Chapter 7

Conclusion and Suggestions
From what we have discussed so far, it is clear that securities market consists of primary and secondary market. The securities available to the public for the first time, are issued in the primary market. The primary market facilitates transfer of resources from savers to the users, actual resulting in actual utilisation of the saving funds for the purpose of economic growth of the country. The primary market performs various functions like origination, underwriting, distribution etc. Origination refers to the work of investigation, analysis and processing of new projects. Therefore, origination starts before an issue is actually floated in the market. Usually the merchant bankers perform these functions. They give their advice regarding the issue of securities. However, they do not guarantee the success of the issue, as it depends on the performance of the company. To avoid failure of the issue, companies have option to underwrite it. If the issue is underwritten, then the underwriters take up the unsubscribed securities in case the public or the section to which securities are issued fail to subscribe them. In return the company promises to pay commission to the underwriters. Securities in a primary market may be issued through offer for sale, private placement, rights issues and public issues. It is looked after by many players in the securities market i.e. merchant bankers, underwriters, registrar to an issue, collecting and coordinating bankers, brokers etc. The company appoints them in accordance to its requirements or in compliance with statutory provisions.
The securities issued in the primary market are traded in the secondary market i.e. stock exchanges. Though, investors can buy securities in the primary market they cannot sell them. It is only through the stock exchanges that investors can sell their securities. Thus, the secondary market provides liquidity to investments. The secondary market enables investors to sell or purchase securities at fair prices.

The functioning of securities market in India has shown many weaknesses, with long delays in settlement, lack of transparency in procedures, manipulation of securities prices, insider trading, poor liquidity, lack of control over brokers etc.

Therefore, to counter these shortcomings and deficiencies there is a strong need to regulate the securities market.

In India, regulation of securities market was a pre-independent phenomenon. During the Second World War period, in the Defence Rules of India 1943, provisions were made to check the flow of capital into production of essential commodities. These rules, which were promulgated as temporary measures, continued after the war and culminated into the Capital Issues (Control) Act 1947. Under this Act an office of the controller of capital issues was also set up with the responsibilities of regulation of the capital issues in the country.

With an aim to properly regulate the securities market, the Govt. of India set up a regulatory body i.e. SEBI in 1988, which became the statutory
after the enactment of SEBI Act 1992. SEBI is constituted of nine members including its chairman. The chairman of SEBI is appointed by the central govt. and may exercise all those powers, which can be exercised by SEBI.

SEBI initially was entrusted very limited powers, which have been extended many times by different enactments. Prior to the amendment of SEBI Act, SEBI had power to regulate the business in stock exchanges, to register and regulate the market intermediaries, self-regulatory organizations etc. Initially, SEBI did not have powers to issue directions to the market participants, to impose penalties on defaulters and to adjudicate the matters. At that time SEBI was issuing directions to various intermediaries under the regulations framed by it, which were challenged by the parties in many cases.

Consequently, Securities Laws (Amendment) Act 1995 was enacted which substantially amended SEBI Act 1992. The Securities Laws (Amendment) Act 1995 extended the powers of SEBI and authorized SEBI to issue directions, to impose penalties on defaulters, and to appoint adjudicating officer. Moreover the powers of civil court were also vested with SEBI.

Further, SEBI (Amendment) Act 2002 authorised SEBI with more powers. Now SEBI is authorised to take interim measures i.e. while pending investigation and inquiry. It can suspend trading of any security in a stock exchange, restrain persons from accessing securities market etc. The powers exercised by SEBI can also be wielded by chairman of SEBI. In view of this
one may say that all these powers are vested in one person i.e. chairman of SEBI and there are great chances of misuse of these powers.

SEBI, since its establishment, (especially after getting its statutory character as before SEBI Act it was not adequately empowered to deal with securities market) has made various reforms in the securities market, which have changed the condition of market to some extent. It prescribed regulations including code of conduct for almost each participants/intermediaries of securities market. The regulations regulate the business of the participants/intermediaries. Violations of these regulations are subject to penalties in accordance with SEBI Act 1992.

Apart from SEBI, securities market in India is regulated by DCA, DEA and RBI. Though their functions and responsibilities have been divided amongst them, they are not very clear at least not for common investors.

However, the Indian securities market is not free from the abusive corporate activities and many problems still exist in securities market. SEBI’s reforms are mainly on papers and it has failed to enforce them. There are regular attempts by securities market participants to manipulate the securities prices to their own advantage. Insider trading, excessive speculation etc. still exists in the market irrespective of the fact that heavy penalties are provided under SEBI Act 1992. SEBI’s orders in many cases are challenged by the parties before SAT. SAT in most of the cases has either set aside the order or reduced penalties imposed by SEBI.
As discussed, in the recent securities market scam, SEBI acted in accordance with the wishes of the stock exchange. SEBI though noted irregularities and violations of the rules and regulations in the workings of CSE it did not bother to take any action against defaulters.

In USA there were no specific laws regulating the securities market prior to 1993. At that time the stock exchanges were regulated by their own rules and state criminal and civil laws. It was the market decline in USA during the period of 1929-33, which was the main reason for beginning of legal reforms in USA. Presently, there are seven statutes, which regulates the securities market as discussed in chapter sixth. However, the Securities Act of 1933 and the Securities Exchange Act of 1934 are two principal statutes that substantially regulate the issue of securities and prohibit abusive corporate activities.

The Securities Act of 1933 is basically a disclosure statute and sometimes referred as ‘truth in securities’ act. It mainly regulates the new securities offered to public. The Act requires that all offers or sale of securities should be made to the public in pursuance of the registration statement. The Act provides civil liabilities of damages if the securities are offered to public in violations of law irrespective of the fact that the securities are registered with SEC or not.

The Securities Exchange Act 1934 regulates trading in existing securities. The main objective of this Act is to prevent unfair and inequitable
practices related to securities trading. Section 9 and 10 of the Securities Exchange Act 1934 prohibit the manipulation of securities prices. These provisions apply not only to brokers and dealers but also to persons who directly or indirectly use the facilities of any national securities exchange. Further, section 16 prevents corporate officials from using inside information for the purpose of speculating in securities of their corporations. This Act also regulates proxy solicitations, use of credit in securities transactions etc.

For the purpose of administering and enforcing the federal laws the Securities Exchange Act 1934 established SEC. It has responsibility to enforce all the federal acts and rules made there under. It has duty to prevent the violations of laws and rules by the issuers of the securities and the persons associated with the securities market. The Securities Exchange Act 1934 provided various powers to SEC for the purpose of making it capable to perform its assigned responsibilities. It has wide powers to investigate the violations in the securities market. The SEC may compel the attendance of witnesses for the purpose of taking evidences while investigating the matters. If, after investigation the SEC finds that any violation of laws, rules has occurred it may bring an action before the Administrative Law Judge or in any other appropriate court. Administrative Law Judges are independent officers of the SEC. The SEC may also file a complaint with appropriate US courts, which describe the misconduct, identify the law and rules violated and also identify the sanction or remedial action that is sought by it.
UK, recently enacted the Financial Services Act, 2000 that deals broadly with market abuses, penalties etc. The Financial Services Act, 2000 established regulatory authority i.e. Financial Services Authority. The goal of the regulatory authority is to maintain efficient, orderly and clean financial markets and help retail consumers. The FSA has power to regulate the investment firms like investment banks, large UK stockbrokers and independent financial advisors. It also regulates the activities of professional firms such as lawyers and accountants who carry on mainstream investment business. It has power to investigate violations, to impose penalties etc. It also regulates and supervises the markets and exchanges including clearing and settlement houses and other market infrastructure providers. It conducts market surveillance and monitors transactions in securities market. At present, it supervises eight recognised investment exchanges.

At present, SEBI has almost similar powers to those of SEC in USA and FSA in UK. Though SEBI is adequately empowered to discharge its responsibilities and duties, it has failed to curb abusive corporate activities prevailing in the securities market. Moreover, SEBI’s powers have been extended many a times, but the fact remains that it is not even exercising the powers that have been originally vested with it. SEBI has failed in leaving any deterrent effect on the offenders and defaulters of the securities market. Securities market still witnesses regular violations of laws, rules and regulations by the market participants and intermediaries. Making of regulations, rules and guidelines does not make any sense until and unless their
frequent violations by the intermediaries are not prevented. In nutshell, the working of SEBI during last ten years shows that it is not an enforcement agency and it has failed to enforce the laws, rules and regulations. It seems that SEBI’s main task is to prescribe regulations, rules for the market participants/intermediaries even if it does not seem willing to enforce them.

Suggestions

The securities market is still not free from abusive corporate activities and market witness regular violations of securities laws, rules and regulations. There are frequent attempts by the market participants to manipulate securities prices through circular trading or some other illegal means. SEBI, which is constituted particularly for regulation of securities market and investor protection, has failed to enforce the laws. However, it is promoting securities market on the pattern of international standard by introducing various reforms in the market but is not very successful in dealing with the defaulters and preventing the abusive corporate activities in the market. It has prescribed rules, regulations and guidelines for securities market and market participants. However, today securities market does not need clogging rules and regulations which will slow business, but a suitable machinery for quickly identifying and tracking down speculators who are indulging in malpractices, before irreparable damage is done to market. Thus, making rules, regulations and guidelines for the regulation of securities market and its participants does not make any difference until their violations are prevented. SEBI has failed in
leaving any deterrent effect on the market participants. However, it is not sensible to suggest that a new regulatory body or super regulatory body should be constituted for this purpose but there are following suggestions for improving the functioning of SEBI as regulator of securities market in India.

The Govt. should reconsider the independent character of SEBI. Presently, SEBI is not an autonomous regulatory body. There are various provisions under SEBI Act 1992 which suggest that it is working under complete and strict control of Govt. Excessive government control leads to lobbying, arbitrary decisions making corruption. SEBI is constituted of nine members, of which chairman and five other members are appointed by the Govt. as provided under section 4 of the Act. In this regard it is suggested that all the members of SEBI should be appointed by Govt. in consultation with the chief justice of India.

Further, section 5 authorises central govt. to terminate the services of the members of SEBI including chairman at any time. It gives arbitrary powers to central govt. to terminate services of the members. Therefore, it is suggested that the chairman of SEBI should not be removed by Govt. unless on a ground of proved misbehaviour or incapacity after an inquiry by SC judge whereas other members should only be terminated only on the specified grounds under section 6 of the Act.

The chairman of SEBI has been entrusted with wide powers and there is enormous chance of misuse of those powers. For this purpose it is suggested
that all the orders and decision should be taken or passed by a majority votes of the members present and voting.

The post of Adjudicating Officer should be created within SEBI on the pattern of Administrative Law Judge in USA to adjudicate the matters. At present he is appointed by SEBI only if any investigation indicates that violations of the securities laws have been occurred. Qualifications for adjudicating officers should also be prescribed. Today Adjudicating Officer has been authorized broad powers, he can impose fine up to rupees 25 crores on the defaulters/offenders.

SEBI, should first cause confidence among the market participants and they must believe that it is working in a fair and impartial manner. At present, most of SEBI’s orders are challenged by the parties and SAT does not always agree with the market regulator. Recently, SAT set aside an order of SEBI against an investment arm of Swiss banking giant UBS. The order of SAT extended the already long list of cases where the tribunal did not agree with the market regulator. Prior to that in 2002, the SAT had set aside SEBI’s order banning Sterlite Videocon International and BPL from accessing the capital market for alleged price manipulation as discussed. Therefore it should work in an impartial manner.

SEBI should be more sensitive to investor’s needs and problems. The market’s growth and healthy functioning depend on the confidence, which investors have in the market’s mechanism. Genuine investor’s participation in
the market can be increased only by building his confidence that he will be effectively protected against market abuses and lapses. Such confidence continues to be weak in India despite the reforms made by SEBI so far. A national investors grievance cell should be formed to deal with the investor's complaints, as it will enable the investors to approach to a single institution for their problems. Currently, they have to approach to different regulators i.e. DCA, SEBI etc depending on the nature of their problems/ complaints. The national investors grievance cell should also be authorized to award compensation to investors.

The investors should also come within the purview of SEBI. The investors / clients giving false information regarding their financial status should also be punished. Many a times they mention the wrong particulars in the registration form with the brokers.

Under SEBI Act 1992 two alternative types of punishment for violations of the provisions of the Act in addition to prosecution and directions have been provided. They are suspension or cancellation of certificate of registration to be imposed by SEBI and monetary penalties to be imposed by an adjudicating officer to be appointed by SEBI. Therefore, if violation is assigned to an adjudicating officer, SEBI loses control over the case and the adjudicating officer decides the case on merit. The adjudicating officer can at best impose monetary penalty even if he finds that the violation really warrants suspension or cancellation of registration. Similarly, if SEBI initially considers a case for
suspension or cancellation, it cannot impose monetary penalties even if it concludes that the violation warrants monetary penalties. This happens because SEBI does not have power to impose monetary penalty and the adjudicating officer does not have the power to suspend or cancel a certificate of registration. Thus, adjudicating officer should also be authorized to award suspension and cancellation of registration certificates.

SEBI should be authorized to impose penalties on stock exchanges for different types of violations. As of now SEBI can only withdraw recognition / cancel registration if the stock exchanges are not working in accordance with the provisions of law. However, some times the violations may not warrant such extreme punishment therefore, it is desirable, to empower SEBI to impose monetary penalties on erring stock exchanges.

Today, apart from the Companies Act 1956 the securities market is governed by the provisions of S C (R) Act 1956, SEBI Act 1992 and various rules, regulations, notifications made thereunder and Depositories Act 1996 etc. leaving alone the compliance aspect, even in administering of these provisions, there arises an unnecessary duplication. Therefore, there is an urgent need to bring about a comprehensive law integrating the different provisions in different statutory enactments into one unitary law. Similarly, the securities market is regulated by many regulators i.e. SEBI, RBI, DCA, DEA, ROC etc and moreover, the statutes do not provide for the regulatory coordination or sharing information among them on day-to-day basis. Therefore, as a first
endeavour, SEBI should be given its autonomous status as discussed and thereafter it should be the only authority for the regulation of the securities market.

As revealed in table 1.9 there are 233 cases pending for investigations. It may cause hardship to persons under investigation therefore, a period should be prescribed within which investigations should be completed.

Securities market supervision is labour intensive and relies for success on the commitment, judgment and skill of the personnel involved. Conferring additional powers on SEBI would not make much difference unless it has right quality and quantity of people to administer the Act. It presently has 217 officers and 147 staff members at different branches that is not sufficient in view of the duties and responsibilities it has to perform. The staff strength at SEBI should be increased to meet the challenges and rigors of administering securities market.