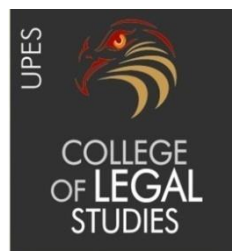


ROLE OF SECURITIES AND EXCHANGE BOARD OF INDIA IN REGULATING THE SECURITIES MARKET

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*This dissertation is submitted in partial fulfilment of the degree of B.B.A., LL.B.
(Hons)*



College of Legal Studies

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DECLARATION

I declare that the dissertation entitled “**Role of SEBI in regulating the Securities Market**” is the outcome of my own work conducted under the supervision of Mr. Sujith Surendran, Assistant Professor at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

Priya Nagpal

12.04.2016

CERTIFICATE

This is to certify that the research work entitled “**Role of SEBI in regulating the Securities Market**” is the work done by **Priya Nagpal** under my guidance and supervision for the partial fulfilment of the requirement of **B.B.A., LL.B. (Hons)** degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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ABBREVIATIONS

CLB	:	Company Law Board
DEA	:	Department of Economic Affairs
HC	:	High Court
MCA	:	Ministry of Corporate Affairs
RBI	:	Reserve Bank of India
Sec	:	Section
SCRA	:	Securities Control Regulation Act

INTRODUCTION

Statement of the problem

With the growth in the dealings of stock markets, lot of malpractices also started in stock markets such as price rigging, ‘unofficial premium on new issue, and delay in delivery of shares, violation of rules and regulations of stock exchange and listing requirements. Due to these malpractices the customers started losing confidence and faith in the stock exchange. This is the main reason behind progressive more attention by regulators and legislatures to this area and prerequisite to make the regulations and penal provisions more strict and stringent.

Objectives of the research

The key objectives of the research are:

- To outline the role of Securities and Exchange Board of India in regulating the securities market.
- To know key functions of the SEBI

Therefore the main objective of the study is to know the extent of regulation of securities market by SEBI. The statutory powers of SEBI include protecting the interests of investors in securities, to promote the development of securities market, to regulate the securities market and for matters connected to it. Moreover SEBI has powers to control speculation activities, insider trading, takeovers and other substantial share acquisitions¹.

Scope and significance of the research

The research highlights the development in the legal regime in the field of regulation of the capital markets in India. Also this paper further highlights how far investors interest has been protected and it enlists the regulatory and legal framework dealing with the assessment of Securities Market. The concept has been substantiated further

¹ Taxmann SEBI Manual, 2015

with the help of various case studies and importance of need and necessity to regulate the same has been explored. The study shall be limited to the laws of India only.

Research Questions

1. Whether there has been orderly and healthy growth of securities market?
2. Whether there has been sufficient protection of interests of the investors?

Hypothesis

“The role and functions of SEBI has promoted orderly and healthy growth of securities market and investor’s interest has been protected to a larger extent.”

Methodology

The methodology for research for the completion of the thesis would be analytical. The research methodology for this paper requires gathering relevant data from the specified documents and compiling databases in order to analyse and compare the material and arrive at a more complete understanding of the concerned topic that whether a certain harmonization proposal could work, taking into account other important divergences in the legal systems concerned, with the help of various statutes, norms, regulations, scholarly articles of different authors, journals and books to. The research in this study has been done having relied upon “Doctrinal Method” of research. The methodology adopted for this dissertation work is doctrinal, analytical and descriptive.

Literature Review

The kind of the literature review that has been made used in the present topic is vast and highly diversified. The reason for this could be that the topic in itself is very diversified and consuming. These general texts are mixture of text books, Statutes, regulations, scholarly Articles in the field on regulation of capital market with the various issues involved and scope of such norms, rules etc. Thus there is literature present in volumes but in adjacent sources and thereby making it necessary for all of

it to be compiled and documented in one piece, to make further study of the topic possible.

CHAPTER 1

1. INTRODUCTION TO THE ROLE OF SEBI AS A MARKET REGULATOR

Securities and Exchange Board of India was incorporated on 12th April, 1988 as a non-statutory body by the legislature for an official determination. Securities and Exchange Board of India has been the directing power for the securities market in India. Formerly it was established by the Government of India in 1988, but later in in 1992 it acquired statutory form with Securities and Exchange Board of India Act 1992 being passed by the Parliament of India. These Acts were:

- The Bombay Securities Contracts Control Act, 1925
- The Capital Issues (Control) Act, 1947
- Registrar of Companies (The Indian Companies Act, 1956)
- The Securities Contracts (Regulation) Act, 1956

The key objectives of the research in this study are-

- To outline role of the Board in regulating the market.
- To know key functions of the SEBI
- In this way the principle target of the study is to know the degree of regulation of securities business sector by SEBI. The statutory forces of SEBI incorporate ensuring the premiums of speculators in securities, to advance the improvement of securities business sector, to manage the securities market and for matters associated with it. In addition SEBI has forces to control theory exercises, insider trading, takeovers and other generous offer acquisitions.²

² Taxmann SEBI Manual, 2015

The main question of the research revolves around the role of SEBI in protecting the investor's interest and regulating securities market and has it really protected the interests of the investors. Without active investors, the capital market is pointless. For this reason, it is important to protect the interests of the investors. To protect the interests of investors it is essential to shield them from erroneous information provided by the businesses. Therefore, the main criterion of the Securities and Exchange Board of India is to provide security to the investors. The Securities and Exchange Board of India also keeps a check for Insider Trading. Insider trading can be defined as the trading of a company's securities by individuals having approach to non-public information of the company. Such people have access to secret information about the company.

To ensure a prospering development of capital markets and to confine malpractices in trading, the Government had chosen to build up a different board for the precise working and of the regulation of the securities business and the Stock Exchanges in India. The Cabinet Committee on Economic Affairs in July 1987 endorsed the expansive elements of the Board of India which prompt the beginning of ventures for plan of Securities and Exchange Board of India³.

With the advancement in the dealings of markets, there are parcel of misbehaviours that are additionally found in securities exchanges like infringement of guidelines and regulations of stock exchange, unofficial premium on issues, listing prerequisites and deferral in conveyance of shares. On account of these acts of neglect the clients started to lose confidence and trust in the stock trade market.

³ ABBOT, K.R.A., COMPANY LAW, HAMPSHIRE DP PUBLICATIONS LTD, (Second Edition, 1986).

Keeping this in mind the government of India decided to set up a regulatory body or an agency known as Securities Exchange Board of India.

This methodology checked two fundamental goals of Securities and Exchange Board of India. Firstly, advancing systematic and development of securities market and exchange in India. Secondly ensuring sufficient protection of investors and to focus upon the developmental philosophy with which Securities and Exchange Board of India would operate. Without dynamic financial specialist's i.e. investors, the capital business sector is pointless. Therefore, it is vital to ensure the interests of the financial specialists. To secure the premiums of financial specialists it is vital to shield those from incorrect data gave by the organizations. Subsequently, the primary model of the Board is to give security to the financial specialists or investors⁴.

The Board also govern the stock markets to insure that adequate services are offered to all the parties like bankers, merchant, brokers and other intermediaries so as to ensure fair practices and to promote professionalism.

It also keeps a check for Insider Trading. Insider trading is the trading of a company's securities having approach to non-public information of the company. Such people have access to secret information about the company. This practise harms the interests of the common investors. In many countries insider trading is illegal because it is unfair to other investors not having access to the information. Many steps have already been taken to keep a check on insider trading by the Board. It's essential for keeping a close track upon the activities of the brokers and other intermediaries in order to regulate the capital markets⁵.

Since its formation, the Board has been working towards the achievement of its goals with commendable determination. The further steps in the securities markets like margining, capitalization requirements, establishment of clearing organizations and so on that has narrow down the risk of shortcoming.

⁴ Asok K. Nadhani, Business and Corporate Laws, BPB Publications, 2009 Edition, New Delhi

⁵ Bhargava, M.K., Companies Act, Taxmann Allied Services Private Limited, 1988 Edition

1.1 Securities Market Regulation before the Securities and Exchange Board of India

Prior to the Securities and Exchange Board of India, the trades had been under the managerial control of the Exchange Division of Department of Economic Affairs. The division of the stock trade was in charge of the Securities Contract Regulation Act, 1956 which administered the matter of managing, purchasing and offering in securities. The issuance or assembly of capital through the general population business sector was controlled by Controller of Capital Issues. The Controller of Capital Issues needed to satisfy a few financial and social targets, for example,⁶

- i. that the capital structure of organizations is sound and is in the public interest;
- ii. public financial specialist protection;
- iii. of the arrangement of corporate speculations with planning of Government;
- iv. regulation of outside venture.

The Controller of Capital Issues implies included:-

- i. managing securities issuance forms;
- ii. administration and lax strategies and
- iii. Strict controls on quantum of issue, its terms and time of issue

The Controller of Capital Issues regime represented a “merit regulation”.

The result of the Controller of Capital Issues regime was that it⁷:

- i. led to impediment of resource utilization
- ii. unhealthy administrative practices
- iii. resulted in the resoluteness to adapt to the expanding resource usage load

⁶ AGRAWAL, “THE COMPANIES AMENDMENT ACT, 2000 –“CHARTERED SECRETARY, Vol. XXXI, No. 1, pp 18–20.

⁷ SHUKLA, M.C., COMPANY LAWS, CHAND & COMPANY, NEW DELHI.

- iv. “grey” market leading to unhealthy developments in the markets
- v. Less attention given on the development of the market institutionalities.

Companies Act, 2013 which is a thorough bit of statute covers all parts of working of organizations. Outlined along and which is gotten from the British forerunners, the guidelines made thereunder are an imperative for the regulation of an organization and material to corporate bodies in India. As indicated by the Ministry of Corporate Affairs, it empowers a stage for corporate administration prerequisites crucial for the organizations with responsibility and straightforwardness, perceiving and securing the hobbies of different partners. The Companies Act is far reaching in its scope. A "thorough audit" has been on the track for quite a long while. It has been there to empower a streamlined law to contemplate the adjustments in the national and worldwide situation, giving adaptability to advancement of new game plans. The amendments and provisions are numerous and complex to be given a meaningful explanation here⁸. India has an established corporate law that is acknowledged to be suited to meet the needs of the corporate sector though it is sometimes criticized in its implementation. The sections of this Act are governed by a three tiered structure with the Ministry of Corporate Affairs as the supreme. Some of the provisions of the Companies Act are administered by the Board if they relate to listed companies.

1.2 Present Organisations for regulation of Securities Markets in India

There are five organizations that have a noteworthy administrative impact, over the securities markets in India at present ⁹.

These agencies are as follows:

- The Company Law Board i.e. CLB to put it plainly, which is a legal body that exercises a percentage of the quasi-legal and legal forces under the Act that was beforehand practiced by the Central Government and the High Court. ¹⁰.

⁸ The Companies Act, 2013.

⁹ ABBOT, K.R.A., COMPANY LAW, HAMPSHIRE DP PUBLICATIONS LTD, (Second Edition, 1986).

¹⁰ Section 10E of the Companies Act, 1956

- The Reserve Bank of India i.e. RBI in short which is basically responsible, , for the supervision of currency business sector and the banks..
- Securities and Exchange Board of India i.e. SEBI to put it plainly, which is in charge of the regulation of capital markets and the different members and participants.
- Department of Economic Affairs i.e. DEA to put it plainly, which is in charge of the monetary administration of the nation and is the arm of the legislature that is worried with the methodical working of the financial markets in general.

Ministry of Corporate Affairs i.e. MCA to put it plainly, which is at the zenith of a three level structure that has obligation regarding the registration and oversight of incorporated entities which fall under the administrative domain of the Companies Act.

Among the offices said over, the organization that is specifically responsible with the supervision of the capital markets in India is the Securities and Exchange Board of India. The working of the Securities and Exchange Board of India is the primary focus of this dissertation.

CHAPTER 2

REGULATORY FRAMEWORK OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

The Securities and Exchange Board of India Act, 1992 mandates that the Board might be a body corporate by the name that will have a common seal and perpetual nature of succession. The Board will have the force subject to the provisions of this Act, in admiration of gaining, holding of both movable and immovable property, and to contract, and can sue or be sued by the aforementioned name¹¹.

The Board comprise of a Chairman, Shri U. K. Sinha heading the same, two individuals from the Ministry of the Central Government headed by Mr. Shaktikanta Das who is the Secretary of Department of Economic Affairs, Ministry of Finance and Mr. Arun Jaitley who is Union Minister of Finance and Corporate Affairs managing Finance, one member from amongst the individuals from the Reserve Bank, and five different individuals, no less than three might be the whole time members who are named by the Central Government¹².

Every one of the individuals from the board should vest inside of themselves the general supervision, administration, and bearing of the undertakings of the Board, and alongside that the privilege to do all demonstrations and things and practice all forces which might be offered to the Board. The Chairman alongside alternate individuals from the Securities and Exchange Board of India should have the aforementioned specified forces.¹³

The Chairman and the five other members amongst who three are the whole-time members can be terminated by the Central Government before the ending of their prescribed period. But for that the Central Government has to give a notice of at least three months before the termination or three months' salary and allowances. The

¹¹ Section 3(2), SEBI Act, 1992

¹² "Board of Members" available at http://www.sebi.gov.in/cms/sebi_data/about_us/Board.pdf (Last visited on 21/12/2015).

¹³ Section 4 (2), The Securities and Exchange Board of India Act, 1992.

Chairman and the members of the Board has the right to withdraw or even resign from his post or office, at any time before the expiry of the prescribed period by giving the notice of at least three months before the resignation in writing to the Central Government.¹⁴

The Central Government can terminate a member from office on the ground if such member is declared as insolvent, convicted of some offence in which the Central Government thinks that there is an involvement of a moral turpitude, unsound mind or has been declared that by a competent authority or such member has abused or excessively made use of his power and position that have adversely affected the interest of public. But before the removal such member will be provided with reasonable opportunity, being heard.¹⁵

As given under the regulation, the Board can conduct a meeting at any time or place to manage the principles of methodology in reference to the exchange of business. In the event that the Chairman can't go to a meeting, alternate individuals from the board might pick a member amongst themselves to manage the meeting. The inquiries raised at the meeting of the Board should be managed by a majority voting amongst the present individuals and if there is an equality votes then the Chairman or the directing part might have a second choice. Where an individual from the Securities and Exchange Board of India is an executive of some organization and at the time of the executive meeting there is a matter being referred, in which such person has some immediate or backhanded financial interest, then it will be dealt under the Act.¹⁶ The Board at the earliest opportunity after the learning of such certainty uncover the way of his interest at such meeting and the person concerned might not take any part in any choice regarding that matter.

¹⁴ Section 5 (2), The Securities And Exchange Board of India Act, 1992.

¹⁵ *ibid*

¹⁶ Section 7 (1), The Securities And Exchange Board of India Act, 1992.

Any act or proceeding of the Board would be deemed invalid merely because there is a defect in the constitution or there is a defect in appointment of any person who acts as a member or if there is any irregularity in the procedure of the Board.¹⁷

The Securities and Exchange Board of India also has the power to appoint some other employees or officers as it deemed necessary for discharging of its functions. The terms and conditions of the service of the employees and officers shall be determined by the regulation.¹⁸

2.1 Market Participants

2.1.1 Issuers and Issuances: Associations of Indian and in addition outside source are permitted to issue securities in India. These associations has the Central and in addition the state governments, the state controlled and owned by bodies, for example, open part endeavors, banks and monetary foundations, shared assets, private body corporates, aggregate plans and extraordinary reason vehicles particularly for securitization purposes. An expansive scope of obligation and value cross breeds and instruments can be issued in India. The securities that are allowed for dealing and exchanging India are characterized under law¹⁹.

Issuers are to guarantee that the premiums of financial specialists are ensured. The issuers are additionally controlled by previous commitments to the individuals who could be influenced by an issuance of securities. These liabilities might be characterized upheld in various ways.

Issuances are either private or open. Cooperation by outside financial specialists in private and open issuances ought to hold fast to administrative limitations.

2.1.2 Investors: Foreign as well as Indian investors are eligible to participate in the Indian market. The domestic investors have access to those shares provided to them.

¹⁷ Section 8, The Securities And Exchange Board of India Act, 1992.

¹⁸ Section 9, The Securities And Exchange Board of India Act, 1992.

¹⁹ Section 2(h), The Securities Contracts Regulation Act, 1956

2.1.3 Intermediaries: Contribution and role of some of these intermediaries is given and is same to that of a merchant banker.

2.1.4 Stock Exchange: Only on recognized stock trades, there can be exchanging securities which are permitted just through individuals from the stock trade. These trades are executed through stock exchanges²⁰.

2.1.5 Clearing Corporation: Disposition of trades is done through the Clearing Corporation. The counter party risks are eliminated through Clearing Corporations.

2.1.6 Depositories: The services provided by the two depositories are accessible to every one of the financial specialists through Depository Participants.

Breaking down from the brief exchange over, is that the Indian securities business sector is a system of monetary operators. When they are executing an exchange they are entwined by a gathering of regulations notwithstanding their business interconnectedness.

Alongside that the behaviour of persons that are not specifically represented by the securities regulations is by implication administered by their contractual commitments to the regulation on the result of the administration they give.²¹

2.2 Provisions Relating To Intermediaries

The Board developed provisions identified with the intermediaries. The Securities and Exchange Board of India Act gives that sub-specialists, stockbrokers and different go-betweens connected with the securities business sector might offer, purchase the securities as per the condition of Certificate of Registration.²² The Securities and Exchange Board of India thought of regulations representing every one of these

²⁰ CHANDRA RAMESH, Company Law, Central Law Agency, 1978

²¹ Section 12, SEBI Act. 1992

²² *ibid*

classifications of middle people. These regulations determine conditions identifying with the capital sufficiency, size, record keeping and business conduct.

2.3 The Controlling Exchanges

A report identifying with the byelaws ought to be given to the stock trades for acknowledgment. The bye-laws permit the trading administration instrument to set out the business rules on the trade .²³

The bye-laws give the imperative data to the stock trade to frame standards and regulations covering essentially all parts of the working of the trade, request framework that the trade ought to embrace, the sort of exchanging frameworks that the trade might receive, criteria for listing, clearing and settlement systems and managing danger of defaults and counter-party risks at the level of the trade.

Bye-laws require the approval of the Board to draft rules suo-motu and changing the bye-laws through the administration of the trade. In the event that there is any issue with the administration of the trade then, it might supersede the administering body of the trade and afterward the administration of the trade is in the hands of nominees. At last, in the occasion of a "crisis" the Securities and Exchange Board of India can likewise coordinate that the business be suspended if in light of a legitimate concern for the exchange and people in general.²⁴

In this way the Securities and Exchange Board of India has prudence to control the undertakings of trades from controlling the administration and organization to ending the business for such timeframes if discovered sensible.

For guaranteeing consistence with these procurements, the Securities and Exchange Board of India has the privilege to call for returns and yearly reports, starting an investigation into the issues of individual individuals from the stock trade and different rights.

²³ Supra,note19

²⁴ Section 12, The Securities Contract (Regulation), Act 1956.

Toward the end, the Securities and Exchange Board of India might pull back the acknowledgment to the stock trade, in the event that it is fundamental in light of a legitimate concern for the exchange or in public interest.²⁵

2.4 Consent Order

The Securities and Exchange Board of India has set out the idea of consent order into force to determine the question in smoother way through arrangement and dialogs rather than tedious suits. It is a request settling common procedures between the administrative and the persons. On this record, common authorization activities incorporate issuing directions, cancelations or suspensions of endorsement of enlistment, implementing of money related punishments, seeking after bids and suits in court and securities re-appraising tribunal. The request gives adaptability of requirement and healing activities which would accomplish the twofold objectives of a proper authorization, discouragement and cure without turning to suit, resulting delays and extensive procedures. The aggravating offense can likewise occur after the documenting of a criminal complaint by the Board. It is a procedure whereby a accused pays exacerbating charges in lieu for results of indictment. The compounding of offence permits the blamed to keep away from an extensive procedure for criminal indictment which would spare time, cost, and mental desolation and so on consequently for payment of exacerbating charges.

²⁵ Section 5, The Securities Contract (Regulation), Act, 1956

CHAPTER 3

FUNCTIONS AND POWERS OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

3.1 FUNCTIONS

3.1.1 Regulating Stock Exchanges and Subsidiaries²⁶

The vital functioning of the Board includes keeping eye on and to act as a watch dog on the action of the exchanges, settlement system and clearing houses, enhancing the market framework and to insure that there are appropriate risk management systems.

- **Inspection of stock exchange²⁷**

The on-site surveillance by the way of inspection of the stock exchanges is considered as one of the adequate regulatory weapon.

The point of the assessment is to guarantee that firstly the trade accommodates an unprejudiced, fair and prospering business sector to the financial specialists, furthermore the trade has hold fast to the conditions, if there are any, forced on it amid the season of reestablishment or award of the acknowledgment. Thirdly the association of the trade, the principles encircled in that and their practices and frameworks are as indicated by the Securities Contracts (Regulation) Act, 1956. Fourthly the rules, headings, and directions issued by the Securities and Exchange Board of India are executed by the trade. In conclusion the trade is outfitted with adequate danger administration frameworks and inside control systems.

A Special inspection of The Ludhiana Stock Exchange, The Jaipur Stock Exchange, The Calcutta Stock Exchange and The Uttar Pradesh Stock Exchange has been carried in the year 2003²⁸.

²⁶ Section 11 (2), The Securities And Exchange Board of India Act, 1992.

²⁷ *ibid*

The post-investigation methodology was additionally fortified by expanding the periodicity in inspecting the consistence reports, making it obligatory to audit compliances reports at any rate twice in every quarter by a sub-advisory group of the Governing Board of the stock trades and accommodation of such survey to the Governing Board of the trade. Further issuing of letters of dissatisfaction, if there is a disappointment in agreeing the past investigation reports or there is an unsuitable consistence and individual gatherings to be held to examine the status of usage of the consequence of the assessment reports.

- **Illegal Trading in Securities²⁹**

There were situations where persons were taking part in exchanging securities outside the domain of the stock trades, illicit utilization of terminals given to the dealers by the Stock trades and Kerb exchanging. In these circumstances the Board made quick move by taking actions with the assent of the Chief Minister of the State and took the assistance of neighbourhood police to check these illicit exercises.

3.1.2 Regulation And Registration of the Intermediaries

With a specific end goal to mediate between the issuers and the financial specialists, authorities appointed intermediaries in the capital market. The regulation through these mediators has been found, exceptionally successful in specific circles of action. The Securities and Exchange Board of India, over the period, perceived different sorts of capital business sector intermediaries in India and the operations of such go-betweens are inspected in the essential business sector as guarantors, brokers to an issue, share transfer agent to an issue, including offer exchange specialists and portfolio director and these are the one that function in the Primary market. In the Secondary sector the Brokers are a standout amongst the most essential connections between the financial specialists and the business sector. They are connected with stock trades and investor goes back to as right on time as nineteenth century. Such elements are permitted to acquire registration at more than one stock trade³⁰. Along

²⁸ Supra note 4

²⁹ Supra note 18

³⁰ CHANDRA RAMESH. COMPANY LAW, CENTRAL LAW AGENCY, 1978

with that there are Sub-Brokers who go about as the delegates between the representative and the speculator. Further the Securities and Exchange Board of India is required to enlist the sub-representatives through stock trades at which the merchant is a part.

3.1.3 Regulation of Collective Investment Schemes which includes Mutual and Venture Capital Funds.³¹

The Board grants registration to the Collective Investment Schemes and to the Mutual Funds. As per the regulations, a current aggregate venture plan which has either neglected to make an application for enlisting to the Board or possibly has not been allowed temporary registration by the Board or if furnished with temporary registration, it neglects to agree to the Regulation or he is not desirous of acquiring temporary registration, then needs to end up its current plans and to make reimbursement to the financial specialists and from that point present the winding up report.

The Board keeps a track on shared resources that was further strengthened through their survey reports and periodical reports to ensure that premiums of money related authorities are secured. The basic resources from time to time gave illustration on consistence of regulations and principles. The Board had made disciplinary move against different basic resources.

3.1.4 Promotion and the regulation of Self-Regulatory Organisations³²

³¹ Section 11 (2) (c), The Securities And Exchange Board of India Act, 1992.

³² Section 11 (2) (d), The Securities and Exchange Board of India Act, 1992.

The Securities and Exchange Board of India is going for the improvement of Self-Regulatory Organizations for business sector middle people. Self-Regulatory Organizations were set up/perceived over a timeframe to invigorate development of capital business sector through channelizing the reserve funds of people and little financial specialists. These Self-Regulatory Organizations are suitably engaged by section 9 of The Securities Contracts (Regulation) Act, 1956 to make bye-laws for the behavior of business, regulation and control of agreements. The Stock Exchanges goes about as Self-Regulatory Organizations with the goals that they have better feel of the ground reality and that they ought to deal with the miniaturized scale parts of regulation.

There are different points of the Self-Regulatory Organizations that are-

firstly ,the self-regulation turns into the obligation of business sector experts and this might bring about more prominent acknowledgment of standards by the individuals from the Self-Regulatory Organizations, also it gives market experts more noteworthy adaptability to respond to securities market, thirdly It evades duplication of responsibilities as it is seen over years of experience that if the administrative body gets into miniaturized scale regulation, it loses its sight of essentials and parks up in duplication of obligations, other than this the Self-Regulatory Organizations are liable to have a superior comprehension of minced substances. In spite of the fact that for any association such as Stock Exchange to adequately work as a Self-Regulatory Organizations, it is fundamental that it has the ability to implement consistence to standards and regulations, bye-laws, set around them. Also, these Self-Regulatory Organizations ought to have the capacity to build up and authorize and governing which anticipate manipulative and deceitful exchange hones and advance fair measures in trading. At present such powers are given to the exchanges by section 9 of the Act, whereby they can make bye laws for controlling of agreements and behavior of business. In any case, advancement of Stock Exchanges as Self-Regulatory Organizations and improving their viable administrative part puts further obligation on the Securities and Exchange Board of India for guaranteeing that Self-Regulatory Organizations are effectively directing their obligations.

3.15 Inspection and Inquiries³³

- **Warning / Deficiency Letters**

- i. Regarding the earnestness and extent, cautioning/warning letters are issued on mutual funds on the basis of observing through different periodical reports and insufficiencies. There are different purposes behind which cautioning and warning letters are issued to the mutual funds:
- ii. There is an infringement of rules or advertisement code
- iii. There is a postponement in accommodation of periodical reports
- iv. There is careless short-selling
- v. There is a failure to install compliance mechanism or system in place
- vi. There is deficiencies for delays on account of remitting the redemption proceeds
- vii. There is an increase in the marginal limit
- viii. There is an infringement of standard observations in offer documents
- ix. There are inconsistencies in figuring of annualized returns in draft offer report
- x. The Submission holding explanation later than the time as given by the Securities Exchange Board of India in its rules
- xi. There Discrepancy in case of inter-scheme transfers
- xii. There is postponement in offering data to the Securities Exchange Board of India examiners on auspicious premise.

³³ Section 11 (2) (i), The Securities And Exchange Board of India Act, 1992.

- **Payment of Interest³⁴**

The Board has made it compulsory that the mutual funds must pay interest @ 15% for the delay in despatch of repurchase proceeds to the unit holders. The common assets are required to report these instances of deferrals on quarterly premise to The Securities Exchange Board of India.

3.16 Research and International Relations

The Securities Exchange Board of India also conducts and brings several papers on aspects of primary and secondary market and on other issues as well. One of an example of Research paper is on Market for Corporate Control and Takeover Regulations: Trends and Analysis³⁵.

3.17 Other Functions

- **Grievance Redressal**

The grievances are taken from the financial specialists that are against the shared assets are taken up directly by the Board with the common assets for redressal.

- **Securities Market**

The Board accommodates a comprehensive financial specialist grievances handling component. The Board accommodates a uniform complaint format that is accessible at all the Securities Exchange Board of India workplaces and in addition on the Securities Exchange Board of India site for the advantage of the financial specialists. Protests those are gotten from the concerned financial specialists are recognized and after that a reference number is sent to the complainant. The dissensions are entertained by the concerned organizations. The Securities Exchange Board of India officers likewise direct gatherings with the organization authorities to implement upon them their obligations to enforce the protest of speculators. Defaulted organizations are then sent to Enforcement Division for suitable action. The Securities Exchange

³⁴ Section 11 (2) (1), The Securities and Exchange Board of India Act, 1992.

³⁵ M. T. Raju, Deepti., “Market for Corporate Control and Takeover Regulations: Trends and Analysis”, available at http://www.sebi.gov.in/cms/sebi_data/attachdocs/1293166850590.pdf (Last visited on 23/02/2016).

Board of India additionally issues fortnightly official statement for public on the status of redressal of financial specialist grievances. This report is likewise posted on The Securities Exchange Board of India site.

- **Investor's Association**

The Securities Exchange Board of India also grants registration to Investor Association so as to bring an organized form of investor's motion. The investor associations' roles are two fold, firstly to entertain the complaint of the investors and raise issues which may upset the investors. Secondly, educating the investors about the securities markets and their awareness is of utmost importance.

Certain Investors' Associations who are registered with the Securities Exchange Board of India have also organised conferences for educating investors on topics where the financial support extended by the Securities Exchange Board of India³⁶.

3.2 POWERS

3.2.1 Power to ask for Periodical Returns or direction to make Inquiries

The Securities Exchange Board of India will get from each Stock Exchange periodical returns of undertakings as given under the Securities Contracts (Regulation) rules. The Board has the ability to assess at all reasonable times books of records and different archives to be kept up by the Stock Exchanges for periods not surpassing five years as might be endorsed in light of a legitimate concern for exchange and of general society prescribed by the Central Government. It can call upon stock trades or any of its individuals to deliver in composing any clarification or data identifying with the undertakings of the Stock Exchange or of the part in connection to the trade as required by the Board in light of a legitimate concern for the general public or exchange. The Securities Exchange Board of India has the ability to select, by a request that would be composing, one or more persons to make a request as endorsed by regulations identified with the undertakings of the representing group of trade or the issues of individuals from the trade and present a report as, determined in the provisions to the Securities Exchange Board of India. In the event of any issues of the

³⁶ *ibid*

individuals from a stock trade, the Securities Exchange Board of India can coordinate with the administering group of such stock trade to make an inquiry and give the report of it. Each secretary, chief, director, or other officer of the stock trade, each individual from concerned stock trade and each operators or constituent of such part whether directly or in a roundabout way is under a duty to deliver before enquiry officer or the Securities Exchange Board of India the force identifying with the topic of the enquiry and all books of records and different reports in his guardianship. Every one of these things is to be done within the time indicated and as might be required by the authority.³⁷

3.2.2 The Power To Approve Bye-laws Of Stock Exchange

The stock exchange has the power to make bye-laws with the approval of the Securities Exchange Board of India. These bye-laws provide for submission of periodical settlements carried out by clearing houses to the Securities Exchange Board of India or publication of particulars by clearing houses subject to directions of the Securities Exchange Board of India. These bye-laws have to be published for public comments and once approved by the Board has to be published on Gazette of India and of State.³⁸

3.2.3 The power of the Board to amend or make bye-laws of recognised stock exchanges

On request of governing body of any exchange in writing or on its own motion the Board can make laws on matters specified in Securities Contracts (Regulation) Act, 1956 or amend any bye-laws made by concerned stock exchange. After consultation with the governing body, if the Board is of the opinion, it can amend the bye-laws and record its reasons for the same³⁹.

³⁷ The Institute of Chartered Accountants of India., “Corporate And Allied Laws”, available at http://www.icai.org/resource_file/19399sm_cal_finalnew_cp16.pdf (Last visited on 09/02/2016).

³⁸ Id. at p. 22.

³⁹ Section 9, The Securities Contracts (Regulation) Act, 1956.

3.2.4 Power to provide license to dealers in certain areas

The Securities Exchange Board of India has the power to grant a License to any person for the business of dealing in any area or State except to those to which to which Section 13 of The Securities Contracts (Regulation) Act, 1956 is applied.

3.2.5 The Power to delegate

The Central Government has the right to delegate the power to the Board and the Reserve Bank of India by an order published in the Official Gazette, delegating the powers exercisable by it under any provision of the Securities Contracts (Regulation) Act, 1956 in relation to such matters and directed to such conditions, as may be specified in the order.⁴⁰

3.2.6 Power to Adjudicate

Under Sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB with the end goal of adjudging, the Board can name any of its officers not beneath the rank of Divisional Chief for turning into an arbitrating officer to hold inquiry in a particular way with the end goal of forcing any punishment subsequent to giving any individual a reasonable chance of being heard.

At the time of holding a request, the mediating officer has power to summon and can uphold the participation of any individual to give proof or to deliver any record, which is valuable for or pertinent to the topic, and if on such request, the arbitrating officer ought to be convinced that any individual has neglected to consent to the provisions of segments indicated in sub-section (1), the settling officer in such case, force such punishment as it regards fit as per the provisions of any of the previously stated segments.⁴¹

⁴⁰ Section 29A, The Securities and Exchange Board of India Act, 1992.

⁴¹ Section 15I, The Securities and Exchange Board of India Act, 1992.

3.2.7 Other Powers Of The Securities Exchange Board of India

The Board has been conferred with some additional powers with regard to certain provisions under the Companies Act, 2013. Provisions till the point they relate to issuing and transfer of securities and relating with the non-payment of dividend, in the case of listed public companies which are intending to get their securities listed on the stock exchange, shall be administered by the Securities Exchange Board of India⁴².

3.3 PENALTIES

3.3.1 Penalty on failure to furnish Information

Any person who is required under the Act or any rules and regulations:-

- Presenting any document, report or return to the Board, neglects to do likewise, he should be subject to a punishment of rupees one lakh for each day till such time the failure proceeds or a measure of rupees one crore, whatever is less.
- To furnish any data, archives or books or document within the time indicated thereof in the principles or regulations, neglects to provide the same or record return, he might be at liability to a punishment of a measure of rupees one lakh for each day till such time the failure proceeds or a measure of rupees one crore, whatever is less.
- To keep up records or books of records, neglects to keep up the same, he should be liable to a punishment of a measure of rupees one lakh for every day till such time the failure proceeds or a measure of rupees one crore, whatever is less.

⁴² “The Companies Act, 2013”, available at http://www.mca.gov.in/Ministry/pdf/Companies_Act_2013_13jun2011.pdf (Last visited on 12/02/2016).

3.3.2 Penalty on failure to enter into Agreement with clients⁴³

Any individual who is enrolled as an intermediary under the Act and is required to go into a concurrence with his customer, however neglects to go into such concurrence with his customer, he might be obligated to a punishment of a measure of rupees one lakh for each day till such time the failure proceeds or a measure of rupees one crore, whatever is less.

3.3.3 Penalty on failure for redressing Investors' grievances⁴⁴

Any intermediary who is called by the Board, fails to present the grievances, such person will be liable to pay one lakh on each day till such failure continues or one crore, whichever is less.

3.3.4 Penalty on failure by an Asset Management Company⁴⁵

If an asset management company which is registered has failed to comply with the regulations on the activities of such companies, is liable to a penalty of an amount of rupees one lakh per day till such time the failure continues or an amount of rupees one crore, whatever is less.

3.3.5 Penalty for default of Stock Brokers⁴⁶

Any person who is a stock broker under this Act:

- Fails for issuing contract notes in the structure as indicated by the exchange in which that intermediary is a part, then that individual might be at risk to a punishment not greater than five times for which the agreement note was at first required to be issued by that agent;

⁴³ Section 15B, The Securities And Exchange Board of India Act, 1992.

⁴⁴ Section 15C, The Securities And Exchange Board of India Act, 1992.

⁴⁵ Section 15E, The Securities And Exchange Board of India Act, 1992.

⁴⁶ Section 15F, The Securities And Exchange Board of India Act, 1992.

- Fails in making payment of the amount or fails to deliver any security due to the investor within the period mentioned in the regulations, then that person is liable to a penalty of an amount of rupees one lakh per day till such time the failure continues or an amount of rupees one crore, whatever is less.
- Charges an amount of brokerage which is more as may be specified in the regulations, then that person shall be liable to a penalty of five times of brokerage charged in excess of the specified brokerage.

3.3.6 Penalty for Insider Trading⁴⁷

If any member who:

- On the behalf of any other person or on his own behalf deals in securities on any exchange of any unpublished price sensitive information or
- converses any such data to any individual with or without his solicitation for that data aside from as has been required in the conventional course of business or any law or
- Procures or advises for other persons for managing in any securities of a body corporate on the premise of such information. Then he is liable for a penalty of an amount of rupees twenty-five crore or three times the profits made, whatever is higher.

3.3.7 Penalty on Unfair Trade Practices⁴⁸

If anyone indulges in an unfair or fraudulent trade practices in dealing then he is subject to a punishment of a measure of rupees a twenty-five crore or three times the benefits made out of such practices, whatever is higher.

3.3.8 Penalty in case no separate penalty has been provided⁴⁹

⁴⁷ Section 15G, The Securities And Exchange Board of India Act, 1992.

⁴⁸ Section 15HA, The Securities And Exchange Board of India Act, 1992.

Any individual who neglects to follow any provisions of this Act, the standards or the regulations made for which no particular punishment has been given in the Act, is at liable to a punishment which might reach out to a measure of rupees one crore.

⁴⁹ Section 15HB, The Securities And Exchange Board of India Act, 1992.

CHAPTER 4

**THE SECURITIES AND EXCHANGE BOARD OF INDIA'S
PERFORMANCE AS A REGULATOR – A CRITICAL AND
BRIEF REVIEW**

A clarification of the Securities and Exchange Board of India as a controller of the securities business sector is not finished without a brief outline of its achievements in this way. This review is a thumbnail representation of the controller's more critical commitments. The Securities and Exchange Board of India's role is reviewed along the following major areas:-

- 4.1 Capital Market
- 4.2 Primary market and market access
- 4.3 Public Issues
- 4.4 Secondary market
- 4.5 Disclosure requirements
- 4.6 Corporate Governance
- 4.7 Market for corporate control
- 4.8 Trade and Trading Mechanisms
- 4.9 Settlement systems
- 4.10 Dematerialisation
- 4.11 Institutionalisation of Trade and of Securities
- 4.12 Ownership of stock exchanges; and
- 4.13 Compliance Enforcement.

4.1 CAPITAL MARKET

The capital business sector can be said to be a business sector of long term finances that incorporates both equity and debt and funds raised inside of the nation and outside of the nation. The essential business sector can be clarified as the stream of assets from the surplus area to the administration division and corporate segment through essential and optional issues to banks and non-banks monetary delegates. The essential issue prompts capital data i.e. incremental change in inventories and making of net fixed assets.⁵⁰

The secondary market can be explained as a market for outstanding securities. On one side where the primary issues results into capital information, the secondary market works only in marketability and liquidity of outstanding debt.

4.1.1 History

The historical backdrop of the capital business sector in India can be followed back in the eighteenth century when East India Company had its securities exchange in the nation. It has been a long path for the Indian capital business sector. In the blink of an eye the capital business sector is more composed, genuinely incorporated, worldwide, modernized and developed. The Indian business sector of equity is one of the best with regards to innovation and also esteem and volume of business. It was on August 31, 2010, that Indian equity stocks downright market capitalization sum was roughly Rs.70, 00,000 crores.

4.1.2 Capital Markets

Once the securities have been issued in the primary sector, then they are traded in the secondary market. The stock exchanges with the help of other intermediaries too, provide a necessary platform for trading in secondary market and for clearing and settlement. These securities are settled, traded and cleared within the regulatory framework prescribed by the Board. Till now, it was mandatory for the Indian companies that they had to list their securities on one of the the regional stock

⁵⁰ DATTA, ON THE COMPANY LAW, EASTERN LAW HOUSE, CALCUTTA.

exchanges nearest to their registered office, to provide an opportunity to investors to invest in securities of the local companies. Because of the previous regulation which required companies to get listed first at the regional stock exchange, presently there are in all 23 exchanges operating in the country.

Due to the rising application of technology, the trading platform of all the exchanges can be accessed from any part of the country through the terminals of trading. However, the trading platform of the National Stock Exchange can be accessible through mobile and Internet devices. In a widespread geographically country like India, this resulted in a significant expansion of reaching of the exchanges to the homes of the investors and thereby increasing the aspirations of people to have exchanges in their area. As a result of the reforms/initiatives taken by the Regulators and the Government, the market microstructure has been modernized and refined. The investment choices for the investors have also broadened.

The Reserve Bank of India settling inter-bank transactions at real time mode also introduced real gross settlement⁵¹. The developments in the securities market provide the necessary growth and development; thereby strengthening the emerging market economy in India.

4.1.3 Importance of the Capital Market

Capital business sector achieves an imperative reason for pooling the capital assets of the nation and after that making it accessible to the speculators. Much created capital markets enlarge assets by loaning and pulling in assets on the worldwide scale.

A capital market can take care of this issue of shortage of assets. The development of joint stock business has in its turn energized the advancement of capital markets.

4.1.4 Role of the Board in Capital Market

- ❖ ***Power for making rules on controlling stock exchange:*** - It has the ability to make new standards for controlling stock trade in India. As an Example, the Securities and Exchange Board of India altered the time of exchanging 9 AM and 5 PM in the business sector.

⁵¹ <http://www.nse-india.com/content/us/ismr2004ch1.pdf> (last visited on 26/12/2016)

- ❖ ***Providing license to dealers and brokers:*** - The Securities and Exchange Board of India have power to provide license to the brokers and also to the dealers of the capital market. If it finds that any financial product is of capital nature, then the Securities and Exchange Board of India can also control that product and its dealers. In UPIL'S case the Securities and Exchange Board of India said, "It is just like mutual funds so all the banks and financial and insurance companies who want to issue it, must take permission from the Board."⁵²
- ❖ ***Stopping any type of fraud:*** -It has different forces for halting extortion in the capital business sector. It can put a restriction on the exchanging of those specialists who are included in deceitful and out of line exchange works on identifying with securities exchange. It can force the punishments on capital business sector delegates in the event that they are included in insider trading.⁵³
- ❖ ***Controlling the Merger, Acquisition and Takeover of the companies:*** - Various organizations in India are in a hurry to make syndication in the capital business sector. Subsequently, these organizations purchase every single other company or arrangement. The Securities and Exchange Board of India keeps a track whether merger is for improvement of business or to hurt the capital business sector.⁵⁴
- ❖ ***Auditing the performance of market:*** - The Board make use of its powers for auditing the performance of various Indian stock exchanges to bring uniformity in the working of stock exchanges.
- ❖ ***For creating relationship with Institute of Chartered Accountants of India:*** - Institute of Chartered Accountants of India is the authority to make new auditors of the companies. The Board creates good relationship with Institute of

⁵² Sarvesh Khatnani., "Role of SEBI in Capital Market: Developments and Challenges", 2013, available at <http://corporatelawreporter.com/2013/10/30/role-sebi-capital-market-developments-challenges-1/2/> (Last visited on 08/02/2016).

⁵³ Supra note 34

⁵⁴ *ibid*

Chartered Accountants to bring uniformity in the work of company accounts because audited financial statements reflects the real face, on the basis of which the investors decide whether to invest or not. Furthermore, investors can easily trust on these audited financial reports. Much after the Satyam Scam, the Securities and Exchange Board of India is thoroughly investigating with Institute of Chartered Accountants of India, whether Chartered Accountants are doing their duty in an ethical way or not.⁵⁵

❖ ***Introduction to the derivative contracts on Volatility Index:*** - Just to reduce the risk of the investors, the Securities and Exchange Board of India decided to permit Stock Exchanges to introduce derivative contracts on Volatility Index, on major condition that the Volatility Index has a track record of at least one year. Secondly that there is an appropriate risk management framework for the derivative contracts for which the Stock exchange has to submit:

- i. The positioning and Exercise Limits
- ii. The margins
- iii. The economic purpose intending to serve
- iv. Contribution to market development
- v. The safeguards and risk protection measures adopted to ensure market integrity, to protect investors and smooth and orderly trading.
- vi. The infrastructure of the exchange system to effectively monitor trading in such contracts, and
- vii. The details of settlement procedures & systems i. Details of back testing of the margin calculation for a period of one year considering a call and a put option on the underlying with a delta of 0.25 & -0.25 respectively and actual value of the underlying.

⁵⁵ *ibid*

- ❖ ***Requiring a report of Portfolio Management Activities:*** - The Board also has the power requiring a report of portfolio management to check the capital market performance. Recently, Securities and Exchange Board of India had sent a letter to all Registered Managers of India for demanding report.

Education of the investors: - The Securities and Exchange Board of India every now and then mastermind workshops to teach the financial specialists. On May 22, 2010 the Securities and Exchange Board of India forced a workshop. A financial specialist can get training through the Securities and Exchange Board of India pioneers by getting redesigned data.

PRIMARY MARKET AND MARKET ACCESS

4.2.1 Introduction

The Primary business sector gives a chance to issuers of securities in the business sector, the Government and the corporates, to raise assets for meeting their necessities of venture and to release every one of the commitments. The guarantors issue and create fresh securities in return of assets by method for open issues or as private placement. They might issue the securities at the face value, or at a premium/markdown value and these securities might take an assortment of structures, for example, debt, equity or some hybrid nature of instrument. They might likewise issue the business sector securities in household business sector and worldwide business sector through ADR/GDR/ECB route.

4.2.2 The Securities and Exchange Board of India and Primary Market

The measures undertaken by the Securities and Exchange Board of India: -

→ ***Entering Norms***

- i.** The record of dividend payment for minimum three years preceding the issue.
- ii.** Companies already listed - when the post-issue net worth is more than five times the pre-issue net worth.

- iii. For manufacturing company which do not have such track record – appraise project by a scheduled commercial bank or public financial institution.
- iv. The corporate bodies - Five shareholders for every one lakh rupees of the net capital offer which is made to the public.
- v. Banks - Two years of profitability for all the issues above par value.

Offer documents to companies.

→ ***The Contribution of the Promoter***⁵⁶

- i. It has to be not less than 20% of the issued capital.
- ii. Receive promoters' contribution.
- iii. Lock in period as per the Securities and Exchange of India.
- iv. Cases of non-underwritten public issue

→ ***Disclosure***

- i. Draft prospectus
- ii. Unaudited financial results

→ ***Book building***⁵⁷

- i. The Securities and Exchange Board of India always recommend a two-tier under writing system.
- ii. Public issue through prospectus as a mode.
- iii. Role of book runners and syndicate members.
- iv. Minimum thirty centres

⁵⁶ *ibid*

⁵⁷ *ibid*

→ *Allocating shares*

- i. Minimal application of shares.
- ii. Reserving for small investors.
- iii. Allotment of the market securities.

The Securities and Exchange Board of India's disclosure requirements for public offering is reviewed under disclosure related developments. It is necessary to point out the following⁵⁸:

- i. The Securities and Exchange Board of India confines to a specific level the issuance of equity and of convertible securities for issuing to organizations that qualify regarding criteria of size and benefit which are apparently expected as an intermediary for firm quality.
- ii. The Securities and Exchange Board of India permits the free estimating of securities however not in the situation of private placement by organizations recorded, where shares are issued at a value which is connected to the business sector price by Securities and Exchange Board of India.
- iii. There are different examples of administration as with the lock-in of proprietor's value and the degree of dilution, the effect of which has not been exactly tried.

One noteworthy component of the regulation of the essential business sector is the technique adopted by the Securities and Exchange Board of India. The issuance movement is represented through the procurements in the Disclosure and Investor Protection Guidelines. The incentives are there in the regulations which administer the classes of intermediaries who take an interest in the market, for example, the recorders to an issue, trader investors, and brokers to the issue thus who deal with the procedure of issue. The exercises on the essential business sector are controlled through contracts that have the aim to relieve the different sectors from disappointment in the essential business sector.

⁵⁸ Dr. kvsn jawahar babu, *Investor protection measures by SEBI*, Arth Prabandh: A journal of Economics and Management.

4.2 PUBLIC ISSUES

The Securities and Exchange Board of India is responsible for governing the rules, regulations and procedures relating to public issues in India. Any company that is going public in India should get approval from the Securities and Exchange Board of India before opening its Initial Public Offering. Issuers companies lead managers submit the public issue prospectus to the Securities and Exchange Board of India provide clarification to make changes to the prospectus suggested by the Securities and Exchange Board of India for its approval⁵⁹. The Securities and Exchange Board of India validate the Initial Public Offering prospectus and ensures that all the declaration made in this document are correct and also make sure that document has enough information for helping investors to take decision before applying shares in an Initial Public Offering.

4.3.1 Kinds of Issues

The issues can be classified as a Public issue, Rights issues or preferential issues which are also called by the name of private placements. Private issues or preferential placements process is comparatively simpler than the public or the rights issues.

A further arrangement of open issues is Initial Public offerings and further public offering. In the first sale of stock, the backer makes an offer for new financial specialists to enter its shareholding group. The organizations that issue makes definite exposures according to the Disclosure and Investor Protection Guidelines⁶⁰ and offers it for subscription The important features are -

❖ *Initial Public Offering*

First sale of stock is the point at which an unlisted organization makes a new issue of business sector securities or an offer available to be purchased of existing securities to people in general. This makes path for the simple posting and exchanging of the guarantor's securities.

⁵⁹ DATEY, V.S., TAXMANN'S BUSINESS AND CORPORATE LAWS, TAXMANN ALLIED SERVICES PRIVATE LIMITED (4th.ed.)

⁶⁰ GHOSH, INDIAN COMPANY LAW, BHARAT LAW HOUSE (12th ed., Volume 1).

❖ *Further Public Offering*

Further Public Offer is when a company which is already listed, makes either afresh issue to the public or an offer for sale through an offer document to the public. An offer for sale in such a case is allowed only if it is made to satisfy listing or continuous listing obligations.

❖ *Rights Issue*

In a situation where a listed company issues fresh securities as on a record date to its existing shareholders, it is termed as a rights issue. The rights are ordinarily offered before the issue in a specific proportion to the quantity of securities. This course has been most appropriate for the organizations who might want to raise capital without the weakening of the stake of its current shareholders unless they don't plan to subscribe to their qualifications.

On the other hand, private placement is an issue of shares of securities which is neither a public issue nor a right issue⁶¹. This is a comparatively faster way for a company to raise equity capital. A private placement of convertible securities or of share or by a listed company is generally known as preferential allotment. A company listed undertaking preferential allotment has to comply with the provisions contained in Chapter XIII of the Securities and Exchange of India (Disclosure and Investor Protection Guidelines) pertaining to preferential allotment in Securities and Exchange of India (Disclosure and Investor Protection) guidelines which includes pricing disclosures in notice etc., along with the requirements specified in the Companies Act⁶².

❖ *Qualified Institutions Placement*

⁶¹ Section 62, The Companies Act, 2013

⁶² The Companies Act, 2013

It is a private placement of equity shares or securities which are convertible into equity offers by recorded organization to qualified establishment purchasers as per the provisions of part XIII An of the Securities and Exchange of India (Disclosure and Investor Protection Guidelines)⁶³. The Chapter contains provision relating to disclosures pricing, currency of instruments etc.

4.3 SECONDARY MARKET

4.4.1 Introduction

The secondary market is the spot to buy and offer existing securities. It empowers an investor for adjusting his holdings of securities subject to changes in his assessment about the criteria's of return and risk. It likewise enables him to offer securities for money to meet his liquidity needs. It basically provides exchanges which give a set stage and platform to exchanging of securities to middle people who help with exchanging of securities and settlement and clearing of exchanges. The securities are exchanged, settled and cleared according to endorsed administrative structure under the supervision of the Exchanges and oversight of the Securities and Exchange Board of India.

4.4.2 Listing of Securities

Listing of securities means admission through a formal agreement of a guarantor to exchanging benefits on a stock trade. The essential target of admission to dealings is to give liquidity to the market securities furthermore giving a component to compelling administration of exchange.

4.4.3 Process of Listing of Securities

The stock trade can set up the guidelines for listing of securities as a major aspect of the bye-laws.⁶⁴ Such organizations or aggregate venture plans which need to get their securities or units recorded on a stock trade need to apply to the exchange where they

⁶³ Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000.

⁶⁴ Section 9(1)(m), The Securities Contract (Regulation), Act 1956.

wish their securities to get listed and consent to the important conditions indicated in the bye-laws and the Securities Contract Regulation Rules. However these conditions can't be less stringent than those predetermined in the Disclosure and Investor Protection Guidelines. The Securities Contract Regulation Rules describe the files and information that an association or a total endeavors plot needs to provide for the stock exchange while searching for posting of its securities. Taking an outline, the Securities Contract Regulation Rules underwrite the base measure of quality that should be offered for an association to possess all the necessary qualities for listing its shares. Stock exchanges have the benefit to loosen up the base issue standard with the prior underwriting of the Securities and Exchange Board of India. Further the Securities Contract Regulation Rules determine an arrangement of procurements that organizations trying to rundown need to agree to. The Rules leave a compelling voice in the hands of the Board to waive or unwind the authorization of the listing prerequisites. The securities trade might stipulate extra conditions.⁶⁵.

Any stock trade might pull back the listing of the securities of an organization if there should arise an occurrence of rebelliousness with the necessities of the listing understanding which can be challenged by the organization with the Securities Appellate Tribunal⁶⁶.

4.4.4 The Securities and Exchange Board of India and Secondary Market

Reformation in the secondary market

- ❖ Governing board
- ❖ Infrastructure
- ❖ Settlement & clearing
- ❖ Price stabilization
- ❖ Debt market

⁶⁵ Rule 19 (2)(a)The Securities Contract (Regulation), Rules 1957.

⁶⁶ Rule 19(5)The Securities Contract (Regulation) Rules 1957.

❖ **Delisting**

❖ ***Governing Board***

- i. Representation of the brokers and non-brokers was made in the ratio of 50:50.
- ii. In disciplinary, arbitration and default committees 60% of the brokers were made.
- iii. 40% representation was made for trading members.

❖ ***Infrastructure***

- i. The screen based exchanging terminals.

❖ ***Settlement And Clearing***

- i. Settlement which is to be done weekly.
- ii. The auctions of non-delivered shares within the time frame of 80 days after settlement.
- iii. Advice to set up Clearing Corporation, clearing houses or settlement guarantee fund.
- iv. Warehousing offices given permission by the Securities and Exchange Board of India.

❖ ***Debt Market Segment***

- i. Regulates by way of The Securities and Exchange Board of India (depository participants) Regulation Act 1996.

- ii. Listing requirements of debt instruments.
- iii. Investment range prescribed for Foreign Institutional Investors.
- iv. The system of dual rating if more than Rs.500 million.

❖ *Price stabilization*⁶⁷

- i. Division for supervising supervise the movements in prices.
- ii. Supervising the prices of new listed scrip from the first day of trading.
- iii. A circuit breaker system and other monitoring restrictions could be applied.
- iv. The imposition of special margins of 25% on purchase in addition to margins.
- v. The price bands
- vi. The price filters.

4.4 THE DISCLOSURE REQUIREMENT

The step for continuing disclosures in the primary market was a matter of concern as quantitative development of the business sector and its opportunity for issues had additionally brought up concerns about the nature of issues entering the business sector. The revelation norms were not restricted to bookkeeping data but rather were reached out to other issue related interchanges, for example, commercials.⁶⁸

The continuing disclosure under the Companies Act which was there prior to the establishment of the Board suffered from three principal deficiencies. These were as follows:

- ❖ low frequency at least once in one year

⁶⁷ Amit K Vyas (2006) "Project MCA-21: A Commendable Thrust towards Company Law Reform" Chartered Secretary, Vol. III, No. 4, pp 304–317

⁶⁸ Chairmanship Y.H. Malegam., "Recommendations of two committees, in 1995-96 and 2000-01" <http://www.sebi.gov.in/commreport/melagamreport.pdf> (Last visited on 05/11/2015).

- ❖ Insufficient administered deterrents for non-compliance.
- ❖ Disclosure obligations for companies with widely and limited distributed ownership. To improve the disclosures, the Securities and Exchange of India framed a committee to examine the question of disclosures⁶⁹.

The Securities and Exchange of India directed recognized stock trades to execute the majority of the suggestions of a board of trustees which analysed proceeding with exposure necessities deliberately for the first time in 1996⁷⁰.

The introduction of the governance requirements in 2000-01 of important matters such as related party transactions with directors, promoters, management, relatives, subsidiaries and so on were added. For organizing the development of the business sector, the Securities and Exchange of India entered into a collective activity with the Institute of Chartered Accountants and formed the National Committee on Accounting Standards. In these years, with an expansion in the recurrence to quarterly reporting the divulgence necessities have begun commanding the more fine-grained governance of the companies.

Taking after the Securities and Exchange of India's orders, the trades have enhanced the stream of exchange related data by innovation and decreasing the examples of crevices in the stream of data as on account of off business sector exchanges, for example, square exchanges which required to be steered through the exchanging of the stock trade.

4.5 CORPORATE GOVERNANCE

The Securities and Exchange of India has driven the effort in upgrading models of corporate governance, however the matter of corporate organization should be critical to all body corporates.

The major items that were covered under Clause 49 are as follows:

⁶⁹ Amit K. Vyas (2003) "Corporate Governance in India, Much Celebrated But Hardly Implemented" Chartered Secretary, Vol. XXXIII.

⁷⁰ Bhave Committee Report

- ❖ insuring independence of the Board and disclosure requirements
- ❖ insuring correctness and credibility of disclosures
- ❖ the requirement of financial literacy between the members of the audit committee and expertise in accounting / financial management among one of them
- ❖ the whistle blowing policy
- ❖ the requirement of risk management policy
- ❖ the certification statements by the Chief Executive Officer / Chief Financial Officer to the Board
- ❖ quarterly covering consistence with the prerequisites of each element of Clause 49 to the stock trades. Every one of the organizations making an Initial Public Offering should agree to Clause 49 of making an Initial Public Offering. The elements are said to draw upon the enactment in the targets and also way to deal with directing corporate administration.

It's too early to survey the effect of Clause 49 on the administration principles of organizations in India albeit a few studies have attempted to gauge the effect of consistence with Clause 49 available valuation of the organizations. There are a few onlookers who have additionally communicated questions about whether minor institution of regulation is sufficient to guarantee the autonomy of the Board and then raising the principles of administration.

4.6 MARKET FOR CORPORATE CONTROL

Takeovers are controlled by the Securities and Exchange of India (Substantial Acquisition of Shares and Takeover) Regulations 1997 which are otherwise called the Takeover Code which is itself a considerably adjusted rendition of the 1994 Code further changed again generously in 2002 and is subject of a noteworthy examination. The Code has empowered a dynamic business sector for corporate control to develop in India.

TRADING AND TRADING MECHANISM⁷¹

The Board denoted an essential part in moving numerous Indian trades to embrace an electronic exchanging framework ⁷². Trading and post trading on the major stock exchanges provides these advantages:

- ❖ Reducing costs and camouflage of review trails of control
- ❖ The guaranteed speculators got time based priority and right costs.
- ❖ Fundamentally changed the financial aspects of the matter of stock exchanges as the operations of the National Stock Exchange and The Stock Exchange Mumbai were permitted to be stretched out electronically to different urban areas from 1996-1997. The aftereffect of this was the offer of exchange on local stock trades dropped consistently from 57% in 1994-1995 to 4% in 2002-2003. The way that the Securities and Exchange of India needed to apply weight on a portion of the trades to change to electronic exchanging resentment of the signs from the business sector, it was from the accomplishment of National Stock Exchange that exchanging was liable to be forward for stock trades in India recommends it was a range that market strengths might not have given the obliged motivators to the occupant players to pick what was to the greatest advantage of the exchange in general.

4.10 DEMATERIALISATION

With the passage of Foreign Institutional Investors beginning in 1992 and establishment of shared assets in the private division in 1994, the regulation of stock exchanging, exchanging volumes had expanded significantly throughout the years. Various choices rose which included combination of littler exchanging parcels into a solitary bit of paper known as a "gigantic testament" and custodial administrations which represented considerable authority in taking care of the expanded paper work identifying with the exchange. These activities did not address the issues of the quick trading activities.

⁷¹ Balakrishnan, R. (2009) "Corporate Governance – Induction of Directors," SEBI and Corporate Laws, Vol. 93

⁷² *ibid.*

Dematerialisation was made compulsory in 1988. The system of dematerialisation had various advantages:

- ❖ The liquidity due to withdrawal of the requirement of minimum trading lot sizes and reduced the “no-delivery” period.
- ❖ There was no risk or loss on account of loss of scrips or mutilation.
- ❖ The shorter periods of book closure for corporate actions such as bonus issues, rights or dividends payments.
- ❖ This eliminated delays in transfer that were intended to withhold transfers so as to create an artificial shortage of scrips in the market.

4.11 INSTITUTIONALISATION OF TRADING

An element of the better created securities markets is the degree of institutional responsibility for and the expanding offer of organizations in securities exchange. A considerable part of these streams have been conveyed into responsibility for. Notwithstanding a sizeable measure of shareholding in the hands of Indian establishments, for example, insurance agencies and improvement budgetary foundations gained through an assortment of components, for example, buy of value stakes in Indian organizations and in addition through transformation of their advances to Indian corporates. Other than from its worth as a wellspring of capital, these streams are additionally said to be vital for the effect they appear to have on business sector valuation. It was evaluated that the connection between month to month net Foreign Institutional Investors inflows and month to month Sensex returns is 0.49 from 1994 to 2005 that proposes expanding join between Foreign Institutional Investors inflows and business sector returns, however of uncertain causal heading. Essentially, a few researchers have contended that these financial specialists have applied weight on Indian corporate to raise their models of administration. The purpose of qualification brought out is that the state possessed or state controlled financial specialists did not use the changes in the administration.

4.12 MARKET INTEGRITY VIS-A-VIS INSIDER TRADING

Keeping in mind the end goal, to keep up the certainty of the speculators in the securities market it is vital that some financial operators who have leverage over the others don't misuse the same to infer monetary additions for them. Moreover, there has all the earmarks of being some observational confirmation that insider exchanging can expand instability. The Securities and Exchange of India's first enactment to curb insider trading namely, the Securities and Exchange of India (Prohibition of Insider Trading) Regulations, 1992⁷³ had not made much progress because of poor enforcement. Such regulations have been amended over and over again from time to time. There has been some worry about this methodology forces a lot of a weight on the associations and this can be particularly burdensome on account of small associations. General viewpoint however has all the earmarks of being that given the trouble in demonstrating and indicting an offense of insider exchanging, the methodology of counteractive action is better.

An equivalent genuine concern is manipulative practices. The manipulative practices done are normally by merchants and dealers in the business sector. Typically this includes the proprietor directors or promoters of organizations who might remain to pick up from these manipulations. Such practices have regularly been intended to make a false market or to push the cost of the securities at low level through some different means and roundabout exchanging. Such practices are not only constrained to the "penny stocks" alone but rather have frequently been in the shares of bigger and settled organizations moreover. Therefore manipulative practices can hurt the premiums of little and expansive financial specialists alike and also that of organizations whose shares are liable to such practices. The Securities and Exchange of India has tended to these through The Securities and Exchange of India (Fraudulent and Unfair Trade Practices) Regulation, 2003.

The Securities and Exchange of India has supported its measures with due investment in the markets. The Securities and Exchange Board of India's effort at refining the integrity of markets includes its attempts at improving the corporate and general governance. Most importantly, the separate nature of ownership should enable the stock exchanges to effectively curtail the level of manipulative practices in the

⁷³ http://www.sebi.gov.in/cms/sebi_data/attachdocs/1421319519608.pdf (last visited on 4/02/2016)

market. The quality of supervision depends on the number of instances that are identified and taken up for investigation.

4.13 GOVERNING STOCK EXCHANGES

From initial days the Securities and Exchange of India's methodology towards administration of stock trades are affected by the discoveries in the investigation finished in 1992-1993. The significant finding of this assessment was that the trades were not working as viable Self-Regulatory Organizations, not managing their individuals through the requirement of bye-laws, standards and regulations are given careful consideration to redressal of financial specialist grievances with long pending mediation cases. In the year 1993-1994 the Securities and Exchange of India required various alterations to the standards and articles of relationship of stock trades. Such changes mostly needed to do with including open delegates on the administering collections of trades in the different statutory councils and a constrained break, so that individuals could be re-chosen to the Board. The scope of these amendments has been summed up clearly in the annual report that says “It is expected that with this restructuring stock exchanges would move away from their closed club character and re-orient them to function as public institutions⁷⁴.”

4.14 COMPLIANCE ENFORCEMENT

Framing a perspective on consistence implementation is difficult on the grounds that that would require that all examples of business sector misuse and infraction are recognized and managed. The Securities and Exchange of India has been less powerful in indictments and punishing the business sector members for rebelliousness. Certain eyewitnesses ascribe it to it as absence of authority to prosecute while others attribute it as a lack of effectiveness of inability to make a convincing case with Securities Appellate Tribunal and the Supreme Courts. As there is a nonattendance of specific courts that would have the limit for managing the matters including the monetary markets is referred to as a third purpose behind

⁷⁴ Giridharan, P.T. (2004), “New Dimensions to the audit of Corporate Governance,” SEBI and Corporate Laws, Vol. 49 No. 1

the Securities and Exchange of India's absence of accomplishment in securing arraignment against different offenses.

CHAPTER 5

ROLE OF CENTRAL GOVERNMENT AND FOREIGN INSTITUTIONAL INVESTORS

5.1 CENTRAL GOVERNMENT

The Central Government which has various powers for issuance of directions to the Board supersedes the Board and can call for reports and return as required by it. The Central Government has the power for giving guidelines or to making regulations and rules for the Securities and Exchange Board of India.

The activities of the Board are financed from the grants given by Central Government, along with expenses, charges thus on gathered by the Securities and Exchange Board of India. The fund which is known as the Securities and Exchange Board of India "General Fund" is set up in which all expenses, charges and are credited. The assets are utilized to meet the costs of the Board and payment to staff and individuals of the body⁷⁵.

5.2 FOREIGN INSTITUTIONAL INVESTORS

5.2.1 *Union Government Allowance*

- ❖ Foreign Institutional Investors
- ❖ Non-Residents
- ❖ Persons of Indian Origin

Under the scheme the Foreign Institutional Investors / Non-Resident Indians can acquire shares or debentures of companies through the exchanges in India.

5.2.2 *Implications*

- ❖ It basically affects Sensex movements

⁷⁵ *ibid*

- ❖ It makes the market indications
- ❖ The guidelines announced in 1992
- ❖ In the year 1993, Twelve Foreign Institutional Investors got registered
- ❖ In the end of 1996-1997, 439 Foreign Institutional Investors were registered
- ❖ Can trade in securities listed including Over-The-Counter Exchange of India.

5.2.3 *Ceiling for Investment for Foreign Institutional Investors*⁷⁶

- ❖ 24% of the paid up capital of the Indian company
- ❖ 10% for Non-Resident Indians / Persons of Indian Origin.
- ❖ 20% of the paid up capital in the case of public sector banks including the State Bank of India.

5.2.4 *Modifications in Ceilings*

- ❖ 24 % ceiling for Foreign Institutional Investors investment can be raised till sectoral cap/statutory ceiling subject to the approval of the board and the general body of the company passing a special resolution to that effect.
- ❖ The ceiling of 10 % for Non-Resident Indians/Persons of Indian Origin can be raised to 24% subject to endorsement of the general body of the organization passing a resolution to that.⁷⁷

⁷⁶ Dilip Kumar Sen (2010) “Corporate Governance norms for Indian Companies – Have they changed Corporates”?(volume 98).

⁷⁷ *ibid*

5.2.5 Monitoring of Foreign Investments

- ❖ The Reserve Bank of India supervises the ceilings on Foreign Institutional Investors / Non-Resident Indians / Persons of Indian Origin investments in Indian companies on a daily basis.
- ❖ For effective supervision of foreign investment ceiling limits, the Reserve Bank has fixed cut-off the points that are two percentage points lower than the actual ceilings.

5.2.6 The Securities and Exchange Board of India Guidelines for Foreign Investors

- ❖ As per 1995 regulations Foreign Institutional Investors shall hold certificate granted by the Board to trade in Indian market.
- ❖ To provide the certificate the applicant should
 - i. Professional and competence record, track record, general reputation of fairness and of the integrity.
 - ii. Regulation by an appropriate foreign regulatory authority.
 - iii. Permission under the Foreign Exchange Regulation Act 1973.
 - iv. That is valid up to 5 years

CHAPTER 6

RECENT SCAMS AND THE REGULATORY FRAMEWORK

6.1 HARSHAD MEHTA SCAM (1992)

6.1.1 Introduction

His full name was Harshad Shantilal Mehta. He was born on 29 July 1953 and died on 31 December 2001. He was a Stockbroker. He had degree in Bachelor of Commerce and after that began his working life as a worker of the New India Assurance Company⁷⁸.

In the early eighties he started working with stock broker P. Ambalal who was affiliated to Bombay Stock Exchange. He then became a jobber on Bombay Stock Exchange for stock broker P.D. Shukla then. He took advantages of loopholes in the banking system. He triggered the famous “SENSEX” in 1992 and diverted funds of Rs.4,000 crore.

It was on April 23, 1992, that the journalist Sucheta Dalal published Mehta's scam.

6.1.2 The Instruments used in Scams

- *Ready Forward Deal*

At a point of time, when there were banks needing to offer their securities, for example, bonds/offers for money and there would be banks offering so as to need to purchase securities money. Harshad Mehta used to go about as a mediator between such banks.

With an Illustration, assume Punjab National Bank needed to offer securities and HSBC Bank needed to purchase securities. At that point he went to Punjab National Bank and guarantees them that he will discover a purchaser for them and take their securities and request one week time for this procedure. After that instantly he went to

⁷⁸ Shah, S.M., Lectures on Company Law, Seventeenth Edition

HSBC Bank and lets them know that he will discover a merchant and take their money and request one week time. By this technique, he wound up having both the securities and fluid money for one week evidently this was illegal yet banks did that since he had picked up their trust. As he managed numerous banks similarly, he tells Punjab National Bank that he will pay on Monday, after that he goes to Allahabad Bank and say he will pay them on Tuesday et cetera. The following Monday when he should pay to Punjab National Bank, he would make an arrangement with HDFC, get their cash and pay it to Punjab National Bank, subsequently getting a breathing time of one more week and this cycle proceeds. In this was he wound up having both the securities and liquid money constantly.

- ***Bank Receipt***

The other lacuna he picked was the Bank Receipt. As per the above illustration, it is seen that how one bank would give securities then, another bank would pay cash for such securities. But as far as in banking system is concerned, assets would usually not move but only circulated through receipts. Banks would not give securities but would give a bank receipt of the securities is trusted by the next bank and treated as securities itself.

Harshad Mehta got fake bank receipts and took the fraud to next level. By this way he made sure that he always had crores of rupees as liquid cash and then invested them in stock market creating an artificial boom and by this continued making more and more money.

6.1.3 Impact of Scam

- Impact of this scam was sharp fall in the prices of shares and indices.
- Harshad Mehta had by then swindled the banks of a staggering Rs 4,000 crore.
- There was Bribery case on P. V. Narsimha Rao.
- Post Harshad Mehta Scam, the markets lost Rs.0.1million crore in market capitalisation.
- Government's liberalization policies came under severe criticism.
- The Bank Receipts was removed by the Reserve Bank of India.

- Consequently, these policies were put on hold for a while.
- The Securities and Exchange Board of India, the securities market regulator postponed the sanctioning of a private sector mutual fund.
- The entry of much talked about foreign pension funds and mutual fund became at that time the remotest possibility.
- The Euro-issues planned by many Indian Customers were delayed.

The banks understood that they were taken for a ride and began requesting their money promptly. Evidently there was no cash. This was a fraud. This led the share trading system to crumple. Absences of guiltless stock dealers went bankrupt. The Bank Chairmen began stopping their occupations taking obligations. The administrator of Vijaya Bank conferred suicide by hopping from top of his bank building.

6.1.4 Regulatory Action taken against Harshad Mehta

- Mehta was charged with 72 criminal offenses cases and much more than 600 civil suits filed against him.
- Harshad Mehta was arrested and banned from the stock market.
- He was arrested by the Central Bureau of Investigation on November 9, 1992 for misappropriating much more than 27 lakh shares.

6.2 KETAN PAREKH SCAM (2001)

6.2.1 Introduction

Ketan Parekh is a former stock broker from Mumbai. Parekh was convicted in 2008 for involvement in the Indian stock market manipulation scam in late 1999-2001. At present he has been debarred from trading in the Indian stock exchanges till 2017. Parekh was trainee of Harshad Mehta. Parekh can be best described as the Pied Piper of Dalal Street. He came from a family of brokers which helped him to create a trading ring of his own.

6.2.2 Factors That Helped Ketan Parekh

- Though Parekh was a successful broker, he never paid money to buy large stakes as he held the stakes of more than Rs 750 million in July 1999.
- Parekh had borrowed from various companies and banks for this purpose.
- Ketan Parekh financing method was fairly simple.
- Parekh bought shares when they were trading at low price and saw the prices rising in the bull market while continuously trading.
- At the time when the prices was high enough he pledged the shares with various banks as collateral for funds and also borrowed from the companies like HFCL.
- This SCAM was not possible without the involvement of banks.
- Small Ahmedabad-based bank known as Madhavapura Mercantile Cooperative Bank was his main Partner in the scam.
- Parekh and his associate started tapping the Madhavapura Mercantile Cooperative Bank for funds in early 2000.
- It was in December 2000 when he faced liquidity problem in settlement he used Madhavapura Mercantile Cooperative Bank in two different ways:
 - Firstly he used the pay order route, he issued cheques drawn on Bank of India to Madhavapura Mercantile Cooperative Bank, against which Madhavapura Mercantile Cooperative Bank issued pay orders, such pay order discounted at Bank of India.
 - Second route was borrowing from a Madhavapura Mercantile Cooperative Bank branch at Mandvi in Mumbai where different companies were owned by him and his associates had accounts. He used 16 such accounts, directly or through other broker firms to obtained funds.

6.2.3 Impact on Calcutta Stock Exchange

- There was lack of regulations and surveillance on the stock exchange that allowed a highly illegal and volatile badla business.
- Calcutta Stock Exchange had the third-highest volumes in the country after National Stock Exchange and Bombay Stock Exchange.
- Calcutta Stock Exchange helped Parekh to cover his operations from his rivals in Mumbai. The brokers at Calcutta Stock Exchange used to buy shares at his order.
- The brokers had to keep shares in their name and they were paid 2.5% interest weekly.
- By Feb 2001, Calcutta Stock Exchange was reduced to an amount of Rs. 6-7 billion from their initial worth of Rs 12 billion.
- Parekh's badla payments of Rs. 5-6 billion were not honoured on time for the settlement and about 70 Calcutta Stock Exchange brokers defaulted on their payments.
- By mid-March the value of stocks held by Calcutta Stock Exchange brokers went down further to approximately Rs 2.5 - 3 billion.

6.2.4 Impact of Scam on Financial Institutions

- Parekh was threatening to sue the Bank of India for defamation because it complained of forging of Rs. 1.3 billion pay orders issued to the broker by Madhavpura Merchantile Cooperative Bank.
- Investigations by the Securities and Exchange Board of India and Central Bureau of Investigation reveal that sheer magnitude of money moved by Parekh was a staggering 64 billion.

6.2.5 Role of the Securities and Exchange Board of India after Scam

- Additional 10% deposit margin was imposed on outstanding net sales in the stock markets.
- The extent of applications for the additional volatility margins were lowered from 80% to 60%.
- For reviving the markets the Securities and Exchange Board of India imposed restriction on short sales and ordered.
- The Securities and Exchange Board of India suspended all the broker member directors of Bombay Stock Exchange's governing board.
- The Securities and Exchange Board of India also banned trading by all stock exchange presidents, vice presidents and treasurers.
- The Securities and Exchange Board of India allowed banks for collateralised lending only through Bombay Stock Exchanges and National Stock Exchanges.

6.2.6 Consequences of this Scam

- A total of RS. 2000 billion were lost.
- Parekh was released on bail on May 2001.
- Retail investors were the worst hit.
- The Bank Of India, State Bank of India and Punjab National Bank had to suffer huge losses.
- Madhavapura Mercantile Cooperative Bank also suffered huge losses.

6.3.3 INVESTORS FRAUD CASE (SAHARA GROUP)⁷⁹

The Securities and Exchange Board of India v. Sahara case relates to optional fully convertible debentures that the two unlisted companies issued in early 2008 collecting \$2.9 billion from 30 million investors. Further in 2011 the Securities and Exchange Board of India ordered Sahara to refund this amount with interest taking the view that

⁷⁹ ibid

the issue which Sahara said fell within its 'para banking' activity and this was against capital market regulations. After this Sahara took the Securities and Exchange Board of India to court, challenging the order and its jurisdiction over the issue concerned.

In August 2012 the Supreme Court ordered Sahara to repay amount of \$3.9 billion to the Securities and Exchange Board of India. Later, Sahara had insisted that most of the debenture amount had been already repaid to investors that were approximately a sum of \$840 million which it subsequently deposited with the Securities and Exchange Board of India. The regulator which froze Sahara's bank accounts disputes that claim saying that details of investors that were repaid have not been properly provided.

7.1 CONCLUSION

The Securities and Exchange Board of India might be separated into two sets which are those perspectives which fall inside of the domain of the Securities and Exchange Board of India and those which fall outside. The viewpoints which fall outside the domain of the Securities and Exchange Board of India incorporate the common revelation rules, court framework, and the tax assessment administration representing securities exchanges. The Government of India, quite a long time ago made an office to oversee the statutes which arrived for managing the business sector. The scrapping of the Capital Issues Control Act, 1947 denoted the authorization of the Securities and Exchange Board of India Act, 1992. It permitted significant opportunity in different parts of securities and gave over the power of the business sector to the Securities and Exchange Board of India.

The Board is a self-governing and enabled organization with the best possible information and resources. The Board has planned a business sector that is operationally protected and among the most cost focused leaving aside imposes. Payment crisis that won in the early mid-nineties have been few. Risks in execution of trade and counterparty dangers have been eliminated. In contrast with others India has one of the better open offering systems on the planet that takes into consideration value disclosure and is fit for taking care of colossal volumes of utilizations, however it has split a couple times under the attack of freak business sector members. The Board has put set up different regulations that guarantee a scope of business sector members and middle people have the limit and the impetuses to capacity well.

Bookkeeping composing and organization has been reinforced with the foundation of National Advisory Committee on Accounting Standards. There was a push back at first; however then the Board has revealed a corporate administration code that is compared with the Sarbanes Oxley Act of the United States.

This methodology of achievement has not been without its diligent work. As an establishment, the Securities and Exchange Board of India needed to battle with a legacy that it acquired from a monetary worldview offered with neither the power nor the lawful system vital for doing its capacities. This took over 10 years for the Board to finish an update amid which an extensive cost must be paid for scams. Present

administrative structure puts the Board responsible for the capital business sector while the currency market goes under the ambit of the Reserve Bank of India

The reforms in the market, particularly relating to the establishment and empowerment of the Securities and Exchange Board of India, availability of derivatives of securities, dematerialization and electronic transfer of securities, and allocation of resources by market improved the framework and safety of trading, issue and settlement of securities. The principle change which has been seen in the Indian securities business sector is the substitution of physical exchanging framework, in both essential business sector and optional business sector by electronic frameworks. The fortifying of the administrative framework and presentation of different Acts has enabled the business sector and subsequently it has improved as a possibility for contributing the assets. It can likewise be seen that number of individuals putting resources into securities, for example, Debt Market, Equity Market, Derivatives, and Mutual Funds is on expansion and will likewise assist increment with more modernity of innovation and change in powers ensuring the privileges of speculators. The Securities and Exchange Board of India have been assuming an imperative part in directing the trades and alternate securities markets, alongside that ensuring the premiums of financial specialists. The advancement of the securities market has been come about as a noteworthy wellspring of money for industry crosswise over India. Various organizations are getting to the business sector instead of relying upon advances from the banks and Financial Institutions. Additionally the Indian securities business sector is contributing enormously to the development of Indian Gross Domestic Product (GDP). The capital activation in both markets has been watching exceptional development throughout the years. The Indian business sector is getting progressively incorporated with whatever remains of the world. The Indian organizations can raise assets from abroad through issue of American Depository Receipts, Foreign Currency Convertible Bonds and European Central Banks, Global Depository Receipts .American Depository Receipts and Global Depository Receipts have two-way usefulness. Indian organizations can list their securities on remote trades by method for American Depository Receipts and Global Depository Receipts issues against square shareholding.

7.1.1 Advantages of the Securities and Exchange Board of India

- It promotes healthy and smooth development of the business sector and secures the interests of financial specialists
- It helps in managing the business sector and guarantees reasonable practice by issuers and offering them some assistance with raising at the low cost.
- The Securities and Exchange Board of India advances effective administrations by trader investors, dealers and different mediators to make them proficient and efficient.
- The Securities and Exchange Board of India aids in promoting training of intermediaries, investor education and also conducting researches and provides information to them.
- The Securities and Exchange Board of India was enacted for the development of the capital market.

7.1.2 Disadvantages of the Securities and Exchange Board Of India

- There is no action for price manipulating activities.
- Rate of conviction is poor and rare cases of action have taken place.
- There is no process for changing of regulations.
- The Securities and Exchange Board of India is not much apprehensive to bullish market.
- The implementations of existing disclosures are inadequate.
- Its regulations are biased towards corporates and towards large investors.
- An indication of pressures including from government.
- There are no stringent norms for all asset sell-offs, mergers and demergers.

→ It does not warn on collective investment, Monthly Income Plans, and finance schemes.

8.1 SUGGESTIONS/ RECOMMENDATIONS

8.1.1 Empowering the Investor for making informed decisions and achieve fair deals

The Board should ensure that the checks and balances in the system work well to curb manipulations that should have prompt scrutiny, punitive actions and investigations. It has to exercise due diligence for ensuring timely crackdown on price manipulation and has to impose penal action to have a close tab on fund flows for protecting interests of the investor.

8.1.2 Suggesting the participants to think that markets are efficient and clean

The Board can encourage more market players. Board may reconsider the participation of Organizational citizenship behaviors by making it mandatory for them to announce the beneficiaries rather than completely banning them. Board shall examine the issues of contentious nature. The Board should make all disclosures available freely to everyone. Board took the first step towards it through its Electronic Data Information Filing and Retrieval System though it was with effect from 1st April 2010.

8.1.3 Further establishing a proportionate, appropriate and effective regime where all the stakeholders have confidence

The Board has done a commendable job in defining stringent rules and regulation. But, the penalties must be more severe and appropriate so that it should deter the market participants from indulging in malpractices. The Board must ensure that norms for corporate disclosures are in more depth and are implemented over a shorter period of time. The Securities Appellate Tribunal dismissing major Securities and Exchange Board of India orders has shown a poor rate of conviction. The Securities and Exchange Board of India is to ensure that it has exercised its penal powers up to Rs. 25 crore i.e. three times the profits on reasonable grounds so that there is no room for reversals as happened in cases of United Breweries Group, Videocon, BPL etc. Board

should ensure that there are skilled staffs to make its decisions stronger, capable to handle violations of markets and the interest of the investors.

8.1.4 Cautious Investment in Privately Placed Securities, Unlisted Securities, Non-Performing Assets and Unrated Debt Securities

All the Appraisal Management Companies has been advised to observe specific attention on investments in privately placed, unlisted securities, non-performing assets, unrated debt securities and transactions where associates are involved as these investments are highly risky. The Securities and Exchange Board of India should include provisions in its regulations to ensure safeguard against the risk associated with these investments securities.

8.1.5 Certain Suggestion Regarding the Compliance Certificate

It has to be submitted by the Appraisal Management Company on a half-yearly basis and it should contain specific comments on the following:-

- ❖ The Appraisal Management Company is carrying on other activities as per the regulations and that it continues to meet the capital adequacy requirements for each activity.
- ❖ The investments have been made in accordance with the trust deed, regulations and investment objectives of the scheme.
- ❖ The usage of the services of the sponsor or any of the Appraisal Management Company's employees, associates or relatives for any transaction is as per the offer document and the commission paid to such affiliates.
- ❖ The details of any changes in the interests of the directors on the Appraisal Management Company's board of directors.
- ❖ Redemption or investment by the Appraisal Management Company or sponsor in scheme investments, providing details, price date, value and charges levied.

- ❖ The transactions in securities by the personnel of the Appraisal Management Company, whether in their own name or on behalf of the Appraisal Management Company, giving details of the names of the personnel, purchase or sale details including the quantity, value, rate, name of the security, and name of the broker and to see whether the transaction is on personal account.
- ❖ Warning/ Deficiency letters if received from the Board to check that the corrective action is taken.

8.1.6 The suggestions regarding Investment decisions

The Securities and Exchange Board of India has taken various steps towards ensuring transparency in all investment decisions. The Appraisal Management boards can prescribe the parameters of investment, it is also important that the basis for the decision to invest in security-equity or debt should be recorded. The Appraisal Management Company should report on the matter to the trustees and the trustees are to report to the Board in their bi-annual report.

8.1.7 Recommendations to provide more power to Self-Regulatory Organisation

Association of Mutual Fund Industry needs to be given the status of Self-Regulatory Organisation through legislative measures to be held as a 'juridical person'.

8.1.8 Delegation of supervisory powers by the Securities and Exchange Board of India to the Association of Mutual Fund

The Board should delegate certain supervisory powers to Association of Mutual Fund of India so that it can act as the first-line supervisor such as screening the applications for licenses and then conducting 'fit and proper test' for Appraisal Management Company, registrars, intermediaries, transfer agents and for the fund managers etc., investigation relating to investors' complaints, routine audit matters, implementation of the advertisement code etc., routine disclosure of portfolio assets, valuation of the

portfolio and Periodic investigations to uncover any possibility of fraud, moral hazards etc.

8.1.9 Setting up an Appellate Body by the Association of Mutual Fund of India

The Association of Mutual Fund of India must set up an appellate body which could act as an arbitrator between the Members and Association of Mutual Fund of India; Investors and Association of Mutual Fund of India; Association of Mutual Fund of India and Appraisal Management Company.

8.1.10 The Suggestions Regarding Risk Management Function

It is suggested that all funds shall have an independent risk management function for evaluating, identifying all risks in a mutual fund organisation and establishing controls for mitigating such risks. It should be separate from fund management. The Securities and Exchange Board of India should administer a Risk Management Framework that works in manual detailing of the policies and procedures, organisation controls, systems and risk management measures for the risks, with an implementation of time frame.

8.1.11 The Suggestion for providing Insurance Cover

Suggestion is that funds should buy an insurance cover against the third party losses arising from omissions and error. The type of cover to be determined by the Trustees is subject to minimum of Rs. 5 crore. Though, Mutual Funds with assets of less than Rs. 100 crore can take insurance cover for less than Rs. 5 crore as determined by their trustees. Premium for this cover may be paid for in accordance with Chapter VII dealing with Section 52 (4) (b) (x) of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996. Registrar and Transfer agents and custodians should take separate cover for errors.

8.1.12 Utilization of existing powers effectively

The Securities and Exchange Board of India could not initiate prosecution proceedings in many cases of insider trading fraudulent and unfair practices. The Securities and Exchange Board of India took action against the defaulters of cancellation of registration in only 2% cases during the last four years. Although the

Securities and Exchange Board of India has the power to impose a penalty whenever a person fails to give the necessary information but the power has not been exercised properly Provision for mandatory punishment of imprisonment along with award for penalty has not been used in most of the cases.

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