if any insider who:-

(i) Either on his own behalf or on behalf of any other person, deals in securities of a Body Corporate listed on any Stock Exchange on the basis of any unpublished price sensitive information or

(ii) Communicates any published price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) Counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price sensitive information.

The person shall be liable to a penalty not exceeding (twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher).
5.18 What Next in SEBI’s Programme

SEBI’s agenda should include making the corporate debt market vibrant: cash and futures, operationalization of Indian deposit receipts, and corporatization and demutualization of Stock Exchanges (which has already begun with Stock Exchange, Mumbai) where the ownership, management, and trading rights reside with three different sets of entities in order to avoid conflict of interest. The Central Listing Authority and ombudsman should become fully functional. The settlement cycle should migrate to T+1. New products should be introduced to meet the needs of all kinds of market participants. MAPIN (unique identification) should be extended to cover all market participants. Regulations should be revised and amended on a continuing basis to keep them in tune with market developments. National training and skill delivery institutes should be organized to build a cadre of professionals to fulfill specialized functions in the Securities Market. There is a need to spread an equity culture and build institutions, such as pension funds, to enlarge the market and reduce volatility.

The regulation of listed companies, a job performed in a fragmented manner by SEBI and the Ministry of Company Affairs, needs to be consolidated to eliminate regulatory arbitrage, by unscrupulous operators and blurring of regulatory accountability. Further, regulation is an evolutionary process and has to be refined on an ongoing basis. Thus, SEBI would and should continue to travel on the learning curve to reorient and reconfigure ground rules (regulations), investigating abilities and investor protection measures. India will do well because it is fully convinced that Securities Markets allow people to do more with their savings, ideas, and talents than would otherwise be possible. The proper development of the Securities Markets will also allow increasingly larger numbers of citizens to participate in some form and to share an opportunity to profit from economic gains. It is worthy of noting that the stock market has been transformed from a proverbial den of thieves to one of the most transparent, automated and well regulated in the world — with a record foreign institutional investment inflows being a good testimony to this.

It was found out that overseas investors infused US$ 816.69 million into the Indian stock market in the first trading week of 2010, reflecting a positive start for the year after record inflows in the last year. Foreign institutional investors (FIIs) were gross buyers of shares
worth US$ 3.03 billion, and sold equities valued worth US$ 2.2 billion, resulting in a net investment of US$ 823.74 million, according to the capital market regulator, Securities and Exchange Board of India (SEBI). FIIs were net investors of US$ 973.22 million in debt instruments in the first trading week of the year, according to data released by SEBI. According to SEBI, FIIs transferred a record US$ 17.46 billion in domestic equities during the calendar year 2009. This FII investment in 2009 proved to be the highest ever inflow in the country in rupee terms in a single year, breaking the previous high of US$ 14.96 billion parked by foreign fund houses in domestic equities in 2007. FIIs infused a net US$ 1.05 billion in debt instruments during the said period. During the October-December period in 2009-10, FIIs made a net buy of shares worth US$ 5.19 billion, according to data compiled from market regulator, the Securities and Exchange Board of India (SEBI). In the quarter, December attracted the highest inflow of US$ 2.2 billion, followed by October US$ 1.95 billion and November US$ 1.18 billion. FIIs poured a net US$ 1.26 billion in debt instruments during the said period. The trend of strong FII inflows to the tune of about US$ 6.3 billion was witnessed during the April-June quarter and gained further during the September, 2009 quarter an infusion of US$ 7.2 billion. The number of FIIs who registered themselves with SEBI during the 2009 year was higher by 7 per cent over 2008. Data sourced from SEBI showed that the number of registered FIIs stood at 1706 and number of registered sub-accounts rose to 5,331 as of December 31, 2009.

5.19 Information Disclosure by Issuing Companies

The prospectus of a company is the main document that must be made available to investors in good time before an issue is launched. This is of a major concern to companies offering Initial Public Offers (IPO). The contents of a prospectus should be as specified on schedule 11 part 1, 11 and 111 of the Companies Act 1956. It must also contain credit rating information for debentures and preference shareholders. A declaration was also required to be furnished to the effect that all the relevant provision of the Companies Act, 1956 and the guidelines issued by the government had been complied with and that no statement made in the prospectus was contrary to the Act and Rules made therein.
Where mutual funds and collective investment scheme prepare offer documents, such documents must be prepared to contain SEBI’s regulations on mutual funds and collective investment scheme.

The following are the brief contents of a prospectus:

(a) **General Information**

(i) Name and registered office of the company

(ii) Name of the Stock Exchanges where listing is proposed

(iii) Minimum subscription

(iv) Statement about the refund of application money.

(v) Date of opening, closing of the issue.

(vi) Name and address of the auditors and lead managers

(vii) Details of credit rating information

(viii) Details of underwriting of the issue

(b) The capital structure of the company like - authorized paid up, pre-issued and post-issued capital.

(c) Terms of Present Issue

(d) Particulars of issue like object, project cost and the mode of finance

(e) Company Management

(i) History and main objects of present business

(ii) Subsidiary company if any

(iii) Promoters and their background details

(iv) Details of Manager, Managing Director and Director.

(v) Location of Project

(vi) Place and Machinery, Technology and Process

(vii) Infrastructure facilities like raw materials utilities, water and electricity

(viii) Schedule of project
(ix) Further prospects

(f) Outstanding litigation

(g) Risk Factors and Management Perception

Note – SEBI is the principal organization charged with the task to regulate the working of Issuing Companies, Consultants, Issuers Printers, Lawyers, Merchant Bankers, Advisor to the Issue, Underwriter, Brokers and Sub-brokers, Registrar to the Issue, Depositories, Depository, Bankers and The Investors.

Thus, SEBI is at the helm of the affairs taking charge and supervision of all the Securities Market participants in order to protect the interest of the investors.

5.20 SEBI’s Stock Watch System

For effective surveillance and monitoring of the Securities Markets it was felt that there is a need to have as a system, with a common Framework Across all the Stock Exchanges in India. The objectives of this system, termed as the Stock Watch System, are to give suitable indicators for the detection of any potential illegal or improper activity, to protect investors’ confidence and the integrity of the Securities Market and its players. This system is being used by SEBI which monitors the movements in the Stock Market. It includes alerts as its prime component.

The stock watch system is fitted with control devices in the form of alerts based on the order size and trade related information during all trading hours. The devices identify any abnormality as soon as it occurs. The alerts are set off by abnormal intra-day price movements, abnormal order size and abnormal trade values. These are online real time alerts (ORTA). Some alerts are online but not real time. They enable the capital market mechanism to run smoothly and protect the interest of the investors.

5.21 Investor Education Guide

Investor Education forms a crucial part of SEBI’s efforts to protect the interest of investors in the Securities Market. A working group on Investor Education has been constituted by SEBI to advise the Board on matter relating to Investor Education. Programmes on Investor
Education are being worked out by the Group. Based on its initial suggestion a series of information brochures are always prepared for the interest of investor. As a part of the series SEBI has brought out an information pamphlet title “A Quick Reference Guide for Investor” for the benefit of investors who already hold securities. The pamphlet examines:-

(1) Shareholders’ Rights

As a shareholder in a company, the investor enjoys certain rights, which are:

(a) To receive the share certificate on allotment or transfer as the case may be due time.
(b) To receive copies of the abridged Annual Report the Balance Sheet and the Profit and Loss a/c and the Auditor’s Report.
(c) To participate and vote in General Meetings, either personally or through proxies.
(d) To receive Dividends in due time once approved in General Meetings.
(e) To receive corporate benefits like rights, bonus issues, etc. one approved.
(f) To apply to Company Law Board (CLB) to call or direct the Annual General Meeting.
(g) To inspect the minute books of the General Meetings and to receive copies thereof.
(h) To proceed against the company by way to civil or criminal proceedings.
(i) To apply for the winding up of the company.
(j) To receive the residential proceeds.

Besides the above rights which individual shareholders enjoy, they also enjoy the following rights as a group:

(i) To requisition an extraordinary General Meeting
(ii) To demand on a poll on any resolution
(iii) To apply to the Company Law Board (CLB) to investigate the affairs of the company.
(iv) To apply to the Company Law Board (CLB) for relief in cases of oppression and/or this management.

(2) Debentures holder’s Rights

(i) To receive interest/redemption in due time
(ii) To receive a copy of the trust deed on request
(iii) To apply for winding up of the company if the company fails to pay its debts
(iv) To approach the debenture trustee with your grievance
(3) **Responsibilities of the investor**

Remember that rights must be matched against responsibilities:

(i) To remain informed
(ii) To be vigilant
(iii) To participate and vote in general meetings
(iv) To exercise your rights on your own or as a group

### 5.22 The Trading of Securities

The investor has the right to sell the securities that he/she holds at a price and time that chooses. He may do so personally with another person or through a recognized Stock Exchange.

Similarly he has the right to buy securities from anyone or through a recognized Stock Exchange at a price and time of his choice.

Whether it is a sale or purchase of securities, affected directly by him or through an exchange, all trades should be executed by a valid duly completed and transfer deed.

Where the investor chooses to deal i.e. (buy or sell) directly with another person he is exposed to counterparty risk i.e. the risk of non-performance by that party. However, if he deals through a Stock Exchange this counterparty risk is reduced due to trade settlement guarantee offered by the Stock Exchange mechanism. Further, the investor also has certain protections against defaults by his broker.

When he operates through a Stock Exchange, he has the right to receive the best price prevailing at that time for the trade and the right to receive the money or the shares on time. He also has the right of receive a contract note from the broker confirming the trade and indicating the necessary details of the trade. He also has the right to receive good delivery and the might to assist on rectification of bad delivery. If he has a dispute with his broker, he can resolve it through arbitration under the aegis of the Stock Exchange.

If the investor decides to operate through a Stock Exchange, he has to avail the services of a SEBI registered broker/sub-broker. He has to enter into a broker-client agreement and file a
client registration form. Since the contract note is a legally enforceable document, he should insist on receiving it. He has the obligation to deliver the shares in case of sale or pay the money in case of purchase within the time limit prescribed. In case of a bad delivery of securities by him, he has the responsibility to rectify them or replace them with good ones.

5.23 The Transfer of Securities
Transfer of securities means that the company has recorded in its books, a change in the title of ownership of the securities affected either privately or through a Stock Exchange transaction.

To implement a transfer, the securities should be sent to the company along with a valid duly executed and stamped transfer deed duly signed by or on behalf of the transfer (seller) and the transferee (buyer). It would be a good idea to retain photocopies of the securities and the transfer deed when they are sent to the company for transfer to be effected. It is very essential that he sends them by registered post with acknowledgement due and watch out for the receipt of the acknowledgement card. If he does not receive the confirmations of receipt within a reasonable time, say, within two months; he should immediately approach the postal authorities for confirmation/verification.

Sometimes for the investors convenience he may choose not to transfer the securities immediately. This may facilitate easy and quick selling of the securities. In that case, the investor should take care that the transfer deed remains valid. However, in order to avail the corporate benefits like the Dividends, Bonus or Rights from the company, it is essential that he gets the securities transferred in his name.

On receipt of a transfer request the company proceeds to transfer the securities as per provisions of the law. In case they cannot implement the transfer, the company returns the securities giving details of the grounds under which the transfer could not be implemented. This is known as company objection.

When the investor receives a company’s objection for transfer he should proceed to get the errors/discrepancies corrected. He may have to contact the transferor (seller) either directly or through his broker for rectification or replacement with good securities. Then he can resubmit the securities and the transfer deed to the company to make the transfer.
In case the investor is unable to get the errors rectified or to get them replaced, he has recourse to the seller (transfer) and his broker through the Stock Exchange will get back his money. However, if he had transacted directly with the seller originally, he has to settle the matter with the seller directly.

Sometimes, the investors’ securities may be lost or misplaced. He should immediately request the company to record a stop transfer of the securities and simultaneously apply for issue of duplicate securities. In order to cause a stop transfer to be effected, the company may require him to submit indemnity bonds, affidavit, sureties etc. besides the issue of a public notice. He has to comply with these requirements in order to protect his own interest.

Sometimes, it may so happen that the securities are lost in transit either from him to the company or from the company to him. He has to be in his guard and write to the company within a month of his sending the securities to the company. The moment it comes to his notice that either the company has not received the securities that he sent or he did not receive the securities that the company claims to have sent to him, he should immediately request the company to record stop transfer and proceed to apply for duplicate securities.

5.24 Depository and Dematerialization

Shares are traditionally hold in physical or paper form. This method has its own interest weaknesses like loss/theft of the certificates, forged/fake certificates, cumbersome and the time consuming procedure for transfer and shares etc. Therefore, to eliminate these weaknesses a new system called Depository System has been established.

A depository is a system which holds your shares in the form of electronic accounts in the same way a bank hold your money in a saving account depository system provides the following advantages to an investor.

(i) Your shares cannot be lost or stolen or mutilate.

(ii) You never need to doubt the goriness of your shares i.e. whether they are forged or fake.

(iii) Share transaction like transfer, transmission etc. can be effected immediately.

(iv) Transaction costs are usually lower than on the physical segment.
(v) There is no risk of bad delivery
(vi) Bonus/Rights Shares allotment to you was immediately credited to your account.
(vii) You will receive the statement of accounts of your transaction/ holding periodically.

When you decide to have your shares in electronic form, you should approach a depository participant (DP) who is an agent of the depository and open on account. You should surrender your share certificates in physical form and your DP will arrange to get them sent to and verified by the company and on confirmation credit your account with an equivalent number of shares. This process is known as dematerialization you can always reverse this process if you so desire and get your shares reconverted into paper format. This process is known as re-materialization. Share transitions (like sale or purchase and transfer/transmission, etc) in the electronic form can be effected in a much simpler and faster way. All you need to do is that after confirmation of sales/purchase transaction by your broker, you should approach your DP with a request to debit/credit your account for the transaction effected. The Depository will immediately arrange to complete the transaction by updating your account. There is no need for separate communication to the company to register the transfer.

5.25 Grievance Redressal

There are occasions when the investors have grievances against the company in which they are stakeholders. It may be that the investor has not received share certificates on allotment or on transfer; it may be that he did not receive the annual account, etc; then he should first approach the company, in that regard he may not be satisfied with the company’s response thereto. He should like to know whom he should turn to, for his grievance to be redressed, (see Table 5.2)
### Table 5.2: Investors’ Grievance Redressal Points

<table>
<thead>
<tr>
<th>Nature of Grievance</th>
<th>Can be taken up with</th>
</tr>
</thead>
<tbody>
<tr>
<td>In case of any public issue non-receipt of:</td>
<td></td>
</tr>
<tr>
<td>(ii) Refund order</td>
<td>- SEBI</td>
</tr>
<tr>
<td>(iii) Interest on delayed refund</td>
<td>- Dept. of company affairs</td>
</tr>
<tr>
<td>(iv) Allotment advise</td>
<td>- Stock Exchange</td>
</tr>
<tr>
<td>(v) Share certificates</td>
<td>- Registrars to the issue</td>
</tr>
<tr>
<td>(vi) Duplicate for all of the above</td>
<td>- Registrars to the issue</td>
</tr>
<tr>
<td>(vii) Revalidations</td>
<td>- Registrars to the issue</td>
</tr>
<tr>
<td>In case of a listed security non-receipt of the</td>
<td></td>
</tr>
<tr>
<td>certificates after:</td>
<td></td>
</tr>
<tr>
<td>(i) Transfer</td>
<td>- SEBI</td>
</tr>
<tr>
<td>(ii) Transmission</td>
<td>- Dept. of Comp. Affairs</td>
</tr>
<tr>
<td>(iii) Conversion</td>
<td>- Stock Exchange</td>
</tr>
<tr>
<td>Nature of Grievance</td>
<td></td>
</tr>
<tr>
<td>(iv) Endorsement</td>
<td></td>
</tr>
<tr>
<td>(v) Consolidation</td>
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<tr>
<td>(vi) Splitting</td>
<td></td>
</tr>
<tr>
<td>(vii) Duplicate of securities</td>
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</tr>
<tr>
<td>Regarding listed debenture non-receipt of:</td>
<td></td>
</tr>
<tr>
<td>(i) Interest due</td>
<td>- SEBI</td>
</tr>
<tr>
<td>(ii) Redemption proceeds</td>
<td>- Dept. of Comp. Affairs</td>
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<td>(iii) Interest on delayed payment</td>
<td>- The debenture trustees</td>
</tr>
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<td></td>
<td>- Stock Exchange</td>
</tr>
<tr>
<td>Regarding bad delivery of shares</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bad delivery call of the Stock</td>
</tr>
</tbody>
</table>
Exchange

Regarding shares or debentures in unlisted companies
Dept. of company affairs

Deposits in collective investment schemes like plantations etc
SEBI

Units of Mutual Funds
SEBI

Fixed Deposits in Banks and Finance Companies
Reserve Bank of India

Fixed Deposits in Manufacturing companies
Dept. of Company Affairs

Source: SEBI Guide

In addition to providing the above investor information, centres have been set up in every recognized Stock Exchange which in addition to the complaints to the securities traded/listed with them, will take up all other complaints regarding the trades effected in the Exchange and the relevant members of the Exchange.

There are two other avenues available to the investors to seek redressal of their complaints namely:

(i) Complaints with consumers disputes redressal forums
(ii) Suits in the court of law

5.26 Status of Investors’ Grievances

The grievance letters received by SEBI from investors have been categorised as under:

Type I: Non-receipt of refund orders/allotment letters etc.
Type II: Non-receipt of dividend.
Type III: Non-receipt of share certificates/bonus shares.
Type IV:  Non-receipt of debenture certificates/interest on debentures/redemption amount of debentures/interest on delayed payment of interest on debentures/redemption amount of debentures.

Type V:  Non-receipt of right forms/interest on delayed receipt of refund order.

Table 5.3: Status of Investors’ Grievances

<table>
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<tr>
<th>S.N</th>
<th>I</th>
<th>II</th>
<th>III</th>
<th>IV</th>
<th>V</th>
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<th>II</th>
<th>III</th>
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<td>8403</td>
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<td>2953</td>
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<td>199.39</td>
<td>466.83</td>
<td>141.83</td>
<td>164.06</td>
<td>249.50</td>
<td>164.61</td>
<td>317.78</td>
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<td></td>
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<td>82.56</td>
<td>68.07</td>
<td>89.35</td>
<td>93.90</td>
<td></td>
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</tbody>
</table>

**Source: Field Analysis 2008**

Most grievances from investors, received by the Securities and Exchange Board of India are always processed on time. Table 5.3 shows that a total of 4447 type I, 3589 type II, 8403 type III, 2553 type IV and 2953 type V complaints were receive during the period July 16, 2005 to May 15, 2006. This gives an overall total of 21945 complaints in the period. Table 5.4 shows the percentages of grievances received and processed during the two year period. The overall processing percentage is shown in Table 5.4. It shows that 100.99% of type I, 82.56% of type II, 68.07% type III, 89.35% of type IV and 93.90% type V were all processed during the period July 16, 2005 to May 15, 2006. Figures 5.2 to 5.6 present the figures shown in Table 5.3, complaints received and processed, during the two years period ending May 15, 2006. The overall processing percentage is 83.06% (see equation 5.1).

**Total percentage processed** = \( \frac{18,228 \times 100}{21,945} = 83.06\% \) \( \ldots \ldots \ldots \) Equation 5.1
Table 5.4: Received and Processed Grievances

<table>
<thead>
<tr>
<th>Type</th>
<th>Total Received</th>
<th>%</th>
<th>Total Processed</th>
<th>%</th>
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<td>I</td>
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<td>20.26</td>
<td>4,491</td>
<td>24.64</td>
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<tr>
<td>II</td>
<td>3,589</td>
<td>16.36</td>
<td>2,963</td>
<td>16.26</td>
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<td>III</td>
<td>8,403</td>
<td>38.29</td>
<td>5,720</td>
<td>31.38</td>
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<td>IV</td>
<td>2,553</td>
<td>11.63</td>
<td>2,281</td>
<td>12.51</td>
</tr>
<tr>
<td>V</td>
<td>2,953</td>
<td>13.46</td>
<td>2,773</td>
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<tr>
<td>Total</td>
<td>21,945</td>
<td>100</td>
<td>18,228</td>
<td>100</td>
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</table>

Source: Field Analysis (2008)

Given that the total number of complaints amounted to 21,945 in two years, then for the period between 1992 and 2006, the complaints will proportionately amount to 164,588. The total that would have been processed should amount to 136,710, giving an overall processed percentage of 83.06%. This shows the state of rottenness that existed in the Indian Capital Market, which is forcing SEBI to bring in numerous reforms, in order to rectify the situation and protect the interest of investors. The Indian Capital Market is no exception in the receipt of investors’ complaints, given that it is in a developing environment. The degree of complaints in the developed environment (USA and Europe) is more, given the numerous bank and company failures, (Enron 2001 and Madoff 2008 are just two prominent examples).

In a study by Varma (2002), it was stated that from the days of Adam Smith, those who have placed their faith in free markets have done so in full knowledge of the greed that permeates human society. The breakdown of market discipline may be attributed to state interventions in the free market that fatally weakened its ability to correct itself.
Fig. 5.1

![Total Received](image)

Total Grievances Received

Source: Field Analysis 2008

Figures 5.1 and 5.2 show the total number of investors’ grievances in absolute terms and in percentage terms. The same thing is depicted on the pie chart (fig. 5.3). Processed investors’ grievances are shown on figures 5.4, 5.5 and 5.6.

Fig. 5.2

![% of Grievances Received](image)

Percentage of Grievances Received

Source: Field Analysis 2008
Fig. 5.3

Percentage of Grievances Received

Source: Field Analysis 2008

Fig. 5.4

Total Grievances Processed

Source: Field Analysis 2008
Fig. 5.5

Percentage Total Grievances Processed

Source: Field Analysis 2008

Fig. 5.6

Percentage of Grievances Processed

Source: Field Analysis 2008
5.27 SEBI’s Handling of Disgorgement Money

The Primary function of Securities and Exchange Board of India under the SEBI Act, 1992 is the protection of the investors’ interest and the healthy development of Indian financial markets. The question to be addressed is whether SEBI has been successful in fulfilling its primary function in the midst of so many securities and Initial Public Offering (IPO) scams taking place in the country, which is not only harmful for the healthy development of the financial markets, but also harmful for the investors’ interest and which eventually lowers the morale of the investors and act as a demotivating factor for them to invest their hard earned savings in the financial markets? No doubt, it is a very difficult and herculean task for the regulators to prevent the scams in the markets considering the great difficulty involved in regulating and monitoring each and every segment of the Indian financial markets. The regulator has the responsibility to set the system right once the scams have taken place, especially the responsibility of redressing the grievances of the investors, so that their confidence should be restored. The redressal of investors’ grievances, after the scams, was the most challenging task faced by the regulator. One of the weapons in the hand of the regulator is the collection and distribution of disgorged money to the aggrieved investors.

The word disgorgement means “to bring up and expel from the throat or stomach”, “to surrender (stolen goods or money or any other things) unwillingly”. In the financial markets, the word ‘disgorgement’ is used to mean the repayment of ill-gotten gains that is imposed on the wrong-doers by the courts or the regulators. Funds that were received through illegal or unethical business transactions, such as defrauding creditors or cheating investors, are disgorged, or paid back, with interest to those harmed by the illegal and/or unethical actions of the wrong-doers. Disgorgement is a remedial civil action rather than punitive civil action and disgorged money can be demanded from not only those entities/individuals directly involved in unethical and illegal business activities and those who violate securities regulations, but also from anyone profiting from such activities. However, it should be noted that the term disgorgement is not the same as imposing civil money penalties. In general, individuals and companies violating the securities regulations are required to pay, both civil money penalties and disgorgement. Civil money penalties are punitive in nature, but disgorgement is not punitive. It is purely about paying back profits made from violating the
securities regulations. The scope of the term disgorgement is wide and it is demanded not only from those who are directly involved in violations of securities regulations, but from anyone who has profited from such unethical or illegal business transactions. The SEBI Act, 1992, need to be suitably amended to see that fines, penalties and disgorged amount collected by the SEBI do not go to Consolidated Fund of India, but it should remain with SEBI for the purpose of being distributed to the aggrieved investors.

5.28 Rights and Obligations of Depositories, Participants, Issuers and Beneficial Owners.

(1) Agreement between depository and participants
   (a) A depository shall enter into an agreement with one or more participants as its agent
   (b) Every agreement under sub-section (1) shall be in such form as may be specified by the bye-laws.

(2) Services of depository
   Any person, through participants may enter into an agreement in such form as may be specified by the bye-laws, with any depository for availing its services.

(3) Surrender of certificate of security
   (a) Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository to the issuer in such manner as may be specified by the regulations.
   (b) The issuer, on receipt of the certificate of security under sub-section (1) shall cancel the certificate of security and substitute in its records the name of the depositor as a registered owner in respect of that security and inform the depository accordingly.
   (c) A depository shall on receipt of information under sub-section (2), enter the name of the person referred in sub-section (1) in its records, as the beneficial owner.

(4) Registration of transfer of securities with depository
   (a) Every depository shall on receipt of intimation from a participant register the transfer of security in the name of the transferee.
   (b) If a beneficial owner or a transferee of any security seeks to have custody of such, security the depository shall inform the issuer accordingly.

(5) Options to receive security certificate or hold securities with depository
Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

Where a person opts to hold a security with a depository the issuer shall initiate such depository the details of allotment of the security and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

Securities in depositories to be in fungible form

All securities held by a depository shall be dematerialized and shall be in a fungible form.

Nothing contained in section 153, 153A, 153 B, 187C and 372 of the companies Act, 1956 shall apply to a depository in respect of securities held by it on behalf of the beneficial owners.

Rights of depositories and beneficial owners

Notwithstanding anything contained in any other law for the time being in force a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

Save as other provided in sub-section (1) the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by depository.

Register of beneficial owner every depository shall maintain a register and an index of beneficial owners in the manner provided in section 150, 151 and 152 of the companies Act 1956 (1 of 1956).

5.29 Government of India Initiatives

The Securities and Exchange Board of India (SEBI) has allowed equity investors to lend and borrow shares for 12 months compared with the current limit of one month. The new norms will also allow a lender or a borrower to close his position before the agreed-upon expiry date. No single entity (FII) shall be allocated more than US$ 62.78 million of the government debt investment limit for allocation through bidding process. An investment limit of US$ 73.25 million in Government debt shall be allocated among the FIIs/sub-accounts on a first-
come first-served basis, subject to a ceiling of US$ 10.46 million per registered entity. The Government of India reviewed the External Commercial Borrowing (ECB) policy and increased the cumulative debt investment limit by US$ 9 billion (from US$ 6 billion to US$ 15 billion) for FII investments in corporate debt. India's foreign investment policies allow foreign direct investment up to 26 per cent and foreign institutional investments of (an additional) 23 per cent in stock exchanges. Under the regulation, FIIs have been allowed to acquire shares of unlisted stock exchanges through transactions outside a recognised stock exchange provided it is not an initial allotment of shares. The Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI) have jointly unveiled norms enabling exchange-traded interest rate futures (IRF). Foreign portfolio investors have been allowed to trade in IRFs with capped limits. FIIs and the non-resident Indians (NRIs) are allowed to invest in Indian Depository Receipts (IDRs), according to the operational guidelines issued by the RBI on July 22, 2009.

The discussions have provided an explicit idea of the work SEBI has been during as a capital market regulator. It is evident that SEBI has brought in a lot of reforms, hence stabilizing the capital market and providing it with the great reputation it has now. The record foreign institutional investment inflows act as a good testimony to this. All investors’ grievances are carefully handled, leading to a grievance handling rate of 83.06%.