CHAPTER-III
ORGANIZATIONAL STRUCTURE OF INDIAN CAPITAL MARKET AND SHAREHOLDER PROTECTION LAWS

1. Structure of Indian Financial System

The financial system of any country constitutes an important role in promoting economic growth. It transfers savings into investments and improves efficiency of financial resources. Since 1947, the role of the financial system has been more vibrant in meeting the needs and demands of not only the country but also the corporate sectors. Since independence, the Indian financial system outperformed in the development of the nation and fulfilling the capital requirement of corporate, household sector. The Indian financial system consists of financial institutions, markets, legal obligations, practices, market experts, transactions, claims and liabilities.

In connection with the structure of the capital market, the detailed explanation of the market starts from the financial system. According to Christy, the objective of the financial system is to:

"Supply funds to various sectors and activities of the economy in ways that promote the fullest possible utilization of resources without the destabilizing consequence of price level changes or unnecessary interference with individual desires."^3

According to L.M. Bhole:

"The financial system or the financial sector of any country consists of specialized and non-specialized financial institutions, of organized

and un-organized financial markets, of financial instruments and services which facilitate the transfer of funds. Procedures and practices adopted in the markets, and financial interrelationships are also parts of the system.”

According to Shashik Gupta, Nishi Aggarwal and Neeti Gupta:

“Financial system comprises a set of sub systems of financial institutions, financial markets, financial instruments and services which helps in the formation of capital. It provides a mechanism by which savings are transformed into investments.”

The Indian financial system consists of three components namely financial markets, financial instruments and intermediaries. The development and success of financial system depend on the frequency of a variety of financial instruments meet with the requirement of various investors. The major functions of the financial system are:

(i) It promotes the process of capital formation by providing a mechanism for transformation of savings into investments.

(ii) It serves as a link between savers and investors. It mobilizes savings into productive investments.

(iii) It provides an efficient mechanism of paying for exchange of services and goods.

(iv) It ensures that the transactions are safe and ongoing.

(v) It provides alternate forms of deposits according to the preferences and liquidity positions of the savers.

95 Ibid., p.2
(vi) It distributes the risk through diversification and thus reduces the risk of the saver.

(vii) It helps in lowering the cost of transactions and increase in returns.

(viii) It provides a mechanism for the transfer of resources beyond the geographical limits.

(ix) It provides detailed needed information to the various players of the market like individuals, intermediaries, businessman, Government etc.\textsuperscript{96}

The Indian financial market consists of money market and capital market. Money market means one segment of the financial market where securities and assets with an interim maturity period are traded. Financial assets like treasury bills, certificates of deposits, commercial paper and bankers' acceptance are some of the short-term debt securities traded in the money market. Financial market can be classified into different categories according to the nature of the financial assets available as under:

(i) Nature of claims – debt and equity markets

(ii) Maturity period of the instrument – money market and capital market

(iii) Trade of the instrument – spot market and delivery market

(iv) Deals in financial claims – primary market and secondary market

In an economic development of the country, financial market plays an important role in capital formation and financial assets are the most important part of financial system. The structure of Indian financial markets is as under:

\textsuperscript{96} Supra note 94. at p.3
2. **Structure of capital market**

The detailed structure of capital market is explained in order to understand the importance of shareholder in the development of the capital market and regulations governing intermediaries to protect the interest of the shareholders. Section-2(1) (g) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 defines ‘Intermediary’ as:

> ‘a person mentioned in clauses (b) and (ba) of sub-section (2) of section 11 and sub-section (1) and (1A) of section 12 of the Act and includes an asset management company in relation to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, a clearing member of a clearing corporation or clearing house and a
trading member of a derivative segment of a stock exchange but does not include foreign institutional investor, foreign venture capital investor, mutual fund, collective investment scheme and venture capital fund;97

The Capital market is a market for long-term debt instruments and shares. Long-term debt instruments are those debt instruments having a maturity of more than a year. Both equity and debt instruments trade under the capital market by the issuer of the instrument and the buyer. Section-2(1) (f) of the Depositories Act, 1996 defines term an ‘issuer’ as:

"Issuer" means any person making an issue of securities"98

Capital market constitutes primary market for the new securities and the secondary market for the existing securities. Section-2(1) (h) of the Securities Contracts (Regulation) Act, 1956 defines term ‘Securities’ includes:

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(i) derivative;

(ia) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (2g) of section 2 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

97 Section-2(1)(g) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008
98 Section-2(1)(f) of the Depositories Act, 1996
(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;^99

It includes financial instruments with more than one-year maturity period. Other financial instruments are American Depository Receipts and Global Depository Receipts and derivatives. Section-2(ac) of the Securities Contracts (Regulation) Act, 1956 defines ‘derivatives’ as:

(A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(B) a contract which derives its value from the prices, or index of prices, of underlying securities;^100

Capital Market is a place where market related financial instruments are purchased and sold by different categories of investor. Capital market helps in determining the price of the financial instruments available in the market to trade and this mechanism is known as price discovery process. It is a process of determining the prices of financial assets in the market place through the interactions of buyers and sellers.

In capital market, investors and companies come together in a common place to buy and sell their financial assets i.e. stocks and shares, with the help of the stock exchanges. It is to provide trade facilities efficiently to the investors and the company. In India, a stock

^99 Section-2(1)(h) of the Securities Contracts (Regulation) Act, 1956

^100 Section-2(ac) of the Securities Contracts (Regulation) Act, 1956
exchange is recognized by the Securities Contracts (Regulation) Act, 1956 and operates under the guidance and control of Securities and Exchange Board of India. Section-2(j) of the Securities Contracts (Regulation) Act, 1956 defines ‘Stock Exchange” as:

(a) Anybody of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or

(b) a body corporate incorporated under the Companies Act, 1956 (1 of 1956) whether under a scheme of corporatisation and demutualisation or otherwise, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities\(^{101}\)

Stock exchanges provide a platform to the buyer and seller to trade in financial assets with an easy trading method. Stock exchange operates in the secondary market.

Capital market consists of the primary, secondary market and financial institutions. There is a wide range of borrowers and lenders in the capital market. The long-term demand of the borrower fulfills through capital market and its financial instruments. A financial instrument is a legal instrument that represents either an ownership claim or a creditorship claim. The two categories of securities are ownership and creditorship securities i.e. ownership category comprises of equity and preference shares whereas debentures and bond are representing creditorship securities. A debt instrument is meant to generate capital with an obligation to refund the same with certain conditions i.e. rate of interest and date of repayment of the loan. The creditor is known as the lord of the debt security. Major capital market assets are described below:

\(^{101}\) Section-2(j) of the Securities Contracts (Regulation) Act, 1956
2.1 Share: Section-2(46) of the Company Act, 1956 defines “share” as:

"Share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied"\(^{102}\)

Equity or share stands for possession or ownership with responsibilities and is the basic sources of finance for any company. Every shareholder of the company becomes the member of the company and has the right to vote in the company. They are the legal owner of the company. The price at which company issues these shares consists of two portions, Par value and Premium. Par value can also be called nominal value or face value which normally is 10/- but it may be more than 10/-. Excess of issue price over the nominal value is called the premium. If the issue price of shares consists of premium then it is called an issue of shares at a premium\(^{103}\). Equity investment is almost different from the other form of the investment like bank deposits, small saving schemes, debentures, bonds etc. because the equity investment is based on high-risk high return and all other are traditional fixed income financial instruments. Equity investment is a market based investment where as all others are fixed income financial instruments. They are based on fixed returns with no relation with the market.

2.2 Preference shares: Section-85(1) of the Companies Act, 1956 defines 'preference share' means:

"with reference to any company limited by shares, whether formed before or after the commencement of this Act, that part of the share capital of the company which fulfils both the following requirements, namely :-

\(^{102}\) Section-2(46) of the Company Act, 1956
(a) that as respects dividends, it carries or will carry a preferential right to be paid a fixed amount or an amount calculated at a fixed rate, which may be either free of or subject to income-tax; and

(b) that as respects capital, it carries or will carry, on a winding up or repayment of capital, a preferential right to be repaid the amount of the capital paid-up or deemed to have been paid-up, whether or not there is a preferential right to the payment of either or both of the following amounts, namely:

(i) any money remaining unpaid, in respect of the amounts specified in clause (a), up to the date of the winding up or repayment of capital; and

(ii) any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.\textsuperscript{104}

It is a kind of mixed financial instrument having characteristics of both equity and debentures. It combines both ownership and creditorship rights available with the instruments. The holders of such securities have a preference or prior rights over the equity holders in respect of fixed dividend as well as a return of capital. All preference shares i.e. redeemable or irredeemable must mature within twenty years from the date of issue \textsuperscript{105}. Preferential shares are available to trade in the securities market. The Securities and Exchange Board of India (SEBI) has introduced regulations to govern the public sale of preference shares. It allows hybrid securities, which has a debt and equity components, to be listed on stock exchanges.

\textsuperscript{104} Section-85(1) of the Companies Act, 1956

\textsuperscript{105} Section 80 (5A) of the Companies Act, 1956
Securities and Exchange Board of India said that non-convertible redeemable preference shares sold by Indian issuers must have a minimum rating of "AA-minus" and tenure of at least three years. Securities and Exchange Board of India additionally simplified the registration process for stockbrokers, allowing them to obtain a single certificate from an exchange to trade across all equity instruments like preferential shares.  

2.3 Debentures: Section-2(12) of The Companies Act, 1956 defines 'debenture' as:

`debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not.`

It is issued by the company, which is in need for money from the investors. It bears a fixed rate of interest and redemption of the bond's principal money on specific dates. Payment of interest on maturity of debentures varies from company to company. In some companies, it is half yearly and in some annually basis. All issued debentures are debt instruments and secured or charged against the asset of the company in favour of debenture holders. There are two categories of debenture one is convertible and the other is non-convertible into equity. They have no right to vote in the company meetings like shareholders.  

Section-2(bb) of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 defines 'debenture trustee' as:

`a trustee of a trust deed for securing any issue of debentures of a body corporate`
Debenture trustees are the caretaker of the debenture holder's interest in the company. The benefit of debentures to the issuer company is that they leave the specific assets burden free and thereby leave them open for subsequent financing. Debentures are in general without restraint transferable by the debenture holder to others. The interest given to them against the loan taken is a charge against profit of the company. Debentures are of two kinds in the financial market:

(i) Convertible Debentures means, they are convertible into ordinary shares of the issuing company after a predetermined period or maturity of the instrument.

(ii) Non-Convertible Debentures means, they are not convertible into ordinary shares of the issuer company. They usually carry higher interest rates than the convertible debentures only.

2.4 Bonds: It is a kind of promissory note and debt instrument issued by the company or the Government to the investors with bearing interest. A bond is a promise to pay the holder of the bond a particular sum of interest at gaps over a specified length of time and to pay back the loan on the ending date. It is a process of borrowing and lending between the investors and the issuing company. A bond investor lends money to the issuer and in exchange, the issuer promises to repay the loan amount on a specified maturity date. In India, big corporate houses and public sector companies issue bonds in the search of funds for their business operations. The Indian bond market has lower participation than secondary market. It has enormous opportunities for the growth of the capital market. It is evident from the data sources that the share market is better liked than the bond market in India. The bond market has come out into a significant sector of the financial market. Sometimes, the no availability of capital to the issuer becomes one of the major problems for the large organization.
The bond market in India plays a significant responsibility in fund raising for the developmental ventures of the company. Bond instruments are offered to the public by the company to raise capital against the instrument. Now, bond market in India has fundamentally diversified. It is a massive provider of capital to the constant enlargement of the financial system. The Indian bond market has enormous capacity in raising funds to hold up the infrastructural development started by the Government and expansion plans of the companies. Since bonds are the subject-matter of buy and sell, all the certificates of a bond-issue encloses a master loan agreement. The Master loan agreement is in between the issuer and the investor called the “bond indenture”. An indenture is the contract, which contains the terms of a bond issue. Clauses in an indenture are known as covenants. It specifies the rights of holders of bonds and duties of issuers. It encloses all the information related to the bond. It includes the following:

(i) Amount of the loan
(ii) Rate of Interest
(iii) Schedule or form of interest payments
(iv) Term of the agreement
(v) Refunding
(vi) Collateral

In the bond-market, market operations went through great reforms, the system of auction was introduced to sell the Government securities. It is a tradable instrument issued by the Central Government or the State Governments. It acknowledges the Government’s debt obligation. Such securities are short-term (usually called treasury bills, with original maturities of less than one year) or

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long-term (usually called Government bonds or dated securities with original maturity of one year or more). Another reform is the opening of delivery versus payment system by the Reserve Bank of India to invalidate the danger of settlement in securities and guarantee the constant performance of the securities delivery and payment. Since July 1995, Reserve Bank of India has established a delivery versus payment system in Mumbai.

To create a centre of attention of more and more investors from the large variety of the community, the launch of innovative products such as capital-indexed bonds and zero coupon bonds by the market regulators has done. Zero coupon bonds are bonds that do not pay interest during the life of the bonds. Instead, investors buy zero coupon bonds at a deep discount from face value of the bond, which is the amount a bond will be worth when it "matures" or comes due. Another area is based on complication of the markets for bonds such as inflation-indexed bonds. The establishment of an influential legal monitoring arrangement called the trade for trade system by the Reserve Bank of India, which confirmed that all market deals are to be advanced with bonds and funds only. The wholesale debt market was established at the National Stock Exchange to report the trading volume of the Government of India bonds as a new segment of trading. Issue of ad-hoc treasury bills by the Government of India as a funding instrument was abolished with the opening of the ways and means agreement. Likewise, capital market instruments are American Depository Receipts / Global Depository Receipts, Derivatives, Exchange Traded funds, Mortgage backed securities etc. After bond market, securities market is the second part of financial market. Securities market is an important part of the market. Shares are

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115 ibid., p.20
available to the investors in the securities market. It is divided into two parts namely primary and secondary market.

3. **Structure of securities market**

In the capitalistic structure of the Indian financial system the securities market is a necessary concomitant which operates through a variety of intermediary institutions, financial instruments and mechanisms whereby investible funds are pooled, distributed and transferred to the business, Governments and individuals\(^{116}\). The main feature of the securities market is to provide liquidity to the investor’s of different categories. Securities market also provides a trading platform to the investor for the securities available in the primary market.

A good securities market is an essential pre-requisite for an industrial and commercial development of a capitalist country. The credit is generally, required and supplied to the borrower on short-term needs. The money market caters to the short-term needs and the securities market meets the long-term capital needs\(^ {117}\). Securities market is a central instrument of coordinating and directing trade mechanism, free and balanced flow of financial resources in the economic system in a country.

The expansion of a high-quality securities market in a nation is dependent upon the accessibility of saving, appropriate association of its ingredient units and the entrepreneurship qualities of its people. Before independence, the securities market of India was ill developed because of its certain defects. However, in recent year since independence, the securities market of India had substantially changed and has been changing for the better. Securities market is a place where money is utilized as a resource to help industry in


monetary terms. In addition, money is provided to the securities market at the rate where borrowing becomes profitable for the companies.

3.1 Meaning of the securities market

The Securities market in India has a long history. The Indian financial system has witnessed the most profound transformation in the securities market. From being a marginal institution in the mid-eighties, the securities market has emerged as the most important mechanism for allocating financial resources in the national economy. The emerging significance of the securities market is based on the rapid expansion in the quantum of funds raised and the number of investors in the primary market. It also includes increases in the number of stock exchanges and listed stocks, the speedy rise in market capitalization and the volume of trade, entry of sophisticated investors like the foreign institutional investors and mutual funds. The following different features make the securities market quite different from any other market like:

(i) Securities are mere intangibles and easily created

(ii) Security analysis is complex and difficult

(iii) Stocks trade in the secondary market

(iv) Excessive liquidity lubricates the market also well.

The securities market refers to the market for those financial assets that are usually and willingly transferable by sale. It has two inter-dependents and indivisible segments namely New-issue market or primary market and stock market or secondary market. The first part of the securities market is the primary market.

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120 The Institute of Company Secretaries of India, Securities Laws and Regulation of Financial Markets (New Delhi: ICSI Publication).3. In addition, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013. Preference shares are securities issued by a company, which typically have no voting rights.
3.1.1 Primary market

For the growing companies, equity finance through a share issue can be much more attractive than debt finance from banks. The primary market activities help the corporate bodies and the Government to mobilize and raise capital funds which is required to fulfill obligations like the payment of a venture capitalist or private equity firms. There is a specialized mechanism to mobilize funds like initial public offerings, offer to sale, placement process etc. Initial public offering means where the share issues to the public first time with the company. Book building process helps in determining the price of shares to be issued by the company. Book-building is a procedure by which corporate determine the demand and the price of a proposed issue of securities through public bidding. In share allotment process, pro rata basis is applied in case of oversubscription of the shares in an issue by the investors.

Secondly, primary market also offers shares under Section-81 of Indian Company Act, 1956 i.e. the further issue of capital category, where securities are offered exclusively to the existing shareholders of the company. As well as raising funds in the market, companies can also issue securities in the international market through the American Depository Receipts, Global Depository Receipts and External Commercial Borrowing route to raise capital. The foreign currency borrowings raised by the Indian corporate from confirmed banking sources outside India are called "External Commercial Borrowings". These foreign currency borrowings can be raised within ECB Policy guidelines of Government of India or Reserve Bank of India applicable from time to time.

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The new-issue market or primary market is a permanent source of industrial securities of the secondary market. The secondary market and the primary market are interdependent. The primary market deals in new securities, which are not formerly offered to the public to invest. It is only to provide opportunity to transfer capital from investors to the corporate need capital to expand or to fulfill obligations or to expand existing industrial events. The Government and the corporate sector adopt the mobilization of funds through the new-issue market. The investor in these securities is banks, insurance companies, investment companies and individuals. It is the place where an offering company uses to meet with their investors first time with their offering securities. Therefore, if one is wondering whether to invest in the new issue of a company, one is considering whether to participate in the primary market.

The most important purpose of primary market is to make possible the shift of capital from investors to the companies in need to set up new unit or to expand and diversify existing units. Such capital raising facilities are of crucial importance in the context of entrepreneurs who are in search of prospective investors and then apply their saved capital for productive uses. The primary market is a multifaceted of institutions from side to side, which are in need of money from investors, can obtain funds directly or indirectly. The major participants in the search of funds are the Central and State Governments and whereas as investors are the banks, insurance companies, high net worth investors (HNI) etc. In other words, the primary market is a very important division of the securities market. The effectiveness of the primary market defines the scope for higher productive capacity of security and its expansion.

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3.1.2. Functions of primary market

The common purpose of the primary market is mostly to supply the capital funds available for investment in a business enterprise and can be divided from the operational standpoint into three discrete services i.e. investigation and processing of proposals for new-issues, underwriting of new issued securities and allocation of new securities to final investors. A developed primary market is characterized by the presence of particular agencies to carry out each of these three services. In the primary market, the company may issue the securities in the domestic market or international market or both. Companies may issue the securities at face value, at a discount or premium to the investor. These securities may take a multiplicity character such as equity, debt etc.

Likewise, the key participants in secondary market are also participants of primary markets and the stockbrokers who are members of the stock exchange working on the behalf of the investor in the primary market. In case of primary market, the prices are determined by the management with due compliance with the Securities and Exchange Board of India requirement for new issue of securities. On the other hand, in case of secondary market the price of the securities is determined by forces of demand of securities and supply of the market. It keeps on fluctuating according to the market. In case of a new issue of shares of the companies, different methods of share allotment are used and described as under:
3.1.2. (a) Public issue

Public issue means the addition of new investor into the family of shareholders by issuing him shares of the company. It may be divided into two different parts i.e. Initial public offer (IPO) and further public offer (FPO).

3.1.2. (a) (i) Initial public offer

Under Section-2(p) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, it is mandatory by the company to list their company into any recognized stock exchange and comply with listing agreements for making an initial public offering. It defines ‘initial public offering’ as:

‘an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such securities in an unlisted issuer’.

When the shares of the company listed on any stock exchange, the basic document executed between the company and the stock

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129 Section 67 of the Companies Act, 1956
129 Section-2(p) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009
exchange is known as listing agreements. After listing of the company, it issues new securities i.e. shares to the public for the first time and the process of offering called as Initial Public Offering. In addition, Foreign Institutional Investor (FII) has been allowed to invest capital in unlisted securities i.e. not listed on any stock exchange since October 1996 in the Indian financial market. Only limited companies that assure certain conditions are permitted to issue their shares to the public through an initial public offering. The criteria for initial public offerings in India have the following characteristics as under:

(a) The Initial Public Offering criterion for the categories of project companies is far easier on the stipulation that a public financial institution of scheduled commercial bank has evaluated the company's project and,

(b) Scheduled commercial bank has participated in the project financing.

(c) Careful conditions are obligatory on characteristics of Initial Public offerings.

Under Section-2(r) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, the securities issuer has been defined. The issuer shall have to follow pre-requisite conditions for listing as per Securities Contracts (Regulations) Act 1956, Companies Act 1956, Securities and Exchange Board of India Act 1992. In addition, any rules or regulations framed under preceding statutes, any circular, clarifications, guidelines issued by the appropriate authority under foregoing statutes. Securities and Exchange Board of India has stipulated the eligibility norms for companies planning an initial public offering, which are as follows:

131 Section 73 (2) and (2A) of the Companies Act, 1956
(a) Net tangible assets of at least Rs. 3 crore in each of the preceding three full years

(b) Distributable profits for at least three out of the immediately preceding five years

(c) Net worth of at least Rs. 1 crore in each of the preceding three full years

(d) The issue size should not exceed 5 times the pre-issue net worth

(e) If there has been a change in the company's name, at least 50% of the revenue for preceding one year should be from the new activity denoted by the new name.\(^{134}\)

Few entities are exempted for the above-mentioned criteria of listing of IPOs. Alternative routes i.e. Qualified Institutional Buyers Route and Appraisal Route are also mentioned for the companies who are not eligible to make an offer. The substitute circumstances are as follows:

(a) Issue shall be made through book-building route, with at least 50 per cent to be mandatory allotted to the Qualified Institutional Buyers.\(^{135}\) Qualified Institutional Buyers are those institutional investors who are generally perceived to possess expertise and the financial muscle to evaluate and invest in the capital markets.

(b) The minimum post-issue face value capital shall be Rs. 10 Crore or there shall be a compulsory market making for at least two years.\(^{136}\)

\(^{134}\) IPO Investing Eligibility norms for making an IPO. http://icpf.gov.in/IEPF/Eligibility_norms.html (Assessed on 03-05-2013)

\(^{135}\) Clause 2.2.2B (v) of the DIP Guidelines, 2000 defines 'Qualified Institutional Buyer'.

\(^{136}\) What are eligibility norms for making an IPO? available at: http://www.stockmarketindia.net/what-are-eligibility-norms-for-making-an-ipo/ (Assessed on 01-05-2013)
Table 3.1

IPOs: Equity & Convertibles

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Issues</th>
<th>Issue Amount (Rs. crore)</th>
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<td>2375</td>
</tr>
<tr>
<td>2001-2002</td>
<td>6</td>
<td>1082</td>
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<td>2002-2003</td>
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<td>41323</td>
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<td>2008-2009</td>
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<td>2034</td>
</tr>
<tr>
<td>2009-2010</td>
<td>39</td>
<td>24948</td>
</tr>
</tbody>
</table>

Source: PRIME Database 2010

The table 3.1 shows the data of one decade and the number of issues per year offered by the companies to the public. In the year 2009-10, total number of issues was 39 in comparison to the year 2008-09. The maximum number of IPOs offered in the year of 2000-01.

3.1.2. (a) (ii) Further public offer or Follow on offer

When an already listed company makes a fresh issue of securities either to the public or an offer for sale to the public, it is called a Further Public Offering. It is the most popular process used by the companies to generate the capital in the primary market.

137 Section 2(n) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009
company generates capital by issuing prospectus to the public with
detailed information of the offer. Under Public Issue method, the
issuing company formulates a proposal to the investors by making an
announcement through the prospectus carrying all requisite
information at the stated price. It is mandatory for the company to
issue a prospectus, if they want to generate capital from the public. All
companies require the contents of the prospectus as mentioned in the
Companies Act, 1956. Section-2(36) of the Companies Act, 1956
defines 'Prospectus' as:

'any document described or issued as a
prospectus and includes any notice, circular,
advertisement or other document inviting deposits
from the public or inviting offers from the public
for the subscription or purchase of any shares in,
or debentures of, a body corporate'\(^{138}\)

The underwriting facility generates self-assurance among
potential investors to make certain the accomplishment of the issue
arising out of poor public response from the investors.

**3.1.2. (b) Offer for Sale**

Under offer for sale, shares are not issued to the public like
initial public offering, but there are certain specialized agencies called
intermediaries through which shares are distributed to the recognized
stockbrokers and sub- brokers at a fixed price. These broking houses
are known as issuing house for the offer for sale process. In the first
place, issuing company sold the securities to the issuing houses and
then after issuing houses sold securities to the public i.e. final
investors. Offer for sale method differs from the public issue method
on the basis that the shares in the later case are issued directly to the
public whereas, in the former case, these are issued through issuing

\(^{138}\) Section-2(36) of the Companies Act, 1956
houses or stockbrokers. Securities and Exchange Board of India has permitted the stock exchanges to provide a separate window, i.e. apart from the existing trading system for the normal market segment, to facilitate promoters of listed companies to dilute or offload their holding in the listed companies in a transparent manner with wider participation of investors. The facility of offer for sale will be available on the both major stock exchanges in India. Section-2(za) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 defines 'promoter' as:

'(i) the person or persons who are in control of the issuer;

(ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;

(iii) the person or persons named in the offer document as promoters:

Provided that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:

Provided further that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person;

Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter for the subsidiaries
or companies promoted by them or for the mutual fund sponsored by them;”

The size of the offer shall be a minimum of Rs. 25 Crores. However, size of the offer can be less than Rs. 25 Crores to achieve minimum public shareholding in a single tranche. The compensation of the offer for sale to the private investor is that it apparently allows participating in the market and permits applications from the general public.

3.1.2. (c) Placement method

In the placement method of the issue, the issuer offers securities to a selected group of people not more than forty-nine percent. It must not be a right issue or a public issue in nature. The following are the important characteristics of the private placement i.e. the transaction in placement method is very fast, there are no legal hurdles, flexibility in borrowing of the fund. It does not require the detailed compliance of formalities as required in public or rights issues. It is a cost and time effective way of raising funds for the corporation.

In this method, for issuing the shares, companies are free to fix the quantum of placement and only follow the rule for pricing of preferential allotment as stipulated by the Securities and Exchange Board of India. Preferential allotment and qualified institutions placement are of the two types of Private placement of shares or convertible securities by the listed issuer.

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139 Section-2(za) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009
140 SEBI Circular No: CIR/MRD/DP/ 18/2012
142 G. Ramesh Babu, Financial Services In India. (New Delhi: Concept Publishing Company 2005) 59
3.1.2. (c) (i) Preferential allotment

Preferential allotment means, allotment of shares or convertible securities to a select group of persons under provisions of Chapter-XIII of SEBI (Disclosure of Investor Protection) Guidelines, 2000 by the issuer. It is required by the issuer of the securities to comply with provision of Securities and Exchange Board of India, which includes pricing, disclosures in the notice, lock-in period of promoters etc. Under allotment, compliance with Section-81(1A) of the Companies Act, 1956 is also mandatory. Such preferential issues\textsuperscript{143} by the listed companies by way of equity shares, fully-convertible debentures, partly-convertible debentures or any other financial instruments which would be converted into or exchanged with equity shares at a later date, shall be made by the issuer in compliance with the securities pricing provisions under the Securities and Exchange Board of India guidelines, 2000. In case of every issue of shares, warrants, fully-convertible debentures, partly convertible debentures, or other financial instruments having conversion option, the statutory auditors of the issuer company shall certify that the issue of said instruments is being made in conformity with the necessities contained in SEBI (Disclosure of Investor Protection) Guidelines, 2000.

Copies of the auditor’s certificate shall also be laid before the meeting of the shareholders convened to consider the proposed issue by the issuer. In case of preferential allotment of shares to promoters, an independent qualified valuer shall do a valuation of the assets in consideration for which the shares are proposed to be issued. The valuation report shall be submitted to the concerned exchanges on which shares of the issuer company are listed\textsuperscript{144}. A company can make no issue of shares on a preferential basis unless authorized by its Articles of Association. In addition, the members in a general meeting pass a special resolution authorizing the board of directors to

\textsuperscript{143} Section 2(z) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009

\textsuperscript{144} Chapter XIII of the SEBI (Disclosure of Investor Protection) Guidelines, 2000
issue the same. The special resolution by the general meeting shall be acted upon within a period of twelve months\textsuperscript{145}.

\subsection*{3.1.2. (c) (ii) Qualified institutions placement}

Qualified Institutions placement means the transfer of ordinary shares or securities convertible to Qualified Institutions Buyers in accordance with provisions of Chapter-XIII A of SEBI (Disclosure of Investor Protection) Guidelines, 2000 by the listed issuer.

Under the private placement, the securities are offered to the specialized agencies like stockbrokers or issuing houses and then they issue securities to the selected investors. New securities are not offered to the public directly but through selected brokers. These securities are issued to those investors who have already purchased shares from the issuing houses, which may be individual or institutional investors.\textsuperscript{146} It is different from the offer for sale process. Under offer for sale, securities are acquired by the issuing houses and then issued to the public directly but in private placement, only securities are allotted to the big financiers or selected investors. A qualified institutions placement shall be managed by merchant banker(s) registered with the Securities and Board of India who shall exercise due diligence. The qualified institutions placement shall be made based on a placement document, which shall contain all material information, including those specified in Schedule XVIII\textsuperscript{147}.

\subsection*{3.1.2. (d) Rights Issue:}

In case of rights issue process, the company provides an opportunity to the existing members of the company i.e. shareholders, for the subscription of the new allotment of the shares in accordance

\textsuperscript{145} Published in the Gazette of India Extraordinary Part ii, Section 3, sub-section (i)] Ministry of Finance (Department of Company Affairs) notification New Delhi, the 4th December. 2003
\textsuperscript{146} C.Van Horne James, \textit{Financial Management and Policy} (New Delhi: Prentice Hall 1973) 307,310
\textsuperscript{147} Chapter XIII A of the SEBI (Disclosure of Investor Protection) Guidelines, 2000
with the terms and conditions of the company. In case of unsubscribe shares, it will open to the public for subscription. In case of companies, whose shares are already listed on the stock exchange is offered to the existing shareholders. This is called “rights-issue”. The shareholders receive the right issue in proportion to the number of shares they already possess or hold.

The major advantage of the rights issues is reduces cost of marketing of the securities. The process of rights issue is more advantageous than other methods of floatation of securities. The customary operating cost like underwriting fee, brokerage and other organizational expenses are either non-existent or make up extremely minute segment. The number is limited in a rights issue, the management of applications of the rights issue and its allotment is less unmanageable. The current shareholders of the company can maintain their equity in voting as well as in surplus. The major opportunity is available to the current shareholders to get rights issue at the lower price in comparison with the current price of the share in the market. The marketing of rights issue varies on different factors like market-to-market and the nature of the shareholding pattern to which securities will be offered.

The mechanisms like private placement and offer for sale is not general in India. There are only few companies those who have resorted to these methods. The most popular methods, which are used in India, are public issues through the prospectus and right issues. The public issue method is most accepted method and frequently used. In addition, it is mandatory for the investor to fulfill the requirement of the Permanent Account Number in case investor wants to invest in any kind of securities and need to be mentioned in the application form.

### Table 3.2

**Resource Mobilization through Public and Rights Issues**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>2011-12</th>
<th>2012-13*</th>
<th>Percentage share in total amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of issues</td>
<td>Amount (₹ crore)</td>
<td>No. of issues</td>
</tr>
<tr>
<td>1. Public Issues (i)(ii)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Public Issues</td>
<td>55</td>
<td>46,105</td>
<td>53</td>
</tr>
<tr>
<td>(ii) Public Issues (Equity/ PCD/IFCD)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IPOs</td>
<td>34</td>
<td>5,904</td>
<td>33</td>
</tr>
<tr>
<td>FPOs</td>
<td>1</td>
<td>4,578</td>
<td>0</td>
</tr>
<tr>
<td>(ii) Public Issues (Bond / NCD)</td>
<td>20</td>
<td>35,611</td>
<td>20</td>
</tr>
<tr>
<td>2. Rights Issues</td>
<td>16</td>
<td>2,375</td>
<td>16</td>
</tr>
<tr>
<td>Total Equity Issues (1(i)+2)</td>
<td>51</td>
<td>12,857</td>
<td>49</td>
</tr>
<tr>
<td>Total Equity and Bond (1+2)</td>
<td>71</td>
<td>48,468</td>
<td>69</td>
</tr>
</tbody>
</table>

**Memo Items: Offer for Sale**

| 5 | 2,054 | 4 | 1,589 | 4.2 | 4.9 |

*The primary market resource mobilisation is inclusive of the amount raised in the SME platform.*

**Source:** SEBI Annual Report 2012-13

### Chart 3.3

![Chart 3.3](image)

**Source:** SEBI Annual Report 2012-13

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During the year 2012-13, 69 companies accessed the primary market and raised 32,455 crore through public (53) and rights issues (16) as against 71 companies which raised 48,468 crore in year 2011-2012 through public (5) and rights issues (16). The restrained and the passive milieu observed in the primary market activities in 2011-12 continued further in year 2012-13 as against 34 companies during the year 2011-12. The amount raised through IPOs during the year 2012-13 was slightly higher at 6,528 crore as compared to 5,904 crore during the year 2011-12. Of the amount raised through IPOs, 1,589 crore was through offer for sale by existing shareholders and four IPOs used this mechanism to raise resources. There was no FPO in the current financial year. While the share of public issues in the total resource mobilization declined to 72.4 percent during the year 2012-13 from 95.1 percent during the year 2011-12. Share of rights issues increased from 4.9 percent in the year 2011-12 to 27.6 percent in the 2012-13. Of the public issue, the share of debt issues in the total resource mobilization was the largest at 52.3 percent and that of equity issues was 47.7 percent in the year 2012-13.

Table 3.3
Sector-wise Resource Mobilization

<table>
<thead>
<tr>
<th>Sector</th>
<th>2011-12</th>
<th>2012-13</th>
<th>Percentage share in total amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of issues</td>
<td>Amount (₹ crore)</td>
<td>No. of issues</td>
</tr>
<tr>
<td>Private</td>
<td>60</td>
<td>14,293</td>
<td>55</td>
</tr>
<tr>
<td>Public</td>
<td>11</td>
<td>34,175</td>
<td>14</td>
</tr>
<tr>
<td>Total</td>
<td>71</td>
<td>48,468</td>
<td>69</td>
</tr>
</tbody>
</table>

Source: SEBI Annual Report 2012-13
Sector-wise classification reveals that 55 private sector and 14 public sector issues mobilized resources through primary market during the year 2012-13 as compared to 60 private sector issues and 11 public sector issues in the year 2011-12. The amount raised by the private sector issues summed to 17,690 crore as compared to 14,765 crore mobilized by the public sector companies. The share of private sector in total resource mobilization was 54.5 percent in the 2012-13 compared to 29.5 percent in the year 2011-12. The amount raised through public sector issues was 45.5 percent of the total resource mobilization. Higher mobilization by public sector since 2009-10 was a result of the disinvestment programme outlined by the Union Government.

3.1.3. Participants of the Primary-market

Primary market intermediaries are a very important connection between regulators, issuers and investors. Any irregularity in the capital markets has presumably direct bearing on the intermediaries,
their governance practices, which sequentially affects the self-confidence of the markets. Therefore, it is required to make sure good governance practice by the intermediaries and to have steady monitoring and surveillance on the activities of intermediaries\textsuperscript{150}.

Previously, The Controller of Capital Issues under the provisions of the Capital Issues (Control) Act, 1947, regulated the new-issue market and the exemption orders and rules made under it. With the repeal of the Act and the consequent abolition of the office of the Controller of Capital Issues in 1992, the protection of the interest of the investors in capital market and promotion of the development and regulation of the market becomes the responsibility of the Securities and Exchange Board of India\textsuperscript{151}.

Intermediaries, which are registered with the Securities and Exchange Board of India, are Merchant Bankers to the issue (known as Book Running Lead Managers in case of book built public issues), Registrars to the issue, and Bankers to the issue & underwriters to the issue who are associated with the issue for different activities. Their addresses, telephone, fax numbers, registration number, and contact person and email addresses are disclosed in the offer documents. Section-2(x) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 defines 'offer document' as under:

\textit{“a red herring prospectus, prospectus or shelf prospectus and information memorandum in terms of section 60A of the Companies Act, 1956 in case of a public issue and letter of offer in case of a rights issue;”} \textsuperscript{152}

\textsuperscript{150} The Institute of Company Secretaries of India. \textit{Securities laws and Regulation of financial markets} (New Delhi: ICSI Publication) 113


\textsuperscript{152} Section-2(x) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009
In the primary market, following intermediaries are involved: -

3.1.3. (a) Merchant Bankers

In issue management method, merchant bankers play a significant position. Merchant bankers are governed under Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992. Section-2(cb) of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 defines 'merchant banker':

> 'means any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management;'

Merchant banker carries out the role of intermediary with the action of relocating funds to those borrowers who are concerned in borrowing funds from the investors. It is a kind of financial advisory service and issue management by arranging buying, selling and subscribing opportunities. They also perform functions in Euro and Global Depository Receipt issues.

Merchant banker performs important functions in issue management like drafting of the prospectus and its approval, basis for allotment in consultation with stock exchange and refund of application money in case of non-allotees. In addition, management of funds, financing of foreign trade, advises corporate clients on raising capital, undertaking of foreign securities business etc. It is now mandatory that merchant banker should manage all public issues. Thus, merchant bankers provide dedicated service like:

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Section-2(cb) of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992
(i) In reviewing the client’s fund necessities and developing an appropriate financing package for the client.

(ii) Plan of instruments such as equity, convertible debentures and non-convertible debentures.

(iii) Obtaining consents from institutions or banks, audited certificates.

(iv) No-objection certificates from previous charge-holders of the company.

(v) Acquiring government clearance for the company projects from different agencies and involving license process.

(vi) Foreign collaboration process for the company.

(vii) Appointment of different agencies such as underwriters, registrars, brokers, bankers and advertising agencies to the issue of the company.

(viii) Preparation of prospectus of the issue after obtaining necessary clearance from the stock exchanges, underwriters, auditors, legal advisors etc.

The period of validity of merchant banker is for three years from the date of certification. No person shall carry on any activity as a merchant banker unless he holds a certificate granted by the Securities and Exchange Board of India under the regulations. A set of financial institutions that are into providing specialist services, which usually comprises of the acceptance of bills of exchange, corporate finance, portfolio management and other banking services, are known as “merchant banker”. Portfolio management refers to managing an individual’s investment in the form of bonds, shares, cash, mutual funds etc. so that he earns the maximum profits within the stipulated period.

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154 Section 13(A) of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992
155 Dr. S Gurusamy, *Financial Services and System*, (Chennai: Vijay Nicole Imprints Private Limited, 2004) 239
3.1.3. (b) Registrars and Share Transfer Agents

An important category of intermediaries in the primary market is the Registrars to an Issue and Share Transfer Agents. They offer exceptionally valuable services in mobilizing new capital and smoothing the progress of appropriate records of the investors so that the basis for allotment could be determined and allocation ensured as per the Securities and Exchange Board of India guidelines\textsuperscript{157}. In exercise of the powers conferred by the Securities and Exchange Board of India, Act, 1992, the Central Government framed the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Rules, 1993. Rule-2, defines a Registrar to an Issue as a:

\begin{quote}
'person appointed by a body corporate or any person or group of persons to carry on the activities on its or his or their behalf namely collecting applications from investors in respect of an issue, keeping a proper record of applications and monies received from investors or paid to the seller of the securities and assisting body corporate or person or group of persons in determining the basis of allotment of securities in consultation with the stock exchange, finalizing the list of persons entitled to the allotment of securities and processing and dispatching allotment letters, refund orders or certificates and other related documents in respect of the issue'.\textsuperscript{158}
\end{quote}

A share transfer agent means any person who on behalf of corporate maintains the record of holders of securities issued by such body corporate and deals with all matters connected with the transfer and redemption of its securities. No person shall act either as a

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{157} Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993
\item \textsuperscript{158} Rule 2 of Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Rules, 1993
\end{itemize}
\end{footnotesize}
Registrar to an Issue or Share Transfer Agent without holding a certificate issued by the Securities and Exchange Board of India under the regulations.\footnote{159}

\subsection*{3.1.3. (c) Underwriters}

Underwriters are those intermediaries who underwrite the securities offered to the public. In case, there is under subscription underwriters subscribe to the unsubscribe amount so that the issue is successful and for the same guarantee, an agreement will be made into between the issuing company and the assuring party such as a financial institution, merchant-banker, broker and other persons. In the primary market, the success of any issue is based on the marketing of the underwriters. The term “Underwriting” elaborated under the Securities and Exchange Board of India (Underwriters) Regulations, 1993. It is defined as

“an agreement with or without conditions to subscribe to the securities of a body corporate where the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them”. In addition, the underwriter means “a person who engages in the business of underwriting of an issue of securities of a body corporate”.\footnote{160}

The main objective of the underwriting is to provide guarantee the sale of securities at a given price, helps in reorganization and to provide the provision of money during the financial crisis of the company. It is a kind of insurance policy to the company for the new issues in the market. At the time of appointment of the underwriter, many points like guidelines provided by the Securities and Exchange Board of India, the issuing company must check the financial capacity

\footnote{160} Regulation 2(fa) of Securities and Exchange Board of India (Underwriters) Regulations, 1993
of the underwriter, market reputation and outstanding understanding commitments.

Chapter-III of the SEBI (Underwriter) Regulations 1993 deals with the general obligations and responsibilities of an underwriter. These are also known as guidelines of the SEBI for the underwriter. It is required by the underwriter to follow the code of conduct as prescribed by the regulation. The underwriter is bound to follow these guidelines:

(i) An underwriter shall make all efforts to protect the interests of its clients and shall maintain high standards of integrity, dignity and fairness in the conduct of its business.

(ii) An underwriter shall ensure that it and its personnel will act in an ethical manner in all its dealings with a body corporate making an issue of securities and render high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment.

(iii) An underwriter shall not make any statement, either oral or written, which would misrepresent—

(a) the services that the underwriter is capable of performing for its client, or has rendered to any other issuer company;

(b) his underwriting commitment.

(iv) An underwriter shall avoid conflict of interest and make adequate disclosure of his interest and put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its business or where any conflict of interest
arises, shall take reasonable steps to resolve the same in an equitable manner.

(v) An underwriter shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as underwriter which would impair its ability to render fair, objective and unbiased services.

(vi) An underwriter shall not divulge to other issuer, press or any party any confidential information about its issuer company, which has come to its knowledge and deal in securities of any issuer company without making disclosure to the board as required under the regulations and also to the Board of directors of the issuer company and not discriminate amongst its clients, save and except on ethical and commercial considerations.

(vii) An underwriter shall ensure that any change in registration status/any penal action taken by board or any material change in financials, which may adversely affect the interests of clients/investors, is promptly informed to the clients and any business remaining outstanding is transferred to another registered person in accordance with any instructions of the affected clients/investors.

(vii) An underwriter shall not make any untrue statement or suppress any material fact in any documents, reports, papers or information furnished to the Board.
(viii) (a) An underwriter or any of his employees shall not render, directly or indirectly any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including its long or short position in the said security has been made, while rendering such advice.

(b) In case, an employee of an underwriter is rendering such advice, the underwriter shall ensure that he shall disclose his interest, the interest of his dependent family members and that of the employer including their long or short position in the said security, while rendering such advice.

(ix) An underwriter or any of its directors, partners or manager having the management of the whole or substantially the whole of affairs of the business, shall not either through its account or their respective accounts or through their associates or family members, relatives or friends indulge in any insider trading.

(x) An underwriter shall not indulge in any unfair competition, which is likely to be harmful to the interest of other underwriters carrying on the business of underwriting or likely to place such other underwriters in a dis-advantageous position in relation to the underwriter while competing for, or carrying out any assignment.

(xi) An underwriter shall have internal control procedures and financial and operational capabilities which can be reasonably expected to
protect its operations, its clients and other registered entities from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.

(xii) An underwriter shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate conduct for its employees and officers in the carrying out of their duties. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance of conflict of interests, disclosure of shareholdings and interests, etc. An underwriter shall ensure that good corporate policies and corporate governance is in place.

(xiii) An underwriter shall ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience) and ensure that the senior management, particularly decision makers have access to all relevant information about the business on a timely basis\textsuperscript{161}.

\textbf{3.1.3. (d) Bankers to an Issue}

Section-2 (A) of the Securities and Exchange board of India (Bankers to an Issue) Regulations, 1994 define ‘Banker to an issue’ as under:

\textsuperscript{161} Chapter III: General obligations and Responsibilities. SEBI (Underwriters) Regulations, 1993
'a scheduled bank carrying on all or any of the following activities, namely:

(i) acceptance of application and application monies;
(ii) acceptance of allotment or call monies;
(iii) refund of application monies;
(iv) payment of dividend or interest warrants'\textsuperscript{162}

Bankers to an issue are banks, which accept application, application money or call monies from the public on behalf of the company. In addition, Banker to an issue performs refund of application monies or payment of dividend or interest warrants. After collection of applications of different categories, banker to an issue forwards the application to Registrar and share transfer agent for the next level of processing. Banker to an issue provides elite services in the mobilization of capital for companies from investors.

While one or more banks can be the Bankers to the issue in addition to collection banks, others may do the limited work of collecting the applications. It is requisite for the bank to provide prompt information and factual proceedings to the company and to the lead manager for monitoring and movement of the issue. The issuer company has to enter into an agreement with different banks for the purpose of banker to an issue specifying the conditions, terms and remuneration for services to be rendered by each such bank\textsuperscript{163}. It is expected from Banker to an issue to observe high standards of integrity and fairness in the conduct of its business. Another requirement is that the Lead Merchant Banker shall ensure that Bankers to the Issue are appointed in all the mandatory collection centers as specified in SEBI (Disclosure and Investment Protection) Regulations.

\textsuperscript{162} Section-2 (A) of the Securities and Exchange board of India (Bankers to an Issue) Regulations, 1994
\textsuperscript{163} The Institute of Company Secretaries of India, Securities laws and Regulation of financial markets (New Delhi: ICSI 2009) 136
Guidelines 2000. It provides a comprehensive framework for issuances by the companies.

3.1.3. (e) Debenture – trustees

A debenture is a document, which shows on the face of it that a company has borrowed a sum of money from the holder thereof upon certain terms and conditions. Debentures are secured by way of fixed or floating charge on the assets of the company in favour of debenture holders\textsuperscript{164}. Under the Securities and Exchange Board of India (Debenture-trustees) Rules, 1993, Section-2(c) defines “debenture-trustees” which means a trustee of a trust deed for securing any issue of debentures of a body corporate. For a company before offering debentures it is required to extend assurances in favour of the investors who are going to invest in debentures and fulfill legal formalities. Intermediaries such as trustees who are usually banks and financial institutions make available service to the investors for a fee payable by the company\textsuperscript{165}. A Debenture Trustee is a Securities and Exchange Board of India registered intermediary to provide services to the debenture holders in the primary market. It is required to have certificate under regulations of the Securities and Exchange Board of India to act as a debenture trustee. The validity of the certificate is for the period of three years and renewal is subjective\textsuperscript{166}.

A debenture trustee work out due diligence to make sure fulfillment of legal obligations by the body corporate with the provisions of the Companies Act, 1956, the listing agreement of the stock exchange or the trust deed in accordance with provisions of the SEBI. Also, implement safety in the interest of the debenture holders of the company. SEBI has enabled a two-way information sharing

\textsuperscript{165} The Institute of Company Secretaries of India, \textit{Securities laws and Regulation of Financial markets} (New Delhi: ICSI 2009) \textsuperscript{139}
\textsuperscript{166} Capital Market of India - Role of SEBI Registered Intermediaries - Debenture Trustees, available at: http://kannanpersonal.com/content/stock/intermediary/debenture-trustee.html (Assessed on 01-04-2013)
arrangement between the credit rating agencies and debenture trustees to help them effectively discharge their respective functions. A credit rating agency is a company that assigns credit ratings i.e. rating of the debtor's capability to return the debt making timely interest payments and the possibility of default. Any information related to default by the issuer will be shared by the credit rating agency with debenture trustees. The second part of the capital market is the secondary market. It is the place where existing securities are traded with the help of stock exchanges.

3.2. Secondary Market

The key purpose of the secondary market is to give liquidity to the investors in the primary market. The major easiness of the secondary market is to provide marketability and transferability to the securities offered in the primary market. Secondary market converts savings into investment and boosts the economy. Initially, securities offered to the public in the primary market and secondary market provides a platform where primary market securities are traded. The majority of the trading is done in the secondary market with the help of stock exchanges. Stock exchange provides a facility of stock trading in secondary market. The secondary market provides a well-organized platform for trading of his securities for different categories of investors. Secondary market provides the trading of equity market and the debt market both. Investors who wish to participate and miss to get allotment of shares in primary market can easily access the company in the secondary market. On the other hand, secondary market activities like implementation of incentive based management contracts, aggregating information guides management of the company to take decisions.

3.2.1. Members of the Secondary market

The major members of secondary market are stock exchanges, broker, sub-broker and depositories. The secondary market consists of the operations associated with the primary market. The secondary market consists of Bombay Stock Exchange, National Stock Exchange, Regional Stock Exchanges such as Calcutta Stock Exchange, Ludhiana Stock Exchange etc. The stock exchange provides trading, facilities of listing of securities, registration of stockbroker, sub-brokers, and monitors risk in securities transactions and enforces exchange by-laws for trade.

3.2.2. Stock Exchange

In a capitalist economy for an easy capital mobilization, stock exchanges provide a trading platform. For the proper functioning and capital inflow in the present economic system, corporate enterprises are essential. Corporate enterprise fetches together large masses of capital needed for the economic development of a country. Without the availability of the market place, where those, who have invested many number of shares, may convert their holdings into cash at their convenience, no enterprise could generate capital.

Such a market is available from stock exchanges, where millions of investors, institutional buyers and owners of listed securities may freely as well as punctually exchange their excess of shares and bonds for cash and exchange them for other listed securities. Thus, the worth of a stock exchange is based on it steadiness to make available a forum, where investors can both buy and sell securities when they desire at fair spirited, monitored price. If investment were made risky by too wide fluctuations in share prices,

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savings would go into safer but unproductive investments like land and gold\textsuperscript{169}.

As an economic development proceeds, the possibility of acquisition and ownership of capital by individuals also grows in the market. Alongside with it, the prospect of the stock exchange to provide the services of inspirational private savings and transferring such savings into productive investment increases on a vastly greater scale. Stock exchange alone can render efficiently all these categories of services. In a contemporary industrial society, which recognizes the rights of private ownership of capital, stock exchanges are not simply useful, they are necessary. As India is moving towards liberalization, propensity is sure to be strengthened. The major challenge stock exchanges facing is to work out the ways to reach down to the general investors, to draw the savings of the household in the market into productive investment. Also, to generate situations in which many millions of small investors in cities and towns, villages will find it feasible to make use of these facilities\textsuperscript{170}. The trading and trend statistic of stock exchanges in last one decade is available at Annexure-III. Further, to understand the buying and selling process of the shares and other securities, the functioning of the stock exchange has been explained as under:

3.2.2 (a) Functions of stock exchange

The stock exchange carries out the subsequent essential economic functions:

(i) Makes available a prepared market or platform for buying and selling of securities.

(ii) Directs the flow of capital in the most profitable channels i.e. equity, mutual funds, bonds etc.

\textsuperscript{169} R.K. Dixit, \textit{Behaviour of share prices and investment in India} (New Delhi: Deep & Deep Publications, 1986)

\textsuperscript{170} www.shodhganga.inflibnet.ac.in (Assessed on 11-04-2013)
(iii) Induces corporate enterprises to lift up their standard of performances, compliance and corporate governance

(iv) Offers without difficulty to understood assessment of the financial situation and prospects of listed companies.

(v) Facilitates speculation.

(vi) Promotes the habit of savings and investment among the public and thereby helps capital formation.

(vii) Make and enforce bye-laws of the stock exchange

(viii) Manage risk in securities transactions

(ix) Provides Indices to sectors like banking, auto and reality.

In a developed capitalistic economy, the stock exchange provides the citadel of funds and the determining tool for economic development. It is pointed as an indispensable associate of the industrial system of an economy. Regardless, the structure of the secondary market, it provides huge capital to the corporate. It is also important for industrial units for the normal functioning. Stock exchange represents axle on which the fiscal structure of the capitalist system turns, the temple of values, the market of individual efforts and the market where man's courage, originality and labour are marketed. There are two major stock exchanges in India namely National Stock Exchange and Bombay Stock Exchange.

---

Table 3.4
Exchange-wise Cash Segment Turnover

<table>
<thead>
<tr>
<th>Stock Exchange</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>Percentage Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ahmedabad</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>BSE</td>
<td>11,05,027</td>
<td>6,67,498</td>
<td>5,48,774</td>
<td>16.8</td>
</tr>
<tr>
<td>Bangalore</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Bhubaneswar</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Cochin</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Coimbatore</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Delhi</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Guwahati</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>ISE</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Jaipur</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Calcutta</td>
<td>2,597</td>
<td>5,991</td>
<td>4,614</td>
<td>0.1</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Madras</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>MCX</td>
<td>-</td>
<td>-</td>
<td>33</td>
<td>0.0</td>
</tr>
<tr>
<td>MIIP</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>NSE</td>
<td>35,77,410</td>
<td>28,10,892</td>
<td>27,08,279</td>
<td>83.0</td>
</tr>
<tr>
<td>OTCEI</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Pune</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>UPESE</td>
<td>0.12</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Vadodara</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>46,85,034</td>
<td>34,84,381</td>
<td>32,61,701</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: SEBI Annual Report 2012-13

The turnover of the stock exchanges in the cash segment declined by 6.4 percent to 32,61,701 crore in the year 2012-13 from 34,84,381 crore in the year 2011-12. Bombay Stock Exchange and National Stock Exchange together contributed 99.8 percent of the turnover, of which National Stock Exchange accounted for 16.8 percent to the total. Apart from National Stock Exchange and Bombay Stock Exchange, the only stock exchanges which recorded turnover during the year 2012-13 were Calcutta Stock Exchange and MCX-SX.
Table 3.5
Growth of Turnover in Various Segments of Indian Stock Market

<table>
<thead>
<tr>
<th>Year</th>
<th>Cash Segment (All India)</th>
<th>Equity Derivatives (NSE+BSE+MCX-SX)</th>
<th>Currency Derivatives (NSE+MCX-SX+USE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010-11</td>
<td>46,82,437</td>
<td>2,92,48,375</td>
<td>76,43,805</td>
</tr>
<tr>
<td>2011-12</td>
<td>34,78,391</td>
<td>3,21,58,208</td>
<td>98,96,413</td>
</tr>
<tr>
<td>2012-13</td>
<td>32,57,087</td>
<td>3,87,04,572</td>
<td>87,10,504</td>
</tr>
</tbody>
</table>

Source: SEBI Annual Report 2012-13

As per the table, in year 2012-13 the turnover in cash segment was 32,57,087 crores and 3,87,04,572 crores in the derivative segment. In the year 2012-13, turnover in derivatives was more than the previous year.

3.2.2. (b) National Stock Exchange

National Stock Exchange is in progress with the thought of an independent governing body not including any broker symbol. Thus, it ensures that the operators' interests are not allowed to govern the control of the stock exchange. It was set up in 1995 at a primary objective to reform the securities market through enhanced technology and the beginning of best practices in management. Before the NSE establishment, stock trading on the stock exchanges in India used to take place through an open chorus of approval without the help of information technology such as price matching or recording of settled securities trades. Major lacuna was time consuming and unproductive trade and practice of physical trading imposed limits on trading volumes.

To prevent this, the NSE launched screen-based trading system (SBTS) where a member can punch into the computer the quantities
of shares and the stock prices at which investor wants to execute the trade. The business deal is completed once the quotes punched by trading member finds a matching sale or buy quote from the counterparty. SBTS by electronic means matches the buyer and seller in an order-driven system or finds for the customer the excellent price accessible in a quote-driven system. It cuts down time, cost, risk of error and probability of deceit. SBTS provides a platform for far-away participants to trade in securities with other participants, increasing the liquidity of the markets. The high speed with which trades are executed and the large number of participants who can trade at the same time permits faster incorporation of price-sensitive information into current prevailing prices. It becomes achievable for market participants to watch the full bazaar with the help of SBTS.

National Stock Exchange is one of the foremost-demutualised stock exchanges in the country. It is the place where the ownership and management of the exchange is completely alienated from the right to trade on it. From the beginning, National Stock Exchange has adopted the structure of a demutualised exchange and the ownership, management and trading of securities is in the control of three different sets of people. National Stock Exchange is owned by a set of most important financial institutions, banks, insurance companies, financial intermediaries It is managed by professionals, who do not directly or indirectly trade on the exchange. This has entirely eliminated any disagreement of attention and helped National Stock Exchange in insistently following policies and practices within a public interest framework\textsuperscript{172}. It helps to construct the market more translucent, leading to increased investor confidence. Due to the SBTS by the National Stock Exchange, regional exchanges lost a lot of business and forcing them to bring in SBTS.

The electronic and online trading introduced by the National Stock Exchange has made manipulation difficult like an insider-

\textsuperscript{172} National Stock Exchange - The Premier Stock Exchange of India, available at: http://kannanpersonal.com/content/stock/nse/index.html (Assessed on 01-05-2013)
trading, price rigging etc. It has enhanced liquidity and made the entire operation more transparent and well organized. The National Stock Exchange has formed a clearing corporation to make available legal counterparty guarantee to each trade thereby eliminating counter party risk. It is accountable for the settlement of market trades that took place during day hours. It is the legal counter-party to meet obligations of each brokerage firm and is answerable for removing counter party risk.

For the protection of the investor, The National Securities Clearing Corporation Ltd. (NSCCL) commenced its working in April 1996. Counter party risk is guaranteed through fine-tuned risk management systems by the NSCCL. It is a groundbreaking technique of on-line position of trade monitoring and automatic disablement. National Stock Exchange in the capital market implements the principle of "novation". Under the principle of novation, NSCCL is the counter party for every capital market trade. Due to this, default risk in the trade of the securities has been minimized. To maintain the guaranteed settlement of the securities, a "settlement guarantee fund" was formed.

A large settlement guarantee fund makes available a cushion for any outstanding trade risk related to the capital market. As a result, notwithstanding the truth that the everyday traded volumes on the National Stock Exchange run into heavy volumes, credit risk no more poses any trouble in the marketplace. The momentum from its beginning came from policy makers in the country. It has been set up as a public limited company, owned by the leading institutional investors in the country.

The Bombay Stock Exchange and the National Stock Exchange are the major stock exchanges and controls the Indian capital market. Bombay Stock Exchange is the largest among all stock exchanges and

the oldest in terms of operations. It held the dominant position in terms of business transacted and companies listed on it. National Stock Exchange launch increased competition for the Bombay Stock Exchange to switch from traditional to online trading system. The number of trade transacted on the National Stock Exchange has grown exponentially even since its establishment because of more transparent trading and settlement mechanisms and lower cost of transaction as compared to the Bombay Stock Exchange 175.

Table 3.6

<table>
<thead>
<tr>
<th>Year Month</th>
<th>All listed Companies</th>
<th>Percentage Variation</th>
<th>CNX Nifty</th>
<th>Percentage Variation</th>
<th>CNX Mid Cap</th>
<th>Percentage Variation</th>
<th>CNX IT</th>
<th>Percentage Variation</th>
<th>CNX Bank</th>
<th>Percentage Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-09</td>
<td>28,96,194</td>
<td>10.4</td>
<td>18,92,629</td>
<td>33.6</td>
<td>2,73,627</td>
<td>40.9</td>
<td>2,01,810</td>
<td>37.5</td>
<td>2,24,132</td>
<td>36.1</td>
</tr>
<tr>
<td>2009-10</td>
<td>60,09,173</td>
<td>107.5</td>
<td>15,25,162</td>
<td>19.4</td>
<td>3,17,619</td>
<td>16.1</td>
<td>2,28,558</td>
<td>13.3</td>
<td>3,17,351</td>
<td>41.6</td>
</tr>
<tr>
<td>2010-11</td>
<td>67,02,616</td>
<td>11.5</td>
<td>17,55,468</td>
<td>15.1</td>
<td>3,12,736</td>
<td>15.5</td>
<td>2,78,846</td>
<td>22.0</td>
<td>4,03,234</td>
<td>27.1</td>
</tr>
<tr>
<td>2011-12</td>
<td>60,96,518</td>
<td>9.0</td>
<td>16,32,058</td>
<td>7.0</td>
<td>3,18,794</td>
<td>1.9</td>
<td>2,55,463</td>
<td>8.4</td>
<td>3,59,370</td>
<td>10.9</td>
</tr>
<tr>
<td>2012-13</td>
<td>62,39,035</td>
<td>2.3</td>
<td>18,22,965</td>
<td>11.7</td>
<td>2,64,721</td>
<td>-10.7</td>
<td>2,94,435</td>
<td>15.3</td>
<td>4,19,220</td>
<td>16.7</td>
</tr>
<tr>
<td>Apr-12</td>
<td>60,59,258</td>
<td>-0.6</td>
<td>16,37,645</td>
<td>0.3</td>
<td>2,78,335</td>
<td>-12.7</td>
<td>2,40,217</td>
<td>-6.0</td>
<td>3,68,458</td>
<td>2.5</td>
</tr>
<tr>
<td>May-12</td>
<td>56,95,547</td>
<td>-6.0</td>
<td>15,37,512</td>
<td>-6.1</td>
<td>2,57,899</td>
<td>-7.3</td>
<td>2,37,323</td>
<td>-1.2</td>
<td>3,38,788</td>
<td>-8.1</td>
</tr>
<tr>
<td>Jun-12</td>
<td>60,26,766</td>
<td>5.8</td>
<td>16,48,700</td>
<td>7.2</td>
<td>2,75,047</td>
<td>6.6</td>
<td>2,42,706</td>
<td>2.3</td>
<td>3,71,288</td>
<td>9.6</td>
</tr>
<tr>
<td>Jul-12</td>
<td>59,51,540</td>
<td>-1.2</td>
<td>16,33,700</td>
<td>-0.9</td>
<td>2,68,295</td>
<td>-2.5</td>
<td>2,24,981</td>
<td>-7.3</td>
<td>3,73,134</td>
<td>0.5</td>
</tr>
<tr>
<td>Aug-12</td>
<td>59,42,510</td>
<td>-0.2</td>
<td>16,45,120</td>
<td>0.7</td>
<td>2,63,661</td>
<td>-1.7</td>
<td>2,40,799</td>
<td>7.0</td>
<td>3,58,748</td>
<td>-3.9</td>
</tr>
<tr>
<td>Sep-12</td>
<td>64,31,655</td>
<td>8.2</td>
<td>18,01,491</td>
<td>9.5</td>
<td>2,96,900</td>
<td>12.6</td>
<td>2,53,916</td>
<td>5.4</td>
<td>4,11,563</td>
<td>14.7</td>
</tr>
<tr>
<td>Oct-12</td>
<td>63,37,676</td>
<td>-1.5</td>
<td>17,75,094</td>
<td>-1.5</td>
<td>2,93,964</td>
<td>-1.0</td>
<td>2,44,829</td>
<td>-3.6</td>
<td>4,04,810</td>
<td>-1.6</td>
</tr>
<tr>
<td>Nov-12</td>
<td>66,03,005</td>
<td>4.2</td>
<td>18,65,554</td>
<td>5.1</td>
<td>3,07,577</td>
<td>4.6</td>
<td>2,53,848</td>
<td>3.7</td>
<td>4,38,355</td>
<td>8.3</td>
</tr>
<tr>
<td>Dec-12</td>
<td>67,63,781</td>
<td>2.4</td>
<td>18,74,152</td>
<td>0.5</td>
<td>3,22,539</td>
<td>4.9</td>
<td>2,44,213</td>
<td>-3.8</td>
<td>4,52,114</td>
<td>3.1</td>
</tr>
<tr>
<td>Jan-13</td>
<td>68,58,653</td>
<td>1.4</td>
<td>19,15,431</td>
<td>2.2</td>
<td>3,17,326</td>
<td>-1.6</td>
<td>2,74,860</td>
<td>12.5</td>
<td>4,60,563</td>
<td>1.9</td>
</tr>
<tr>
<td>Feb-13</td>
<td>63,85,291</td>
<td>-6.9</td>
<td>18,14,313</td>
<td>-5.3</td>
<td>2,91,063</td>
<td>-8.3</td>
<td>2,89,511</td>
<td>5.4</td>
<td>4,23,642</td>
<td>-8.1</td>
</tr>
<tr>
<td>Mar-13</td>
<td>62,39,035</td>
<td>-2.3</td>
<td>18,22,965</td>
<td>0.5</td>
<td>2,84,721</td>
<td>-2.2</td>
<td>2,94,435</td>
<td>1.6</td>
<td>4,19,220</td>
<td>-1.0</td>
</tr>
</tbody>
</table>

Source: SEBI Annual Report 2012-13

The market capitalization of the shares included in CNX-Nifty is increased by 11.7 percent during the current financial year. The rise in the market capitalization of the Nifty scrips was more than that of exchange market capitalization.

3.2.2. (c) Bombay stock exchange

To smooth the progress of the stock business deal, Bombay Stock Exchange had changed its trading system with Bombay Stock Exchange on-line trading (BOLT). Information Systems Department ad infinitum improved the hardware, software and networking systems and provided the whole terminal to improve the superiority and standard of trading service given to its members and other stock market intermediaries i.e. stock broker, settlement agencies etc. Bombay Stock Exchange Ltd. placed huge money on information technology in order to make its operation stronger and presentable. BOLT system in BSE came in the year 1995 and then entirely automatic screen based trading in securities was put in service nation-wide within fifty days.

BSE established master earth station in the year 2000, which uses complete transponder on the INSAT 3B satellite to furnish to trader work stations, located over 400 cities across the country. Bombay Stock Exchange has also introduced the world's first central exchange based Internet trading system i.e. BSE WEBx.com. Numerous other technological initiatives have been processed to make available quicker, well-organized and more consistent trading services. The initiative enables investors everywhere on the earth to business on the BSE portal. BSE's website gives complete information on the stock market with the latest updates and complete information related to the company\textsuperscript{176}.

On-line real time system known as Bombay Stock Exchange Online Surveillance System (BOSS) monitoring all trading and settlement activities of the member-brokers in the market. It helps the

\textsuperscript{176} http://bseindia.com/index.op.htm (Assessed on 22-05-2013)
stock exchange in detecting market mistreatment at an emerging phase, develop the risk management system and build up the self-regulatory mechanisms. Currently, Bombay Stock Exchange is in the path of developing an incorporated arrangement for online supervision of Cash and Derivatives Segment with the help BSE Online Surveillance System i.e. Integrated (BOSSi). BOSSi uses upper level fault understanding systems for its securities trading and related functions. It uses Integrity Non-stop S88000 systems for its online trading systems (BOLT). BSE use one of the most dominant RISC based Alpha GS140 and ES40 servers for Internet based trading system (ITS) facilitating the end user to perform the trading activities from any place facilitated by the internet.

BOSSi uses Intel 8 and 4 way servers for the bseindia.com web site. It is one of the finest portals on information related to capital markets. Complementing the BSE and NSE are the Over the Counter Exchange of India (OTCEI) and a number of regional bourses. The OTCEI, set up on the pattern of the NASDAQ of the United States of America. It failed to attract substantial business primarily because of its focus on low capitalization companies\(^7\).

### Table 3.7

**Market Capitalization at BSE**

<table>
<thead>
<tr>
<th>Year/Month</th>
<th>All Listed Companies</th>
<th>Percentage Variation</th>
<th>BSE Senses</th>
<th>Percentage Variation</th>
<th>BSE-Teck</th>
<th>Percentage Variation</th>
<th>Bankex</th>
<th>Percentage Variation</th>
<th>BSE PSU</th>
<th>Percentage Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-09</td>
<td>30,56,075</td>
<td>-39.9</td>
<td>15,07,742</td>
<td>-12.2</td>
<td>4,10,923</td>
<td>-39.7</td>
<td>2,33,895</td>
<td>-38.0</td>
<td>9,49,211</td>
<td>-17.7</td>
</tr>
<tr>
<td>2009-10</td>
<td>61,65,619</td>
<td>99.6</td>
<td>26,17,900</td>
<td>73.6</td>
<td>7,40,817</td>
<td>80.3</td>
<td>5,54,127</td>
<td>136.9</td>
<td>17,33,662</td>
<td>82.6</td>
</tr>
<tr>
<td>2010-11</td>
<td>65,39,084</td>
<td>10.9</td>
<td>29,44,451</td>
<td>12.5</td>
<td>5,69,794</td>
<td>17.4</td>
<td>6,89,751</td>
<td>24.5</td>
<td>19,46,555</td>
<td>12.4</td>
</tr>
<tr>
<td>2011-12</td>
<td>62,14,941</td>
<td>-9.1</td>
<td>14,59,141</td>
<td>-50.4</td>
<td>3,45,956</td>
<td>-60.2</td>
<td>3,90,614</td>
<td>-43.4</td>
<td>16,03,085</td>
<td>-17.7</td>
</tr>
<tr>
<td>2012-13</td>
<td>63,87,887</td>
<td>2.8</td>
<td>16,07,224</td>
<td>10.1</td>
<td>3,91,259</td>
<td>13.1</td>
<td>4,40,395</td>
<td>12.7</td>
<td>14,38,155</td>
<td>-10.3</td>
</tr>
<tr>
<td>Apr-12</td>
<td>61,75,377</td>
<td>-0.6</td>
<td>14,52,345</td>
<td>-0.5</td>
<td>3,23,035</td>
<td>-6.6</td>
<td>3,93,239</td>
<td>0.7</td>
<td>15,89,378</td>
<td>-0.9</td>
</tr>
<tr>
<td>May-12</td>
<td>58,17,422</td>
<td>-5.8</td>
<td>13,60,993</td>
<td>-6.3</td>
<td>3,18,253</td>
<td>-1.5</td>
<td>3,60,162</td>
<td>-8.4</td>
<td>14,96,012</td>
<td>-5.9</td>
</tr>
<tr>
<td>Jun-12</td>
<td>61,52,309</td>
<td>5.8</td>
<td>14,75,914</td>
<td>8.4</td>
<td>3,25,428</td>
<td>2.3</td>
<td>3,95,002</td>
<td>9.7</td>
<td>16,10,540</td>
<td>7.7</td>
</tr>
<tr>
<td>Jul-12</td>
<td>60,76,541</td>
<td>1.2</td>
<td>14,60,555</td>
<td>1.0</td>
<td>3,07,745</td>
<td>-5.4</td>
<td>3,95,616</td>
<td>0.2</td>
<td>15,76,580</td>
<td>-2.1</td>
</tr>
<tr>
<td>Aug-12</td>
<td>60,80,795</td>
<td>0.1</td>
<td>14,76,392</td>
<td>1.1</td>
<td>3,16,365</td>
<td>2.8</td>
<td>3,81,992</td>
<td>-3.4</td>
<td>15,29,831</td>
<td>-2.3</td>
</tr>
<tr>
<td>Sep-12</td>
<td>65,59,050</td>
<td>7.9</td>
<td>15,92,339</td>
<td>7.8</td>
<td>3,33,446</td>
<td>5.4</td>
<td>4,35,963</td>
<td>14.1</td>
<td>16,45,530</td>
<td>6.9</td>
</tr>
<tr>
<td>Oct-12</td>
<td>64,71,051</td>
<td>-1.3</td>
<td>15,71,298</td>
<td>-1.3</td>
<td>3,23,664</td>
<td>-2.9</td>
<td>4,29,751</td>
<td>-1.4</td>
<td>15,76,510</td>
<td>-4.2</td>
</tr>
<tr>
<td>Nov-12</td>
<td>67,38,713</td>
<td>4.1</td>
<td>16,42,506</td>
<td>4.5</td>
<td>3,46,256</td>
<td>7.0</td>
<td>4,64,256</td>
<td>8.0</td>
<td>15,92,704</td>
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<td>16,50,373</td>
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<td>3,41,900</td>
<td>-1.3</td>
<td>4,80,225</td>
<td>3.4</td>
<td>16,27,556</td>
<td>2.2</td>
</tr>
<tr>
<td>Jan-13</td>
<td>70,24,577</td>
<td>1.5</td>
<td>16,90,489</td>
<td>2.4</td>
<td>3,78,892</td>
<td>10.5</td>
<td>4,88,332</td>
<td>1.7</td>
<td>17,00,129</td>
<td>4.5</td>
</tr>
<tr>
<td>Feb-13</td>
<td>65,38,038</td>
<td>-6.9</td>
<td>16,03,015</td>
<td>-5.2</td>
<td>3,90,601</td>
<td>3.1</td>
<td>4,42,488</td>
<td>-9.4</td>
<td>15,22,755</td>
<td>-10.4</td>
</tr>
<tr>
<td>Mar-13</td>
<td>63,57,587</td>
<td>-2.3</td>
<td>16,07,224</td>
<td>0.3</td>
<td>3,91,259</td>
<td>0.2</td>
<td>4,40,395</td>
<td>-0.5</td>
<td>14,38,155</td>
<td>-5.6</td>
</tr>
</tbody>
</table>

**Source:** SEBI Annual Report 2012-13

In BSE, the market capitalization of the Sensex scrips appreciated substantially by 10.1 percent in the year 2012-13. While market cap of BSE Teck and Bankex increased by 13.1 percent and 12.7 percent, that of BSE PSU declined by 10.3 percent in the year 2012-13 over the previous financial year. Both the stock exchanges are using specific mechanism for facilitating trading on the exchange. The trading mechanism of stock exchange in brief is as under:

#### 3.2.2. (c) National Stock Exchange’s Trading Mechanism (NEAT)

National Exchange for Automated Trading (NEAT) system was the first trading mechanism by the National Stock Exchange to provide nation-wide, anonymous, order-driven, screen-based trading
system. Major feature of the NEAT system is that the trading member inputs the details of his order such as the quantities and prices of securities at which trading member wishes to trade. The securities transaction is carried out in the NEAT system as soon as it finds a corresponding sale or buys order from a counter party. All the orders related to the buying and selling of the securities in online based trading are by electronic means matched on a said price and time on priority basis.

NEAT based trading on National Stock Exchange has resulted in an extensive decrease in time spent by the investor on broker’s houses, cost and risk of trading error as well as transactional frauds. NEAT provides an equal right to use for all the investors. It permits a quick combination of price sensitive information into existing securities prices, as the market participants can see the current complete market on a concurrent basis on their online trading screen. Online trading mechanism increases informational effectiveness of the stock exchange and makes the market more translucent to the investor.

Additionally, the online trading system permits a greater number of market participants, irrespective of their geographical locations, to trade with one another at the same time. It is also improving the deepness and liquidity of the stock market. The bookstores only limit orders, which are ordered to purchase or sell shares at a declared amount and declared cost, are executed only if the price amount conditions go equal. Therefore, the NEAT system provides an Open Electronic Consolidated Limit Order Book, which guarantees full secrecy by accepting orders, big or small, from members without illuminating their identity178. A perfect audit trail, which helps to decide disputes by logging in the trade execution process in total, is also provided by the exchange. The trading platform of the capital market or derivative segment of National Stock

Exchange and Bombay Stock Exchange are accessed not only from the computer terminals, but also from the private computers of the investors through the internet and from the hand-held devices like iPad or mobiles through WAP\textsuperscript{179}.

The Securities and Exchange Board of India has permitted use of the internet as an order routing system for communicating the investors' orders to the exchanges through the registered stockbrokers. It is required for the brokers to obtain the authorization from their concern stock exchanges. In February 2000, National Stock Exchange became the first exchange in the country to provide web-based access to investors to trade directly on the Exchange followed by Bombay Stock Exchange in March 2001. The trading orders initiating from the private computers of investors were channeled through the internet to the trading terminals of the selected brokers and further to the stock exchange. After the exchange terminal matches these trading orders, the securities transaction is executed and the investor gets the verification in a straight line on their personal computers and SMS by the National Stock Exchange.

The Securities and Exchange Board of India has also allowed securities trading through wireless medium or Wireless Application Protocol (WAP) platform. National Stock Exchange is the single exchange to make available right to use in its order book through the mobile devices, which make use of WAP technology. WAP technology assists retail investors, who are mobile and want to buy and sell from any place across the nation with the help of their handsets. The National Stock Exchange primarily operates two market segments:

1. the wholesale debt market segment, where fixed income instruments such as government bonds, treasury bills, commercial papers, corporate debentures are traded among institutional investors and

ii. the capital market segment, which facilitate trade in equities and retail trade in convertible and non-convertible debentures and hybrid instruments.

Trading in the debt market segment of scripts started in June 1994 and in the capital market segment in November 1994. The futures and options (F & O) started in the year 2000. The ownership and management of the NSE are alienated from its member’s right to trade on the exchange. It is owned by the promoters and other financial institutions and not by its trading members.\textsuperscript{180}

| Table 3.8 |
|------------------------|------------------------|------------------------|
| **Year**               | **NSE No. of Companies listed** | **BSE No. of Companies listed** |
| 2010-11                | 1,574                  | 5067                   |
| 2011-12                | 1,646                  | 5133                   |
| 2012-13                | 1,666                  | 5,211                  |

Source: SEBI Annual Report 2012-13

The table shows the data of companies registered on the NSE and BSE during the last three years. The maximum numbers of the companies listed on the NSE and BSE was in year 2012-13.

**3.2.2. (d) Bombay Stock Exchange’s Trading Mechanism (BOLT)**

The Indian capital market is in the continuous phase of change. The beginning of Over-The-Counter Exchange of India in 1993 escorted the concept and practice of screen based trading in India. Following the same pattern, the National Stock Exchange became

ready in June 1994. As a result, the Bombay Stock Exchange was compelled to adopt an on-line trading mechanism through the BOLT system. At the present, Bombay Stock Exchange set up a BOLT system in various cities. All investors, including brokers and sub-brokers, have right to use to BOLT across the country. The final beneficiary of the whole work of technological advancement is the retail investor in other cities who, up until now, had to access to BOLT, without going through a chain of mediators.

Table 3.9

Turnover at BSE and NSE: Cash Segment

<table>
<thead>
<tr>
<th>Year / Month</th>
<th>BSE</th>
<th></th>
<th></th>
<th>NSE</th>
<th></th>
<th></th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Turnover</td>
<td>Percentage</td>
<td>Turnover</td>
<td>Percentage</td>
<td>Turnover</td>
<td>Percentage</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(₹ crore)</td>
<td>Variation</td>
<td>(₹ crore)</td>
<td>Variation</td>
<td>(₹ crore)</td>
<td>Variation</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008-09</td>
<td>11,00,074</td>
<td>-30.3</td>
<td>27,52,023</td>
<td>-22.5</td>
<td>38,52,097</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009-10</td>
<td>13,78,609</td>
<td>25.3</td>
<td>41,38,023</td>
<td>50.4</td>
<td>55,16,833</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010-11</td>
<td>11,05,027</td>
<td>-19.9</td>
<td>35,77,410</td>
<td>-13.5</td>
<td>46,82,437</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2011-12</td>
<td>6,67,498</td>
<td>-39.6</td>
<td>28,10,893</td>
<td>-21.4</td>
<td>34,76,390</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2012-13</td>
<td>5,48,774</td>
<td>-17.8</td>
<td>27,06,279</td>
<td>-3.7</td>
<td>32,57,054</td>
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<td></td>
</tr>
<tr>
<td>Apr-12</td>
<td>42,305</td>
<td>-32.5</td>
<td>1,98,324</td>
<td>-27.2</td>
<td>2,40,630</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May-12</td>
<td>41,655</td>
<td>-1.5</td>
<td>2,16,755</td>
<td>9.3</td>
<td>2,58,409</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jun-12</td>
<td>44,315</td>
<td>6.4</td>
<td>2,02,104</td>
<td>-6.8</td>
<td>2,46,418</td>
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</tr>
<tr>
<td>Jul-12</td>
<td>44,475</td>
<td>0.4</td>
<td>2,10,325</td>
<td>4.1</td>
<td>2,54,800</td>
<td></td>
<td></td>
</tr>
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<td>Aug-12</td>
<td>42,789</td>
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<td>2,04,874</td>
<td>-2.6</td>
<td>2,47,663</td>
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<td></td>
</tr>
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<td>Sep-12</td>
<td>45,301</td>
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<td>17.2</td>
<td>2,85,690</td>
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<td></td>
</tr>
<tr>
<td>Oct-12</td>
<td>51,030</td>
<td>12.2</td>
<td>2,39,795</td>
<td>-0.2</td>
<td>2,90,825</td>
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<td></td>
</tr>
<tr>
<td>Nov-12</td>
<td>47,703</td>
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<td>2,20,933</td>
<td>-7.9</td>
<td>2,68,716</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dec-12</td>
<td>50,377</td>
<td>5.4</td>
<td>2,40,325</td>
<td>8.8</td>
<td>2,90,702</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan-13</td>
<td>56,662</td>
<td>12.5</td>
<td>2,95,415</td>
<td>22.9</td>
<td>3,52,077</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Feb-13</td>
<td>42,138</td>
<td>-25.6</td>
<td>2,26,642</td>
<td>-23.3</td>
<td>2,68,780</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mar-13</td>
<td>39,745</td>
<td>-9.7</td>
<td>2,12,598</td>
<td>-6.2</td>
<td>2,52,343</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: SEBI Annual Report 2012-13

The turnover on BSE and NSE declined by 17.8 percent and 3.7 percent, respectively in the year 2012-13 over the last year. Monthwise, BSE and NSE together recorded the highest turnover in January 2013 followed by October 2012 and December 2012.
3.2.2. (e) Technology

With the advancement in communication and wireless network technologies, there has been a standard shift in the operations of the securities market across the world market. Knowledge has permitted associations to construct novel foundation of aggressive benefit, make changes in products and services and make available novel commerce prospects for the investors. Stock exchanges everywhere on the globe have understood the importance of information technology. They have shifted to electronic trading systems, which have a wider reach, make available an improved instrument for buying and selling, and post buying and selling implementation. Given the significance of information technology in determining the securities industry, National Stock Exchange has been highlighted on changes and continued expenditure on technology. National Stock Exchange is the first exchange in the world to use satellite communication technology for stock trading. It has the very important VSAT-based trading network with biggest VSAT network in the Asia Pacific region.

It uses satellite communication technology to invigorate sharing from more than 2,800 VSATs from approximately 365 cities. It has been constantly using capacity development measures to resourcefully fulfill the necessities of enlarged users and associated trading loads. The facility empowered shareholders to sell or buy the shares from any part of the country without any inconvenience.

Table 3.10
Inspection by Stock Exchange and Clearing Corporations
(\textit{Number})

<table>
<thead>
<tr>
<th>Year</th>
<th>NSE</th>
<th>BSE</th>
<th>MCX-SX</th>
<th>USE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>2011-12</td>
<td>1,044</td>
<td>746</td>
<td>133</td>
<td>99</td>
</tr>
<tr>
<td>2012-13</td>
<td>1,384</td>
<td>936</td>
<td>245</td>
<td>89</td>
</tr>
</tbody>
</table>

\textbf{Source:} SEBI Annual Report 2012-13
In compliance with the requirement of inspecting all active members by the stock exchanges, the number of entities inspected by the stock exchanges is given in Table 3.10.

3.2.3. Brokers

A stockbroker is a registered member of a recognized stock exchange who deals in securities on the behalf of investors. A certificate of registration is required by the Securities Exchange Board of India to act as a broker. Section-2(aa) of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 defines 'stock-broker' as a member of stock exchange. The Securities Exchange Board of India is authorized to enforce conditions at the same time granting the certificate. As a member of a stock exchange, the stockbroker will have to put up with its rules, regulations and bye-laws give in the prescribed fee and obtain enough steps for redressal of investor's grievances. There are 8926 brokers are registered with SEBI in cash segment and 2232 are in the equity derivative segment. Exchange-wise brokers registered with SEBI in Cash Segment are available at Annexure-IV. Each stockbroker is subject to capital adequacy norms constituent of two parts:

i. Basic minimum capital norm

ii. Additional or optional capital related to the volume of business.

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183 Tadashi Endo, Indian Securities Market. (New Delhi: Vision books 2010) 63
The number of registered brokers was highest in National Stock Exchange (1,416) followed by Bombay Stock Exchange (1,361), Inter-connected Stock exchange (8830) and Calcutta Stock Exchange (CSE) (869). The number of corporate brokers was also highest in National Stock Exchange (1,261) followed by BSE (1,162) and OTCEI (496). Corporate brokers constitute 89.1 percent of the total stock brokers at National Stock Exchange whereas the corporate brokers constitute 85.4 percent and 76.7 percent at Bombay Stock Exchange and OTCEI, respectively. Highest number of stock brokers in ‘proprietorship’ category were at CSE (616), followed by ISE (537). Stock brokers in ‘partnership’ category were highest NSE (81), followed by CSE (43). Bhubaneswar and Coimbatore Stock Exchanges did not have any brokers in ‘partnership’ category.

Table 3.11
Classification of stock brokers in cash segment on the basis of ownership

<table>
<thead>
<tr>
<th>Stock Exchange</th>
<th>Proprietorship</th>
<th>Partnership</th>
<th>Corporate**</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ahmedabad</td>
<td>137</td>
<td>40.3</td>
<td>137</td>
<td>40.4</td>
</tr>
<tr>
<td>Bangalore</td>
<td>134</td>
<td>49.1</td>
<td>127</td>
<td>48.7</td>
</tr>
<tr>
<td>BSE</td>
<td>181</td>
<td>13.2</td>
<td>171</td>
<td>12.6</td>
</tr>
<tr>
<td>Bhubaneswar</td>
<td>195</td>
<td>91.1</td>
<td>185</td>
<td>91.6</td>
</tr>
<tr>
<td>Calcutta</td>
<td>644</td>
<td>72.2</td>
<td>616</td>
<td>70.9</td>
</tr>
<tr>
<td>Cochin</td>
<td>350</td>
<td>79.4</td>
<td>320</td>
<td>78.6</td>
</tr>
<tr>
<td>Coimbatore</td>
<td>88</td>
<td>64.7</td>
<td>87</td>
<td>64.4</td>
</tr>
<tr>
<td>Delhi</td>
<td>190</td>
<td>38.2</td>
<td>183</td>
<td>37.8</td>
</tr>
<tr>
<td>Guwahati</td>
<td>90</td>
<td>95.7</td>
<td>59</td>
<td>95.2</td>
</tr>
<tr>
<td>ISE</td>
<td>552</td>
<td>60.2</td>
<td>537</td>
<td>60.8</td>
</tr>
<tr>
<td>Jaipur</td>
<td>447</td>
<td>94.9</td>
<td>434</td>
<td>94.8</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>215</td>
<td>70.3</td>
<td>213</td>
<td>70.1</td>
</tr>
<tr>
<td>MISCE</td>
<td>162</td>
<td>77.9</td>
<td>187</td>
<td>73.1</td>
</tr>
<tr>
<td>Madras</td>
<td>112</td>
<td>51.9</td>
<td>104</td>
<td>52.5</td>
</tr>
<tr>
<td>NSE</td>
<td>72</td>
<td>5.1</td>
<td>74</td>
<td>5.2</td>
</tr>
<tr>
<td>OTCEI</td>
<td>145</td>
<td>21.0</td>
<td>135</td>
<td>20.9</td>
</tr>
<tr>
<td>Pune</td>
<td>123</td>
<td>67.6</td>
<td>117</td>
<td>67.6</td>
</tr>
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<td>UPSE</td>
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<td>210</td>
<td>75.0</td>
</tr>
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<td>Vadodara</td>
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<td>242</td>
<td>78.1</td>
</tr>
<tr>
<td>MCG-SX</td>
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<td>0.0</td>
<td>20</td>
<td>4.4</td>
</tr>
</tbody>
</table>

* As on March 31 of the respective year.

** The categories of financial institutions and composite corporate are clubbed within the category of corporate broker.

Note: Percent ownership represents category-wise percent share for a particular exchange.

Source: SEBI Annual Report 2012-13
Table 3.12
Registered Sub-brokers

<table>
<thead>
<tr>
<th>Stock Exchange</th>
<th>2012</th>
<th></th>
<th>2013</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percentage of Total</td>
<td>Number</td>
<td>Percentage of Total</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Ahmedabad</td>
<td>81</td>
<td>0.1</td>
<td>77</td>
<td>0.1</td>
</tr>
<tr>
<td>Bangalore</td>
<td>158</td>
<td>0.2</td>
<td>158</td>
<td>0.2</td>
</tr>
<tr>
<td>Bhubaneswar</td>
<td>16</td>
<td>0.0</td>
<td>14</td>
<td>0.0</td>
</tr>
<tr>
<td>BSE</td>
<td>33,852</td>
<td>43.9</td>
<td>31,635</td>
<td>45.1</td>
</tr>
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<td>Calcutta</td>
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<td>0.1</td>
<td>71</td>
<td>0.1</td>
</tr>
<tr>
<td>Cochin</td>
<td>41</td>
<td>0.1</td>
<td>41</td>
<td>0.1</td>
</tr>
<tr>
<td>Coimbatore</td>
<td>20</td>
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<td>20</td>
<td>0.0</td>
</tr>
<tr>
<td>Delhi</td>
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<td>200</td>
<td>0.3</td>
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<td>0.1</td>
<td>103</td>
<td>0.1</td>
</tr>
<tr>
<td>NSE</td>
<td>42,327</td>
<td>54.9</td>
<td>37,600</td>
<td>53.6</td>
</tr>
<tr>
<td>OTCEI</td>
<td>14</td>
<td>0.0</td>
<td>14</td>
<td>0.0</td>
</tr>
<tr>
<td>Pune</td>
<td>156</td>
<td>0.2</td>
<td>156</td>
<td>0.2</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>3</td>
<td>0.0</td>
<td>2</td>
<td>0.0</td>
</tr>
<tr>
<td>Vadodara</td>
<td>29</td>
<td>0.0</td>
<td>27</td>
<td>0.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>77,165</td>
<td><strong>100</strong></td>
<td><strong>70,178</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

* As on March 31 of the respective year.

**Source:** SEBI Annual Report 2012-13

The number of registered sub brokers has declined by 9.1 percent from 77,165 as on March 31, 2012 to 70,178 as on March 31, 2013. However, the number of Authorized Persons (APs) as approved by the stock exchanges in accordance with SEBI guidelines, has increased substantially (27.1 %) during the year from 98,533 as on March 31, 2012 to 1,25,273 as on March 31, 2013. Stock brokers were allowed to provide market access to clients through APs, in addition to sub-brokers, with a view to expand the reach of the markets for exchange traded products, vide SEBI circular dated November 6, 2009. Thus, while number of sub-brokers has come
down, the increased presence of APs has ensured the increase in reach of the markets for exchange traded products, as intended while introducing the concept of APs.

Table 3.13
Inspection of Stock Brokers and Sub Brokers

<table>
<thead>
<tr>
<th>Particulars</th>
<th>2011-12</th>
<th>2012-13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspections Completed -</td>
<td>69</td>
<td>162</td>
</tr>
<tr>
<td>Stock Brokers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inspections Completed -</td>
<td>12</td>
<td>39</td>
</tr>
<tr>
<td>Sub-brokers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>81</td>
<td>201</td>
</tr>
</tbody>
</table>

Source: SEBI Annual Report 2012-13

In the year 2012-13, stock exchange completed the inspection of 162 stock brokers and of 39 sub brokers as compared to the year 2011-12 namely 69 stock brokers and 12 sub brokers.

3.2.4. Depository

An organization that keeps securities of all investors in electronic form at the direction of the investors, through a registered depository participant is known as depository. Depository participants make available services associated with business in securities. In India, two depositories are registered with SEBI and recognized viz. National Securities Depository Limited (NSDL) and Central Depository Services Limited (CDSL). It can be evaluated with a bank, which holds the funds for depositors because of following characters or services:

(i) Maintain securities in an account allotted to the investor

(ii) Transfers securities between accounts on the instruction of the account holder i.e. from company to investor or vis-à-vis
(iii) Facilitates transfer of ownership without having to handle securities on his or her own

(iv) Facilitates safety of securities submitted by the depositor.

3.2.4. (a) Functions of Depositories

In India, the National Securities Depository Limited and the Central Depository Services (India) Ltd are the two acknowledged depositories. The Securities and Exchange Board of India coordinate with the depositories. The Depositories Act, 1996 administers the activities of depositories. Through a depository participant, an investor can open his account with any depository. Both depositories are interlinked to each other and it is connected to the NSE, BSE exchanges.

Stocks are held in depository accounts in the depository system, which is approximately equivalent to custody money into bank accounts. The depositories account method is at no cost from all the mistreatment risks and problems typically associated with the official procedure of banks. Consequently, the cost of transacting in a depository is particularly lesser as measured up to executing in certificates of the company. The depository system operates a facility of allotment of dividends through the RBI's ECS system, where the participating company has agreed to such service. It is a mode of electronic funds transfer from one bank account to another bank account using the services of a Clearing House. In addition, bonuses, split-ups of shares are transferred by the depository into the beneficiary account. All stocks can be held in the depository in electronic mode i.e., shares (listed or unlisted), stocks, bonds, debentures, RBI relief bonds, Government securities, mutual funds units, commercial paper, money market instruments etc. Both the documented depositories maintain dematerialized securities in their accounts. In settlement of securities trading through the stock

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184 Electronic Clearing Service (ECS) - FAQs available at: rbidocs.rbi.org.in/docs/ECS/DOCS/19631.doc (Assessed on 12-03-2013)
exchanges and clearing corporations, the exercise of depository has been made obligatory. At present, all the trading volumes through the stock exchanges are in demat mode.

In the depository system, the ownership and transfer of securities from one investor to another investor goes by the way of electronic book entries. It is facilitated with the help of the ‘demat request slip’ or through the direct instruction system on the internet. Depository system makes available exclusion of bad deliveries in securities and exclusion of all risks associated with the physical certificates transfer or safeguarding of the securities. It makes the settlement cycle simple, earlier disbursement of non-monetary corporate benefits like rights, bonus, etc., decrease in brokerage of many brokers for trading in dematerialized securities and reduce in administration of enormous document work and regular position reports. There is a range of checking measures in the depository system to confirm the protection of the investor assets in demat accounts. There are various checks and measures in the depository system to ensure safety of the investor holdings. These measures comprise of following:

(i) A depository participant can be prepared only after registration by Securities and Exchange Board of India. It is based on the offer from the depository and their personal independent evaluation under regulations for depository participant. There is a procedure of compulsory settlement between participants and the depository each day.

(ii) There are cyclic assessments into the commerce activities of both depository participant and Registrar & Share Transfer agent by the depository.

(iii) The stock dealing information exchange between depository and its commerce associates is protected by security actions of international standards such as
encryption hardware lock. The protective actions taken by the depositories are in accordance with the Securities and Exchange Board of India regulations.

(iv) All commerce dealings are recorded at depository Central System and in the records kept by commerce associates.

(v) In the depository, the depository keeps the investor accounts on a common faith and self-assurance. Consequently, if the depository participant becomes insolvent the creditors of the depository participant will have no admission to the property of the authority of the clients of the depository participant. These investors can transfer their property to an account held by a different depository participant. Every month the depository transfers report of account to a random sample of investors as a counter check.

(vi) The Depository has brought in a Certification Program in Depository Operations. It is necessary for all Depository Participants to take up an individual expert in the certification program in each of its working branches. NSDL makes mandatory that every local office of a Depository

(vii) Participants that provide services to the investors has at least one person who has good knowledge about depository system\textsuperscript{185}.

There are categories allowed to open a depository account with any depository through a depository participant i.e. Individuals, Companies, Trusts, Partnership Firms, Non Resident Indians, Hindu Undivided Family, Banks and Institutions. The investor would need to act upon a standard form giving all his details, bank details, instruction details, nomination details and recent photograph and

\textsuperscript{185} Investor Guided Tour / Safety, available at: https://nsdl.co.in/guidedtour/investor3.php (Assessed on 09-03-2012)
signature. Beside with this investor form, the investor would also have signed an agreement with the depository participant, which generally forms a regular part of the account-opening procedure. The details given on the form have to be corresponding with a photocopy of the investor's passport, driving license, etc. to certify the mentioned details of the investor interested to avail services of a depository.

Once the Demat is opened, the investor takes delivery of the following booklets: operational procedure booklet, account opening information sheet, dematerialization booklet required when converting physical shares into electronic shares and instruction booklet, which is used when selling, or transferring shares. An investor can get physical certificates converted into electronic balances maintained in his account with the participant in the Depository System by a separate process. The Participant and the Registrar processes forward them, the Certificates to the Registrar, giving an equivalent number of shares in the investor's beneficiary account. This is done at the request of the demat account holder only. Before dematerialization of his securities certificate, it is required by an investor to open one account with a depository participant and submit the certificate to dematerialize the share certificate. The process of dematerialization will take maximum forty-five days to reflect in the investor's account. The investor can collect all necessary documents related to the account opening from the depository participants\textsuperscript{186}.

\textsuperscript{186} dp services, available at: http://www.pratibhuti.com/DPServices/ (Assessed on 11-03-2012)
### Table 3.14

Depository Statistics

<table>
<thead>
<tr>
<th>Particulars</th>
<th>NSDL</th>
<th>CDSL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011-12</td>
<td>2012-13</td>
</tr>
<tr>
<td>No. of Investor Accounts (lakh)</td>
<td>121</td>
<td>127</td>
</tr>
<tr>
<td>No. of Companies Signed up (listed and unlisted)</td>
<td>9,741</td>
<td>10,844</td>
</tr>
<tr>
<td>No. of Companies Available for Demat (listed and unlisted)</td>
<td>9,741</td>
<td>10,844</td>
</tr>
<tr>
<td>Demat Quantity of Securities* (lakh)</td>
<td>57,98,010</td>
<td>68,64,758</td>
</tr>
<tr>
<td>No. of Shares Settled in Demat (lakh)</td>
<td>7,20,656</td>
<td>7,37,773</td>
</tr>
<tr>
<td>Value of Shares Settled in Demat (₹ crore)</td>
<td>12,47,249</td>
<td>12,72,531</td>
</tr>
<tr>
<td>Market Capitalisation of Companies in Demat (₹ crore)</td>
<td>62,65,157</td>
<td>64,39,115</td>
</tr>
<tr>
<td>Ratio of dematerialized equity shares to total outstanding shares (listed)</td>
<td>81.4</td>
<td>82.5</td>
</tr>
</tbody>
</table>

*Note: Securities includes common equity shares, preference shares, mutual fund units, debentures and commercial paper.

Source: SEBI Annual Report 2012-13

As per the table 3.14, in the end of March 2013, there are 127 lakh demat accounts at NSDL and 83 lakh demat accounts at CDSL. As on March 31, 2013, 10,844 companies have signed up for dematerialization at NSDL and 8,329 at CDLS. At NSDL, quantity of dematerialized securities increased by 18.4 percent to 68,64,758 lakh in 2012-13 from 57,98,010 lakh in 2011-12. At CDSL, the quantity of dematerialized securities increased by 26.8 percent from 13,35,700 lakh in the year 2011-12 to 15,17,926 lakh in the year 2012-13. While the quantity of dematerialized shares increased at the CDSL, the quantity and value of shares settled in demat declined. On the other hand at NSDL, both the quantity and value of shares settled in demat increased. The total value of demat settled shares increased by 2.0 percent from 12,47,249 crore in 2011-12 to 12,72,531 crore in the year 2012-13 at NSDL. The same in case of CDSL increased by 10.0 percent from 2,90,572 crore in the year 2011-12 to 3,19,491 crore in the year 2012-13. The ratio of dematerialized equity shares of total outstanding shares of listed companies was 82.5 percent at NSDL and 14.5 percent at CDSL at the end of the year 2012-13.
3.2.4. (b) Meaning of Depository Participant

A Depository Participant (DP) is an agent of the depository through which it meets with the investor. A depository participant can propose a depository service to the investor after appropriate registration from the Securities and Exchange Board of India. Banking services can be availed through a branch while depository services can be benefited through depository participant. To make use of the service of a depository, an investor has to open a demat account with a depository participant registered with SEBI. To promote investor awareness regarding the mechanism for redressing investor grievances, the information placed below shall be printed on the inside back cover of the Delivery Instruction Form (DIF) Book issued by all Depository Participants.

Depository Participants are permitted to provide transaction statements and other documents to the Beneficiary Owners under Digital signature, as governed under the Information Technology Act, 2000, subject to the DP entering into a legally enforceable arrangement with the Beneficiary Owner for the said purpose. While such practice in the aforesaid manner shall be deemed to be in compliance of the provisions of the Regulation-43 of SEBI (Depositories & Participants) Regulations, 1996 and if the Beneficiary Owner is still desirous of receiving statements in hard copy, DPs shall be duty bound to provide the same. All depository participants (DPs) shall make available a "Basic Services Demat Account" (BSDA) with limited services as per the terms specified in the SEBI circular. Under BSDA, No Annual Maintenance Charges (AMC) shall be levied, if the value of holding is upto Rs. 50,000. For the value of holding from Rs. 50,001 to Rs. 200,000, AMC not exceeding Rs. 100/- may be charged.

188 Circular No: SEBI/MRD/DP/25/2012 dated September 21, 2012
190 Circular No: CIR/MRD/DP/22/2012 dated August 27, 2012
For geographical locations where the facility of refund through ECS is available, details of applicants shall be taken directly from the database of the depositories in respect of issues made completely in dematerialized form. Accordingly, DPs shall maintain and update on a real-time basis the MICR (Magnetic Ink Character Recognition) code of bank branch of beneficial owners and other bank details of the applicants in the database of depositories. This is to ensure that the refunds through ECS are made in a smooth manner and that there are no failed/wrong credits. Transaction statements shall be sent to the beneficial owner at the end of each quarter. If there are no transactions in any quarter, no transaction statement may be sent for that quarter.

The depository participants shall take sufficient steps for redressal of grievances within one month from the date of receipt of the complaint and keep the investor/depositories accordingly informed of the action taken by the depository participants. Failure to comply with the said requirement will render the depository participant liable for penal action. From July 02, 2007, Permanent Account Number is the solitary identification number for all transactions in the securities market, irrespective of the amount of the transaction. A copy of the Permanent Account Number card with photograph may be accepted as Proof of Identity.

Depository Participant shall make sure that all relevant documents pertaining to proof of identity and proof of address are collected from all the account holders. Submission of the formerly mentioned documents is the minimum requirement for opening a beneficiary ownership account. Depository participants must verify the copy of the aforementioned documents with the original before

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192 Circular No: CIR/MIRSD/20/2011 September 12, 2011. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
accepting the same as valid\textsuperscript{194}. No Account closure charges shall be levied by the depository participant on beneficiary owner on the closure of any demat account\textsuperscript{195}. To promote investor awareness with reference to mechanism for redressing investor grievances, the information placed below shall be printed on the inside back cover of the delivery instruction form book issued by all depository participants\textsuperscript{196}.

Companies shall use an electronic clearing system facility for allocation of dividends and other cash benefits to the investors. If an electronic clearing system facility is not available, companies may use warrants for distribution of dividends. In order to avoid fraudulent encashment of dividend and other cash benefits, all companies shall print the bank account details, furnished by the depositories, on the payment instruments\textsuperscript{197}. Depositories and registered depository participants shall designate an exclusive e-mail ID for the grievance redressal division/compliance officer exclusively for registering investor complaints\textsuperscript{198}.

3.2.5. Functions of Secondary market

A prearranged secondary market carries out the subsequent functions in the area of capital creation, allocation of funds and servicing to the corporate segment and investors.

3.2.5. (a) Technical function

The role of controlled trading on a secondary market is to enhance the number of buyers and sellers, make the demand and

\textsuperscript{194} Reference point 5 of part II on ‘Customer Due Diligence’ of Master Circular No: ISD/AML/CIR- 1/2008 dated December 19, 2008.


\textsuperscript{198} Circular No: MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006.
supply functions continuously so that they act, react and interact to produce a smoothly flowing price curve.

The secondary market proceeds as a complicated method for the supply and demand of a variety of types of shares by bringing about a proper modification in their prices. Demand is always at a price of the security and this is true for a security or any other commodity. Where there is a demand for scrip, its price might shift to other scrips, which might appear cheaper in the new price interrelationship. Thus, the demand for scrips is remaining constant.

The secondary market provides the means, whereby shares can be easily bought or sold by the investors. The holdings of those who wish to withdraw funds by selling shares are for the time being transferred to the professional operators, who act as risk bearers until, the stock is in the end absorbed by those who desire to invest funds by buying shares. Organized secondary market trading in the stock markets satisfies investors that their capital investments are not pushed into an irreversible promise and that they are at all times in a safe situation. It is the most important technical function of the secondary market.

3.2.5. (b) Mobilization of savings

The secondary market provides mobilization of saving funds of individual investors, business firms and corporations for speculation in corporate securities. It is the main objective of the secondary market to mobilize savings into investment.

3.2.5 (c) Equity and safety in Dealings

The secondary market provides opportunity to trade between equity and safety. For the performance of the function requires the working of a stock exchange under a set of distinct rules and regulations to reduce the threats inherent in speculative trades and
manipulations. Moreover, a high standard of commercial honesty and integrity among its members is necessary to promote, inculcate just and equitable principles of trade.

3.2.5. (d) Evaluation of securities

In a secondary market, with the interchange of forces of free competition, the securities are likely to be evaluated at their true value overall. At the relevant factors, present and forthcoming values are taken into account in relation to not only the exact enterprise and industry, but also an overall environment of the market. In the practice of formative security prices and yields, the secondary market also points toward the path in which the group of people investments should be spent, for in a perfect market price differences among shares represent differences in their profitability and future prospects, as judged by the combined findings of many experienced operators. Thus, the price system well known on the secondary market provides supervision to investors and assists in directing the flow of capital into a brighter future.\textsuperscript{199}

3.2.6. Trading steps in secondary market

In the secondary market, listed securities are available on the stock exchange for the trade. The main objective of the explanation of the trading process is to understand the working and the role of the trading members in a trade. The process of the steps as under:

3.2.6. (a) Execution of orders

The trading member (broker) shall make sure that suitable confirmed order instructions are acquired from the investors or client before placement of an order on the system. In order to accomplish a

trade for an investor, a broker must have specific customer instructions as to the name of the company, the precise number of shares, limit and market price condition. The broker shall maintain pertinent records or documents of the client transactions and of the completion of transactions or otherwise of these orders. Where the investor or client wants an order to be positioned or any of his orders to be changed after the order has been punched into trading system but has not been executed, the trading member shall make certain that he has ordered placement or alteration details in writing from the investors.

The trading member shall provide to his investor or client the order number and copies of the order confirmation slip or modification slip or cancellation slip and a copy of the trade confirmation slip as generated by the trading system, immediately on execution of the trade from the system. The trading member shall keep copies of all trading instructions in writing from investor or clients as well as participants for an order placement, order modification, order cancellation, trade cancellation etc. It is mandatory for the trading member before executing any order on the behalf of the investor to execute triplet agreement.

3.2.6. (b) Client-broker agreement

The Securities and Exchange Board of India registered brokers and sub brokers can only make investor's transactions in equity or derivatives. Investors also need to be registered with the broker or sub broker by completing client registration form and signing triplet client-broker agreement for the brokering services. It is an agreement between a stockbroker and the client. The agreement inter-alia prescribed rights and obligations of the investor's vis-à-vis brokers and sub-broker. The triplet agreement between both has to be made
on a valid stamp paper. It must be signed on all the pages by the investor and the broker or sub-broker or his authorized representative. In addition, signed by the witnesses to the agreement. SEBI made it mandatory for all brokers to use unique client code for all clients. Brokers shall collect and maintain in their back office the permanent account number allotted by Income tax department for their entire client. Where an individual client does not have Permanent Account Number, such client shall be required to give declaration to that effect and until the Permanent Account Number is allotted, such client shall furnish passport number, place, and date of issue.

3.2.6. (c) Placing of order

After entering into client broker agreement, the investor may place orders for purchase or sale of share either over telephone, fax or by sending e-mail. The orders can also be placed through the internet. Only registered members of a particular stock exchange can transact business on that stock exchange either for themselves or on behalf of their clients.

3.2.6. (d) Types of orders

When an investor invests through his broker or sub broker, he identifies the quantity of scrip and cost at which he wants to buy or sell the scrip. If investor quotes the rate, then it is a "Limit Order". In case an investor wants to execute an order at the existing market rate, then investor will state the "Market Order". The market order is matched at the touching price which is nothing but the best buy and sell price prevailing at that point of time in the order book. The broker
or sub broker is required to inform verification to the investor then whether the order has been carried out or not\textsuperscript{201}.

\subsection*{3.2.6. (e) Contract notes}

Contract note is a confirmation of trades done on a particular day in and on the behalf of a client. A stockbroker shall issue a contract note to his clients, investors for trades i.e. purchase, or sale of securities executed with complete pertinent details as required by the investor related to the executed orders. A contract note shall be issued to a client within 24 hours of the execution of the contract duly signed by the Trading Member or his Authorized Signatory or in electronic mode to the investor\textsuperscript{202}.

No member of a recognized stock exchange shall enter into any contract as a principal with any person regarding any securities. Except only he has obtained the consent or authority of such person and discloses in the note, memorandum of agreement of sale or purchase that he is acting as a principal or on the behalf of investors. For Trading Member, it is mandatory to maintain the duplicate copy of the contract notes issued for five years to different investors. The Trading Member shall make sure that –

\begin{enumerate}
  \item Contract notes are to be in the prescribed format,
  \item Maintain details in the counterfoils of contract notes,
  \item Stamp duty is paid
  \item The service tax charged in the bill is shown in the contract note, and
  \item Contract note is signed by the authorized signatory\textsuperscript{203}.
\end{enumerate}

Contract note verifies the trades executed on a given day for and on behalf of the investor and it is issued in a format specified by the

\textsuperscript{201} V.K. Bhalla, \textit{Management of Financial Services}, (New Delhi: Anmol Publications Pvt. Ltd.) 465, 467

\textsuperscript{202} Circular No. SMD/SED/CIR/23321 Dated November 18, 1993

\textsuperscript{203} Rule 15 of the Securities Contracts (Regulation) Rules, 1957
regulatory authorities. It provides details such as order number, time, trade number, executed time, quantity, rate at which the transaction took place, brokerage charged by the broker, rate inclusive of the brokerage, service tax payable on the transaction etc. It is compulsory to get a contract note from broker at the end of the trading day. In addition to the confirmation of trading transactions, it serves as an exhibit when an investor has a grievance with his broker regarding under performance or non-performance of the obligations mentioned in the regulations. The final step of the trading steps of the secondary market is the clearing and settlement process. The process is elaborated in detail to understand the duties and the rights available to the investor in a trade as under:

3.2.7. Clearing and settlement process

The clearing and settlement method in the Indian securities market has observed important modifications. Settlement is the procedure whereby the trader or investor who has acquired scrip makes payment and the seller send the securities. Clearing Houses completes the settlement process for the stock exchanges. The clearing house acts similar to an intermediary in each business deal.

The transactions in secondary market completes through three distinct segments, i.e. trading, clearing and settlement of securities. While the stock exchanges make available the platform for trading, the clearing corporation determines the funds and securities clearing obligations of the trading members and makes sure that the trade is settled through a stock exchange as per obligations. The clearing banks and the depositories provide the essential crossing point between the custodians and clearing members for the settlement of funds and securities obligations of trading members. The clearing process is to find out what counter-parties owe and which counter-parties are due to take delivery i.e. of funds or securities on the settlement date, thereafter the clearing obligations are discharged by
settlement agencies. Clearing is the process of determining of obligations, after which the obligations are discharged by settlement\textsuperscript{204}.

3.2.8. Settlement agencies

A number of entities, like the clearing corporation, clearing members, custodians, clearing banks, depositories are involved in the process of clearing. The role of each of settlement agencies in any trading settlement is elaborated below:

3.2.8. (a) Role of clearing corporation

In April 1996, the National Securities Clearing Corporation Ltd. (NSCCL) commenced operations in settlement and risk management. The clearing corporation is accountable for after trade activities such as the risk management and the clearing and settlement of trades executed on a stock exchange. NSCCL carries out clearing and settlement functions as per the settlement cycle. Settlement is a two-way method, which involves transfer of funds and securities on the settlement date. The National Stock Exchange has set up a clearing corporation to provide a legal counter party guarantee to each trade in that way eliminating counter party risk to the party. Counter party risk is guaranteed through fine-tuned risk management systems and an inventive method of on-line position monitoring and automatic disablement technique. Facilities offered by NSDL are:

(i) Enable deposit and withdrawal of securities to and from the depository.
(ii) Maintain investor holdings in the electronic form.
(iii) Effect settlement of securities traded on the exchanges.

\textsuperscript{204} Clearing & Settlement - Equities, http://www.nseindia.com/products/content/equities/equities/clearing_settlement.htm (Assessed on 12-03-2014)
(iv) Carry out settlement trades not done on the stock exchanges\textsuperscript{205}.

NSDL gives a protected internet based service for clearing members of stock exchanges and to beneficial account holders. NSDL provided a service called IDeAS (Internet-based Demat Account Statement) facilitate clearing members and beneficial account holders to sight particulars of their accounts straight on the Internet. IDEAS can be accessible by the users of SPEED-e clearing members who subscribe it and to those clients whose depository participants are registered for IDEAS.

With the intention of extending the benefits of technological development to the investors, NSDL has launched SPEED-e services. SPEED-e is an internet-based service for customers of all depository participants that facilitates the accountholder to give instructions to their depository participants through SPEED-e website. The customer can submit instructions at a time suitable to them from a place suitable to them using SPEED-e. The accountholders can also view the position of their given instructions tendered through SPEED-e. SPEED-e is expected to decrease the time and efforts necessary in dispensation of the instructions.

Likewise, Central Depository Services Limited (CDSL) is promoted by Bombay Stock Exchange Ltd and together with most important banks such as State Bank of India, Bank of India, Bank of Baroda, HDFC Bank, Standard Chartered Bank and Union Bank of India. CDSL was stationed with the purpose of facilitating suitable, reliable and protected depository services at reasonably priced to all market participants\textsuperscript{206}. The working of CDLS is governed by the bye-laws of Central Depository Services (India) Limited.


\textsuperscript{206} Introduction, available at: https://www.cdslindia.com/aboutcdsl/introduction.html(Assessed on 16-05-2013)
3.2.8. (b) Role of clearing members

Clearing Members are accountable for settling their obligations as determined by the NSCCL. They do so by providing funds and securities in the designated accounts with clearing bank and depositories on the date of settlement. "Clearing Member" means a member of the Clearing Corporation but does not represent the shareholders of the Clearing Corporation. SEBI may lay down regulations from time to time for the performance and operations of the Clearing Corporation. It is to control the performance and daily routine of the clearing members of the Clearing Corporation.

A clearing member shall have the right to claim from its constituent the margin he has to make available under the rules, byelaws and regulations regarding the trade done by him for such constituent. It has the right to demand an initial margin in cash and securities from its constituent before promise to clear his responsibilities and to lay down that the constituent shall pay a margin or provide an extra margin in accordance with the changes in market prices. The clearing occupation of the clearing corporation is intended to exercises:

a) What clearing members are owing to deliver and

b) What members owe to receive on the settlement date. Settlement is a joint procedure, which involves transfer of funds and securities on the said date.

Clearing member eligibility norms for the work in the stock market is net worth of at least Rs.300 Lakhs. The net worth precondition for a clearing member who clears and settles only deals executed by him is Rs. 100 Lakhs. As a part of security, it is mandatory to deposit of Rs. 50 Lakhs to NSCCL. The most

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207 Chapter VIII of the National Securities Clearing Corporation Limited Byelaws
important of Clearing Members work is to make possible pay-in or pay-out of securities to or from Stock Exchanges, Clearing House, or Clearing Corporations either on their own behalf or on behalf of their customer. The securities that are pending for delivery can be delivered straight from customer’s account (based on whether the stock exchange gives such kind of facility) or through clearing members to the stock exchanges/clearing house/clearing corporations account. Likewise, payout of securities can be delivered straight to customer accounts dependent on information given to the clearing house by the clearing members or to clearing members account.\footnote{Circular: SMDRP/Policy/Cir-05/2001 dated February 1, 2001 \& Circular: SEBI/MRD/Policy/AT/Cir-19/2004 dated April 21, 2004. Also, available at: \url{http://www.cdslindia.com/cds_assoc/mem_intro.html} (Assessed on 04-04-2013) \& \url{http://www.cdslindia.com/eds_assoe/mem_intro.htm} (Assessed on 13-04-2013)} It is obligatory for the clearing member of the stock exchanges to own demat account in both the clearing corporations\footnote{SEBI press release ref. no. PR 153/99 dated July 9, 1999. (Assessed on 13-04-2013)}.

### 3.2.8. (c) Role of custodians

Section-2(d) of the SEBI (Custodian of Securities) Regulations, 1996 defines ‘Custodian’ as:

> *any person who carries on or proposes to carry on the business of providing custodial services*\footnote{Section-2(d) of the SEBI (Custodian of Securities) Regulations, 1996}

Custodians are not trading members but clearing members in the settlement process. They reconcile trades on behalf of trading members, when a particular trade is given to them for settlement. Custodian of securities is governed by the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996. Third schedule of the regulation defines the code of conduct related to the working of the custodian as an intermediary in the market\footnote{Third Schedule: code of conduct, SEBI (Custodian of Securities) Regulations, 1996}.
3.2.8. (d) Role of clearing banks

Clearing banks are a key link connecting the clearing members and Clearing Corporation to effect settlement of funds between the parties. Every clearing member is mandatory to open a devoted clearing account with one of the designated clearing banks. Based on the clearing member's obligation as determined through clearing, the clearing member makes funds available in the clearing account for the pay-in and takes delivery of funds in case of a pay-out of the securities\(^{214}\).

3.2.8. (e) Role of depositories

Real delivery of securities to the clearing system from the selling brokers and delivery of securities from the clearing system to the buying broker is done by the depository. To attain the objective of settlement of the securities, depositories and the designated clearing system should be electronically connected to each other.

In the beneficiary accounts, depository keeps traded securities in the electronic form for the investor. It is mandatory for each clearing member to keep a clearing pool account with the depositories. It is mandatory to make available the required securities in the designated account of the investor with the depository on settlement day i.e. T+2 Day. The depository runs an electronic file to relocate the securities from accounts of the custodians or clearing member to that of NSCCL and vice-versa as per the agenda of distribution of shares\(^{215}\).


\(^{215}\) ibid
3.2.8. (f) Role of professional clearing member

NSCCL acknowledges particular class of members known as professional clearing members (PCMs). PCMs may possibly clear and resolve buying and selling executed for their clients i.e. individuals, institutions etc. In such cases, the working and duties of the PCM are alike to that of the custodians. In addition, PCMs take on clearing and settlement responsibilities of the trading members. The professional clearing members have no stock trading rights, only have clearing rights i.e. PCMs clears the trades of his connected trading members and institutional customers. NSCCL is responsible for settlement of trade as per the distinct settlement cycles. With effect from 2003, all securities are being traded and settled under T+2 rolling settlement. The NSCCL gives the relevant trade particulars to clearing members or custodians on the trade day (T), which are confirmed on T+1 to NSCCL.

Based on it, NSCCL fix the positions of counter parties to decide their commitments. A clearing member has a mandatory responsibility to pay-in or payout funds or securities. The obligations are for a member across all securities to decide his fund obligations and he has to either disburse or obtain funds. Participating members pay-in or payout responsibilities are completed latest by T+1 and securities or funds are advanced to them on the same days that they can resolve their obligations on T+2. The settlement of the securities is complete in 2 days from the end of the trading day and the securities or funds are paid-in or paid-out on T+2 day to the member clients216.

3.2.9. Process of electronic settlement

In the early 1990s, the use of physical share certificates in India was the grounds of elevated back-office costs, a sky-scraping occurrence of failed trades, and vulnerabilities associated with large-scale of the theft and forging of shares.

216 ibid
Now, the position has changed with the commencement of the National Securities Depository (NSDL), a depository founded on dematerialization process. Two major domestic financial institutions and National Stock Exchange created NSDL for the better settlement of the securities free from hassles or any kind of frauds in the handling of securities. In the year 1996, NSDL started working settlement, clearing process and it is estimated that almost equity settlement in the country is done by the NSDL. It was the great achievement of the financial sector in making of the settlement and transaction easier. In spite of all the reforms in the equity market, there have been a number of cases of fraud and market malfunctioning in the 1990s.

3.2.9. (a) Settlement cycle

The settlement process followed by NSE is also applicable to BSE and other regional stock exchanges in country. It indicates the settlement of buying and selling of shares through the intermediaries. It also indicates time involved after the execution of trade order. After the execution of trade order every intermediary has to complete obligations within the given time period.

<table>
<thead>
<tr>
<th>Settlement Cycle in Cash Market Segment</th>
<th>T+2 Rolling Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trading</td>
<td>T</td>
</tr>
<tr>
<td>Custodial Confirmation</td>
<td>T+1</td>
</tr>
<tr>
<td>Determination of Obligation</td>
<td>T+1</td>
</tr>
<tr>
<td>Securities/Funds Pay-in</td>
<td>T+2</td>
</tr>
<tr>
<td>Securities/Funds Pay-out</td>
<td>T+2</td>
</tr>
<tr>
<td>Valuation Debit</td>
<td>T+2</td>
</tr>
</tbody>
</table>
### Process of rolling settlement

Rolling Settlement is a mechanism of settling trades done on a stock exchange on T' i.e. trade day. With rolling settlement, buy and sell are fixed through the day, and all open positions at the end of the day are settled ‘n’ days afterward and called as T+n rolling settlement. Rolling settlement is eye-catching for the reason that on the settlement date, all open positions are cleared. In the rolling settlement, each trading day is treated as a trading period. Buy and sell takes place throughout the day and are settled on the basis the net obligations for the day. At National stock exchange and Bombay stock exchange, buy and sell in rolling settlement are settled on a T+2 basis, i.e. on the 2nd working day. In case of settlement, it is required to exclude all intervening holidays, which include bank holiday, national stock exchange and Bombay stock exchange holiday, Saturday and Sundays. Characteristically, trades take places on Monday are settled on Wednesday, Tuesday trades settled on Thursday and so on\(^\text{217}\).

\(^{217}\) *(Understanding the Rolling Settlement, available at: cbse.nic.in/fmm-12/FMM%20II_Chapter%206.pdf (Assessed on 19-04-2013))"
3.2.9. (c) Settlement process

The following chart has explained the settlement process of share settlement in the investors account as under:

![Chart 3.6]

Source: www.nse-india.com

The above mentioned chart has been explained for the settlement process of shares in detail:

1. Trade details from exchange to Clearing and Settlement agency (CSA) (Real time and end of day trade file).

2. CSA notifies the consummated trade details to Clearing Members or Custodians who affirm back. Based on the affirmation, CSA applies multilateral netting and determines obligations.

3. Download of obligations and pay-in advice of funds or securities.

4. Instructions to clearing banks to make funds available by pay-in time.
5. Instructions to depositories to make securities available by pay-in-time.

6. Pay-in of securities (CSA advises depository to debit pool account of custodians or Clearing Members and credit its account and depository does it).

7. Pay-in of funds (CSA advises clearing Banks to debit account of custodians or Clearing Members and credit and clearing does it. CSA transfers funds between clearing banks to meet the payout requirements at each bank.)

8. Pay-out of securities (CSA advises depository to credit pool account of custodians or Clearing Members and debit its account and depository does it.)

9. Pay-out of funds (CSA advises Clearing banks to credit account of custodians or Clearing Members and debit its account and clearing bank does it).

10. Depository informs the custodians or Clearing members (CMs) through Depositories Participants.

11. Clearing banks informs custodians or Clearing Members.218

In the entire value chain, only at the stage of entering order into trading system any date related to the trade can be entered electronically or manually. Otherwise, no fresh inputting of data takes place at any stage of the chain of settlement. Data flows flawlessly among different level of agencies viz. from stock exchanges to clearing agency and from clearing agency to clearing banks, the depository, members and custodians. The main objective of the explanation of the settlement process is to understand the settlement process and about the intermediaries involved in the settlement.

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3.2.10. Risk management and other services

To prevent market failure and protect investors from loss, the regulator and stock exchanges have developed a wide-ranging risk management system, which is constantly monitored and upgraded by the regulator. It includes capital adequacy norms of members, adequate margin requirement by the broker and investors, limits on exposure and turnover in case of listing of securities, indemnity insurance, on-line position monitoring, automatic disablement etc. They also administer an efficient market surveillance system to curb excessive volatility, detect and prevent price manipulations by the traders or investors. Stock exchanges have set up trade and settlement guarantee funds for meeting shortages of funds arising out of non-completion or partial completion of funds obligations by the participating members in trading settlement. A clearing corporation guarantees the country party risk\(^{219}\) of each member and guarantees financial settlement in respect of trades executed on the National Stock Exchange.

In addition to the above, regulator adopted other preventive measure to stop the market abuse. These preventive measures are explained in detail as under:

3.2.10. (a) Circuit breakers

SEBI introduced the index based market large circuit breaker system from July 2, 2001\(^{220}\). A stock market index evaluates working with performance of the stocks included in the index. An index can be used to assess how well a specific stock or mutual fund is doing in relation to the stocks represented in the index\(^{221}\). Financial market institutions in the economy provide the avenue by which long-term savings are mobilized and channeled into investment opportunities to

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\(^{219}\) The risk to each party of a contract that the counterparty will not live up to its contractual obligations


\(^{221}\) *The Financial system and the Economy, principles of money & banking*, (USA: Thomas South Western 2006) 372

the savers and capital seekers. Therefore, it is important to have strong faith in the secondary market by the investor. For any secondary market, the market indices are the barometer of its performance and reflect the prevailing sentiments of the entire economy growth. Actually, stock index is configured to make available investors with the information concerning the average share price in the secondary market. The difficulties in the index stand for the progress of the equity market. These indices need to stand for the return achieved by typical portfolios in the country. The largest significant use of an equity market index is as a measure for a portfolio of stocks. A share index includes stocks from all the sectors of the economy and thus cancels out the stock and sector specific news and events that affect stock prices and reflect the taken as a whole performance of the company or equity market and the company related news affect it. All diversified portfolios, belonging to either retail investors or mutual funds, use the common stock index as a measure for their returns. In addition, indices are valuable in contemporary financial application of derivatives.

For both the policy makers and the investors volatility in stock prices is a cause of concern related to the future performance of the company. To restrain unwarranted volatility, Securities and Exchange Board of India has prearranged a system of circuit breakers to the stock in the trading sessions under different parameters i.e. based on categorization of the securities etc. The circuit breakers are a nation-wide synchronized stop in trading of all the equity. The circuit breaker system applies at three stages of the index progress i.e. at 10%, 15% and 20%. Supplementary, the National Stock Exchange views entries of fake market orders with greater significance because it has market consequence. NSE may itself withdraw the market orders in the nonappearance of any direct verification from the trading members that these orders are authentic or for any other cause as it may deem

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222 Rajesh Chakrabarti, Sankar De, Capital Markets in India. (New Delhi: Sage Publication India Pvt. Limited 2010) 81
fit. As a supplementary step of protection, individual scrip-wise price bands have been fixed as given under:

(i) Daily price bands of 2% (either way) on a set of specified securities,

(ii) Daily price bands of 5% (either way) on a set of specified securities,

(iii) Daily price bands of 10% (either way) on another set of specified securities,

(iv) Price bands of 20% (either way) on all remaining securities (including debentures, warrants, and preference shares etc., which are traded on Capital Market segment of National Stock Exchange\textsuperscript{223}.

3.2.10. (b) Demat trading

A depository keeps securities in dematerialized form with the ownership records of securities in a book entry form. It helps transfer of ownership through a book entry to the others. Though, the investors have a right to retain the securities in either physical or demat form, SEBI has made it compulsory that trading in securities should be only in dematerialized form. It was originally brought in for institutional investors and then inclusive to all categories of investors trading in the stock market. The companies, which are unsuccessful to set up connectivity with both the depositories on the scheduled date i.e. September 30, 2001 as announced by the Securities and Exchange Board of India, their securities are traded on the ‘trade for trade’ settlement window of the exchanges. Since the beginning of the depository system, dematerialization has progressed at a fast speed and has gained recognition amongst the all market participants. Now, all traded scrips are held, traded and settled in demat form in the depositories. The benefits of the depository services are as under:

\textsuperscript{223} ibid
(i) A safe and convenient way to hold securities
(ii) Immediate transfer of securities
(iii) No stamp duty on transfer of securities
(iv) Elimination of risks associated with physical certificates such as bad delivery, fake securities, delays, thefts etc.
(v) Reduction in paperwork involved in transfer of securities
(vi) Reduction in transaction cost
(vii) No odd lot problem, even one share can be traded
(viii) Nomination facility to the demat holder
(ix) Change in address recorded with DP gets registered with all companies in which investor holds securities electronically eliminating the need to correspond with each of them separately
(x) Transmission of securities is done by DP and eliminates correspondence with companies
(xi) Automatic credit into demat account of shares, arising out of bonus or split or consolidation or merger etc.
(xii) Holding investments in equity and debt instruments in a single demat account

SEBI has advised that from January 09, 2006, no charges shall be levied by a depository on Depository Participant (DP) and consequently, by a depository participant on a beneficiary owner (BO). No charge will be levied, when a beneficiary owner transfers all the securities lying in his account to another branch of the same Depository Participant or to another depository participant of the same depository or another depository, provided the beneficiary owner account/s at transferee depository participant and at transferor depository participant are identical in all respects. In case the

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beneficiary owner account at transferor depository participant is a joint account, the beneficiary owner account at transferee depository participant should also be a joint account in the same sequence of ownership. Inter-depository transfer of shares does not attract stamp duty and it does not require compliance with Section-108 of the Companies Act 1956\(^2\). All other transfers of securities consequent to closure of the account, not fulfilling the above-stated criteria, would be treated like any other transaction and charged as per the schedule of charges agreed upon between the beneficiary owner and the depository participant\(^2\).26

Table 3.16

<table>
<thead>
<tr>
<th>Year</th>
<th>NSDL Demat Quantity (million shares)</th>
<th>CDSL Demat Quantity (million shares)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010-11</td>
<td>4,71,304</td>
<td>1,05,310</td>
</tr>
<tr>
<td>2011-12</td>
<td>5,79,801</td>
<td>1,33,570</td>
</tr>
<tr>
<td>2012-13</td>
<td>6,86,476</td>
<td>1,51,792</td>
</tr>
</tbody>
</table>

Source: SEBI Annual Report 2012-13

In the year 2012-13, NSDL and CDSL Demat quantity was 6,86,476 and 1,51,792 shares respectively. As compared to the previous year of 2011-12, the Demat quantity was low. In year 2010-11, it was 4,71,304 and 1,05,310 shares on NSDL, CDSL respectively.

3.2.10. (c) Index services

For any secondary market, the market indices are the indicator of its presentation and replicate the current emotions of the complete financial system. Stock index is created to give investors the information on the subject of the standard share price in the

\(^{2}\) Circular: SMDRP/Policy/Cir-29/99 dated August 23, 1999

secondary market. The movements in the index correspond to the movement of the equity market. These indices symbolize the return acquired by distinctive portfolios in the country.

A stock index consists of a set of stocks that are the symbol of both the whole market and a particular segment. It assists to determine the change in large performance of the markets or sector over a period. The India Index Services and Products Limited (IISL) is promoted by National Stock Exchange and Credit Rating Information Services of India Limited (CRISIL) in technological joint venture with Standard and Poor’s. The India Index Services and Products Limited give stock index services by rising and keeping a collection of indices for stock prices. IISL is the merely dedicated association in the country. IISL preserves a number of equity indices that include broad-based benchmark indices, sectoral indices and customized indices. The most famous index is the S&P CNX Nifty, followed by the CNX Nifty Junior, S&P CNX Nifty, S&P CNX 500, CNX Midcap 200, S&P CNX Industry indices and CNX IT Index. They are monitored, restructured actively and are evaluated on a regular basis. These are kept efficiently to make sure that it carries on to be a reliable standard of the equity markets, which includes addition and elimination of stocks in the index, everyday monitoring and giving outcome to corporate actions on single stocks. S&P CNX Nifty is a well-diversified fifty stock index responsible for 24 divisions of the financial system. The total traded value of all Nifty stocks constitutes roughly 77% of the traded value of all the stocks on the National Stock Exchange. 11.6% of the market share in National Stock Exchange goes to CNX Nifty Junior accounts.

After implementation of modifications, it was observed that Indian stock market had at ease liquidity of roughly fifty stocks. Away from 50, the liquidity levels turn out to be lower. Hence, the index set size of 50 stocks was selected to form index of the Nifty. The stocks included in the Nifty index are selected based on their impact cost,
liquidity and market capitalization. The index is intended afresh every
time a trade takes place in any of the index stock. It is calculated on-
line and dispersed over trading terminals online to all investors across
the country. The association at every quarter reviews the combination
of Nifty.

4. Role of law on protection of shareholder

Laws are important for the proper functioning of the market
intermediaries and their participants. For the protection of the
investor, securities laws are enacted by the legislature. The main
objective of the market regulators is to protect the interest of the
investor. The main purpose of securities market regulations is to
endorse and uphold effective, liquid and clear market227. The
responsibility of a regulatory body for securities market in a country is
to determine the stage of development of securities market in the
country. Regulatory and developmental functions are strongly inter-
linked. It has the same objectives in the end, and very often, rapid and
healthy development is an outcome of well-regulated structure228.

As a part of the liberalization process of the market, the
Government allowed foreign institutional investors to invest in
securities in the primary and secondary markets. An intensive bid
being made by the Reserve Bank of India and Government of India to
achieve the appreciated goal of capital account convertibility have
opened up exciting opportunities for whole market growth.

As the market move towards an open economy with greater
trade and investment with the rest of the world, market will play a
hugely significant responsibility in the coming years. It will become
the nerve centre of economic activity in the nation. It will also bring
closer integration of domestic market to the global market with the

Delhi: Deep and Deep Publication Pvt. Ltd.2008)18
228 A.K. Sharma, G.S. Batra, Indian Stock Market, Regulation, Performance and Policy Perspective. (New Delhi:
same platform. Liberalization does not indicate neglecting of all the codes and statutes passed by the legislature. It denotes variation of one set by another more liberal code or statute, which is at times reflected to as re-regulation in the literature. This regulation or reregulation means to set the rules, which control the technique in which private sector agents accomplish their actions. The same obvious contradiction has generated a continuous, often subjective debate on the extent and nature of regulation, among and between the regulators, those regulated policy makers and economists.

It is commonly accepted that the threat regulation has a very significant and serious role in ensuring the liberalized markets function in a well-organized and reasonable approach and the risks of systemic failure are diminished. The securities market is not perfect in operations and full of loopholes in the system. Three sets of factors interrelate with one another to cause a market breakdown in the securities market. These are elaborated as under:

a) **Individual personality:** Peoples are self-centered, they value spending and have a dislike to attempt risk.

b) **Economic status:** Economic business happens without perfect information, the collection, maintenance and use of which require formidable cost. Property rights are not well defined and the production technology is lumpy and inseparable.

c) **Securities market features:** The securities market is information driven and the transactions are carried out through intermediaries. The scale of operations in the securities market of the players is very small, the various players are spatially distinct, and there is a high degree of risk and uncertainty. The current of information in the securities market is not instant and the participants in

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the securities market do not have the same worth and the extent of information, some get information after a lapse of time, some have only propaganda and some others by no means get information. It occurs because the spatially dispersed small operators fall short to crack the information barrier lift by a grouping of well-equipped sophisticated operators\textsuperscript{230}.

A range of players in the market, act and react to the basis of full and accurate information which is not enough information. The self-centered players operate opportunistically and the prices of securities i.e. both in primary and secondary market does not reproduce the fundamentals of the issuers. Thus, the irregularity of information makes a market defective, transaction costs high and prices fail to distribute the resources successfully. The indistinguishable inbuilt tendency of the securities market to fail requires the existence of a regulatory body to control the conduct of all the participants in the market, to arrange for maintenance of property rights to promote provision of full, accurate and up to date information. It is to develop insurance and prospect markets to avoid risk and uncertainty. It is to provide an institutional structure to minimize transaction costs. The call for regulation is more strengthened by the reality that trade and industry now days all over the world depends on the securities market significantly for resources to finance their transformation and development programmes. If the securities market is to keep on to be a most important resource of funding for the development of the business segment, it is needed that every market players i.e. issuers, investors and the intermediaries must perform in an answerable approach. If they do not do so on their own, the regulatory body should be constituted to regulate\textsuperscript{231}.


\textsuperscript{231} Ibid
In year 1992, the Securities and Exchange Board of India Act enacted to protect the interest of the investor and for proper functioning of the market participants. It is to formalize market regulations in practice. Prior to 1992, the three most important Acts regulating the securities market were:

(i) **The Capital Issue (Control) Act, 1947** was enacted to limit issuer admission in the securities market and in the pricing of issues. It has been repealed in year 1992.

(ii) **The Companies Act, 1956**, which sets out the code of conduct for the business segment concerning issue related to public issue like allotment and transfer of securities and disclosures to be made.

(iii) **The Securities Contracts (Regulation) Act, 1956** makes accessible for regulation to monitor business in securities all the way through control over stock exchanges\(^{232}\).

Department of Economic Affairs, Department of Company Affairs, Reserve Bank of India and Securities and Exchange Board of India share the accountability for administration and progress of the securities market. Taking into consideration participation of numerous market regulators, there is a possibility for confusion between the regulators and the regulated participants, regulatory gaps and overlaps, and duplication and chance of conflicting regulations. The important legal frameworks on capital market for the protection of shareholders are explained as under:

### 4.1. Legal framework of Securities and Exchange Board of India

The Government has formed the Securities and Exchange Board of India in April 1988. Upto 1992, it had no statutory powers to operate in the market. It had the following temporary functions during the time were:

i. To collect information and advice the Government on matters relating to capital market

ii. Licensing and regulation of merchant banks, mutual funds etc

iii. To make legal drafts for regulatory and improvement role of the Securities and Exchange Board of India

iv. To carry out any other functions as may be handover to it by the Government

It is to protect the stakes of the investors of all categories in securities trading, to encourage the expansion of and to regulate the securities market. In addition, for any matters connected with the market. SEBI as a regulatory body is for the encouragement of well-organized services by recognized brokers, merchant bankers and other intermediaries so that they become aggressive and specialized for the constant flow of capital savings in the capital market.

Under the supervision of the Securities and Exchange Board of India, the guidelines and the code of conduct are to be observed in the market and defaults are subject to penal provisions. The Securities and Exchange Board of India has the power to carryout schedule scrutiny of all market participants and intermediaries. It is to make sure compliance with approved standards. Indeed, all the intermediaries have to seek first the license and registration for working in the Indian capital market. Market Intermediaries Registration and Supervision Department, Market Regulation Department and Derivatives and New Product Departments do the subsequent work of the Securities and Exchange Board of India to pay attention on the activities in the secondary market.

The Securities and Exchange Board of India specify separately the norm and eligibility requirements for each group. It also has

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233 http://infr.ac.in/pdf/cmfi/seminars/Seminar05.pdf. (Assessed on 07-05-2013)

examination power comparable to that of a civil-court in terms of
summoning persons and seeking information important to its
investigation. The implementation power of the Securities and
Exchange Board of India comprises issue of directions, obligation of
monetary penalties, annulment of intermediaries registration and trial
of capital market intermediaries. To make certain efficient and
trustworthy use of enforcement powers, the Securities and Exchange
Board of India has approved measures such as expansion of a stock
watch system, uniform price bands and establishment of a Market
Surveillance Division.

To guarantee functional independence and answerability in the
execution of functions and powers by the regulators, the Securities
and Exchange Board of India has been comprised as an independent
body and is established under a separate Act of the Parliament. The
Securities and Exchange Board of India is answerable to the
Parliament through Central Government and the regulations framed
by them are required to be laid before Parliament by the Central
Government. SEBI as a regulator provides protection to the
shareholders and other investors in the market to trade without fear.

The Securities and Exchange Board of India consists of one
Chairman and five members, two from the department of the Finance
and Law of the Central Government. In addition, it has one member of
the Reserve Bank of India and two other persons. It has one head
office in Bombay with regional offices in Delhi, Calcutta and Madras to
regulate all activities in India. The supreme power to terminate the
services of any of the member is vested in the Central Government.
The Board decides all questions in its meeting by majority vote with
the Chairman having a second or casting vote. The purpose of the
Securities and Exchange Board of India is as described as under:

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235 Chapter VIA: Penalties and Adjudication, SEBI Act, 1992
i. to promote fair dealings by the issuers of securities i.e. companies

ii. to provide an improved market place for the corporate sector to raise funds at a low cost from the investors

iii. to provide investor protection and safeguards their rights and interest

iv. to control the securities market

Securities and Exchange Board of India has commenced dispensation of investor grievances in a centralized web-based complaints redressal system called ‘SCORES’. The salient features of the system are:

(i) Centralized database of all complaints related to the investor

(ii) Online movement of complaints to the concerned entities i.e. stockbroker, depositories etc

(iii) Online upload of action taken reports by the concerned entities.

(iv) Online tracking of status of complaints by investors by logging on the web portal of the SCORES.

4.2. Legal framework of stock exchange

In the Indian securities market, stock exchanges are governed by the Securities Contract (Regulation) Act, 1956. The Securities Contracts (Regulation) Act, 1956 manage overall trading methods and market practices for a variety of important matters including recognition of stock exchanges. It provides regulation relating to securities and provisions on the subject of listing of securities. The Act provides for unitary control and secured by allowing stock exchanges

238 Circular No: CIR/O1AE/1/2013 dated on April 17, 2013
to operate only after they are recognized, their rules and bye-laws comply with the prescribed rules of the Government and the exchanges are ready to act in accordance with any conditions made compulsory by the Central Government etc. The Act controls hours of trade, fixes floors and ceilings on days transaction, sets down margin requirements for the trade, business in securities being done only under the authority of a license granted etc. The Government is also vested with powers to take over charge from governing bodies, when circumstance needs and in emergencies to postpone operations.

Stock exchanges provide marketability and liquidity to the securities. It encourages investments in securities and assists corporate development. Stock exchanges act as the most important branch of Indian capital market. They grant facility for trading in all categories of securities such as shares and bonds. It provides the machinery with which it is possible to evaluate the securities and predict the moving trends and directions in which investments of the investors flow. It assists the primary market by acquiring subscription for the new issues with the help of IPOs. The stock exchange in secondary market provides a well-regulated market for trading in existing securities, which have already been subscribed in the primary market. SEBI has decided that the stock exchanges shall send details of the transactions to the investors, by the end of trading day through SMS and E-mail alerts. Stock brokers shall ensure to the stock exchange that separate mobile number and E-mail address is uploaded for each client.

4.2. (a) Acknowledgment of stock exchanges

Under Section-2(f) of the Securities Contact (Regulation) Act 1956, “Recognition of Stock-Exchange” means:

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139 D.Sakriya, _SEBI and Securities Market in India_, (New Delhi: Anmol Publications Pvt. Ltd. 2000) 166, 167
140 SEBI Circular No: CIR/MIRSD/15/2011 August 02, 2011

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"a stock exchange which is for the time being recognized by Central government under Section 4 of the Act"\(^{241}\).

Under Section-4 of the Securities Contract (Regulation), Act 1956, every grant of recognition to the stock exchange shall be in print in the Gazette of India and in the official Gazette of the State in which the main office of the stock exchange is situated and it shall have effect as from the date of its publication. It shall be either on a permanent basis or for such period not less than one year as may be prescribed in the recognition.

At present, the stock exchanges have nationwide terminals such as the National Stock Exchange of India Ltd. and Bombay Stock Exchange Ltd. They operate in equity as well as equity derivative segments and are providing an investor grievance redressal mechanism. In addition, SEBI has initiated steps to set-up arbitration facility by the stock exchanges at more centers after examining the data on complaints and arbitrations filed by investors from various regions\(^{242}\). The Central Government may grant recognition to the stock exchange if it is fulfilled after making needed queries and obtained such further information, if any, as it may require –

(a) That the rule and by-laws of stock exchange are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors. The conditions, which the Government may impose, inter alia relates to –

i) The maintenance of account of members and their audit by chartered accountants, wherever the Central Government requires such audit, no rules of the stock exchange relating to any of these matters shall be amended except with the approval of the Central Government

\(^{241}\) Section-2(f) of the Securities Contract (Regulation) Act 1956  
ii) The manner in which contracts shall be entered into and enforced as between members of the stock exchange

iii) The representation of the Central Government on each of the stock exchange by such number of persons not exceeding three as the Central Government may nominate in this behalf and

iv) The qualifications for membership

(b) That the stock exchange is willing to comply with any other conditions (including condition as to the number of members) which the Central Government after consultation with the governing body of the stock exchange may impose for carrying out the objects of the Act.

(c) That it would be in the favour of securities buy and sell and in the community interest to grant recognition to the stock exchange.243

The major task of the stock exchanges is to provide a platform to the intermediaries for trade and securities clearing and settlement by the exchange. All securities transactions and settlements are within the bye-laws of the exchanges and the SEBI. Previously, it was necessary for the public limited companies to register their securities to the nearest stock exchange from the registered office. It was only to provide an opportunity to the local investor to trade in companies based in their locality or area. Now, position has been changed and every company is free to go to as many as stock exchanges to trade in their listed securities.

With the improved application of information technology, the trading platforms of all the stock exchanges in different securities are easy to get from everywhere in the nation through their trading terminals. However, the trading platform of National Stock Exchange and Bombay Stock Exchange is also accessible through internet and

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243 Section 4 of the Securities Contracts (Regulation) Act, 1956
mobile devices with different applications. In a geologically extensive
country like India, it has extensively expanded the reach of the
exchanges to the doorsteps of every investor and assuaged the
aspirations of people to have exchanges in their neighborhood\textsuperscript{244}. The
major objective behind the regulations of the stock exchange is to
provide accessibility of all the categories of securities available to the
investors. It will help the shareholders to easily buy and sell the
shares in the market at the best price.

4.3. Legal framework of brokers and sub-brokers

The Central Government notified the Securities and Exchange
Board of India (Stock Brokers and Sub-Brokers) Rules, 1992, which
defined a Stockbroker under Section-2(e) as:

\textit{\textquoteleft \textit{a member of a stock exchange, while sub-broker
means any person not being a member of a stock
exchange who acts on behalf of a stock broker as
an agent or otherwise for assisting the investors
in buying, selling or dealing in securities through
such stock brokers}}\textsuperscript{245}.

The main function of the stockbroker is to provide help to both
the buyer and seller to enter into business transaction of securities in
the secondary market. The buyers and seller possibly will be either a
broker or a client. The stockbrokers and sub-brokers shall take
adequate steps for the redressal of grievances within one month from
the date of receipt of the complaint and keep the investor or stock
exchange(s) duly informed of the action taken thereon. Failure to
comply with the said requirement will render the stockbroker liable for
penal action\textsuperscript{246}. Brokers should have adequate systems and

\textsuperscript{244} Dr. R.K. Mittal, V.K. Jain, \textit{Capital Market} (New Delhi: PV Global Publications 2010)50. Also, available at:
www.nscindia.com/content/us/ismr004ch4.pdf (Assessed on 03-05-2013)

\textsuperscript{245} D.Sakriya, \textit{Sebi and Securities Market in India}, (New Delhi: Anmol Publications Pvt. Ltd. 2000) 204. See
Section 2(e) of the SEBI (Stock-Brokers and Sub-Brokers) Rules. 1992

\textsuperscript{246} Circular No: CIR/MIRSD/18/2011 August 25, 2011
procedures in place to ensure that client collateral is not used for any purposes other than meeting the respective client’s margin requirements or pay-ins. Brokers should maintain records to ensure a proper audit trail of use of client collateral\textsuperscript{247}.

4.3. (a) Law on registration of brokers

An application by a stockbroker for the grant of a certificate of registration shall be made through the stock exchange or stock exchanges as the case may be, of which he is admitted as a member. Chapter – II of the SEBI (Stock Broker and Sub Brokers) Regulations, 1992, contains Regulations-3 to 10 deals with the registration of stockbrokers with the stock exchange. The stock exchange after receiving the application from the applicant shall forward the application form to the Securities and Exchange Board of India as soon as possible within 30 days from the date of its receipt.

The Securities and Exchange Board of India may require the applicant to provide such additional information or clarifications on the subject of the trade in securities and related matters to consider the application for granting a certificate of registration\textsuperscript{248}. SEBI had prescribed the requirement of Base Minimum Capital (BMC) for stockbrokers trading on the stock exchange. BMC is the deposit given by the member of the exchange against which no exposure for trades is allowed. No exposure shall be granted against such BMC deposit. The Stock Exchanges shall be permitted to prescribe suitable deposit requirements, over and above the SEBI prescribed norms, based on their perception and evaluation of risks involved\textsuperscript{249}.

\textsuperscript{247} MRD/DoP/SE/Cir-11/2008 April 17, 2008
\textsuperscript{248} Chapter-III, Registration of trading and clearing members, available at: www.sebi.gov.in/acts/act1413a.html (Assessed On 08-03-2013)
4.3. (b) Law on registration of sub-broker

Chapter-III of the SEBI (Stock Broker and Sub Brokers) Regulations, 1992, contains regulation 11 to 16 deals with registration of sub-broker with the stock exchange. An application shall be made by a sub-broker in form-B for the grant of certificate of registration. Such application from the sub-broker applicant shall be accompanied by a recommendation letter in the form-C from a stockbroker of a recognized stock exchange with whom the former is to be associated together with two references with one from his banker. The application form shall be submitted to the stock exchange of which the stockbroker is a member. In addition, to the stockbroker with whom the sub broker is affiliated.

Securities and Exchange Board of India allowed the stockbrokers to complete 'in-person' confirmation of their investor by their administrative staff while registering them and make certain that this function is not outsourced. Stockbrokers and sub-broker are majorly the linkage between the shareholder and the market. Regulations on the working and registration of brokers and the stockbrokers help the investor i.e. shareholder, to transact without fear.

4.4. Legal framework of listing of the securities

The provision of listing of securities makes easy for the investor to purchase shares or other securities. Listing means the formal entrance of a security on the trading platform of a stock exchange. The provisions in the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, The Securities Contracts (Regulation) Rules, 1957, the circulars and guidelines issued by Central Government and the Securities and Exchange Board of India, administer listing of

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securities on the domestic stock exchanges. In addition, Stock exchanges are governed by the rules, bye-laws and regulations of the concerned stock exchange and by the listing agreement entered into by the issuer and the stock exchange under SEBI listing guidelines, 2005.

The basic listing and other norms for listing of securities on the stock exchanges to trade and investment are consistent for all the exchanges. Domination of the exchanges within their allocated area, regional aspirations of the people and mandatory listing on the regional stock exchange resulted in a multiplicity of exchanges throughout the country. These norms are mentioned in the listing agreement entered into between the issuer company and the concerned stock exchange. The listing agreement prescribes a number of requirements to be complied with by the issuers for continued listing of securities and such compliance is checked by the exchanges. It also stipulates that the disclosures to be made by the companies at the time of listing of securities and corporate governance practices to be followed by the issuer²⁵².

The Securities and Exchange Board of India has been issued guidelines or circulars mentioning certain norms to be incorporated in the listing agreement and to be complied with by the companies in regular interval of time. Only listed security is accessible for trading on the stock exchange and the stock exchanges levy listing fees like initial fees and annual fees from the listed companies. Although, the initial fee is a fixed amount, the annual fee differs depending upon the size of the issuer company. Major stock exchanges like National Stock Exchange charges Rs. 7,500/- as initial fees for companies with a paid-up share or debenture capital of less than or equal to Rs. one crore. In addition, an annual listing fee is Rs. 4,200/- for companies with a paid-up share or debenture capital of more than Rs. 50 Crores. The annual listing fees are Rs. 70,000/- plus Rs. 1,400/- for every

²⁵² Clause 49 of listing agreement, 2005
additional Rs. 5 Crores or part thereof. Different categories of fees are the major resource of profits for many exchanges. These kind of revenue collection helps to the stock exchange to provide better services to the shareholders.

A company seeking a listing satisfies the stock exchange that at least 10% of the securities, subject to a minimum of 20 lakh securities, went to the public for subscription. The size of the net offer to the public (i.e. the offer price multiplied by the number of securities offered to the public, excluding reservations, firm allotment and promoter’s contribution) was not less than Rs. 100 Crore, and the issue is made only through book building method with an allocation of 60% of the issue size to the qualified institutional buyers. In the alternative, it is required to offer at least 25% of the securities to public. The company is also required to maintain the minimum level of non-promoter holding on a continuous basis.

A listed company can delist its securities from non-regional stock exchanges after condition that an exit opportunity for holders of securities will be provided in the region where the concerned stock exchange is positioned. Delisting of securities by the stock exchange comes after the very stringent procedure of compliance. In case an issuer company is unsuccessful to meet the terms with the requirements, then trading of its security would be suspended for a specified period of time or withdrawal or delisting, in addition to penalties as prescribed in the Securities Contracts (Regulation) Act, 1956. The norms of the delisting are to protect the interest of the shareholders of the company.

253 Listing fee, available at: www.nsicindia.com/corporates/content/dpp_fee.htm (Assessed on 09-03-2014)
255 Clause 40A of listing agreements, 2005
256 Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003
5. **Major Acts for the protection of shareholder**

In order to provide sufficient protection to the investors, provisions have been incorporated in different legislations. It includes the Companies Act, 1956 Securities Contract (Regulation) Act, 1956 Consumer Protection Act, 1986, Depositories Act, 1996 the Listing Agreement, 2005 between the Stock Exchanges and the listed companies supplemental by many guidelines, circulars and press notes issued by the Ministry of Finance, Ministry of Law, Justice and Company Affairs and SEBI from time to time. The legislations as well as the rules and regulations are notified thereunder i.e. list out the disclosure requirements to be complied with by the companies and also punishments and remedies for failure of compliance. Major Acts governing market are described as under:

5.1. **SEBI Act, 1992**

Securities and Exchange Board of India has complete sovereignty to control, expand an arranged securities market. The SEBI Act, 1992 established Securities and Exchange Board of India with statutory powers for (a) protecting the interest of investors in securities (b) promoting the development of the securities market, and (c) regulating the securities market. Its regulatory jurisdiction extends over corporate in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with securities market. The Act empowers Securities and Exchange Board of India to make rules and regulations governing various aspects of the functioning of the securities market. It can conduct enquires, audits and inspection of all concerned and adjudicate offences under the Act and it has powers to register and regulate all market intermediaries and also to penalize them in case of violation of the provisions of the Act, Rules and Regulations made there under. Securities and Exchange Board of India also draws some of its

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257 Section 11, 11A and 30 of the SEBI Act, 1992
authority from the Companies Act\textsuperscript{258}, 1956 which empowers Securities and Exchange Board of India to manage numerous provisions of the Companies Act\textsuperscript{259}, 1956.

It is required by the all Stock Exchanges to be registered with the Securities and Exchange Board of India under the provisions of the Act. It is applicable to all the stockbrokers, sub-brokers, share transfer agents, bankers to an issue, trustees, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediary who are associated with the securities market. Under Section-12 of the Securities and Exchange Board of India Act, 1992 they are obliged to register with the Board and the Board has the power to suspend or cancel such registration. The Securities and Exchange Board of India is moved by the working directions given by the Central Government from time to time on questions of working policy and the Central Government has the right to take over from the Board related to any decision or market check. The Board is also required to put forward a report to the Central Government every year, giving a full account of its activities, policies and programmes related to the operations and control in the stock market. Any participant who is aggrieved by the Board's pronouncement is permitted to appeal to the Central Government against the decision of the Board. The Board was compelled to provide to the Central Government such returns and statements and such particulars concerning any proposed or existing programme for the promotion and development of the securities market, as the Central Government require for checking and reviewing.

SEBI is prepared with various procedures to manage market participants in the securities market. SEBI Act, 1992 facilitates Securities and Exchange Board of India to expeditiously inform and amend set of laws to maintain balance with promptly varying capital

\textsuperscript{258} Section 55 of the Companies Act, 1956
\textsuperscript{259} Section 55-58, 109, 110, 112-113, 116, 117, 118, 119, 120, 121, 122, 206, 206(A) and 207 of the Companies Act, 1956
market conditions, smooth the progress of maintenance of market
discipline, carefulness, transparency and thereby strike on time. The
Government as a decision-making body to control and encourage the
securities market formed the Securities and Exchange Board of India.

5.2. **Securities Contract (Regulation) Act, 1956**

It has not direct control of almost all the aspects of securities
trading and the running of stock exchanges. The aim of the Act is to
check objectionable business transactions in the securities. According
to the Securities Contract (Regulation) Act, 1956, Central Government
and Securities and Exchange Board of India has regulatory control
over the stock exchanges through a process of recognition and
continued supervision of contracts in securities. It has also control
over listing of securities on stock exchanges. The Act provides
regulation of stock exchanges and of securities dealt in stock
exchange with a view to preventing objectionable speculation in them.
Trading activities in securities takes place on a specified recognized
stock exchange through brokers.

The stock exchange decides their own listing regulations but
they have to comply with the listing criteria set out in the rules of
listing of securities. The Securities Contracts (Regulation) Act, 1956
having 31 sections, has kept a stretched eye on all the Stock
Exchanges of India since 1957. The Central Government formerly
administered the provisions of the Act. Since the enactment of The
Securities and Exchange Board of India Act, 1992, the Board has
powers to manage almost all the provisions of the Securities Contracts
(Regulation) Act, 1956.

The business of dealing in securities cannot be carried out
without a license from the Securities and Exchange Board of India
under the Securities Contracts (Regulation) Act, 1956. Any Stock

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260 Regulation 21 of Securities Contract (Regulation) Act, 1956
261 Ibid
Exchange, which is wishing for the recognition has to make an application under Section-3 of the Act to SEBI, who is empowered to grant recognition and prescribe conditions including that of having SEBI's representation (maximum three persons) on the Stock Exchange and prohibiting the Stock Exchange from amending its rules without SEBI's previous endorsement.

This recognition can be removed in the favour of the trade or public at large. Securities and Exchange Board of India is allowed to call for periodical returns from the recognized Stock Exchanges and make enquiries concerning their market affairs related to general working or any specific transaction\textsuperscript{262}.

Periodically, every Stock Exchange is obliged to provide annual reports to the Securities and Exchange Board of India for monitoring and record purposes\textsuperscript{263}. Stock Exchanges are allowed to make rules only with the prior approval of Securities and Exchange Board of India\textsuperscript{264}. The Central Government and Securities and Exchange Board of India can direct stock exchanges to frame rules in accordance with the consent of the Government. Recognized Stock Exchanges are allowed to make bye-laws for the regulation and control of contracts but subject to the previous approval of Securities and Exchange Board of India. Securities and Exchange Board of India has the power to amend these bylaws made by the stock exchange\textsuperscript{265}. The Central Government and SEBI have power to take the place of the governing body of any recognized stock exchange and to postpone its business\textsuperscript{266}.

A public limited company has no responsibility to have its shares listed on a recognized Stock Exchange. In terms of Section-73 of the Companies Act, 1956, a company is going to offer shares or debentures to the public for subscription by issue of a prospectus

\textsuperscript{262} Section-6 of the Securities Contracts (Regulation) Act, 1956
\textsuperscript{263} Section 7 of the Securities Contracts (Regulation) Act, 1956
\textsuperscript{264} Section 9 of the Securities Contracts (Regulation) Act, 1956
\textsuperscript{265} Section 10 of the Securities Contracts (Regulation) Act, 1956
\textsuperscript{266} Section 11 of the Securities Contracts (Regulation) Act, 1956
must inform to the one or more stock exchange. It is intended to be so offered to the public to be dealt with in each of such stock exchange. An appeal can be filed to Securities and Exchange Board of India in case of any stock exchange is not listing any security for trade to the investor\textsuperscript{267}. It gives Central Government regulatory jurisdiction over (a) stock exchanges through a process of recognition and continued supervision, (b) contracts in securities, and (c) listing of securities on stock exchanges.

5.3. Depositories Act, 1996

In order to make the settlement process more efficient the Depositories Act, 1996 makes available for the establishment of depositories in securities. It ensures the purpose of free transferability of securities with speed, accuracy and security by (a) making securities of public limited companies freely transferable subject to certain exceptions, (b) dematerialize the securities in the depository mode and (c) providing for maintenance of ownership records in the book entry form. The Act allows the transfer of ownership of securities electronically by book entry, without making the securities move from one person to other by hand. The Act has made the securities of all public limited companies freely transferable, restricting the company’s right to use direction in effecting the transfer of securities, and the transfer deed and other procedural requirements under the Companies Act, 1956 have been dispensed with. In year 2012, code of conduct for depository has been added by amendment to the Securities and Exchange Board of India (DIP) Guidelines, 2000. The following amendments are as under:

i. A depository shall always abide by the provisions of the Depositories Act, 1996, rules, regulations, circulars, guidelines and any other directions issued by the Board.

ii. A depository shall act appropriately towards investor protection and education of investors.

iii. A depository shall treat all its applicants/participants in a fair and transparent manner.

iv. A depository shall promptly inform the Board of violations of the provisions of the Act, Depositories Act, the rules, the regulations, circulars, guidelines or any other directions by any of its participants, issuer or issuer's agent.

v. A depository shall take a proactive and responsible attitude towards safeguarding the interests of investors, the integrity of the depository system and the securities market.

vi. A depository shall make endeavors for introduction of best business practices amongst itself and its participants.

vii. A depository shall act in utmost good faith and shall avoid conflict of interest in the conduct of its functions.

viii. A depository shall not indulge in an unfair competition, which is likely to harm the interests of any other depository, participants or investors or is likely to place them in a disadvantageous position while competing for or executing any assignment.

ix. A depository shall be responsible for the acts or omissions of its employees in respect of the conduct of its business.

x. A depository shall monitor the compliance of the rules and regulations by the participants and shall further ensure that their conduct is in a manner that will safeguard the interest of investors and the securities market.268

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268 See Securities And Exchange Board Of India (Depositories And Participants) (Amendment) Regulations, 2012
5.4. Indian Companies Act, 1956

The Indian Companies Act, 1956 is a very comprehensive code that governs all the aspects of the functioning of a company. It may be the incorporation of the company, or winding up, or maintenance of accounts or declaration of a dividend or any other. It deals with issue, allotment and transfer of securities and various aspects relating to company management. It provides for standard of disclosure in public issues of capital, mainly of company management and industrial project, information about other listed companies under the same management, and management awareness of risk factors. It also controls underwriting, the use of premium and discounts on issues, rights and bonus issues, payments of interest and dividends, supply of annual report and other information.

In India, the Companies Act, 1956, is the main significant piece of legislation that authorizes the Central Government to control the configuration, financing, functioning and winding up of different companies. It also contains the method on the subject of organizational, financial, managerial and all the relevant aspects of a company. It authorizes the Central Government to examine the books of accounts of a company, to direct special audit, to order an investigation into the affairs of a company and to start on prosecution for violation of the Companies Act. These inspections are intended to find out whether the companies behavior and their corporate affairs in accordance with the provisions of the Companies Act or not.\(^{269}\)

The Central Government through the Ministry of Corporate Affairs and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, administers the Companies. The Registrar of Companies has power over the task of incorporation of new companies and the supervision of running companies in the country. Under the Companies Act, 1956, the term 'company' means,

\(^{269}\) Section 235, 251, 209A of Companies Act. 1956
For managing investor grievances, Ministry of Companies Affair (MCA) initiated a multi-level structure. The investors can visit to any of the grievance officers of the Registrar of Companies (ROC). In addition, he can contact with the Regional Directors as well as the headquarters of MCA. Investor Grievance Handling & Redressal started MCA21 e-Governance portal. It is a dedicated online facility for filing of grievances online without having to visit the ROC office. An e-form is prescribed for complaints with respect to each company. The nature of complaint may speak about any of the following aspects: Share, dividend, debenture, bond, fixed deposit miscellaneous. Ministry of Companies Affairs runs an outsourced service through www.investorhelpline.in. The investors can login their grievances related to the capital market and company deposits. Investor Education and Protection Fund (IEPF) has been created for the encouragement of investors’ awareness and safety of the interests of investors in the market. The authorities on the daily basis update it. Shareholders have important rights such as right to copies of Memorandum of Association, right to inspect register of charges/copies of instruments creating charges, right to inspect minutes of General meeting and ask for extracts, right to receive Notice of General meetings, copies of Annual reports, right to vote, dividend etc. Section-171(1) of the Companies Act, 1956 requires at least 21 days’ clear notice to be served on to call a general meeting of shareholders of public companies and also for private companies.

271 The Institute of Company Secretaries of India, Transparency and Disclosures Corporate Governance, (New Delhi: ICSI 2009)
272 Section 205C of Companies Act, 1956 and Companies (Amendment) Act, 1999
273 Section 39 of Companies Act, 1956
274 Section 144 of Companies Act, 1956
275 Section 196 of Companies Act, 1956
276 Section 173 of Companies Act, 1956
case of buy back of shares, The Company is required to send intimation to the tenderers within 15 days from the closure of the offer. In case of takeover, the shareholder shall receive (i) intimation about acceptance or rejection of his shares tendered under the open offer or (ii) consideration for shares accepted by the acquirer, within 10 working days of the closure of the open offer.

In case of a dividend by the Company, Section-205A (1) of the Companies Act, 1956 provides that the payment of dividend declared by a company must be paid within thirty days from the date of declaration. Under Section-219 of the Act, members have right to receive copy of balance sheet and other documents.

Under the concept of corporate governance, total shareholders return measures the gain delivered to shareholders in the form of dividend and in the form of capital approval and it may be disclosed in the annual report. In year 2001, the service of voting by postal ballot was introduced. The objective was to concentrate on the troubles faced mainly by retail shareholders, who had to present and actually take part in shareholder meetings, live in distant places of the country. The classification of postal ballot allows shareholders to mail in their votes by post as an alternative of individually attending and voting at a meeting. A procedure circulated by the Central Government listed sure resolutions that are to be mandatorily put to vote by postal ballot. These are matters that materially affect shareholder interest, such as alteration of the constitutional documents, sale of substantial undertaking of the company, buyback of shares, issue of shares with differential voting rights, and the like. In other cases, the company has the option to offer the postal ballot.

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278 See SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
279 "A copy of every balance sheet (including the profit and loss account, the auditors' report and every other document required by law to be annexed or attached, as the case may be, to the balance sheet) which is to be laid before a company in general meeting shall, not less than twenty-one days, before the date of the meeting, be sent to every member of the company to every trustee for the holders of any debentures issued by the company, whether such member or trustee is or is not entitled to have notices of general meetings of the company sent to him, and to all persons other than such members or trustees, being persons so entitled"
280 Rule 4 of Companies (Passing of the Resolution by Postal Ballot) Rules, 2001
service. Although not mandated by legislation, SEBI exhorted companies to undertake shareholder voting through postal ballot even in other cases by imposing this as a condition while granting specific dispensations to companies, such as in exemptions from making an offer under SEBI’s takeover regulations.

While the postal ballot service symbolizes a vast change in terms of providing an enhanced alternative for individual shareholders to cast their vote but it failed to make a grave result. The postal ballot service may have distant some of the practical obstructions to shareholder voting, but it was not planned to deal with the broader matters of joint action problems and shareholders lack of interest. Furthermore, because shareholders are not capable to contribute in the deliberations and to get the advantage of the deliberations in the meeting before they cast their votes, contribution levels have been found to be tremendously low down. One report states that the reply of shareholders through postal ballot has been terribly low down at only about 3% on an average. Given the insufficient performance of the postal ballot system, latest regulatory growth has sought to use technological progressions to improve shareholder involvement and voting. As per Section-192A of the Companies Act, 1956, the law explicitly recognizes the possibility of shareholder voting through electronic mode. On this incident, the effort started from SEBI. On July 2012, SEBI modified the listing agreement needed by big companies to make available electronic voting services regarding issues requires postal ballot. According to the latest indulgence, the 500 top listed companies on the Bombay Stock Exchange and the National Stock Exchange are bound to give e-voting service with effect from October 1, 2012. Two agencies have been certified to make

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282 The Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 were superseded by the Companies (Passing of the Resolution by Postal Ballot) Rules, 2011, with effect from May 30, 2011, which expressly recognize voting by electronic mode.
available e-voting platforms.284 These agencies are the Central Depository Services (India) Limited and the National Securities Depository Limited (NSDL). Both these agencies have established e-voting systems.

In order to facilitate the shareholders to implement their corporate franchise in an educated way, it is significant that they are able to take part in meetings. The Government of India introduces the concept of electronic participation. It is to recognize the limitations of physical shareholders’ meetings. Companies may now give the alternative to shareholders to be present at meetings electronically, through audio-visual means, such that

"all persons participating in that meeting ... communicate concurrently with each other without an intermediary, and ... participate effectively in the meeting".285

Simultaneously, accountability is positioned in the company as well as on the chairman of the meeting. Even though these procedures were originally proposed to be compulsory for listed companies from the financial year 2011-12. Due to concerns related to the legal authority of electronic meetings in the perspective of the Companies Act, 1956 electronic meetings are planned to be not obligatory for listed companies.286 Few remedies are also available to the shareholder under the Companies Act, 1956 against fraud and mismanagement. The Companies Act, 1956 confers on the Central Government and the Company Law Board the power to investigate the affairs of a company suo moto or on petition by members of a company. This investigative procedure is allowed under section 235 and 237 of the Act. Under section 242 (1) of the Companies Act, 1956,

the Central Government has authority to commence criminal proceedings based on the information derived from investigations carried on pursuant to section 235-237. Minority shareholders can take recourse to the provisions of section 235 to 237, and section 397 and 398 in cases where companies indulge in oppression or mismanagement, prejudicial to the affairs of the company and public interest.

5.5. Departments of Central Government

The accountability for monitoring and regulating the securities market is fulfilled by the Department of Economic affairs accountable for the economic management of the nation and is the arm of the Government that is concerned with the orderly functioning of the financial markets. Department of Company Affairs i.e. the apex of a three-tier structure that has responsibility for the registration and oversight of incorporated entities those fall under the regulatory purview of the Companies Act, 1956. Reserve Bank of India is responsible for the supervision of all categories of banks and money markets. Lastly, Securities and Exchange Board of India is responsible for the regulation of capital markets and the various participants and activities. A high-level committee by the Central Government on capital markets coordinates the activities of these agencies.

Most of the powers under the Securities Contract Regulation Act, 1956 are exercisable by the Department of Economic Affairs while few others by the Securities and Exchange Board of India. The power of the Department of Economic Affairs under the Securities Contract Regulation Act, 1956 is also concurrently exercise by the Securities and Exchange Board of India. The Securities and Exchange Board of India Act, 1992 and Depositories Act, 1996 are mostly

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287 Section 31 of Securities Contracts (Regulations) Act, 1956
administered by the Securities and Exchange Board of India. The regulator ensures that the market participants behave in a desired manner so that the securities market continues to be a major source of finance for corporate governance and the interest of investors are protected.

6. Guidelines, Regulations, Circulars etc. related to protection of shareholders

SEBI had issued various guidelines, regulations, circulars etc. for the protection of the shareholder in the capital market from time to time. These are directly and indirectly protect the investor and also binding upon the intermediary. The summary of these are discussed as under:


Securities and Exchange Board of India govern the primary issuances in terms of SEBI (Disclosures and Investor Protection) Guidelines 2000. In year 1992, Securities and Exchange Board of India has started efforts for the disclosure and investor protection guidelines. Finally in year 2000, Securities and Exchange Board of India issued "Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000. It is the collection of all the circulars prearranged in chapter forms. Securities and Exchange Board of India issues these guidelines and amendments thereon under Section-11 of the Securities and Exchange Board of India Act, 1992. SEBI (Disclosure and Investor Protection) Guidelines, 2000 are

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290 Circular No SEBI/CFD/DIL/DIP/29/2007/03/12 dated December 03. 2007

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in short called “DIP guidelines”. It provides an inclusive structure for the protection of the investor and issuances to buy the companies\textsuperscript{291}. The Merchant Bankers are accountable for guaranteeing that all the requirements of Disclosure and Investor Protection Guidelines are arranged with at the time of submitting the draft offers documents to the Securities and Exchange Board of India. Securities and Exchange Board of India on its part evaluates if the guidelines are being followed and all necessary disclosures are available in the offer documents submitted by the company or not\textsuperscript{292}. The main provisions related to the shareholder protection are as under:

The prospectus shall contain all material information, which shall be true and adequate to enable the investors to make informed decision on the investments in the issue. Promoters’ contribution in any public issue shall be in accordance with the following provisions:

\begin{enumerate}[(i)]
\item \textbf{Promoters’ Contribution in a Public Issue by Unlisted Companies}

\textit{In a public issue by an unlisted company, the promoters shall contribute not less than 20\% of the post issue capital.}

\item \textbf{Promoters’ Shareholding in Case of Offers for Sale}

4.2.1 The promoters’ shareholding after offer for sale shall not be less than 20\% of the post issue capital.

\item \textbf{Promoters’ Contribution in Case of Public Issues by Listed Companies}

\textit{In case of public issues by listed companies, the promoters shall participate either to the extent of 20\% of the proposed issue or ensure post-issue share-holding to the extent of 20\% of the post-issue capital.}
\end{enumerate}

\textsuperscript{291} Frequently Asked Questions (FAQs) on Issues, available at: www.sebi.gov.in/faq/pubissuefaq.pdf (Assessed on 02-03-2014)

\textsuperscript{292} ibid
Promoters' Contribution in Case of Composite Issues

In case of composite issues of a listed company, the promoters’ contribution shall at the option of the promoter(s) be either 20% of the proposed public issue or 20% of the post-issue capital.

Rights issue component of the composite issue shall be excluded while calculating the post-issue capital.\(^293\)

6.2. Listing agreements, 2005

As per Clause 49 of listing agreement:

In case of the appointment of a new director or re-appointment of a director, the shareholders must be provided with the following information:

a. A brief resume of the director;

b. Nature of his expertise in specific functional areas;

c. Names of companies in which the person also holds the directorship and the membership of Committees of the Board; and

d. Shareholding of non-executive directors as stated in Clause 49 (IV) (E) (iv)\(^294\)

i. Disclosure of relationships between directors inter-se shall be made in the Annual Report, notice of appointment of a director, prospectus and letter of offer for issuances and any related filings made to the stock exchanges where the company is listed.

ii. Quarterly results and presentations made by the company to analysts shall be put on company’s web site, or shall be

\(^{293}\) Chapter IV and VI of the Securities And Exchange Board Of India (Disclosure And Investor Protection) Guidelines, 2000

\(^{294}\) Non-executive directors shall be required to disclose their shareholding (both own or held by / for other persons on a beneficial basis) in the listed company in which they are proposed to be appointed as directors, prior to their appointment. These details should be disclosed in the notice to the general meeting called for appointment of such director.
sent in such a form so as to enable the stock exchange on
which the company is listed to put it on its own web-site.

iii. A board committee under the chairmanship of a non-
executive director shall be formed to specifically look into
the redressal of shareholder and investors complaints like
transfer of shares, non-receipt of balance sheet, non-receipt
of declared dividends etc. This Committee shall be
designated as ‘Shareholders/Investors Grievance
Committee’.

iv. To expedite the process of share transfers, the Board of the
company shall delegate the power of share transfer to an
officer or a committee or to the registrar and share transfer
agents. The delegated authority shall attend to share
transfer formalities at least once in a fortnight\(^{295}\).

Under the provisions of Clause-35 of the Listing Agreement,
2005 companies listed on stock exchanges are required to file
shareholding pattern on a quarterly basis on the stock exchange. As
per Clause-40A of Listing Agreement, 2005 there are two categories
under which the listed companies can be classified for the purpose of
'minimum level of public shareholding', which are as follows:

(i) Company required to maintain public shareholding of at
least 25% of the total number of issued shares of a class
or kind, for every such class or kind of its shares which
are listed.

(ii) A government company as defined under Section-617 of
the Companies Act, 1956 requires 10% public holding\(^{296}\)

\(^{295}\) Disclosures: Clause 49 of listing agreements
\(^{296}\) Clause-40A of Listing agreements
6.3. Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992

Securities and Exchange Board of India [Prohibition of Insider Trading] Regulations, 1992 issued regulations related to the insider as under:

No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

(iii) No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.

Medium of disclosure/dissemination

(i) Disclosure/dissemination of information may be done through various media so as to achieve maximum reach and quick dissemination.

(ii) Corporates shall ensure that disclosure to stock exchanges is made promptly.

(iii) Corporates may also facilitate disclosure through the use of their dedicated Internet website.
(iv) Company websites may provide a means of giving investors a direct access to analyst briefing material, significant background information and questions and answers.

(v) The information filed by corporates with exchanges under continuous disclosure requirement may be made available on the company website^297^.

6.4. Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996

Every issuer or its agent or any person who is registered as an intermediary under this Act, shall redress the grievances of beneficial owners within thirty days of the date of receipt of complaint and keep a depository informed about the number and nature of grievances redressed by it and the number of grievances pending before it.

Every participant shall provide statements of account to the beneficial owner in such form and in such manner and at such time as provided in the agreement with the beneficial owner.

Every participant shall allow a beneficial owner to withdraw or transfer from his account in such a manner as specified in the agreement with the beneficial owner^298^.

6.5. Securities and Exchange Board of India (Stock-Brokers and Sub-Brokers) Regulations, 1992

(1) Execution of Orders: A stockbroker, in his dealings with the clients and the general investing public, shall faithfully execute the orders for buying and selling of securities at the best available market price and not refuse to deal with a Small Investor merely on the ground of the volume of business involved.

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^297^ Chapter II and Schedule II of the Securities and Exchange Board of India (Prohibition Of Insider Trading) Regulations, 1992

^298^ Chapter IV of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996
A stockbroker shall promptly inform his client about the execution or non-execution of an order, and make prompt payment in respect of securities sold and arrange for prompt delivery of securities purchased by clients.

(2) **Issue of Contract Note:** A stockbroker shall issue without delay to his client or client of the sub-broker, as the case may be a contract note for all transactions in the form specified by the stock exchange.

(3) **Breach of Trust:** A stockbroker shall not disclose or discuss with any other person or make improper use of the details of personal investments and other information of a confidential nature of the client, which he comes to know in his business relationship.

(4) **Business and Commission:**

(a) A stockbroker shall not encourage sales or purchases of securities with the sole object of generating brokerage or commission.

(b) A stockbroker shall not furnish false or misleading quotations or give any other false or misleading advice or information to the clients with a view of inducing him to do business in particular securities and enabling himself to earn brokerage or commission thereby.

(5) **Business of Defaulting Clients:** A stockbroker shall not deal or transact business knowingly, directly or indirectly or execute an order for a client who has failed to carry out his commitments in relation to securities with another stockbroker.

(6) **Fairness to Clients:** A stockbroker, when dealing with a client, shall disclose whether he is acting as a principal or as an agent and shall ensure at the same time that no conflict of interest arises between him and the client. In the event of a conflict of interest, he shall inform the client accordingly and shall not seek
to gain a direct or indirect personal advantage from the situation and shall not consider clients’ interest inferior to his own.

(7) Investment Advice: A stockbroker shall not make a recommendation to any client who might be expected to rely thereon to acquire, dispose of, retain any securities unless he has reasonable grounds for believing that the recommendation is suitable for such a client upon the basis of the facts, if disclosed by such a client.

(7A) Investment advice in publicly accessible media—

(a) A stock broker or any of his employees shall not render, directly or indirectly, any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including the interest of his dependent family members and the employer including their long or short position in the said security has been made, while rendering such advice.

(b) In case an employee of the stockbroker is rendering such advice, he shall also disclose the interest of his dependent family members and the employer including their long or short position in the said security, while rendering such advice.

(8) Competence of Stockbroker: A stockbroker should have adequately trained staff and arrangements to render fair, prompt and competence services to his clients.

Every Trading Member shall make payment to his clients or deliver the securities purchased within two working days of payout unless the client has requested otherwise. Securities and Exchange Board of India has advised the stock exchanges to ensure that their brokers/sub brokers do not advertise their business, including in

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300 Circular No: SMD/SED/CIR/23321 dated November 18, 1993
their internet sites, by subsidiaries, group companies etc. The code of conduct in the regulations requires a stock-broker or sub-broker not to advertise his business publicly unless permitted by the stock exchange and not to resort to unfair means including clients from other stock brokers. The stock broker shall send a complete 'Statement of Accounts' for both funds and securities to each of its clients. It must be in prescribed format and within time as prescribed by the relevant exchange where the trade is executed.

6.6. **Under Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992**

1. A merchant banker shall endeavour to ensure that—
   
   (a) inquiries from investors are adequately dealt with;
   
   (b) grievances of investors are redressed in a timely and appropriate manner;
   
   (c) where a complaint is not remedied promptly, the investor is advised of any further steps which may be available to the investor under the regulatory system.

2. A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.

3. A merchant banker shall endeavour to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision.

4. A merchant banker shall endeavour to ensure that copies of the prospectus, offer document, letter of offer or any other related...
literature is made available to the investors at the time of issue or the offer.

5. A merchant banker shall not discriminate amongst its clients, save and except on ethical and commercial considerations.

6. A merchant banker shall not make any statement, either oral or written, which would misrepresent the services that the merchant banker is capable of performing for any client or has rendered to any client\textsuperscript{302}.

It shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received\textsuperscript{303}.

6.7. Laws on insider trading in shares

Insider trading is measured as a grave offence and prohibited by the SEBI in share trading in the secondary market. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 prohibits an insider from dealing (on his own behalf or on behalf of others) in listed securities based on ‘unpublished price sensitive information’ i.e. financial results, interim and final dividends, right issues, bonus issue, amalgamation, mergers, takeovers. It also prohibits communicating, counseling or procuring such sensitive information from any other person to deal in securities of any listed company based on such price sensitive information. Price sensitive information for a security is any information, which if published, is likely to affects price of the securities in trading. Insider trading is an unfair and unhealthy practice. It damages the integrity of the market.


\textsuperscript{303} ibid. see Regulation 9A
Insider-trading may be the brainchild of the brokers and top-level management trends of the corporate sector. The favorable and unfavorable trends of the particular company lead to the insider trading. The Chapter-IV of Securities and Exchange Board of India (Prohibition of Insider-Trading) Regulations, 1992 dealing with ‘policy on disclosures and internal procedure for preventing of insider trading’ was added to prevent insider-trading. It includes all listed companies, stockbrokers, stock exchanges, financial institutions and intermediaries.

6.8. Law on margins from the investors

Securities and Exchange Board of India has made it obligatory for the Trading Member to accumulate trading margins from clients or investors in all cases where the margin in respect of the client in the settlement, would work out to be more than Rs.50,000/. The margin for trading so collected from the investor shall be kept alone in the client bank account. It is used for making payment to the clearinghouse for margin and settlement with respect to that investor’s settlement.

Margin Trading is trading with borrowed funds or securities from specified other sources. It is fundamentally a leveraging method, which enables investors to take experience in the stock market over and above what is possible with have possession of capital resources for trading. The Securities and Exchange Board of India has been prescribing eligibility conditions and procedural particulars for allowing the margin trading facility from time to time to the market. Corporate brokers with a net worth of at least Rs three crores are qualified for providing margin-trading facility to their clients subject to their entering into an agreement with relation to the facility. Before

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305 Inserted by the SEBI (Insider Trading) (Amendment) Regulations, 2002
providing margin-trading facility to an investor, the stockbroker or sub broker and the investors are mandated to sign a triplet agreement form in the design particular by the Securities and Exchange Board of India. Group-1 securities and securities which are offered in the initial public offers and meet the conditions for an addition in the derivatives segment of the stock exchanges is available for the facility of margin trading. A broker or sub broker is not permitted to have a loan of capital from any other source of funds for trading purposes. For providing the margin based trading facility, a broker may utilize his hold capital funds available with him or have a loan from scheduled commercial banks or NBFCs regulated by the Reserve bank of India.

Scheduled Banks in India constitute those banks which have been included in the Second Schedule of Reserve Bank of India Act, 1934. Reserve Bank of India in turn includes only those banks in this schedule which satisfy the criteria laid down under Section-42 (6) (a) of the RBI Act, 1934.

A non-banking institution which is a company and has a principal business of receiving deposits under any scheme or arrangement in one lump sum or in installments by way of contributions or in any other manner, is also a non-banking financial company (Residuary non-banking company). Margin facility is for the protection of shareholder from the risk of default.

6.9. Laws on transaction charges on securities

The greatest transactional brokerage that can be charged by a broker from the investor or client has been specified in the Stock Exchange byelaws. Therefore, it is possibly at variance from across a

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307 Margin Trading and Settlement, SEBI Annual Report 2012-13
309 See The Second Schedule of the Reserve Bank of India Act, 1934
variety of stock exchanges. As confirmed by the Bombay Stock Exchange and National Stock Exchange bylaws, a broker cannot charge more than 2.5% brokerage from his clients for the single trade. Highest brokerage is comprehensive of the brokerage charged by the sub-broker (sub-brokerage cannot exceed 1.5% of the trade value). Other supplementary monetary charges that the stockbroker can charge are service of the brokerage. To maintain low cost of transactions in securities, guidelines on transactional charges are made to involve more and more participation of investors. In addition, it is to protect the shareholder from any superficial transactional cost by the broker.

6.10. Penal provisions from the protection of shareholder

Under Indian penal code, 1860, a shareholder can take action against the person or company for forgery, falsification of accounts, criminal breach of trust, misappropriation of funds and cheating. These penal provisions are summarized as under:

6.10.1 Forgery

'Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.'


312 Section 463 of Indian Penal Code, 1860
Section 465 of the Indian penal code, 1860 defines punishment for the forgery as under:

‘Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.’

6.10.2 Falsification of accounts

Under Indian penal code, 1860 falsification of accounts by any person is defined as under:

‘Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or willfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.’ 313

6.10.3 Dishonest misappropriation of property

Under Indian penal code, 1860 dishonest misappropriation of property by any person is defined as under:

313 Section 477A of Indian Penal Code. 1860
‘Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.’

6.10.4 Criminal breach of trust

Criminal breach of trust is defined under Indian penal code, 1860 as under:

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

Section 406 of the Indian penal code, 1860 defines punishment for criminal breach of trust as under:

‘Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.’

314 Section 403 of Indian Penal Code, 1860
315 Section 405 of Indian Penal Code, 1860
6.10.5 Cheating

Under Indian penal code, 1860 cheating is defined as under:

'Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".\(^\text{316}\)

Section 417 of the Indian penal code, 1860 defines punishment for cheating as under:

'Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.\(^\text{317}\)’

7. Investor protection fund

The objective of the Investor protection fund is to indemnify the genuine demand of the investor from the fund. It has been set up as a trust under the Bombay Public Trust Act, 1950 under the name of National Stock Exchange investor Protection fund trust and is administered by the trustee. The Investor Protection Fund is maintained by National Stock Exchange to make good investor claims, which may arise out of non-settlement of obligations by the trading

\(^{316}\) Section 415 of Indian Penal Code, 1860

\(^{317}\) Section 417 of Indian Penal Code, 1860
member, who has been declared defaulter, in respect of trades executed on the exchange\textsuperscript{318}.

8. **Classification of investors**

A variety of buyers of securities comprise of individual investors, shareholder, speculators, joint stock-companies, life-insurance companies, commercial banks, public provident funds, underwriters, trustees, investment bankers, Industrial Development bank of India, Industrial Credit and Investment Corporation of India, Industrial Finance Corporation of India, State Financial Corporation etc. Frequently the extra saved capital of individuals, companies and public and private institutions are invested in the corporate securities. An investor is an individual or a commercial legal entity putting his wealth in a different venture or business but does not operate himself. The investor has no responsibility to participate in the everyday administration of the business or its control except as permitted by the law. Investor carries on trade when they buy and sell assets, arranges for other to buy and sell assets, supervises assets owned to others, or manages collective investment schemes. An investor does these activities, but they are not having any power over the everyday actions of any corporate. In general, an investor is an unknown person and they do not know any actions taken by the company\textsuperscript{319}. Investors can be classified into three categories:

(a) Individual Investors  
(b) Joint Stock Companies  
(c) Institutional Investors  

8.1. Individual investors

In the corporate securities, the extra capital of the individuals is the major source of investment for the growth of industry and the investor both. A variety of individual investors of securities may be classified under three broad categories:

8.1.1. Real investors

Such investors who have past-accumulated wealth or savings and which they desire to spend for making future return are termed as real investors. They are not allied with the issuing company in way either of existing shareholders or as customers or as creditors of the company etc. There are many venture opportunities available to such investors like corporate securities, Government securities etc in the market to generate good returns in the market. Real investors prefer to create deal in such securities, which gives them:

(i) Better security of investment in term of return
(ii) Stable returns
(iii) More Liquidity
(iv) Capital appreciation and growth in valuation
(v) Lesser tax burden
(vi) Favorable denomination and period of maturity
(vii) Pride of ownership or control

The elementary explanation of the real investors investing in corporate securities is to receive higher-income in terms of return from the investment made in the company. The real investors who are prepared to take market risk of fluctuation of price for earning high returns and considerable appreciation in investment would like to spend in equity shares.
8.1.2. Speculative investors

Few investors purchase securities with speculative motives for short term capital gain and they are not real investors. Their most important objective is to sell the securities and create capital gains through extensive fluctuations in the value of securities. There are two types of speculative investors:

(a) Bulls
(b) Bears

A bull is an operator who expects a rise in prices of securities in future. In an anticipation of a price rise, he makes purchases of shares and others securities with the intention to sell at higher prices in future. On the other hand, a bear expects prices to fall in the future and sells securities at present with a view to purchase them at lower prices in future.

8.1.3. Individuals affiliated with the issuing company

The accessible companies more often do not prefer to sell their fresh issues to its customers, employees, creditors and existing shareholders etc. Such group of individuals investing in securities includes those persons who are allied with the issuing company in one way or the other. There are many advantages of selling securities to such group of investors.¹

8.2. Joint – stock companies

After individuals in the corporate securities, joint stock companies are the significant group of investors in the securities. A joint stock company is a company whose capital is divided into shares and the liability of whose shareholders is limited to the par value of

the shares respectively held by them\textsuperscript{321}. The ownership of securities by joint stock companies is in a way indirect rather than direct ownership of securities by individuals\textsuperscript{322}.

8.3. Institutional investors

Institutional investors are the main significant collection of investors in corporate securities. A variety of institutional investors may be classified into three categories:

(a) Private institutional investors

(b) Public financial institutions\textsuperscript{323}

(c) Foreign institutional investors\textsuperscript{324}

Private institutional investors are those institutions which invests their capital funds for short-term capital gain. For example, Life Insurance Companies, Investment Trusts, U.T.I., Commercial Banks etc. Another type of private institutional investors includes, Underwriters, Investment Bankers and trustee Companies. Under public financial institutions, a variety of government agencies like Industrial Development Bank of India, Industrial Credit and Investment Corporation of India, Industrial Finance Corporation of India etc. concerned with endorsing and financing of business enterprises.

With the liberalization of the economy, foreign institutional investors have also connected with the mass of investors. In actuality, foreign institutional investors are becoming the gigantic players in the securities-market. The quickly mounting Indian economy requires large investments for development of the economy. The Government has removed many cobwebs of rules to give self-assurance to foreign


\textsuperscript{322} Neeta Gupta, Shashi Gupta. Financial Institution and Securities Market, (New Delhi: Kalyani Publication 2004) 3, 27, 329

\textsuperscript{323} Section 2 (1) of The Public Financial Institutions (Obligation as To Fidelity and Secrecy) Act, 1983

\textsuperscript{324} Regulation 2(f) of SEBI (Foreign Institutional Investors) Regulations, 1995. It means an institution established or incorporated outside India which proposes to make investment in India in securities.
direct investment or Foreign Portfolio Investment$^{325}$. However, only recognized foreign institutions such as pension funds, mutual funds, etc. can have portfolio investment after taking permission from the Reserve Bank of India and the Securities and Exchange Board of India to invest in the stocks. Registered foreign institutional investors are allowed to function without restraint in the primary and secondary markets and they are subject to certain prudential guidelines$^{326}$.

The chapter has covered all the structural aspects of the Indian capital market and the regulations governing the participants of the capital market. Chapter concluded on the regulations focusing on the fairness in the market and protection of investor i.e. shareholder and other categories of investor. It also focused on the powers of regulators to keep check and balance on market equilibrium.
