CHAPTER -10.

INVESTOR EDUCATION & PROTECTION FUND AND INFORMAL GUIDNACE SHCEME

1. INTRODUCTION

Education is the tool in the hands of investors; by using it they can secure their money in securities market. “An educated investor is protected investor”. If the investors know the provisions of securities market, its rules and regulation, then the SEBI’s half task will be completed. Therefore, to achieve its object to protect the rights of investors and shareholders, SEBI has to make investor educated. However, to complete this task, it requires the fund. That’s why investors education and protection fund is established to educate the investor, how to protect their rights in securities market.

The SEBI in exercise of powers conferred by section 30 of the Act, 1992 and to protect the interest of investor and shareholder makes the regulation for investor protection and education fund. This regulation contains the fund, which is used solely for the purpose to educate the investor, to conduct the awareness programme and other incidental matters. Therefore, these regulations are called the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

2. Establishment of Fund:

This fund is called the Investor Protection and Education Fund. It has been established on 23rd day of July, 2007, by the order made by the Board under section 11 of the Act. The fund is established by SEBI in exercise of powers given to it under SEBI Act, 1992 to achieve its objective: to protect the interest of investors.

2.1 The amount to be credited in the fund:
The following amounts shall be credited to the Fund:-

(a) contribution as may be made by the Board to the Fund;

(b) grants and donations given to the Fund by the Central Government, State

Regulation 3 of the SEBI (Investor protection and Education Fund) Regulation, 2009
Regulation 4 ibid
(c) Government or any other entity approved by the Board for this purpose;
(d) proceeds in accordance with the sub-clause (ii) of clause(e) of sub-regulation (12) and the sub-regulation (13) of regulation 28 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
(e) security deposits, if any, held by stock exchanges in respect of public issues and rights issues, in the event of de-recognition of such stock exchanges;
(f) amounts in the Investor Protection Fund and Investor Services Fund of a stock exchange, in the event of de-recognition of such stock exchange;
(g) interest or other income received out of any investments made from the Fund;
(h) such other amount as the Board may specify in the interest of investors.

2.2 Utilisation of Fund - The Fund shall be utilised for the purpose of protection of investors and promotion of investor education and awareness. The Fund may also be used for the following purposes, namely:-

(a) educational activities including seminars, training, research and publications, aimed at investors;
(b) awareness programmes including through media - print, electronic, aimed at investors;
(c) funding investor education and awareness activities of Investors’ Associations recognized by the Board;
(d) aiding investors’ associations recognized by the Board to undertake legal proceedings in the interest of investors in securities that are listed or proposed to be listed. Legal Proceeding means any proceedings before a court or tribunal where one thousand or more investors are affected or likely to be affected by:-
   (i) mis-statement, misrepresentation or omission in connection with the issue, sale or purchase of securities;

\[358\] Regulation 5 ibid
(ii) non-receipt of securities allotted or refund of application monies paid by them;
(iii) non-payment of dividend;
(iv) default in redemption of securities or in payment of interest in terms of the offer document;
(v) fraudulent and unfair trade practices or market manipulation;
(vi) such other market misconduct which in the opinion of the Board may be deemed appropriate; but does not include any proceeding where the Board is a party or where the Board has initiated any enforcement action.

e) refund of the security deposits which are held by stock exchanges and transferred to the Fund consequent on derecognition of the stock exchange as mentioned in clause (d) of regulation 4, in case the concerned companies apply to the Board and fulfill the conditions for release of the deposit;

f) expenses on travel of members of the Committee, who are not officials of the Board, and special invitees to the meetings of the Committee, in connection with the work of the Committee;

g) salary, allowances and other expenses of office of Ombudsman;

(h) and such other purposes as may be specified by the Board.

2.3 Conditions to grant aid to Investor’s Association: The aid to investors’ Association shall be given by board, subject to the following:

(a) that the aid shall not exceed seventy five per cent of the total expenditure on legal proceedings;

(b) such aid shall not be considered for more than one legal proceeding in a particular matter;

(c) if more than one investors’ association applies for seeking legal aid, the investors’ association whose application is received first, shall be considered for such aid.

3. ADVISORY COMMITTEE FOR THE FUND – The advisory committee has been established under this regulation to take care of the fund

Regulation 6 the SEBI (Investor protection and Education Fund) Regulation, 2009
and give advice for the proper utilisation of the fund in accordance with its object to protect the interest of the investors.

3.1 Constitution of the Committee

The Board shall constitute an advisory committee for recommending investor education and protection activities that may be undertaken directly by the Board or through any other agency, for utilisation of the Fund. The Committee shall consist of the following members, namely:-

(a) the Executive Director of the Board in charge of Office of Investor Assistance and Education who shall be the convener of the Committee;
(b) two other officials of the Board;
(c) five other members who have expertise about the securities market and experience in matters of investor grievance redressal or investor education.

3.2 The term of office of members shall be two years, which may be extended for a further period of two years. If any vacancy arising out of resignation, retirement or death of a member or for any other reason that shall be filled by the Board for the remaining period of the term of such member. The Board may dissolve and reconstitute the Committee if, at any time, the Board is of the opinion that the Committee is unable to discharge the functions and duties imposed on it by or under these regulations.

3.3 Functions of the Committee and meeting of the board

The Committee shall consider investor education and protection activities keeping in view the purposes mentioned in regulation 5 and the regulation 6 and submit its recommendations thereon to the Board. Meetings of the Committee shall be convened at least once in three months by the convener or in his absence, by any member nominated by the convener, on his behalf. Four members of the Committee shall constitute the quorum for the transaction of business at a meeting of the Committee. Every member, who is directly or indirectly interested in any matter coming up for consideration at a meeting of the

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360 Regulation 7 ibid
361 Regulation 8, 9 of the SEBI (Investor protection and Education Fund) Regulation, 2009
Committee, shall disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the meeting of the Committee and such member shall not take part in any deliberation of the Committee with respect to that matter.

3.4 Expenses of the Committee

The expenses including travel and other allowances of members of the Committee, who are officials of the Board, and invitees who are officials of the Board, shall be borne by the Board in accordance with their entitlements. The expenses including travel and other allowances of members of the Committee, who are not officials of the Board, and invitees who are not officials of the Board, may be borne by the Fund.

4. INVESTMENT, ACCOUNTS AND AUDIT

Investment, maintenance of accounts and audit of accounts- The Board shall ensure maintenance of proper and separate accounts and other relevant records in relation to the Fund giving therein the details of all receipts to, and, expenditure from, the Fund and other relevant particulars in accordance with the SEBI (Form of Annual Statement of Accounts and Records) Rules, 1994 as far as such rules apply. The accounts shall be prepared and audited before the expiry of six months from the end of each financial year. The investment of the Fund may be in the manner of investments of other funds of the Board. The accounts of the Fund may be audited in the manner of audit of other accounts of the Board.

5. SEBI-INVESTORS EDUCATION GUIDE

This scheme shall be called Securities and Exchange Board of India (Informal Guidance) Scheme, 2003. This scheme is being issued under section 11 (1) of the SEBI Act, 1992 in the interest of better regulation of and orderly development of the securities market. Among other things SEBI has brought out an information pamphlet caption “a quick reference guide for investors” for the benefit of the public who hold securities.

362 Regulation 10 of the SEBI (Investor protection and Education Fund) Regulation, 2009
363 Regulation 11 of the SEBI (Investor protection and Education Fund) Regulation, 2009
364 The scheme shall come into operation from 24-6-2003
The pamphlet highlights the following:

5.1 Rights of Members

(a) To receive share certificates on allotment or transfer, as the case may be, in due time.
(b) To receive copies of notices for various general meetings and attend them either personally or through proxies and to participate and vote.
(c) To receive copies of abridged annual report, balance sheet, profits and loss accounts and auditor’s report
(d) To receive dividends declared (including interim dividends) in time.
(e) To receive other corporate benefits such as rights issues, bonus issues as and when approved.
(f) To apply to the Company Law Board to call or direct the calling of annual general meeting of the company.
(g) To inspect minute books of the general meetings and to take copies thereof.
(h) To proceed against the company by way of civil or criminal proceedings wherever justified.
(i) To apply for the winding up of the company.
(j) To receive the residual proceeds on winding up.

Besides the above rights enjoyed as individual shareholder, the following rights be claimed as a group:

(a) to requisition an extraordinary general meeting.
(b) to demand a poll on any resolution.
(c) To apply to Company Law Board to investigate the affairs of the company.
(d) To apply to Company Law Board for relief in cases of oppression and mismanagement.

As a debenture holder the following rights are available:

(a) To receive interest/payment on redemption in due time.
(b) To receive a copy of the trust deed on request.
(c) To approach debenture trustee with a grievance petition.
(d) To apply for winding up if the company fails to pay its dues.
5.2 Responsibilities of Members
Besides the above rights members also have certain responsibilities to be discharged. They are:

(a) To remain informed.
(b) To be vigilant.
(c) To participate and vote in general meetings.
(d) To exercise rights as an individual and also as a group.

5.3 Benefits of Trading of Securities through recognised stock exchange
A shareholder have the right to sell the securities which he holds at a price and time he chooses. He can do so personally or through a recognised stock exchange. Similarly, he has the right to buy securities from any one directly or through; a recognised stock exchange at a price and time he chooses. All such trading (baying or selling) should be executed by a valid, duly completed and stamped transfer deed. If one deals directly with another person, one is exposed to counter party risk i.e. risk of non performance by that party but if one deal through a stock exchange namely - a broker or sub-broker, this counterparty risk is reduced due to settlement guarantee offered by the stock exchange mechanism. Further a shareholder also has certain protection against the defaults by the broker.

5.4 Right to receive best price trading through recognised stock exchange
When one operates through the stock exchange he has the right to receive the best price prevailing at that time and the right to receive the money (on sale of shares/securities) or the shares/securities (purchased) in time. The member has the right to receive a contract note from the broker confirming the trade and indicating the necessary details thereof. There is also the right to receive good delivery and the right to insist on rectification of bad delivery. If one has a dispute with one's broker it can be resolved through arbitration under the auspices of the exchange.

If it is decided to trade through an exchange the services of a SEBI registered broker/sub-broker have to be availed, entering into a broker-client agreement and filling a client registration form. Since the contract note is a legally enforceable document, one should insist on receiving it. If one is selling, he has the obligation to deliver the shares and if one is buying, he has the obligation to pay the money. In case of bad delivery of securities by a person
he has the responsibility to rectify it or replace the bad securities with good securities.

5.5 Right to receive benefits in Transfer of Securities- When transfer is affected it means that the company has recorded in its books and on the securities a change in the title of ownership. To effect a transfer, the security should be sent to the company along with a valid, duly executed and stamped transfer deed signed by and on behalf of the transferor (seller) and transferee (buyer). It will be useful to have photocopies of the securities and transfer deed when they are sent to the companies for transfer. It is advisable to send them by registered Post with acknowledgement due and watch for the receipt of the acknowledgment card duly signed. If confirmation of receipt is not received within a reasonable period (say 2 months) the post office should be approached for confirmation. Post Office will respond only if inquiries are made within three months from the date of booking the registered article.

In case the shareholder who has purchased it wants to sell it for a good price he may not fill up the transferee's name and forward it to the company for effecting transfer, but in such a case he will not be getting dividends, bonus or rights from the company and these will be sent by the company to the original holder (transferor). In case the transfer is not valid, the company returns back the securities giving reasons for not affecting the transfer. This is known as company objection. Then the errors/discrepancies should be corrected and the papers resubmitted to the company again. In case of bad delivery one should ask the transferor to replace with deliveries. Where one is unable to get the errors rectify or obtain replacement the recourse will be to the seller and his broker through the stock exchange to get back the money. Where the transaction was directly with the original seller and not through the broker, the matter has to be settled with the seller directly.

In case of loss or misplacement of securities one should immediately request the company to record a stop transfer and simultaneously apply for issue of duplicate securities. For affecting stop transfer, the company requires production of a court order or the copy of FIR filed with the Police. The company may also require submission of indemnity bond, affidavit, sureties etc. besides publishing a notice in the newspaper, for issue of duplicate securities. One has to watch the receipt of the securities or delivery of the
securities sent through post or courier, so that loss in transit is immediately noticed, in transfer procedure.

6. Depository and Dematerialisation - Special Advantages
Shares are traditionally held in physical or paper form. This can involve loss or theft, forged or fake securities being issued etc. Transfer of securities in physical form involves time and expenditure. Therefore to eliminate these difficulties a new system called 'depository system' was established, whereby the securities are held in the form of electronic accounts just as a bank holds our money in a savings account. The National Depository Organisation is gradually prevailing upon making large companies to switch over to the new system. If one wants to keep the shares in their original form without transferring it is allowed but for transfer, they must be dematerialized In the depository system securities can not be lost, stolen or mutilated and there is no fear of forgery and fake securities. Physical movement of securities and the cost involved is avoided, and there is no risk of bad delivery. Bonus/right issues by the company will be immediately credited to the investors account and he will receive the statement of accounts of the transactions and the holdings periodically. For this purpose one has to approach a depository participant who is an agent of the depository and open an account. The original share certificates need to be surrendered to the depository through the Depository Participant (DP) and on confirmation the investors account will be credited with the equivalent number of securities. This is known as dematerialisation. If one chooses he can seek dematerialization and get the conversion into proper securities. On sale, or purchase the DP will debit/credit client’s account and transfer is not dealt with in the books of the company.

7. SEBI’s INFORMAL GUIDANCE SCHEME
In most of the regulations, rules & circulars, SEBI has imposed various responsibilities upon intermediaries, company, mutual fund trustees, acquirer etc. It is very difficult for them also to understand these rules and regulations with the interpretation of SEBI objective. SEBI is using all its powers and
means only to protect the interest of investors and shareholders and guide them at every stage. But various persons other than investors i.e. companies, intermediaries etc. want to take help from the Board, so that they can take preventive measures to protect the rights of investors and shareholders. Therefore, to accomplish its object “TO DEVELOP THE SECURITIES MARKET” SEBI issued informal guidance scheme to help these entities or persons in informal way.

The Securities and Exchange Board of India issued, under section 11(1) of SEBI Act, 1992, the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 for better regulation and orderly development of the securities market, so that investor’s interest and rights can be protected at pre stage. Through this scheme any intermediary or other concern may get their concept clear from SEBI. It will help to take guard on interest of investors and shareholders. This scheme helps the seeker in informal way.

7.1 Eligible person to take guidance: As per this scheme following persons may make a request for informal guidance from the Board:

   (i) any intermediary registered with the Board;
   (ii) any listed company;
   (iii) any company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the Board or the Central Listing Authority;
   (iv) any a mutual fund trustee company or asset management company;
   (v) any acquirer or prospective acquirer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

7.2 Form of guidance: The guidance may be sought for and given in two forms by the board:

   a. No-action letters : in which a Department of SEBI indicates that the Department would or would not recommend any action under any Act, Rules, Regulations, Guidelines, Circulars or other legal provisions administered by SEBI to the Board if the
proposed transaction described in a request made under para 6 is consummated.

b. Interpretive letters: in which a Department of SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by SEBI in the context of a proposed transaction in securities or a specific factual situation.

It should be noted that a no-action letter or an interpretive letter issued by a Department constitutes the view of the Department but will not be binding on the Board, though the Board may generally act in accordance with such a letter. The letter issued by a Department under this scheme should not be construed as a conclusive decision or determination of any question of law or fact by SEBI. Such a letter cannot be construed as an order of the Board under section 15T of the Act and shall not be appealable. If a no-action letter is issued by a Department affirmatively, it means that the Department will not recommend enforcement action to the Board, subject to other provisions of this scheme.

7.3 Non responsibility of SEBI on such guidance: SEBI shall not be liable or responsible for any loss or damage that the requestor or any other person may suffer on account of the request not being answered or being belatedly answered or the Board taking a different view from that taken in a letter already issued under this scheme.

7.4 Conditions to take advise: The person seeking informal guidance shall make request and has to comply with the following:

a. It shall state that it is being made under this scheme and also state whether it is a request for a no-action letter or an interpretive letter;

b. It shall be accompanied with a fee of Rs. 25,000;

c. It shall be addressed to the concerned Department of SEBI; and

d. It shall describe the request, disclose and analyse all material facts and circumstances involved and mention all applicable legal provisions.

7.5 Disposal of request: The request of the guidance seeker may be disposed as early as possible and in any case not later than 60 days after the receipt of
the request. The Department may give a hearing or conduct an interview if it feels necessary to do so. The requestor shall be entitled only to the reply. The guidance offered through the letters issued by Departments is conditional upon the requestor acting strictly in accordance with the facts and representations made in the letter.

7.6 Grounds of rejection of request: The internal records or views of SEBI shall be confidential. It may not respond to the request

(a) those which are general and those which do not completely and sufficiently describe the factual situation;

(b) those which involve hypothetical situations;

(c) those requests in which the requestor has no direct or proximate interest;

(d) where the applicable legal provisions are not cited;

(e) where a no-action or interpretive letter has already been issued by that or any other Department on a substantially similar question involving substantially similar facts, as that to which the request relates;

(f) those cases in which investigation, enquiry or other enforcement action has already been initiated;

(g) those cases where connected issues are pending before any Tribunal or Court and on issues which are sub-judice; and

(h) those cases where policy concerns require that the Department does not respond.

Where a request is rejected for non-compliance the fee if any paid by the requestor shall be refunded to him after deducting therefrom a sum of Rs. 5,000 towards processing fee. However, SEBI shall not be under any obligation to respond to a request for guidance made under this scheme, and shall not be liable to disclose the reasons for declining to answer the request.

7.7 Confidentiality of request: Such request may have Confidentiality in the following manner:

i. Any person submitting a letter or written communication under this scheme may request that it
receive confidential treatment for a specified period of time not exceeding 90 days from the date of the Department’s response. The request shall include a statement of the basis for confidential treatment.

ii. If the Department determines to grant the request, the letter or written communication will not be available to the public until the expiration of the specified period.

iii. If it appears to the Department that the request for confidential treatment should be denied, the requestor will be so advised and such person may withdraw the letter or written communication within 30 days of receipt of the advise, in which case the fee, if any, paid by him would be refunded to him.

iv. In case where a request has been withdrawn, no response will be given and the letter or written communication will remain in the SEBI files but will not be made available to the public.

v. If the letter or written communication is not withdrawn, it shall be available to the public together with any written staff response.

Where the Department finds that a letter issued by it under this scheme has been obtained by the requestor by fraud or misrepresentation of facts, notwithstanding any legal action that the Department may take, it may declare such letter to be non est and thereupon the case of the requestor will be dealt with as if such letter had never been issued.

Where SEBI issues a letter under this scheme, it may post the letter, together with the incoming request, in the SEBI website.

7.8 Legality of guidelines issued by SEBI – The guidelines issued on 11 June, 1992 were neither rules nor regulations and those guidelines had not been issued in the manner laid down in section 29 and 30. In the result, those guidelines had no legal force. But now the controversy had been put to rest with the notification of SEBI (Issue of capital and Disclosure Requirements) Regulations 2009, vide circular no. SEBI CFD/ DIL/ICDRR/1/2009/03/09 dated 3.09.2009, which were notified on 26th August 2009. Since that date the
SEBI (Disclosure and Investor Protection) Guidelines, 2000 have been rescinded and are now referred to as the “Rescinded guidelines”. In the case of State of Kerala Vs Abdulla\(^{365}\) the court held that when the power to frame rules is conferred by the Act, that power must be exercised within the strict limits of the authority conferred. If in making a rule the rule making authority transcends its authority, the rule will be invalid for statutory rules made in exercise of delegated authority are valid and binding only if made within the limits of authority conferred. Validity of rule is always open to challenge on the ground that it is unauthorized.

8. Conclusion – By incorporating the regulation of education fund, SEBI has attempted to solve the problem of security of investor’s interest and their confidence. The fund will be helpful in educational activities, seminars, training, research, publication, investor awareness programme through media, funding investor education, salary of ombudsman etc. programmes to educate the investor. The SEBI has also issued informal guidance scheme to help the intermediaries, company, mutual fund trustee or any acquirer of the company. These persons can obtain guidance from SEBI in the matter of securities market. However, the SEBI has not been made responsible for those advices. These schemes are purely informal in nature. Therefore, the SEBI is achieving its object to protect the interest of investors and made regulations to achieve them. The ultimate object of the SEBI is to protect the investor’s interest, whether to incorporate formal regulations or issued scheme which is purely informal.

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\(^{365}\) AIR 1965 S, 1585, 1589