CHAPTER – V

Provisions of SEBI for Small Investors' Protection and its effectiveness
Chapter four has presented in some detail the trends in the Indian capital market and its performance as well as that of the SEBI. The focus of the present chapter is on the provisions for the protection of the small investor made in the SEBI and their effectiveness.

"Investors" are the backbone of economic development, especially in the developing countries like India. Generally, the pattern of savings and investments has a tendency to grow with the safety and growth of funds invested and vice versa. There are mainly two criteria for any investment decision, one is the "safety of funds" and other is "return on investment". In a developing country like ours, there are various investment opportunities available to the investors such as investment in real estate, bullion, government securities, bank deposits, debentures and shares. We are concerned here with investments in shares and debentures through Primary as well Secondary markets.

At present, the rate of interest on government securities and bank deposits has been reduced substantially and is almost very close to the rate of inflation. The resultant effect of this situation is that one's investment does not at all seem to grow in actual terms. Therefore, most people are attracted towards investing funds in the Capital Market. But, looking at the experience of the last one-decade, it would appear that the retail investors have burnt their fingers, not only in the Primary Market but also in the Secondary Market, due to the reasons known to everyone. Now, it has been realized that we capital market has been thrown open to all without properly developing strict checks and controls without thoroughly educating the retail investors in this regard. However the Government has already initiated various steps to protect the
interest of investors in general. The SEBI from its very inception has been continuously endeavouring to make the Indian Capital Market effective, transparent and investor-friendly. In this direction, it has undertaken several initiatives of far-reaching consequences, which have not only radically reformed but also totally transformed the Indian Capital Market.

In fact the SEBI's approach to regulation has been developmental in nature with a long-term perspective to sustain the confidence of stakeholders in the market. It has been persistently striving to ensure that objectivity and pragmatism are maintained in all its decisions and accordingly, the regulatory process is made extremely transparent, interactive and consultative vis-a-vis the stakeholders. It has also chalked out a vision to become the "Most Dynamic and Respected Regulator- Globally" and to realise the vision, it has drawn a Comprehensive Strategic Action Plan aiming at investors, corporates, markets and regulatory regime. This Plan aims to achieve an appropriate, proportionate and effective regulatory regime to safeguard the interests of all stakeholders. In this direction, the SEBI Act, 1992 was amended to empower it to check cases of insider trading, fraudulent and unfair trading practices in securities markets and market manipulation to protect the interest of investors and to levy deterrent penalties on erring corporates and individuals in such matters. The SEBI Board was enlarged with the provision of three fulltime Board members. The Securities Appellate Tribunal was converted into a three-member body with a sitting or retired judge of Supreme Court or a sitting or retired Chief Justice of High Court as the presiding officer. All the orders passed by the Securities Appellate Tribunal and Chairman, SEBI are being posted on the SEBI website, as an effort to enhance regulatory transparency. Also, with a view to ensuring the participation of regulates as also the nation at large in the
process of designing regulation to improve the efficacy of regulations, the SEBI has also established a consultative mechanism by placing the reports of committees and draft regulations on the SEBI website to seek the comments, suggestions and opinions of the interested viewers. Besides the involvement of the regulatee in this process, the consultative mechanism has also ensured that the regulatees are aware of the changes in the regulatory framework in advance. The concern the SEBI has consistently and continuously felt for the investors, their interests and rights is clearly and amply reflected in the provisions made in the Securities and Exchange Board of India Act, 1992. How closely and minutely and comprehensively the matter has been examined will be obvious if the relevant sections of the act are looked into.

The following are the various provisions

Section 11 – Functions of Board

(1) 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) 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 advisors and such other intermediaries who may be associated with securities markets in any manner;
(ba) registering and regulating the working of the 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 organizations;

(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 organization in the securities market;

(j) 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;

(ja) 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;

(la) 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 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.

(3) 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, 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.

(4) 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 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 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 associate 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 intermediary 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;

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

Section 11A - 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 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.

**Section 11AA - Collective Investment Scheme**

(1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which:-

   (i) The contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;
(ii) The conditions, or payments are made to such scheme or arrangement by the investors with a view to receive profits, income produce or property, whether movable or immovable, from such scheme or arrangement;

(iii) The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) The investors do not have day-to-day control over the management and operation of the scheme or arrangement.

(3) Notwithstanding anything contained in sub-section (2), any scheme or arrangement –

(i) Made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) Under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934);

(iii) Being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;

(iv) Providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);

(v) Under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);
(vi) Under which deposits are accepted by a company declared as a Nidhi or mutual benefit society under section 620A of the Companies Act, 1956(1 of 1956);

(vii) Falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982 (40 of 1982);

(viii) Under which contributions made are in the nature of subscription to a mutual fund;

Shall not be collective investment scheme.

Section 11B-Power to issue directions

Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary:

(i) In the interest of investors, or orderly development of securities market; or

(ii) To prevent the affairs of any intermediary or other person referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market, or

(iii) To secure the proper management of any such intermediary or person,

It may issue such directions;

(a) To any person or class of persons referred to in section 112, 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.

Section 11C – investigation

(1) Where the Board has reasonable ground to believe that –
(a) The transactions in securities are being dealt with in a manner
determinable 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 or the
regulations made or direction issued by the Board there under,

It may, at any time by order in writing, direct any person (hereafter in this
section referred to as the Investigating Authority) specified in the order to
investigate the affairs of such intermediary or person associated with the
securities market and to report thereon to the Board.

(2) Without prejudice to the provisions of sections 235 to 241 of the
Companies Act, 1956 (1 of 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 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, or relating to, the
intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any
person associated with securities market in any manner to furnish
such information to, or produce such books, or registers, or other
documents, or records before him 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 record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record 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 record are produced.

Provided that the Investigating Authority may call for any book, register, other document and record if they are needed again:

Provided further that if any person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record are produced before the Investigating Authority, it shall give certified copies of all such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and 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 fine, which may extend to one crore rupees, or with both, or and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

(7) Notes of any examination under sub-section (5) 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 record of, or relating to any intermediary or any person associated with 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 record.

(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 assistance, as may be required, the place or places where such books, registers, other documents and record 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 record, it considers necessary for the purposes of the investigation:

Provided that the Magistrate shall not authorize seizure of books, registers, other documents and record, of any listed public company or a public company (not being intermediaries specified under section 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 record seized under this section for such period not latter than the conclusion of the investigation as it considers 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 (2 of 1974) relating to searches or seizures made under that Code.

Section 11D – Cease and desist proceedings

If the Board finds, after causing an 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 thereunder, it may pass an order requiring such persons to cease and desist from committing or causing such violation:

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 indulged in insider trading or market manipulation.

Section 12A – Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

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 on a recognized stock
exchange, any manipulative and 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
on 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 issue,
dealing in securities which are listed or proposed to be listed on a
recognized stock exchange, in contravention of the provisions of this
Act or the rules or the regulations made there under;

(d) Engage in insider trading;

(e) Deal in securities while in possession of material or non-public
information or communicate such 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 on a recognized stock exchange in contravention of
the regulations made under this Act.

Section 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.
Section 15D - Penalty for certain defaults in case of mutual funds

If any person, who is:

(a) Required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which he sponsors or carries on any such 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, 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) Registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, 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;

(d) Registered as a collective investment scheme, including mutual funds, fails to dispatch unit certificates of any scheme in the manner provided in the regulation 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 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.

Section 15F - Penalty for default in case of stockbrokers

If any person, who is registered as stock broker under this Act,-

(a) Fails to issue contract notes in the form and 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 that broker;

(b) Fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a penalty or one lakh rupees for each 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.

Section 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

(j) Communicates any unpublished 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

(k) Counsels or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

Shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Section 15HA - Penalty for fraudulent and unfair trade practices

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Section 15HB - Penalty for contravention where no separate penalty has been provided
Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

Section 24 - Offences

(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made there under, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

Section 27 - Offences by Companies

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;
Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in this sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section,-

(a) “Company” means any body corporate and includes a firm or other association of individuals; and

(b) “Director” in relation to a firm, means a partner in the firm.

2. Rights in case of compulsory delisting by stock exchange

Rights of Securities holders under Rule 16 of SEBI (Delisting of Securities) Guidelines, 2003

16.1 Where the securities of the company are delisted by an exchange, the promoter of the company shall be liable to compensate the security-holders of the company by paying them fair value of the securities held
by them and acquiring their securities, subject to their option to remain security-holders with the company.

Explanation: For the purpose of this sub-clause fair value shall be determined by the arbitrator having regard to the factors mentioned in Regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

16.2 The security-holders may enforce their claim to compensation/fair value under this clause through the arbitration mechanism of the exchange in the manner laid down in its bye-laws.

Various surveys have been undertaken by various agencies, institutions during last twenty years. In 1999/2000 the SEBI has also undertaken, supported a survey to understand the nature of investment, concept of investment, psychology of small investors in India. Institutions like, society for Capital Market Research and Development, Delhi, are conducting the survey regularly. NGOs/ Investors’ Associations also undertake survey to explain status of Small investors, Small Investors Protection System. "The SEBI recently constituted an Expert Group headed by Justice M H Kania, Former Chief Justice of India, on August 2004 to identify the deficiencies/ inconsistencies in the existing provisions of the SEBI Act and also to suggest new provisions that could be incorporated in it to make it more effective and investor friendly, taking into account recommendations of the Joint Parliamentary Committee (2002) as also recommendations of other expert groups constituted by the SEBI from time to time in this regard. The Group after deliberating on the proposals made regarding amendments to the SEBI Act in the light of comments thereon
received from the stakeholders, submitted its report in June 2005 recommending incorporation of new provisions in the SEBI Act; amendments for changes in the existing provisions; and consequential and related amendments in other Acts. The impartment recommendations of the Group are summarized below:

1. Recommendations for incorporating new provisions in the SEBI Act

I. Investor Protection Fund

The Group recommended that a separate Investor Protection Fund under the SEBI Act, on the lines of Subscriber Education and Protection Fund under Pension Fund Regulatory and Development Authority (PFRDA) Ordinance 2004 may be established for the purpose of investor education and awareness and for compensation to the small investors in respect of fraud or misrepresentations or misstatements by companies or intermediaries. The Group further recommended that the said fund be administered by the SEBI to protect the investors and take measures for investor education and awareness and for compensation to the small investors in accordance with the established guidelines or parameters specified by the SEBI on the lines of the guidelines in respect of stock exchanges. As to the composition of Fund, the Group recommended that there shall be credited to the said fund the following amounts namely:

a) Unclaimed dividend or interest under any mutual fund or Collective Investment Scheme (CIS) or venture capital and scheme for more than 7 years.

b) Any unclaimed money or securities of a client lying with an intermediary in securities market for more than 7 years;
c) Monies lying unutilized in the Investor Protection Funds of the stock exchanges.
d) All sums realized by way of monetary penalty under Chapter VIA of the SEBI Act.

II. Nomination Facility

The Group recommended for a suitable amendment in the SEBI Act for incorporation of a provision to provide nomination facility to the unit holders of Mutual Funds and Collective Investment Schemes.

III. Winding up of intermediaries

The Group recommended that suitable provision in the SEBI Act may be made to enable the SEBI to file winding up petition in respect of the intermediary companies on the lines of Section 45MC of the Reserve Bank of India Act and Section 43A of the Banking Regulation Act.

IV. Non-attachment of assets of clients with intermediaries

The Group recommended that there should be a specific provision in the SEBI Act to the effect that the monies or securities of the clients should be held in the form of a trust by intermediaries and no authority shall attach or seize such assets of investors which are in possession of the intermediary.

2. Recommendations for amendment in the existing provisions of the SEBI Act

i. Registration and Regulation of Asset Management Company, Research Analyst, Clearing Corporation, STP Provider etc.
The Group recommended that the SEBI Act may be amended to include Asset Management Company, stock lender and STP Service Provider in section 12 of SEBI Act. Section 12 of the SEBI Act deals with the registration of stockbrokers, sub-brokers and share transfer agents etc.

ii. Monetary Penalty for false information
The Group recommended that the SEBI Act, may be amended so as to empower SEBI to initiate adjudication proceedings for furnishing false information knowingly.

iii. Power to share information with overseas regulators
The Group recommended that Section 11(2)(1a) may be amended to authorize the SEBI to share information on reciprocal basis with overseas regulators on the lines of Sections 169 and 354 of the Financial Services and Markets Act, 2000 of UK.

iv. Inspection and Investigation
The group recommended that sections 11(2A), 11C(9) and 11D be amended to bring them in harmony with Section 12A of the SEBI Act.

v. Attachment of Bank accounts of intermediaries
The group recommended that Section 11(4) of the SEBI Act may be amended so as to increase the period of attachment from one month to three months subject to further extension by another three months upon the order of a Judicial Magistrate of First Class in writing.

vi. Maximum Penalty
The group recommended that in Sections 15A to 15H of the SEBI Act, the words "one lac rupees for each day during which such failure continues or one crore rupees, whichever is less" may be replaced by the words "not exceeding one lac rupees for each day during which such failure continues subject to a maximum of one crore rupees", for the sake of clarity.
vii. **Failure to comply with the order of SEBI**
The group recommended that Section 15HB of the SEBI Act, may be amended to provide for monetary penalty for the failure to comply with the orders of SEBI and to amend Section 24(2) to make non-compliance of SEBI order an offence under the provisions of the said section.

viii. **Monetary Penalty to be transferred to Investor Protection Fund**
The group recommended that the SEBI Act might be amended on the lines of PFRDA Ordinance so that all the penalty amounts realized under Chapter VIA of the SEBI Act are utilized for investors' protection and education. The Group further recommended that suitable amendments in Section 15JA of the SEBI Act should also be made.

ix. **Composition of Securities Appellate Tribunal**
The group recommended that an amendment in the SEBI Act be made so as to empower the Presiding Officer to constitute benches consisting of one or two members for hearing any appeal or interim application. It has also been provided that atleast one of the member of such bench is a judicial member.

x. **Filing of complaint by SEBI-Deemed Public Prosecutor for prosecution**
The group recommended that a suitable amendment in section 26 of the SEBI Act, may be made to provide that the person conducting prosecution on behalf of SEBI, under the SEBI Act before the Sessions Court shall be deemed to be a public prosecutor.

xi. **Office of Single Enquiry and Adjudicating Authority**
The group recommended that the SEBI Act may be amended to provide that an Enquiry and Adjudicating Officer appointed by the Chairman/Whole-time Member may decide the matter of imposition of any type of penalty namely, suspension or cancellation of certificates of registration.
to be imposed by the SEBI or monetary penalty under SEBI Act and Rules/Regulations made there under. The Group further recommended for the Amendment of SEBI Act to provide for constitution of a three member standing committee to review all the orders passed by the Enquiry and Adjudicating Officers.

3. Recommendations for consequential and related amendments in other Acts

The group recommended that the SEBI may in exercise of its powers under Section 11A of the SEBI Act, specify additional disclosures to be made by the companies and the power to amend Schedule II of the Companies Act may remain with the Central Government.

Role of SEBI for small investor Protection & its effectiveness

The number of individual investors has grown phenomenally. It was around 30 lakhs to approximately 6.30 crores in 2003-04. In 1995-96, the total amount raised by corporate sector by issue of equity was Rs.8882 crores. However, it was trebled and became 27,382 crores in 2005-06. It increased further in the year 2006-07 to reach 33,508 crores. The same trend is also seen in debt markets. The investment culture has spread from urban to semi-urban and rural areas of the country. According to the SEBI-NCAER Survey\(^2\), conducted in June 2000 the percentage of rural investors in Equity shares was 13.28% to their total investment while comparatively that of urban investors was 16.62%.

However the enthusiasm and interest of many small investors was curtailed by many companies, brokers, issue managers, mutual funds and banking institutions by their apathy towards them. Further the deficiency in the quality and performance of their services caused a lot of dissatisfaction in them
and lose of confidence and faith in the financial sector. This is evidenced from the fact that the total number of grievances received by the SEBI from investors from 1991-92 to 2006-07 is 29.07 lakhs. The figure is staggering indeed. As pointed out by L.C.Gupta in his survey on Indian Share Owners, 61% of the household investors are dissatisfied with the companies for their apathetic attitude towards them. In addition to that, 44% of the investors are not satisfied with the information supplied by the companies in which they are shareholders.

As a part of its role towards investor protection the SEBI has, since its inception, evolved a dual approach; Proactive and Reactive. These two approaches are in fact complementary and other go together 'Proactive' means 'controlling a situation by making things happen rethread than waiting for them to happen and them reacting to them 'Reactive' showing a reaction or response to a situation.

I. Proactive Approach

The SEBI strongly believes that investors are the backbone of securities market and "Investors' awareness" is the right solution to solve the problem. "Investors' awareness" can be created by "Investors' education". Today "Investor education" has become a focus for regulations in general and the SEBI in particular, which has been taking direct steps to educate the investors through various programmes, such as the following

SMAC (Securities Market Awareness Campaign)

The SEBI launched a comprehensive education campaign named 'Securities Market Awareness Campaign' aimed at creating awareness among investors about the securities market. Its motto is "An Educated investor is a protected investor". This campaign was launched on 17th January 2003 at national level by the then Prime Minister Atal Bihari Vajpayee. It was closely followed by launches in 12 States in the same year namely, Punjab, Gujarat,
Kerala, Maharashtra, Uttar Pradesh, New Delhi, Karnataka, Rajasthan, Tamil Nadu, Andhra Pradesh, West Bengal and Uttarakhand.

Workshops

The SEBI has been conducting ‘Workshops’ to acclimatize investors with the functioning of the securities market. To date, more than 2949 workshops have been conducted in about 485 cities/towns in 20 states in the country. The basic aim is to acclimatize the investors with the functioning of the securities market.

Educative Material

The SEBI has also prepared standardized reading materials to guide investors and give them tips regarding ‘Dos’ and ‘Don’ts’ in matters of investment. Investment games are also referred to in the reading material, which are available in 11 major regional languages other than Hindi and English. In addition to providing educative material, audiovisual clips depicting detailing the theme of the securities market awareness campaign are played at the various workshops.

Investor Website

An investor website has been placed with a view to making information accessible to investors online at one place. Investors can log at website: www.investor.sbi.gov.in and www.sebi.gov.in

Internet based Response system

A simple and effective Internet-based response to investor complaints has been setup so that investors can lodge their grievances electronically and get an acknowledgement to specified email addresses of the concerned investors like Email. Sebi@sebi.gov.in
Advertisements

To date over 1000 advertisements in regional languages relating to various aspects of the securities market have appeared in 48 different newspapers/ Magazines covering approximately 11 cities. Campaign on TV and the Radio also conducted to educate illiterate investors.

II. Reactive Approach

Adopting this approach, the SEBI takes up grievances of investor relating related to various matters in the capital market registered with it against the various intermediaries and get them redressed. It takes up cases for investigation in respect of issue related and market related matters and completing end appointing the enquiry officer for violation of rules and regulation and taking action in time.

A. Redressal of Grievances:

Any person who has a grievance against a listed company/ intermediary should himself or through authorized or SEBI recognized Investors Associations (List of Registered Investors Associations is annexed) file a complaint in the specified form supported by documents. However, he can make such a grievance complaint if he had made a written representation to the concerned Intermediary/ company which had rejected it or no reply was received within one month or he is lot satisfied with the reply was received within one month or he is lot satisfied with the reply received.

Then, SEBI takes up such grievances related to following matters against various intermediaries registered with it. Given below are types of grievances classified into 11 categories for which any person could approach the SEBI.
Table No: 5.1
Types of Grievances

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type – I</td>
<td>Refund Order/ Allotment Advise</td>
</tr>
<tr>
<td>Type – II</td>
<td>Non-Receipt of Dividend</td>
</tr>
<tr>
<td>Type – III</td>
<td>Non-Receipt of share certificates after transfer</td>
</tr>
<tr>
<td>Type – IV</td>
<td>Debentures</td>
</tr>
<tr>
<td>Type – V</td>
<td>Non-Receipt of letter of offer for rights</td>
</tr>
<tr>
<td>Type – VI</td>
<td>Collective Investment schemes</td>
</tr>
<tr>
<td>Type – VII</td>
<td>Mutual funds/ venture capital funds/ Foreign Ventures/ Capital Investors/ Foreign Institutional Investors/ Portfolio manager, Custodians</td>
</tr>
<tr>
<td>Type-VIII</td>
<td>Brokers/Securities lending Intermediaries/ Merchant Bankers/ Registrars and Transfer agents/ Debenture Trustees/ Bankers to Issue/ Credit Rating Agencies Trustees/ Underwriters/ Depository Participants</td>
</tr>
<tr>
<td>Type-IX</td>
<td>Securities Exchanges/ Clearing and settlement organizations/ Depositories</td>
</tr>
<tr>
<td>Type-X</td>
<td>Derivative Trading</td>
</tr>
<tr>
<td>Type-XI</td>
<td>Corporate Governance/ Corporate Restructuring/ substantial Acquisition and Takeovers/ Buyback/ delisting/ Compliance with Listing conditions.</td>
</tr>
</tbody>
</table>

Source: [www.sebi.com/investor education](http://www.sebi.com/investor education)

To redress the grievances of investors, the SEBI may appoint one or more ombudsman/ stipendiary ombudsman (i.e. person to act as ombudsman in respect of specific matters in a specific territorial jurisdiction) as per the SEBI ombudsman/ stipendiary ombudsman regulation, 2003. The office of the ombudsman would be located at the head office where as stipendiary ombudsman would be located at the place of specific complaint.

A. Settlement: For the purpose of carrying out its duties, the ombudsman may require the listed company/ intermediary to provide information/ furnish
certified copy of any document relating to the complaint. He would pass an award in terms of such settlement within one month directly to the parties to perform their mutual obligations. The award should be implemented by the directed party within 30 days failing which he would be deemed to have failed to redress investors grievances and liable to a penalty under Section 15 C of the SEBI Act. Table no.1 shows the number of grievances received and redressed by the SEBI from 1991-92 to 2006-07.

Table No: 5.2

SEBI: Redressal of Grievances

<table>
<thead>
<tr>
<th>Years</th>
<th>Grievances Received</th>
<th>Grievances Redressed</th>
<th>Redressal Rate Percentage (%)</th>
<th>Year-wise Redressal Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>During the Year</td>
<td>Cumulative</td>
<td>During the Year</td>
<td>Cumulative</td>
</tr>
<tr>
<td>1991-92</td>
<td>18,794</td>
<td>1,8794</td>
<td>4,061</td>
<td>4,061</td>
</tr>
<tr>
<td>1992-93</td>
<td>1,10,317</td>
<td>1,29,11</td>
<td>22,946</td>
<td>27,607</td>
</tr>
<tr>
<td>1993-94</td>
<td>5,84,662</td>
<td>7,13,773</td>
<td>3,99,517</td>
<td>3,66,524</td>
</tr>
<tr>
<td>1994-95</td>
<td>5,16,080</td>
<td>12,29,853</td>
<td>3,51,842</td>
<td>7,18,366</td>
</tr>
<tr>
<td>1995-96</td>
<td>3,76,478</td>
<td>16,06,331</td>
<td>3,15,652</td>
<td>10,34,081</td>
</tr>
<tr>
<td>1996-97</td>
<td>2,17,394</td>
<td>18,23,725</td>
<td>4,31,865</td>
<td>14,65,883</td>
</tr>
<tr>
<td>1997-98</td>
<td>5,11,507</td>
<td>23,25,232</td>
<td>6,76,555</td>
<td>21,42,438</td>
</tr>
<tr>
<td>1999-00</td>
<td>98,605</td>
<td>25,32,969</td>
<td>1,46,553</td>
<td>24,16,218</td>
</tr>
<tr>
<td>2000-01</td>
<td>96,913</td>
<td>26,29,882</td>
<td>85,593</td>
<td>25,01,801</td>
</tr>
<tr>
<td>2001-02</td>
<td>81,600</td>
<td>27,11,482</td>
<td>70,328</td>
<td>25,72,129</td>
</tr>
<tr>
<td>2002-03</td>
<td>37,434</td>
<td>27,48,916</td>
<td>38,972</td>
<td>26,11,101</td>
</tr>
<tr>
<td>2003-04</td>
<td>36,744</td>
<td>27,85,660</td>
<td>21,531</td>
<td>26,32,632</td>
</tr>
<tr>
<td>2004-05</td>
<td>54,435</td>
<td>28,40,095</td>
<td>53,361</td>
<td>26,85,993</td>
</tr>
<tr>
<td>2005-06</td>
<td>40,485</td>
<td>28,80,580</td>
<td>37,867</td>
<td>27,23,060</td>
</tr>
<tr>
<td>2006-07</td>
<td>26,473</td>
<td>29,07,053</td>
<td>17,899</td>
<td>27,40,959</td>
</tr>
</tbody>
</table>

Source: Sebi annual report 2006-07
Table no. 1 shows that the number of grievances received decreased from year to year whereas the number of cases redressed increased in the same period. This fact shows the sincere efforts of the SEBI in redressing the grievances. The maximum number of grievances received was 5.84 lakhs in 1993-94, whereas the maximum number of grievances redressed was 6.76 lakhs in the year 1997-98. The SEBI's year wise response to investors' complaints was 21.6% only in 1991-92; however it went beyond 100 per cent in 1996-97, 97-98, 98-99, 99-00 and 2002-03. This indicates the speed and effective rate at which the SEBI has been attending in the grievances year-wise. The overall performance rate is indicated by the cumulative redressal rate, which stood at 21.6% in 1991-92, whereas it was 94.5% in 2006-07. This indicates that the overall rate of response in attending the grievances is also increasing since the inception of SEBI.

B. Investigation

Where the SEBI has reasonable ground to believe that any Company or Intermediary is involved in any transaction in a manner detrimental to the investors or any person or intermediary is violating any of the provisions of the SEBI Act or rules or regulations, the SEBI can appoint an investigating authority to investigate the affairs of such intermediary or persons associated and report to the SEBI as per Section 11(C) of the Act. Table no. 2 given below shows the cases taken up for investigation and completed during the years from 1992-93 to 2006-07.
The number of cases taken up for investigation between 1992-93 and 2006-07 was 1200 which 930 cases representing a rate of 77.5% are completed. This rate is ranging from 26% in 2001-02 to 100% in the years 92-93, 93-94, 94-95, 98-99, 99-00, 03-04 and 2004-05 respectively. This also shows the sincere reactive approach of the SEBI to investigating cases and completing them in time.

C. Nature of investigation taken up

The investigations taken up by the SEBI are varied and relate to different areas of the securities market such as price rigging, insider trading, manipulations and takeovers etc. The following Table-3 covering the period from 1998-99 to 2006-07, present year-wise details regarding the nature and
...ber of the different investigations undertaken by the SEB and their percentages.

### Table No: 5.4
**Nature of investigation taken up**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Market Manipulation and</td>
<td>40</td>
<td>67</td>
<td>47</td>
<td>96</td>
<td>95</td>
<td>96</td>
<td>110</td>
<td>127</td>
</tr>
<tr>
<td>Price rigging</td>
<td>(71.72%)</td>
<td>(83.92%)</td>
<td>(69.11%)</td>
<td>(77.47%)</td>
<td>(76.69%)</td>
<td>(79.23%)</td>
<td>(81.61%)</td>
<td>(83.03%)</td>
</tr>
<tr>
<td>Issue related</td>
<td>4</td>
<td>2</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>manipulation</td>
<td>(7.34%)</td>
<td>(3.27%)</td>
<td>(7.31%)</td>
<td>(0.90%)</td>
<td>(1.68%)</td>
<td>(1.68%)</td>
<td>(1.59%)</td>
<td>(1.81%)</td>
</tr>
<tr>
<td>Insider trading</td>
<td>1</td>
<td>5</td>
<td>6</td>
<td>16</td>
<td>13</td>
<td>14</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>(1.80%)</td>
<td>(5.25%)</td>
<td>(0.81%)</td>
<td>(14.41%)</td>
<td>(10.71%)</td>
<td>(11.52%)</td>
<td>(5.38%)</td>
<td>(3.63%)</td>
</tr>
<tr>
<td>Takeovers</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>(0.00%)</td>
<td>(1.79%)</td>
<td>(1.47%)</td>
<td>(0.90%)</td>
<td>(1.65%)</td>
<td>(0.76%)</td>
<td>(2.42%)</td>
<td>(2.94%)</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>1</td>
<td>3</td>
<td>9</td>
<td>7</td>
<td>6</td>
<td>7</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>(1.81%)</td>
<td>(5.35%)</td>
<td>(12.23%)</td>
<td>(6.20%)</td>
<td>(14.41%)</td>
<td>(11.52%)</td>
<td>(7.49%)</td>
<td>(9.09%)</td>
</tr>
<tr>
<td>Total</td>
<td>55</td>
<td>56</td>
<td>68</td>
<td>111</td>
<td>125</td>
<td>121</td>
<td>130</td>
<td>165</td>
</tr>
<tr>
<td></td>
<td>(100%)</td>
<td>(100%)</td>
<td>(100%)</td>
<td>(100%)</td>
<td>(100%)</td>
<td>(100%)</td>
<td>(100%)</td>
<td>(100%)</td>
</tr>
</tbody>
</table>

Source: Compiled from SEBI Annual Reports

As may see from the Table, most of the investigations undertaken by the SEBI are against 'Market manipulation and price rigging' next in order appear 'Insider trading' and 'issues related manipulations' respectively. How serious is the problem of Market manipulation may be seen from the fact of the cases for investigation undertaken by the SEBI 72.72% of the cases in 1998-99, 84.61% of cases in 2004-05 and 75.49% cases in 2006-07 pertaining to it. Of the remaining cases the Insider trading is found to be prominent in all the years under study. There were as many as four cases representing 7.5% in 1998-99 and 14 cases in 2003-04 representing 11.5%; fortunately their number fell down to 10 or 9.8% in 2006-07. The issue related cases undertaken by the SEBI show a decreasing trend in general from 7.54% in 1998-99 to 3.92% in 2006-07. All these show the SEBI endeavor to protect the investors' interest. Its...
endeavor has been not to take by cases for investigation but complete them satisfactorily in time.

D. Nature of Investigations Completed

The following Table shows the number of investigations completed by the SEBI, from among the cases taken up during the same period.

Table No: 5.5
Nature of investigations completed

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Market Manipulation and Price rigging</td>
<td>31</td>
<td>37</td>
<td>27</td>
<td>11</td>
<td>72</td>
<td>122</td>
<td>148</td>
<td>62</td>
<td>77</td>
</tr>
<tr>
<td>Issue related manipulation</td>
<td>16</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Insider trading</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>6</td>
<td>14</td>
<td>9</td>
<td>10</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Takeovers</td>
<td>6</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>7</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Miscellaneous (Unfair Practices, Misleading Advertisements, etc.)</td>
<td>3</td>
<td>7</td>
<td>4</td>
<td>3</td>
<td>5</td>
<td>15</td>
<td>17</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
<td>57</td>
<td>46</td>
<td>21</td>
<td>106</td>
<td>152</td>
<td>179</td>
<td>81</td>
<td>102</td>
</tr>
</tbody>
</table>

Source: Compiled from SEBI Annual Reports

It is evident from the above table that the largest number of cases completed pertained to ‘Market manipulation and price rigging’. In 1998-99, 31 investigations in market manipulation and price rigging, representing 51.66% were completed. In 2002-03 72 representing 67.92% of investigations and in 2004-05 148 investigations reflecting 82.68% were completed. Issue related manipulation was another serious issue in which the SEBI completed a considerable number of investigations. Regarding Takeover cases SEBI giving directives in the interest of small investors. Many orders have been given
against the acquiring groups to go for open offer. Since 1994-2001, hardly any open offer order was issued by the SEBI in favour of small investors. Most of the takeovers were exempted by the SEBI. SEBI took 6 years to finalise the guidelines of takeover code. And management prolonged the formation of guidelines to protect small investors’ interest for almost six year. It is clear form the above two tables the SEBI has been doing a good job not only in taking up investigations but also completing them promptly.

E. Appointing an Enquiry Officer

If the SEBI suspects that any intermediary has violated any provision of the SEBI Regulations 1992, an enquiry in respect of such violation can be adjudicated under Chapter VI-A SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating officer) Rules 1995. These regulations were amended twice first on 27th November 2003 and than gain as 30th December 2003, and issued new regulations were issued regarding the Procedure for holding enquiry by Enquiry Officer and Imposing Penalty. Under these regulations, an officer of the Board specified by the Chairman or Member on his behalf can be proposed to hold an enquiry and the intermediary is required to submit a written statement to specify whether he desires to be heard, in person before the enquiry officer, within in 21 days.

The SEBI has appointed enquiry officers in various cases against different financial intermediaries. Table 5 gives the details of cases where an enquiry officer was appointed during the period 1996-97 to 2006-07.
### Table No: 5.6

**Details of Cases where Enquiry Officer was appointed**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Stock brokers</td>
<td>58</td>
<td>34</td>
<td>65</td>
<td>39</td>
<td>21</td>
<td>136</td>
<td>158</td>
<td>272</td>
</tr>
<tr>
<td>Merchant Bankers</td>
<td>10</td>
<td>7</td>
<td>10</td>
<td>6</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Bankers to an Issue</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sub-brokers</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
</tr>
<tr>
<td>RTA/STI</td>
<td>(3.00)</td>
<td>(17.20)</td>
<td>(10.91)</td>
<td>(7.69)</td>
<td>(12.93)</td>
<td>(0.00)</td>
<td>(3.24)</td>
<td>(0.32)</td>
</tr>
<tr>
<td>Portfolio Manager</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
</tr>
<tr>
<td>Depository</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
</tr>
<tr>
<td>Participant</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
<td>(0.00)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>70</td>
<td>52</td>
<td>91</td>
<td>52</td>
<td>43</td>
<td>155</td>
<td>185</td>
<td>314</td>
</tr>
</tbody>
</table>


As seen from Table 5, the maximum number of cases where enquiry officers were appointed was in the case of Stock brokers in secondary markets. Next in order were the cases against merchant bankers in primary markets. The SEBI appointed enquiry officers in 58 cases against brokers representing 83% in 1996-97, in 2003-04 enquiry officers were appoints in 272 cases representing 86.64%. It is also interesting to observe that the number of cases of violation in the primary market where an enquiry officer was appointed declined from year to year. In 1996-97 an enquiry officer was appointed to investigate into the cases against 10 merchant bankers. But after years later in 2003-04 the number of such cases came down to three (just 1%).
The Enquiry officer / Investigating authority, on completion of investigation, if satisfied that there is a violation of the regulations and after giving a reasonable opportunity of hearing to the persons concerned, may by an order, in the interest of the investors and securities market, issue or take any of the following actions or directions, namely Cancellation of registration, Suspension, issuing warning issued etc., under Section 1111-B, 15 and 24 in Chapter VI-A of SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 as amended in 2003. The following table no. 6 shows the nature of prohibitive action taken against various violating intermediaries between 1996-97 and 2006-07

### Table No: 5.7

#### Actions Taken

<table>
<thead>
<tr>
<th>Years</th>
<th>Cancellation</th>
<th>Suspension</th>
<th>Warning Issued</th>
<th>Direction U/S 11 B</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-98</td>
<td>2 (2.66)</td>
<td>39 (52.00)</td>
<td>9 (12.00)</td>
<td>10 (13.33)</td>
<td>60 (100)</td>
</tr>
<tr>
<td>1998-99</td>
<td>0 (0.00)</td>
<td>16 (16.5)</td>
<td>17 (17.50)</td>
<td>62 (83.91)</td>
<td>95 (100)</td>
</tr>
<tr>
<td>1999-00</td>
<td>4 (3.30)</td>
<td>30 (24.80)</td>
<td>28 (23.20)</td>
<td>58 (47.90)</td>
<td>93 (100)</td>
</tr>
<tr>
<td>2000-01</td>
<td>1 (2.56)</td>
<td>4 (10.25)</td>
<td>9 (23.00)</td>
<td>21 (53.84)</td>
<td>35 (100)</td>
</tr>
<tr>
<td>2001-02</td>
<td>1 (0.70)</td>
<td>8 (5.60)</td>
<td>36 (25.17)</td>
<td>98 (68.53)</td>
<td>143 (100)</td>
</tr>
<tr>
<td>2002-03</td>
<td>1 (4.28)</td>
<td>42 (16.34)</td>
<td>62 (24.12)</td>
<td>140 (54.57)</td>
<td>255 (100)</td>
</tr>
<tr>
<td>2003-04</td>
<td>1 (1.72)</td>
<td>43 (24.72)</td>
<td>22 (12.36)</td>
<td>106 (60.92)</td>
<td>174 (100)</td>
</tr>
<tr>
<td>2004-05</td>
<td>3 (1.29)</td>
<td>42 (18.10)</td>
<td>53 (22.86)</td>
<td>134 (57.75)</td>
<td>232 (100)</td>
</tr>
<tr>
<td>2005-06</td>
<td>2 (0.27)</td>
<td>36 (9.58)</td>
<td>71 (9.58)</td>
<td>632 (85.29)</td>
<td>741 (100)</td>
</tr>
<tr>
<td>2006-07</td>
<td>0 (0.00)</td>
<td>53 (12.26)</td>
<td>27 (6.36)</td>
<td>345 (81.36)</td>
<td>424 (100)</td>
</tr>
</tbody>
</table>

Source: Compiled from SEBI Annual Reports
In 1997-98, 13.33% of the total actions taken were in respect of violation of disclosure practices. The percentage went up to 60.92% in 2003-2004. Another common action taken up is Warnings issued to various intermediaries. Suspension of trade and cancellation of registration was also found increasing in all the years under the study. Highest numbers of suspensions were found in 1997-98 with 39 cases representing 52% whereas it was 24.72% in 2003-04. With a view to enhancing regulatory effectiveness, prompt actions were taken during the year against various entities. The total number of entities against whom actions initiated was significantly higher at 741 during 2005-06 as against 232 in the previous year, indicating a rise of 219.4% over the previous year of 2004-05. This was mainly because of the interim orders passed in various cases to prevent malpractices in the markets. Under section 11 of the SEBI Act, 632 (85.29%) prohibitive directions were issued to various entities in 2005-06 as against 134 (57.75%) in 2004-05. The number of intermediaries suspended for varying periods during 2005-06 was 36 as against 42 in 2004-05. Letter of warning issued in 2005-06 were also higher than that in the 2004-05. During 2006-07, 345 prohibitive directions were issued under Section 11 of SEBI Act against various entities. A total of 52 intermediaries were suspended during the year. The number of entities against whom action was initiated during 2006-07 went down as compared to the previous year. This decrease was mainly due to a number of interim orders passed in the previous year in various cases to prevent malpractices in the markets.

In its endeavours to protect of investors, the SEBI has been active in its proactive approach by conducting Investors' awareness / Investors' education programme in several ways across the country. It has been is equally active in its reactive approach also by redressing the investors' grievances, conducting investigations and appointing enquiry officers against financial intermediaries.
and also taking action in a number of cases. However, there has been criticism against the style of function of the SEBI, and the scope of powers by which it is operating and the amount of 'red-tapism' in implementing the enquiry reports. It is also criticized on the ground that political intervention in its administration is mounting up. In spite of its continuous efforts, the Securities Market today is not free from violations and malpractices; Small investors are not adequately educated or sufficiently protected in primary and secondary markets. Therefore, there is a need to strengthen the hands of the SEBI with more and more legal / judicial powers and make it unique machinery on the lines of SEC (USA) to safeguard the interests of investors in general and small investors in particular.

Reference:


6. [www.sebi.com/investor](http://www.sebi.com/investor)

7. Securities and Exchange Board of India, annual report 2006-07