

MINISTRY OF FINANCE

(Department of Economic Affairs)

Role of Controller of Capital Issues—
Development of Capital Market and
Status of Small Investors

**ESTIMATES COMMITTEE
1991-92**

TENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

SEVENTH REPORT
ESTIMATES COMMITTEE
(1991-92)

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MINISTRY OF FINANCE
(DEPARTMENT OF ECONOMIC AFFAIRS)

Role of Controller of Capital Issues —
Development of Capital Market and
Status of Small Investors



Presented to Lok Sabha on 27 April, 1992

LOK SABHA SECRETARIAT
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COMPOSITION OF THE ESTIMATES COMMITTEE (1991-92)

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2. Shri K.K. Sharma — *Joint Secretary*
3. Shri B.B. Pandit — *Director*
4. Shri K.L. Anand — *Assistant Director*

* Resigned from the membership of the Committee w.e.f 6th March, 1992.

@ Elected w.e.f. 6th March, 1992 vice Shri Vijay N. Patil resigned from the Committee.

INTRODUCTION

I, Chairman of Estimates Committee having been authorised to submit the Report, on their behalf, present this Seventh Report, on the Ministry of Finance (Department of Economic Affairs) — Role of Controller of Capital Issues — Development of Capital Market and Status of Small Investors.

2. The Capital market in India has expanded significantly during the last few years mainly due to a new large and resurgent class of small investors who have joined the market. The Committee undertook the examination of this subject mindful of this development as also the vulnerability of the small investor which, itself, underscores pit-falls in the development of Indian Capital Market.

3. The Committee considered the replies given by the Ministry of Finance (Department of Economic Affairs) to a detailed questionnaire issued on the subject where after the Committee took evidence of the representatives of the Ministry on 21.1.1990. The Committee wish to express their thanks to the officers of the Ministry of Finance for placing before them the detailed written notes on the subject and for furnishing whatever information they desired in connection with the examination of the subject. The Committee also appreciate the frankness with which the officials/representatives shared their views, perceptions and constraints with the Committee. The Committee were also benefited from the views of Chairman, SEBI and Chairman, UTI both of whom tendered evidence before the Committee. The Committee wish to place on record their gratitude to them.

4. The Committee also wish to express their thanks to the non-official organisations viz. FICCI, BSE, ASSOCHAM, etc. for furnishing valuable information/memoranda which helped the Committee in their examination of the subject.

5. The Finance Minister while presenting the Central Budget for 1992-93 emphasized that the role of Controller of Capital Issues needs to be reviewed especially in the context of the emerging industrial and financial scenario. The Report though largely based on the views expressed by the representatives of the Government and other non-official bodies and individuals during 1990, has, nevertheless, taken into account recent shifts in Government policy relating to capital market. The recommendations of the Committee adequately reflect this change.

6. The Report was initially considered and adopted by the Committee on 28.1.1992. However, in view of the policy changes announced by the Government on the eve of presenting the Budget, 1992-93 the report was reconsidered by the Committee on 6.3.92 wherein they authorized the Chairman to modify and restructure the report as deemed necessary in the light of Finance Minister's pronouncements.

The Committee after deliberating over the modified report approved the same on 24.4.1992. They also authorised the Chairman to present the Report to the House.

7. In their report the Committee have been guided by the urgent need to ensure visible relief to public through proper regulation of the factors inhibiting small investors.

8. The Report is divided into four Chapters. One Chapter each is devoted to:—

- (i) Development of Capital Market & Capital Issues Control.
- (ii) Capital Market — Institutional Framework.
- (iii) Factors Inhibiting Small Investors.
- (iv) Securities and Exchange Board of India.

9. Chapter I of the Report highlights the phenomenal growth rate of the Capital Market during the last quinquennium. The recent liberalisation of the economy has given a further boost to this development. However, the Committee wish to emphasize the need for providing sufficient legal and administrative safeguards to protect small and inexperienced investors against exploitation by unscrupulous elements and fly-by-night operators in the capital market.

10. The Committee have *inter alia* recommended that —

- (a) Capital Issues (Control) Act, 1947 should be repealed without further delay. However, such of its provisions which continue to be relevant especially regarding protection of small investors should be incorporated in the legislation in regard to the role, functions and powers of SEBI.
- (b) The Office of Controller of Capital Issues should be abolished and those of its functions as continue to be relevant should be transferred to SEBI.

11. Chapter II of the Report discusses the institutional framework of the capital market-stock exchanges, mutual funds, UTI, etc. and their regulation by SEBI through issue of various guidelines. It also dwells upon the latest developments in the Capital Market like setting up of Stock Holding Corporation of India, Credit Rating Information Service of India and Over the Counter Exchanges of India. While the Committee have appreciated

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the continuing expansion of the stock exchange which enables the investors, far and wide, to join the capital market, the report also calls for encouragement to financial institutions in diversifying their operations into minor stock exchanges.

12. The Committee in their Report have taken a dim view of the practice followed, hitherto, by UTI in bolstering their deposits by mopping up institutional savings. They are of the opinion that as an organisation meant for promoting small savings, UTI should reach out to small investors on a larger scale and in this context, welcome the steps taken by UTI in diverting commission so far given to the agents of non-individual investors to those bringing in savings of individual investors.

13. The Committee also lay emphasis on compulsory credit rating of issues of shares as well as debentures of different kinds in respect of existing as well as new issues.

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14. The Chapter III of the Report focus on factors inhibiting small investor's like false, distorted and misleading information in prospectus, manipulation of market price of shares, delayed refund orders, odd lots of shares, false trading and insider trading, bunching of capital issues, utilisation of proceeds of issue, duplicate share or transfer of shares/ debentures. In this background the Committee have emphasized the role of SEBI in ensuring not only proper disclosures in the prospectus of mutual funds but also in popularising the practice of credit rating of companies coming forward with new issues.

15. The Committee recommend that suitable norms for determining the premium, which should be determined by companies/Merchant Bankers, should be laid down taking into account state of industry and position of the Company in the industry as a whole. They are of the firm view that the Government should ensure commonly acceptable evaluation norms and methodology assimilating objectivity in the pricing of shares and that these norms should be given wide publicity through the prospectus and other issue documents.

16. The Committee urge the Government to ensure that the basis of allotment of shares is fair and transparent even after the CCI ceases to exist and that the shares of Public Limited Companies are held as widely as possible. The Committee have cautioned the Government against providing any opportunity to manipulative forces to concentrate share holding in their hands.

17. Chapter IV of the Report discusses the establishment of SEBI and role it would play in developing and promoting the orderly growth of stock market and ensuring at the same time protection of the small investors against exploitation. The Committee desire the Government to review the legal framework within which SEBI is functioning concurrently with the intended removal of control over capital issues and consequent changes in

the statutes. They have also cautioned the Government against any possible misuse of the powers likely to vest with it under the new legislation in order to maintain public confidence in the SEBI as an independent institution in the service of investing public.

18. The Committee would like to express their thanks to the Estimates Committee (1990-91) for taking evidence on the subject and obtaining valuable information thereon. The composition of the Committee (1990-91) is given at Appendix H. (vii)

19. For facility of reference the recommendations/observations of the Committee have been printed in thick type in the body of the report and have also been reproduced in consolidated form in Appendix I of the Report.

NEW DELHI;

April 22, 1992

Vaisakha 2, 1914 (Saka)

MANORANJAN BHAKTA

*Chairman,
Estimates Committee.*

CHAPTER I

DEVELOPMENT OF CAPITAL MARKET & CAPITAL ISSUE CONTROL

1.1 The Capital Market in India has grown at a phenomenal rate during the last quinquennium. During the VIIth Plan about Rs. 21500 crores were raised through the Capital Market. In a Memorandum to the Estimates Committee, Confederation of Engineering Industry, a leading organisation in India, stated that it should not be difficult a proposition to raise Rs. 40,000 to Rs. 50,000 crores during the VIIth Plan.

1.2 A further idea about the present magnitude of Capital Market in India can be gathered from the fact that Bombay Stock Exchange, which accounts for 85% of the total paid-up capital listed on all India basis, and about two-thirds of the turn over in the secondary market, handles the securities of 2446 companies, the total paid up capital of which as on 31st March, 1990, was Rs. 24,264 crores. The market value of listed equity capital of the Exchange on that date was Rs. 51,378 crores.

1.3 In this regard the representative of the Ministry of Finance stated during evidence:

“The capital market, which was attracting funds in the region of 480 crores at the beginning of this decade, 1980-81, is now attracting over Rs. 10,000 crores—in the last year of 1989-90. It has been growing very fast. We have over 12 million investors who are participating in capital market.”

A. Controller of Capital Issues (CCI)

Role and Functions

1.4 Controller of Capital issues is appointed by the Central Government under Sec. 1 of the Capital Issues (Control) Act, 1947. The Secretary of Department of Economic Affairs, Ministry of Finance while explaining the role and functions of CCI during evidence stated:

“So far as general observations are concerned, the Controller of Capital Issues covers a wide spectrum. He deals with the stock exchanges in the country. In that process he deals with the SER Act. He deals with the capital issues. If any company wants to raise money from the market, it has to go to him whether it is “rights” issue or a “public” issue or a “bonus” issue. To that extent, of course, his jurisdiction is very wide in the sense that no money can be raised in the capital market without appraisal by him or without sanction under law. This is one side of the coin. The other side of the coin is control through stock exchanges.

Stock exchanges are autonomous bodies. They have their own elections, president and so on, though there is an executive director to assist these stock exchanges. We control the public issue through the regulatory mechanism available to us and irregularities and complaints from investors are monitored and redressed as the case may be through stock exchanges."

1.5 The Committee during evidence pointed out that in a situation where a capital issue is managed by a merchant banker, placing its own prestige at stake, a Government office may not be competent enough to improve upon the assessment and functioning of the merchant bank. Moreover since so many organisations including banks, financial institutions etc. are involved in the process of appraisals of an investment proposal, what specific purpose could be served by a reappraisal by the officer of CCI who are essentially civil servants and not specially trained for merchant banking. The representative of Ministry in his reply stated:—

"I would submit that there is a conflict of interest here. They appraise a project for the purpose of the working capital requirement. The Merchant Bank is there to assist an entrepreneur. I would submit that when there is no interest involved for the purpose of investment, to expect that the Merchant Bank will not make a mistake is not correct."

1.6 He further stated:—

"Check and balance is necessary. If the CCI is not necessary, as you say, then some other person has got to check it. It is not as if the Merchant Bank acts without interest here. Whether a particular premium is low or high, some independent body has got to ensure that the premium asked for is based on certain principles. There is a lot of controversy about the premium. We have gone public indicating what are the yardsticks we follow in fixing the premium. Somebody independent has got to ensure that the premium asked for is reasonable and in the public interest."

1.7 In this regard another representative of the Ministry explained:—

It is not performing the same function which it was originally intended to perform. A large number of functions are performed by the Planning Commission. Some functions are taken care of by the office of the Secretariat for Industrial approvals MRTPC etc. others are also handled by the various public sector term lending institutions. However, we have in the CCI's office to ensure that, in all cases, before they go to the capital market, clearance has been obtained from various departments; and the appraisal of the project before it goes to the public has been done and that the proposal does conform to the various listing

requirements of the stock exchange and also as to what price should be put on the issue."

1.8 The first representative of the Ministry further added:—

"If you say that the Government does not have the right kind of mechanism for ensuring either public issue or the premium for the public issue, I would submit as I submitted at the beginning that only a statutory body like SEBI can take over the functions of the CCI."

1.9 Asked as to what superior ability does the CCI have in appraising afresh despite sectoral approvals, industrial approvals and approval by lending institutions, for what purpose is this appraising done and how would CCI equip itself to carry on with this appraisal, the Addl. Secretary, Department of Economic Affairs during the evidence stated:—

"The factual position, I think in terms of number is that about 759 of the applications are below Rs. 10 crores. As you know, there are several gradations, that is, some applications are for raising money in the market upto Rs. 3 crores or Rs. 10 crores or for larger projects definitely, it is only if you talk of the larger projects or medium sized projects, that these will not come to the CCI without an appraisal from somebody—that is to say, after getting a clearance from the MRTP for their projects—it will go to the term lending institution which will appraise them, to determine the amount by way of foreign exchange promoter's contribution, the amount which is given as assistance by the financial institutions and so on..... projects upto Rs. one crore, as the law stands today, do not need any consent from CCI."

1.10 Asked further about the additional expertise which the CCI will apply, the special Secretary, DEA during evidence stated:—

It is true that in bigger projects worth Rs. 20 crores or Rs. 30 crores that are going to be raised in the market, financial institutions appraise the project and there it has already been conceded that CCI is not going indepth afresh into the project appraisal. Even here someone has to determine the premium involved and so on..... Every project that is coming up before CCI, will get assessment from the term lending institution. There are many projects which are appraised by the merchant banks."

1.11 He further added:—

"Appraisal of the project by term lending institution is no doubt very scientific and indepth. But they are looking at it from only an important angle as to the investment they are making in that particular project. Therefore, this is an investors' approach to that project. Beyond that institutions like IDBI, IFCI etc. can't be expected to look at it in greater depth. The CCI has to see apart

from the viability of the project, the stake of promoters in that project, the debt-equity ratio and then the return out of the project when it is floated by a MRTP company, obviously MRTP Act and guidelines thereunder will have to be followed and clearance by the Department of Company Affairs becomes necessary.....The CCI can ensure inter-linking with other requirements under law at the final stage before releasing the consent. It is only a Government authority which can look into this, especially with regard to environmental clearances required."

1.12. He further stated:—

"If it is felt that CCI is not necessary for this then it can be substituted by somebody. But certainly an independent person has got to look at this vital aspect of premium."

Powers and Duties

1.13 The powers and/or duties are exercised by the Controller of Capital Issues under Section 10 of the Capital Issues (Control) Act, 1947. Section 10 of Capital Issues (Control) Act is reproduced below:—

"The Central Government may by order direct that any power or duty which by or under any of preceding provision of this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in this direction be exercised or discharged by any officer subordinate to that Government."

1.14 The powers and/or duties under Section 10 of Capital Issues (Control) Act are exercised by Controller of Capital Issues within various administrative guidelines on Capital Issues which have been laid down by Government from time to time.

1.15 In a note to the Committee the Ministry stated that the provisions of Companies Act, MRTP Act, Foreign Exchange Regulation Act, Securities Contract Regulation Act and Policies of Reserve Bank of India are kept in view by CCI while exercising his powers and discharging his duties.

Exercise of Discretion

1.16 Giving details about the criteria adopted to grant consent to new issues, the Ministry in a note stated that the office of the Controller of Capital Issues has been granting consent for issue of capital to both private and public sector companies by way of equity, debentures or bonds. Guidelines have been issued in order to indicate the norms to be followed by the companies in this regard. The consents issued by the CCI have increased from Rs. 2261 crores in 1984-85 to Rs. 12217 crores in 1989-90. The guidelines issued by the CCI also protect the interest of the investing public.

1.17 However, in a subsequent note the Ministry while explaining the use of discretion stated that as far as the use of discretion by CCI is concerned it may be explained that over the period the use of discretion has been deliberately minimised by covering various situations under the guidelines and making these guidelines public. The use of minimum discretion is not a defensive tactics, but it has helped to avoid arbitrariness. Issue of guidelines to the public has been widely acclaimed as it has made the working open and transparent and has made the work of the merchant bankers and other intermediaries easy and simple.

1.18 Moreover, guidelines are evolved from time to time to meet the situations in the ever growing, ever innovative capital market, and this has been largely due to the initiative and openness of the CCI.

1.19 Under a comprehensive Exemption Order issued in 1969 and notified under Section 6 of the Capital Issues (Control) Act, 1947, certain types of issues of securities are exempted from the purview of the Act and do not require the consent of the Controller of Capital Issues. Amendments to Capital Issues (Exemption) Order 1969 are carried out from time to time and are notified.

Procedures

1.20 Companies submit applications to CCI for his consent for issue of Capital under the Capital Issues (Control) Act, 1947 in prescribed forms specified under the Rules made under the Act. These applications are processed in the Office of CCI as per guidelines in force. In case the proposal of a company does not conform to guidelines which are published from time to time, the company is advised to modify its proposal suitably and depending on merits of each case, appropriate decisions on its application for issue of capital are taken and communicated to it.

1.21 Explaining as to how the CCI determine the criteria for granting or denying permission for raising capital from the market, the Ministry in a written reply stated that the CCI grants permission to a company for raising capital from the market keeping in view the provisions of the Capital Issues (Control) Act and the executive guidelines laid down by Government. Some of the important criteria kept in view include adequacy of the capital debt equity ratio, appraisal report of the project, promoter's stake in the project, profitability of the company and its net worth issue price of the security etc.

1.22 Asked about the quantum of permission granted and capital raised from the markets for the period of 1985-90, the Ministry furnished the following figures:

	(Rs. crores)				
	1985-86	1986-87	1987-88	1988-89	1989-90
Total amount for which consents issued	4009.29	6262.31	6121.13	8243.64	12217.20
Capital raised	1534.15	4162.08	2819.74	6580.89	6923.75

B. Monitoring Mechanism

1.23 Asked about the monitoring mechanism to ensure that CCI is operating within the policy laid down by the Government, the Ministry stated that within the Department, there is constant administrative monitoring of working of the Office of the Controller of Capital Issues by Senior Officers. While monitoring the working, all relevant aspects including disposal of applications for Consent for Capital Issues and compliance of guidelines on the subject are taken into consideration.

1.24 Explaining further the review mechanism followed for appropriate monitoring of the organisation, the Ministry of Finance stated that the main activity of office of CCI is to process applications of companies for issue of capital. Normally, if all the information required is furnished, the application is disposed of within a month to 45 days.

1.25 There are regular meetings taken by the Joint Secretary incharge of the Investment Division with the officers in the CCI office to review the working of the office, the pendency list and appropriate measures for quicker disposal of the cases are considered and follow-up action initiated.

1.26 The working of the Office of the CCI is also monitored and reviewed from time to time within the Department by Senior Officers to ensure that administrative/policy guidelines on Capital Issues are being followed and applications for Capital Issues are disposed of expeditiously.

C. Capital Issue (Control) Act, 1947

1.27 Control over Capital Issues was first introduced under the Defence of India Rules promulgated in May, 1943 under the Defence of India Act, 1939. Control over Capital Issues was retained after the Second World War, but the relevant provisions of the Defence of India Rules were replaced by Capital Issues (Continuance of Control) Act in April, 1947. The objective of the Act was, *inter alia*, securing balanced investment of country's resources in different sectors of the economy. This Act was made permanent in 1956 and enacted as Capital Issues (Control) Act, 1947.

Current Relevance

1.28 Justifying the continued existence of Capital Issue Control the representative of Ministry of Finance, during evidence stated:

"If we do not have this legislation, obviously anybody who wants to raise money from the market can do so without any hindrance and without any limitation. As you will appreciate, normally in any system checks and balances are necessary. If you allow fly-by-night operations to operate in the capital market, that is to say, you can raise whatever money you want to and it is entirely upto you to deploy it even when you are not in a position to declare a reasonable dividend, then how do we check it? That is the basic problem. Secondly, when a company goes to the market, someone must at least appraise whether the company's networth is sufficient enough to justify it to come into the market. It should also be seen whether its debt equity ratio is sufficient, whether there is enough of promoters' contribution from the company in whatever they are going to do whether the company has good prospects in regard to profit and so on. If we do not analyse all these, tomorrow the repercussions will be very widespread. As it is even with all the controls we have, sickness among companies is widespread. The amount of money locked up in sick industries of nationalised banks is expanding almost 10 to 15 per cent every year. The sum locked up in sick industries is astronomical. Therefore, in my view a legislation is absolutely essential to ensure the parameters which I have already dealt upon."

Objects of Capital Issues (Control) Act, 1947

1.29 According to Department of Economic Affairs, Ministry of Finance, presently the objective of the Capital Issues (Control) is to encourage growth of joint stock companies with sound capital structure, to protect the interests of investing public and, to regulate requests for public subscription to new issues of capital so as to avoid any undue concentration in a particular period. The Control also acts as a last check to ensure that a company obtains all necessary Government clearances and approvals of scheme of finance from Financial Institutions/Banks for their project before entering capital market.

1.30 Elucidating the relevance of the Capital Issues (Control) Act, 1949 in the changed circumstances the Ministry stated that the Act has 16 sections of which only 3 sections deal with the control over capital issues. Though the Act does not contain any specific "Objects and reasons" for having brought about the legislation, the powers under the Act can be exercised by Government to implement any policy of the Government of India on matters relating to investment and capital issues.

1.31 About the absence of object and reasons clause in the Capital Issues Control Act of 1949, the Special Secretary, Department of Economic Affairs, Ministry of Finance stated:

“If you see the Preamble to the Act, it says, ‘it is an Act to provide control over issues of capital whereas it is expedient to provide control over issues.’ Today we will not stop at this sentence, we will certainly amplify it. ‘Control over issues of capital’ —it means the basic objective is to ensure that there is adequate control over issues of capital.”

D. Budget 1992-93 : Change of Policy

1.32 While presenting the Central Government’s Budget for 1992-93 on 29th February, the Finance Minister stated:

“The role of the Controller of Capital Issues in the Finance Ministry needs to be reviewed, especially in the context of the emerging industrial and financial scenario. The practice of Government control over capital issues, as well as over pricing of issues, has lost its relevance in the changed circumstances of today. It is therefore proposed to do away with Government control over capital issues including premium fixation. Companies will be allowed to approach the market directly provided the issues are in conformity with published guidelines relating to disclosure and other matters related to investor protection. Government proposes to bring necessary legislation to implement this decision.”

1.33 In a clarificatory note obtained by the Committee from the Ministry of Finance, the Ministry, however, stated that the question of repealing Capital Issue (Control) Act, 1947 in its totality was under consideration.

1.34 Asked as to what legal and administrative mechanism would remain after the proposed repeal of Capital Issue (Control) Act for providing necessary protection to investors particularly small investors against unscrupulous elements and fly-by-night operators in the capital market the Ministry states that suitable guidelines/regulations will be framed for ensuring investors protection and full disclosures. In this context, the Bill on Securities Exchange Board of India had been introduced in the Lok Sabha. In reply to a query whether Government had identified such aspects in the Act as would continue to be relevant even after de-regulation of capital issue control and determination of premium by companies raising capital through new issues and within what time frame such exercises would be taken up and completed, the Ministry stated that the matter was under the consideration of the Government.

Conclusion

1.35 The Committee note that the capital market has expanded exponentially in the last one decade and continues to touch higher peaks as a new large and resurgent class of small investors has joined the market. The recent liberalisation of the economy has given a further boost to this development. In this context the Committee are of the view that the Capital Issue (Control) Act, which was brought into existence at the time of Independence to secure balanced investment of country's resources in different sectors of economy has outlived its utility. The position has in fact undergone a radical change in the last 45 years. The Committee, therefore, do not agree with the contention of the Ministry that the Act was flexible enough to facilitate implementation of any policy of the Government regarding investment and capital issue. They also do not agree with the motion that there is need for an agency like the Controller of Capital Issues the main administrative apparatus for implementing provisions of the Act, to have the power of reviewing the assessment of various financial institutions and the expertise of merchant bankers. In fact CCI as it is constituted is not structured to meet the growing challenge of the capital market.

1.36 In this context, the Committee welcome the announcement made by the Finance Minister that Government control over capital issues including premium fixation will be done away with and that companies will be allowed to approach market directly provided the issues are in conformity with the guidelines relating to disclosure and other matters related to investors protection.

1.37 The Committee note that at present, CCI also examines whether the proposals of Public Sector Undertakings for issue of bonds, are within the financial limits fixed by the Budget Estimates. However, a final view in such proposals is taken only after consultation with the Planning Commission, Departments of Expenditure and other concerned departments of the Ministry of Finance. The Committee feel that in the changed circumstances, the Public Sector Undertakings should have the same freedom to operate in the capital market as is to be enjoyed by the Private Sector. Therefore, the Committee finds no usefulness in continuing with the existing procedure.

Recommendation

The Committee make the following recommendations :—

1.38 Capital Issue Control Act, 1947 should be repealed without further delay. However, such of its provisions which continue to be relevant, particularly in the context of protection of investors against exploitation by unscrupulous elements, should be incorporated in the proposed legislation in regard to the role, functions and powers of SEBI.

1.39 The Office of Controller of Capital Issues should be abolished and such of its functions as continue to be relevant should be transferred to SEBI.

1.40 Public Sector Undertakings should be treated in the same manner as Private Companies in regard to issue of Bonds, Debentures, Shares etc.

1.41 The Committee, however, wish to emphasize the need for providing sufficient legal and administrative safeguards to protect investors particularly the small investors against exploitation by unscrupulous elements and fly-by-night operators in the capital market. The Committee would also like to caution the Government against any legal vacuum between the possible repeal of CCI Act and the creation of alternative mechanism for protection of the investors. They feel that SEBI is best suited to take over this note.

CHAPTER II

CAPITAL MARKET—INSTITUTIONAL FRAMEWORK

2.1 Regarding the incentives and other measures for encouraging the development of a healthy capital market, the Ministry of Finance in a written reply stated that various regulatory measures to safeguard the interests of investors and measures to boost investors confidence and productive steps to develop capital market have resulted in development of a healthy capital market.

2.2 Development of a healthy capital market will help both the public and private sector to garner resources from the public which will reduce the burden on funds of financial institutions/banks.

2.3 Asked as to the recent steps taken and extent to which these have helped in the process of strengthening the market, the Ministry in a written reply stated that the development of the capital market is an on-going process and based on experience and feed-back received from different quarters, various schemes for introduction of innovative instruments/policies are framed and announced from time to time. Hence, the scope for further improvement of capital market is always there and efforts in this regard will continue.

2.4 Recently, the CCI has issued guidelines stipulating that the Financial Institutions would disclose any transaction in sale of shares by them if it exceeds 1% of the paid-up capital of a company. Disclosure requirements have also been tightened under Clause 40 of the Listing Agreement with a view to protect the interest of minority shareholders and to check clandestine take-overs. While entering the market for raising capital, the companies also file Prospectus with the Registrar of Companies and the Stock Exchange giving all the details of past and future activities. It is also released to the public for their knowledge and benefit. For promoting a healthy capital market in the country CCI have recently issued various guidelines relating to Mutual Funds, Merchant Bankers, Listing Guidelines revising the take-over Clause, Venture Capital Funds etc. Besides the establishment of Stock Holding Corporation of India, Credit Rating Information Services India Limited (CRISIL) and Over-the Counter Market (OTC) will also go a long way in the development of the capital market.

A. Stock Exchanges

Role

2.5 For development of secondary Capital Market the CCI regulate the functioning of the Stock Exchanges under the Securities Contracts (Regulation) Act. Asked about the measures taken towards this end, the Ministry in a written reply stated that the Securities Contracts (Regulation) Act, 1956 is administered by the Department of Economic Affairs, Ministry of Finance. Under this Act, Stock Exchanges can function in country only after getting recognition from the Government in terms of the provisions of section 4 of the said Act.

Expansion of Stock Exchanges

2.6 The growth in the number of Stock Exchanges has contributed to the creation of an active market for industrial securities. The Ministry keeps a close watch on the Stock Exchange for ensuring their orderly and smooth functioning.

2.7 Asked whether CCI has set up more Stock Exchanges to reach a much higher portion of our population especially in the semi-urban and rural area the Ministry in the written post-evidence reply stated that the Ministry has been granting recognition to new Stock Exchanges from time to time with a view to developing the Stock market and giving services to the investing public. The Ministry has so far granted recognition to 20 Stock Exchanges, including the Over the Counter Exchange of India (OTCEI). A statement showing the year of recognition and location of these Exchanges is given in Appendix A*. Recently, Government have approved in principle establishment of Stock Exchanges at Coimbatore and Meerut.

2.8 The establishment of these Exchanges has helped in spreading the services of Stock Exchanges to the people living in different parts of the country. The members of the Stock Exchanges and their sub-brokers have played an important role in mobilisation of savings of the people including those from rural areas, for investments in shares, debentures and bonds issued by companies. The branches of nationalised banks have also helped in the mobilisation of savings for investments in industrial securities through distribution and collection of application forms for new issues of capital.

Modernization of Stock Exchanges

2.9 While explaining the steps taken by CCI for modernisation of Stock Exchanges the Ministry in a written note stated that the responsibility for the internal management and modernisation of Stock Exchanges vest with

- At the time of factual verification the Ministry stated that Coimbatore Stock Exchange Limited and Meerut Stock Exchange Limited have been granted recognition on 18th September, 1991 and 20th November, 1991 respectively. Information received is added in Appendix A.

the Governing Bodies of Stock Exchanges. The main source of income for the Stock Exchanges is listing fees paid by companies listed on the Exchanges. The Stock Exchanges are expected to utilize the income from listing fees mainly for provision of better services and facilities to the investing public, improvements in infrastructure, modernisation of operations, installation of modern communication systems and for appointment of qualified professional staff for better regulation of trading in securities and for ensuring investor protection.

2.10 The listing fees have been increased by the Government from time to time with a view to enable the Stock Exchanges to have higher incomes which could be utilised *inter alia* for modernisation of Stock Exchanges. Accordingly, the Stock Exchanges have taken up several schemes of modernisation such as interlinking of Stock Exchanges through electronic devices for publicity to share prices during trading hours, computerisation of operations, acquisition of modern premises for Stock Exchanges, appointment of professional staff, publication of bulletins and booklets relating to Stock Exchanges etc. Although Government do not invest directly for modernisation of Stock Exchanges, they have been acting as a catalyst for the modernisation of Stock Exchanges.

Minor Stock Exchanges

2.11 While commenting on the view that Financial Institutions should diversify their operations into minor Stock Exchanges, the Ministry in a note furnished to the Committee stated that the Financial/Investment Institutions operate in the Stock Exchanges according to their objective, policies and judgement. It is true that bulk of the operations of these institutions are taking place in the large Stock Exchanges. This is mainly because of economic reasons such as size of the market, availability of floating stock in large quantities, more competitive market conditions, better communication facilities etc. The largest institution operating in the stock market is Unit Trust of India (UTI). It has been operating even in relatively small Stock Exchanges such as those located at Bangalore, Hyderabad, Kanpur, Indore, Pune, Ludhiana, Mangalore and Cochin.

2.12 The operations of financial/investment institutions in minor stock exchanges could help in the development of these exchanges. However, this objective needs to be seen in relation to the cost of operations, the volume of trading and the number of securities traded in these exchanges. Therefore, the main responsibility for spreading the operations of financial institutions among the various stock exchanges in the country vests primarily with the concerned institutions.

2.13 Confederation of Engineering Institutions in a Memorandum submitted to the Committee stated that Financial Institutions should diversify their operations into minor Stock Exchanges also, while broad-basing the list of members through whom the operations are conducted.

They must also consider acceptance of bulk offers from members who are not in their panel.

Conclusion

2.14 The stock exchanges play a very significant role in expansion of the capital market particularly the secondary capital market, the dynamism of which is in fact the true index of economic health of the country. The setting up and functioning of stock exchanges is regulated through Securities and Contracts (Regulation) Act, 1956. The Committee note that Government have already recognised 20 stock exchanges in the country and that it is their policy to facilitate establishment of more stock exchanges in the country.

Recommendation

2.15 The Committee welcome the positive trend of stock exchanges being able to reach the investors far and wide and desire further expansion of stock exchanges.

Conclusion

2.16 The Committee note that for practical reasons the bulk of transactions in the secondary stock market are routed through major stock exchanges. They also note that even though it is desirable for the growth of capital market to establish minor stock exchanges also the suggestion is beset with inherent limitations of such exchanges being unable to meet the operational costs. They are, however, informed that financial institutions like Unit Trust of India have set up minor stock exchanges in one form or the other.

Recommendation

2.17 The Committee feel that cost considerations notwithstanding minor stock exchanges will certainly help in harnessing a large segment of untapped domestic savings for the development of economy and therefore, recommend that Government should encourage financial institutions to diversify their operations into minor stock exchanges. The Financial Institutions must at the same time ensure broad-basing the list of members through whom the operations are conducted.

B. Public Awareness

2.18 The Ministry has directed the Stock Exchange in March, 1986 to take suitable steps for educating the investors in the semi-urban and rural areas about the benefits of investments in industrial securities and to organise lectures, seminars and press conferences in semi-urban and rural areas periodically. Further, Stock Exchanges were also asked to encourage establishment of investors clubs and investors bureaus.

2.19 Explaining the measures taken by stock exchanges for educating the public, the Ministry of Finance in a written reply stated that the Stock Exchanges have been taking various measures for educating the investing

public and others involved in the securities industry. These include organising conferences and seminars on stock market, publication of stock exchange directory, monthly bulletins, daily official list of prices, index number of share prices, list of members of stock exchanges and other useful booklets on stock market. Bombay Stock Exchange is also conducting training programmes on the working of Stock Exchanges and allied matters on a regular basis.

2.20 According to Clause 41 in the Listing Agreement of the Stock Exchanges all listed companies are required to furnish unaudited half-yearly financial results in the prescribed proforma within two months of the expiry of the period to the Stock Exchange and to make an announcement forthwith at least in one daily English newspaper circulating in the whole or substantially the whole of India and in a newspaper published in the language of the region, where the registered office of the company is situated. Such disclosure of price-sensitive information to the investors generally help in improving the level of trading in shares as well as the information efficiency of the stock market. Certain amendments in Clause 41 of the Listing Agreement are currently under consideration of the Ministry with a view to further safeguarding the interest of the investing public.*

Recommendation

2.21 The Committee while appreciating the steps taken so far by the Ministry to promote public awareness about the capital market would like to emphasize the need of disseminating investors information relating to projects, technology, product quality, competitors and market potential etc. on a more extensive scale. They feel this would lead to not only widening the base of the capital market but also developing a healthy capital market. The Committee desire that Government should come forward with adequate audio-visual publicity in this regard to educate the people.

2.22 The Committee hope that early action would also be initiated to amend clause 41 of the Listing Agreement to further safeguard the interests of the investors.

C. Unit Trust of India

2.23 Asked as to the proportion of flow of resources from private, corporate and public sector to UTI, the Ministry of Finance in a written reply stated that the contribution of corporate sector towards Trust's resources has been mainly in the US-64 scheme which accounts for nearly 60% of Trust's resources. The break-up of capital outstanding under

*At the time of factual verification the Ministry stated that "The Government has already amended clause 41 of the Listing Agreement on 6th September, 1991 with a view to provide for greater disclosure of financial information of the companies for the benefit of the investing public."

US 64 Scheme into Public Sector, private sector companies, public sector banks, individuals and others is given below:

Capital Outstanding as on 31st March, 1990

	Rs. Crores	% of total
Public Sector	1,945.00	28.74
Private Sector Companies	1,942.00	28.70
Public Sector Banks	1,779.00	26.28
Individuals	924.00	13.65
Miscellaneous	178.00	2.63
(Trusts & others)		
Total	6,768.00	100.00

2.24 The Ministry further stated that the outstanding unit capital of Rs. 6768 crores refers only to Unit Scheme 1964 of UTI. In addition, UTI has several other schemes such as Unit Linked Insurance Plan and Children Gift Growth Fund exclusively for individuals. Other Schemes like Monthly Income Scheme, Growing Income Unit Scheme and Parents Gift and Growth Fund are also designed for investment by individuals. The details of the amount outstanding under various Schemes are as follows:—

Scheme	Total amount outstanding as on 30th June, 1990 (Provisional) (Rs. in crores)
ULIP	505.85
CGGF	321.37
MIS	2923.08
GIUS	1087.85
PGGF	20.78
Total	4858.93

As on 30th June, 1990 UTI had about 60 lakh Unit holders in all schemes put together.

2.25 Asked whether UTI can move directly to the small investors the Chairman, UTI during evidence stated:

“It could be done. That is the question of amending section 80M.”

2.26 Asked whether section 80M of the Income Tax Act, 1961 is an obstacle in this direction, the Chairman, UTI replied:

“It is not obstacle. It is an advantage to the corporate sector. So far as unit holders are concerned, we have increased the number of small investors within 5 months. It increased by 20 lakhs. Today (Dec. 1990) we have 85 lakh unit holders.”

2.27 Explaining the tax concession available to UTI the Ministry in a written reply stated that the limited tax concessions for income from investment in units are not exclusively for that purpose. Under Section 80L of the Income Tax Act, an overall tax exemption to the maximum extent

of Rs. 13,000 is available for dividend on Units along with income from other savings instruments, namely, bank interest, dividend on shares, interest and dividend from companies engaged in long-term financing of housing construction and other mutual funds. Since the tax exemption is shared by several savings instruments and is available only for the limited amount of Rs. 13,000, it serves the interest of small investors.

2.28 It has been stated that to enlarge the base of small unit holders, UTI has introduced incentive schemes. Asked why incentives are not being given to individuals who apply for such investments directly, the Ministry in a written reply stated that with a view to reaching investors in all parts of the country, UTI has appointed Agents all over India through whom units are sold. Agents act as a direct link between UTI and the unit holders. Through Agents, UTI is able to provide effective after sales service to its 60 lakh investors spread throughout the country. Agents are compensated by way of commission on sales and some additional incentives if the sales target assigned to them are achieved or exceeded. Direct incentive in the form of commission cannot be provided to the investors, as professional services are not rendered by them.

2.29 To a query as to how revision of sale price of units in July, 1990 on a fortnightly basis had helped in attracting the small investors, the Ministry in a written reply stated that under the Unit Scheme 1964, UTI offers a special offer price during the month of July (the first month of the corporate year of the Trust). In the past the offer price announced would remain valid for the whole month. It has been the experience of UTI that many investors, especially large investors, would invest on the last day of the month and at the same time enjoy the dividend for the full year. This not only affected the return of the unit holders but also created cash flow problems for UTI. This year, therefore, it was decided to announce special prices separately for the first fortnight and the second fortnight. The purpose of announcing special price on fortnightly basis was for more orderly management of the funds invested in Unit Scheme 1964. The number of new unitholders has increased from 2.90 lakhs in July, 1989 to 4.60 lakhs in July, 1990.

2.30 Asked whether reduction of commission on non-individual business actually brought in more investment from individuals, the Ministry in written reply stated that investment in units by non-individuals is made generally in large amounts and for the purpose of tax planning, etc. Such business transactions do not need intensive canvassing by agents as in the case of individuals. It was, therefore, decided by UTI that from July 1990 the commission payable to agents for non-individual business would stand reduced from 0.5% to 0.25%. This reduction of commission on sales to corporate sector has enabled UTI to provide greater incentives to Chief representatives and agents for increasing business to small individuals.

2.31 Asked whether any policy changes are envisaged to correct distortions built into Special UTI fiscal concessions so that the capital market attracts only genuine Savings and its development is to be seen as part of the efforts of widening the spectrum of savings. The Ministry in written reply stated that limited tax concessions have been given to UTI to encourage flow of genuine savings and, for this purpose, various schemes are framed by UTI to attract such savings.

2.32 During the current year, the thrust of UTI has been to encourage investment by small savers in units. It has already taken the following steps to enlarge the base of small unit holders.

- (a) Introduction of incentive schemes to the agents and chief representatives rewarding them for bringing more business from individual unit holders.
- (b) Introduction of Unit Growth Scheme 2000 only for US-64 Scheme unit holders with a maximum investment limit of Rs. 2000/- for each unit holder. This scheme is intended to give the benefit of appreciation in equity shares to small investors.
- (c) Launching of the odd lot unit scheme under which the odd lot share and debenture holders can sell their shares in exchange of units under any of the UTI Schemes.
- (d) Revision of sale price of units in July on a fortnightly basis as against the monthly basis of the past so as to have quicker and more profitable deployment of funds from corporate investment in US-64 Scheme. The reduction in commission from 0.50% to 0.25% payable to agents on non-individual business. The existing rate of commission of 1.75% on individual business is maintained.

2.33 Asked about the concessions available to UTI for investment in shares and whether these, in any manner, are different from those available to other Mutual Funds, the Ministry in a written material stated that under Section 32 of the UTI Act, the Trust is not liable to pay any tax on its income or capital gains. No deduction of tax is made on any interest or dividend payable to the Trust. Other Mutual Funds are also exempted from tax for income and capital gains earned by them under Section 10 of Income Tax.

2.34 The tax incentive under Section 80M given to corporate investors in units is available only to UTI and not to other Mutual Funds.

Conclusion

2.35 The Committee note that as on 31st March, 1990 the Unit Trust of India had attracted funds to the tune of Rs. 6768 crores. However, even though UTI claims to have clientele of 85 lakh unit holders, they account for only 13 per cent of the funds garnered by UTI while bulk of the resources flowing into various UTI schemes come from non-individual investors like public/private sector banks and companies. The Committee are disappointed to find that UTI which is expected to channelise the savings of small investors has for all practical purposes become an instrument of corporate

tax planning due to tax benefits provided by Section 80M of the Income Tax Act, 1961. They cannot help remarking that this seems to have placed UTI Management in a complacent frame of mind in regard to small investors. Since the corresponding tax concession available to individual investors under Section 80L of the Income Tax Act is subject to a maximum limit of Rs. 13,000 and inclusive of savings through other such instruments, the Committee feel that small investors have been placed in a disadvantageous position.

Recommendation

2.36 The Committee strongly urge that in order to encourage small investors to invest more and more sums in various UTI schemes, the Government should remove imbalance between the tax concessions available to corporate investors under Sec. 80M of the Income Tax Act and those given under Sec. 80L of the same Act to small investors.

Conclusion:

2.37 In this context, the Committee welcome the tax benefits made available in regard to mutual funds floated by UTI. However, they find that again it is the non-individual investors who are able to take maximum benefit.

Recommendation

2.38 The Committee recommend that the Government should look carefully into the aspect of benefit available to small investors under mutual funds so that resources flow directly to UTI rather than being mopped up by banks and public/private companies through fixed deposits and over subscription of mega issues of shares and debentures. The Committee would expect the Government to address itself to this abnormality without further delay.

2.39 The Committee also welcome the steps taken by UTI in diverting commission so far given to agents of non-individual investors to those bringing in the savings of the individual investors.

D. Mutual Funds

2.40 A Mutual Fund is a Financial Service Organisation that receives money from investors under different schemes, invests it, earns returns on it and attempts to make the investment grow.

2.41 Explaining the basic objectives of the Mutual Funds in India, the Ministry stated that:

- * (1) to mobilise public savings particularly from small investors in semi-urban and rural areas;
- (2) to assist in developing a healthy and mature Capital Market; and
- (3) to promote and spread equity culture in the country.

2.42 A Mutual Fund generally invests its funds in a whole range of capital market and money market instruments. The objective of a particular scheme with regard to commitment for regular income and growth to the investors. The investors get the advantages of a diversified portfolio, professional expertise and freedom from operational chores of following up a portfolio on their own. Further, these benefits are available even for a comparatively modest outlay of funds in buying a small number of investment units of Mutual Fund.

2.43 In a note regarding the growth of Mutual Funds, the Ministry stated that the origin of Mutual Funds in the country can be traced back to the setting up of the UTI, which was established under the UTI Act, 1963. However, growth of Mutual Furnish the country is a recent phenomenon when banks and financial institutions in the public sector set up Mutual Funds in 1987.

2.44 Explaining the position during the evidence, the Special Secretary, Department of Economic Affairs stated:—

“Today, you have a wide spectrum in the capital market. All these have got to be closely monitored and controlled.”

2.45 In a separate note the Committee were informed that the first Mutual Fund promoted by a commercial bank was that of the State Bank of India (SBI) in November, 1987. Soon after Canara Bank launched its Mutual Fund in December, 1987. The LTC launched its Mutual Fund in July, 1989. In 1990, Indian Bank, Bank of India (BOI) and Punjab National Bank (PNB) launched their Mutual Funds.

2.46 In reply to Lok Sabha Starred Question No. 263 for 13 March, 1992, the Minister of State in the Ministry of Finance (Shri Rameshwar Thakur) made the following statement:—

“The number of schemes launched so far by UTI and Mutual Funds is given below:—

<i>Name</i>	<i>No. of schemes</i>
Unit Trust of India	52
SBI Mutual Fund	12
Canbank Mutual Fund	14
Indian Bank Mutual Fund	7
BOI Mutual Fund	4
PNB Mutual Fund	4
LIC Mutual Fund	15
GIC Mutual Fund	3
Total:	111

2.47 The table below gives the amount raised by Mutual Funds as on 31st August, 1990.

Sl. No.	Name of Fund	Year of Constitution	Total amount invested (Rs. in crores)
1.	Unit Trust of India	1964	17,500
2.	State Bank of India	1987	712
3.	Canara Bank	1987	601
4.	Indian Bank	1990	140
5.	Bank of India	1990	400
6.	Punjab National Bank	1990	75
7.	Life Insurance Corporation of India	1989	500
Total:			19,938

2.48 In a written note the Ministry stated that the contribution of Mutual Funds in the growth of capital market in the country is significant. First of all, Mutual Funds have opened new avenues of investment for household and corporate investors and have been able to channelise substantial amount of funds to financial markets. These Funds have also widened the base of issuers of securities, which was earlier confined to a few financial institutions. Mutual Funds also help to promote the equity cult by extending support to industries for issuing equity on the one hand and by channelising public savings for equity investment. The investment process of Mutual Funds can reasonably be expected in the long run to curb speculative trading and impart stability to the stock market.

2.49 The Ministry also stated that the investor servicing and investor protection are areas closely linked with healthy growth of capital markets, in which Mutual Funds can play a significant role. Mutual Funds provide a reasonably safe investment vehicle for small investors. With the wide network of branches of the banks and financial institutions operating Mutual Funds, it is possible to reach a far wider cross-section of the investing public than otherwise.

Code of Conduct for Mutual Funds Issued by SEBI

2.50 During the oral evidence while explaining mutual funds as an arena in which SEBI would like to take action the Chairman, SEBI stated:—

“Mutual funds have grown in a large way in the last few years. Mutual funds are an internationally accepted form of collective savings of a number of investors and these are used for productive deployment. In India we find that in the last few months, our mutual funds deviated from every major principle of mutual fund. I can give you just three or four examples. Mutual funds use money which the people put in shares to earn

dividends. They do not give guaranteed returns and there is a risk involved. In fact every well known mutual fund all over the world does make it clear. They say, "Please understand, there is a risk in the money you give. We will do our best in the best possible way." They go to the extent of saying that though their past record is very good, it is no guarantee for future performance. If people consider that they are skillful fund managers, then only they can put their money with them. This is what they advise."

2.51 Asked what has been done by SEBI regarding mutual funds exaggerated claims, absence of legal obligation to the rate of return promised and misleading advertisement campaign, the Chairman, SEBI stated during evidence that:

"What the mutual funds tell the investor is not what they are in substance. We have now, with our limited powers, issued a code of conduct for advertisements (Appendix 'B')."

2.52 The representative of Ministry of Finance added:

"I must put the cards on the table. I am not in agreement with him on certain points. We must understand the background of the creation of funds in India. The basic point about creation of mutual funds in India is that very often, except UTI and to some extent the Insurance companies have absolutely no method by which a small investor can hope to get a reasonable return and not to play in the stock market. When the banks started mutual fund—first being the State Bank of India, its capital market—the idea was that they will certainly compete with other institutions in the market raise the money, deploy the funds to the extent possible with maximum return and give an assured return.

There are three categories—income oriented, growth oriented and income and growth oriented.

Regarding growth oriented, no mutual fund says that they will give you an assured return.

They have never claimed that they will give you that certain return. They only say that the money will be invested and at the end of the schemes they will certainly give the maximum return.

In income oriented, they make a claim that they will give this much return."

2.53 During the evidence, the Chairman, SEBI further added:

"Mutual funds are very good instrument of collecting people's savings, Mutual funds are not banks. They have given an impression like this. They are trusts set up by the banks and

banks have no legal liability for anything that can happen. They are un-registered trusts because they do not deal with the movable property.”

2.54 The representatives of the Ministry giving its views on this aspect stated during oral evidence:

“When a bank has to set up a mutual fund, it has to follow two procedures (1) it has to go to RBI and get clearance and then it should decide about the investments in mutual fund, and (2) the banks liability is limited to the extent that they have contributed.

The banks do not have the liability to assume all the responsibility. The Chairman of the bank is the Chairman of the Trust. Legally, the trust is responsible for deployment of funds or any failure thereof.”

2.55 The Chairman, SEBI added:

“The trust deeds are not required to be registered. The Nationalised Bank puts the initial capital in the trust. That capital varies from Rs.25 lakhs to Rs.1 crore. Secondly, internationally the practice is that the settler who puts the initial capital, asked the investing public to invest their savings for getting a good return. It may be a trust; it may be an investment company. Within the company, there is a Funds Manager who manages the funds. He has all the access to the fund. There are three persons—Settler, Trustee and a Funds Manager. They should have an arm length relationship. The Funds Manager should not be told on day-to-day basis where to put the money.”

2.56 The Chairman, SEBI further added:

“We are now in the process of issuing accounting policy and principles. There will be funds for each scheme and its accounts will be audited. It will be disclosed what has been done with the funds which has been collected. There will be code of conduct for advertisements. There will be a disclosure of the accounts to all the investors. All the investors will come to know what has happened to their money.”

Safeguards against Misuse

2.57 When the Committee, during the oral evidence observed that since most of the current mutual funds were being floated and operated by banks and since banks are known to have gone bankrupt or misused their position in stock market a certain degree of restraint is called for at this

stage itself and a mandatory code of conduct for mutual funds is necessary, the Special Secretary of the Department of Economic Affairs, Ministry of Finance stated:—

“There is no question of my disagreeing with you on this. By and large, my assessment is that only 25% of the money is raised by mutual funds which is invested in the stock market. It is because they can invest it in shares, debentures and bonds. Your observation that it is likely to disturb the stock market does not appear to be factually correct. The amount which the LIC is having is much more than this. However, mutual funds must exercise restraint. On that there is no disagreement with you. Certainly, RBI is concerned with this. In the case of mutual fund set up by the banks, RBI is also monitoring it. Apart from that, these mutual funds, really speaking, are taking away money from the nationalised banks. What would have normally gone as deposits in the nationalised banks, now they are being diverted into mutual funds for a much higher rate of return. A code of conduct is definitely called for.”

2.58 The Securities and Exchange Board of India (SEBI) has, in consultation with RBI, prescribed in January, 1991 certain disclosure and reporting requirements and guidelines for Mutual Funds. The salient features of these guidelines are placed at Appendix C.

2.59 In a subsequent note the Ministry informed the Committee that with a view to facilitating the development and orderly functioning of Mutual Funds, Government formulated guidelines in June, 1990. These guidelines specify establishment, management, investment objectives, policies and limitation, disclosure, pricing and valuation, distribution policy and statement of accounts of Mutual Funds. With a view to regulating the activities of Mutual Funds, it has been prescribed except those established through a statute would require the approval of the CCI and thereafter get registered with the SEBI. Further, Mutual Fund should not borrow money or pledge their assets in the normal course. If this is to be done to meet any temporary emergency, this should be reported immediately to SEBI. Besides, SEBI would also prescribe the accounting and disclosure requirements of Mutual Funds. These requirements have been prescribed by SEBI in January, 1991.

2.60 When the Committee asked about their observation that the SEBI Bill, 1992 placed in the Parliament does not identify small investors as a class apart and does not provide any special protection to them, they Ministry in a written note stated that the small investors are identified particularly through the mechanism of Mutual Funds. SEBI is now empowered to grant authorisation to Mutual Funds to conduct business in this regard.

2.61 The Ministry further stated that in addition SEBI will register and make regulation for Stock Brokers, Sub Brokers, Share Transfers etc. The interest of investor particularly small investors will be ensured mainly through a detailed disclosures and reporting frame work made by SEBI for mutual fund and through inspection, enquiry and audit of all the intermediaries involved in the securities business.

Mutual Fund by Private Sector

2.62 Some of the leading associations of trade and industry represented to the Committee that private sector should also be permitted to float Mutual Funds. Regarding Mutual Funds, Confederation of Engineering Industry in their memorandum placed before the Committee, stated that so far Mutual Funds had been allowed to be set up only by banks and Public Institutions, whereas there was a need for such funds to be set up by promoters in the private sector jointly with the public sector institutions as well as independently.

In this regard, the Special Secretary of the Department of Economic Affairs, Ministry of Finance stated during oral evidence:

“There are many grey areas here. Till all these are tightened up, if you allow the private sector mutual fund to come up, I think we will land ourselves in trouble. We have had a history of the chit funds in India. Somewhere it was successful; somewhere it was not. Somewhere the problem was lack of control. Like that, we should not have a situation to develop. Till all the loose ends are tightened up, I don’t think we should allow Private Sector Mutual Funds to come up.”

2.63 In reply to Lok Sabha Starred Question No. 263 for 13 March, 1992, the Minister of State in the Ministry of Finance stated—

“Government have decided to permit establishment of Mutual Funds in the private sector. A comprehensive set of prudential guidelines for the development and regulation of all mutual funds which invest primarily in the capital market and for ensuring investor protection, has been issued on February 14, 1992. The regulatory framework under these guidelines includes *inter alia* authorisation of Mutual Funds by the Securities and Exchange Board of India on the basis of certain eligibility criteria, restrictions on their business activities, disclosure and accounting requirements and penal provisions for violation of these guidelines.”

Conclusion

2.64 The Committee note that the establishment of various mutual funds in recent years have significantly contributed to the growth of capital market. As on 31st August, 1990 funds to the tune of Rs. 9938 crores had been mopped up by various public sector banks and financial institutions through the mutual funds. The share of funds garnered by UTI alone amounted to Rs. 17,500 crores. They are also informed that the objective

of floating mutual funds is to mobilise the savings of small investors in semi-urban and rural areas, to promote equity culture in the country and to develop a healthy capital market. Besides, such institutionalisation of the capital market is also expected to curb speculative trading, stabilise stock market and ensure proper servicing and protection to the small investors. The Committee are, further informed that the Indian Mutual Funds have deviated from the principles followed by mutual funds organisations world over. The Committee understand that a mutual funds in its true sense ought to be entirely and unambiguously promoted as risk oriented investment as the funds raised through these instruments are expected to be invested in the secondary capital market. Therefore, the question of promising an assured return on investment should not arise at all. What, on the other hand, is required to be disclosed to the investor is the portfolio management expertise available to the fund organisation.

2.65 It has further been urged before the Committee that mutual funds have come up in the context of a specific situation in India where there are large number of small investors who desire a reasonable rate of return without getting exposed to the risks of the stock market. The Mutual Funds, therefore, had to incorporate income oriented aspects so as to generate the confidence of the small investors who are relatively unorganised and uninformed. While the Committee appreciate the circumstances in which Mutual Funds in India have originated and found wide acceptance, they are however concerned to note that investors are not being taken into full confidence.

Recommendation

2.66 The Committee would like the SEBI to take effective punitive measures to prevent small investors from being misled in any manner and insist upon full disclosures by Fund Managers of full facts and risks involved. In this regard they would expect SEBI to play a crucial role and the Government to further strengthen SEBI for that purpose.

Conclusion

2.67 The Committee also note that Public Sector Banks and the Financial Institutions raising funds through Mutual Funds have only a liability limited to their contribution to the funds which often is very small in proportion to funds invested by the public. They note that at present trust deeds under which Mutual Funds are created are not required to be registered. The Committee are further apprised that at present Chief Executives of the banks are also simultaneously the trustees of the respective Mutual Funds. The Committee are concerned to observe the possibility of such large sums of public money being used in stock market in disregard of investors interests. Moreover, there is also possibility of these investors investing their funds on the basis of confidence in public sector banks which have only limited share. Although Ministry of Finance have argued before the Committee that since not more than 25% of funds garnered through Mutual

Funds are actually deployed on the stock market and that the possibility of such instruments being used to destabilize the stock market can be safely discounted, the Committee are unable to share this optimism of the Government and will, therefore, like to strike a note of caution. They are of the firm belief that Mutual Funds ought to be subjected, at this early stage itself, to a certain degree of restraint. In this context Committee are satisfied to note that SEBI, in consultation with RBI, have issued suitable guidelines for the Mutual Funds.

Recommendation

2.68 The Committee desire Government to ensure that the guidelines issued by SEBI should be strictly adhered to and the impact of these guidelines as also the nature of violations, if any, reported to Parliament.

Conclusion

2.69 The Committee are satisfied to note that a wide demand for permitting private sector companies to set up mutual funds has been finally conceded by the Government. The Committee hope that this will give further spurt to the growth of capital market and will help in mobilising large untapped resources of small investors besides helping them in efficient servicing of their transactions.

Recommendation

2.70 The Committee are, however, keen that this step should not be allowed to degenerate into a heaven for unscrupulous chit fund operators in respect of whom investors have had better experience in the past. Government/SEBI should evolve foolproof criteria for permitting private companies to establish mutual funds. They desire that such permission should be given only to companies having long existence and proven track record, particularly, in regard to the quality of service provided to the investors.

2.70 (A) The Committee also desire that Government/SEBI should take all necessary steps to protect small investors from unscrupulous fund management and to provide stringent and other legal penalties for those agents and persons who are guilty of cheating unsuspecting investors.

E. Stock Holding Corporation of India Limited (SHCIL)

2.71 Explaining the role, function and need to establish the SHCIL, the Ministry stated that the Stock Holding Corporation has been registered in July, 1986 in Bombay as a public limited company under the Companies Act, 1956. The Corporation commenced its operations in August, 1988. The authorised capital of the Corporation is presently Rs. 15 crores and its paid-up share capital is Rs. 7 crores which is subscribed by the financial institutions as follows:—

UTI, ICICI, IFCI	51%
LIC, IDBI, IRBI, GIC	49%

2.72 SHCIL's role is to introduce modern electronic systems in the area of post trading services relating to securities. The main objective of SHCIL is to emerge as a bank for securities, functioning on the same lines as depository trust companies in other countries thereby eliminating physical transfer to scrips in the market and introduce electronic transfer for scrips. SHCIL's goal is to reduce the cost of securities processing for its users while increasing accuracy, security and speed.

2.73 The functions of SHCIL in the area of trading in securities are broadly as follows:—

- (i) Clearing Services,
- (ii) Depository Services,
- (iii) Support Services,
- (iv) Development Services and
- (v) Management Information System (MIS) Services.

2.74 The need for the setting up of the Corporation arose mainly in view of the following:—

- (i) The arrangements for accepting or giving deliveries of securities was inadequate to meet the increasing requirements of investment institutions and development banks involved in capital market transactions;
- (ii) There would be tangible benefits in the form of savings in skilled manpower costs of the institutions which were being incurred due to the need for a continuous follow up of the activities relating to post-trading services rendered by some agencies.
- (iii) Besides saving money, SHCIL would work towards the objective of introducing modern electronic systems in the area of post-trading services, facilitating sales/purchases by removing delays and impediments in executing the transactions.

2.75 The Ministry further stated that the services of SHCIL are already availed or by UTI, GIC and its subsidiaries and LIC Mutual Fund. The other institutions namely, IDBI, LIC,* ICICI, IFCI are expected to avail of the services of SHCIL shortly. During the financial year ending March 31, 1990, SHCIL handled market operations of Rs. 349 crores earning an income of Rs. 165 lakhs yielding a net profit after tax of Rs. 16.29 lakhs. The target for this year is to handle market operations to the extent of Rs. 1,000 crores and to earn an income of Rs. 4.5 crores.

2.76 SHCIL has recently been permitted by the Government to extend its services to all Public Financial Institutions, all Public Sector Banks and all subsidiaries and Mutual Funds set up by these Public Financial Institutions and Public Sector Banks. SBI Mutual

* At the time of factual verification, the Ministry stated "at present the services of SHCIL is being availed of by the LIC also."

Fund has already agreed to avail of SHCIL's services with immediate effect. SHCIL has plans to set up a fire-proof and secure Depository each in Bombay, Calcutta, Delhi and Madras in the near future. It is also planning to act as sub-custodian for all Off-shore Funds from the next financial year.

2.77 Describing the evolution of the functioning of SHCIL, the Ministry in a post-evidence reply stated as follows:

“The Stock Holding Corporation of India Ltd. has not received any complaint regarding the quality of services rendered by it. Some of the user institutions had desired a review of the schedule of charges for its various services rendered by it. Some of the user institutions had desired a review of the schedule of charges for its various services. Accordingly, a Tariff advisory Committee consisting of the representatives of the users was constituted by the Board of Directors of SHCIL and it has since finalised the schedule of charges. The Ministry are of the view that SHCIL has been performing well so far. Further, it has the potential to grow rapidly and play a greater role in the modernisation of post-trading activities in the securities business.”

2.78 However, during the oral evidence commenting on the functioning of the SHCIL the Special Secretary, Department of Economic Affairs, Ministry of Finance stated:—

“It has still teething troubles. The experience of the LIC, in particular, has not been that happy. It is a very big trader in the stock-market. Therefore some complaints about the way this corporation is taking time... There are problems in Banking in regard to staffing, housing and computers.”

2.79 Touching upon the aspect of operational stability, the Ministry informed the Committee that SHCIL has stabilised its operations and is poised for further accelerated growth. It is expected to handle market operations to the extent of Rs. 1000 crores during the current year and have established a modern safe custody system. It has received appreciative references from various organisations such as Price Waterhouse, New York, Morgan Stanley Bank, Luxembourg, the International Securities Consultancy Ltd., Hong Kong and New India Assurance Co. Ltd., Bombay.

2.80 Explaining how SHCIL is different from stock brokers, the Ministry stated that SHCIL is not a member of any Stock Exchange and does not trade in securities in the market. The function of SHCIL commences after orders are issued by the Institutions to the stockbrokers. It handles the post-trading operations namely delivery, payment, registration of share certificates in the name of the institutions and safe custody of securities. These functions are different from the functions of Merchant Bankers who advise companies on finance and manage the issue of capital.

Electronic Scripts

2.81 Regarding the Electronic Scripts transfer, the Ministry of Finance in a post-evidence reply stated that the procedures relating to transfer of shares and debentures is presently governed by Section 108 of the Companies Act, 1956. According to sub-section (1) of Section 108, transfer of shares and debentures can be effected if a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee is delivered to the company alongwith share/ debenture certificates.

2.82 The Stock Holding Corporation of India (SHCIL) has submitted a proposal to the Ministry for introduction of book entry system of transfer of securities.

2.83 The Ministry further stated that the proposal submitted by the SHCIL for introduction of book entry system of transfer of securities would require a suitable legislation. Such a legislation would *inter-alia* have to give statutory recognition to SHCIL for operating as a Central Securities Depository and authorise the introduction of a book entry transfer system without an instrument of transfer and the share certificate. The proposal made by the SHCIL for introduction of book entry system of transfer of securities would be examined by the Ministry in consultation with the other concerned Departments such as the Department of Company Affairs, Department of Legal Affairs etc.

2.84 Regarding the Stock Holding Corporation of India, the Confédération of Engineering Industry in a memorandum placed before the Committee stated that the Stock Holding Corporation of India, which has been set up by financial institutions and at present caters to them only, should extend its facility to the public at the earliest. Further such Stock Holding Corporation should be encouraged to be set up in the private sector through suitable incentives.

Conclusion

2.85 The Committee note that Stock Holding Corporation of India is an administering serving company whose main objective is to emerge as a bank for securities, functioning on the same lines as the depository trust companies in the other countries, in the process eliminating physical transfer of scrips in the market and introduction of electronic transfer of scrips. The Committee further note that goal of SHCIL is to reduce the cost of processing securities for its users while increasing accuracy, security and speed. The Committee find that SHCIL has recently been permitted by the Government to extend its services to all public financial institutions, all public sector banks, all subsidiaries and mutual funds launched by these public financial institutions and public sector banks. They find SBI mutual fund has already agreed to avail of SHCIL's services with immediate effect. The Committee feel that SHCIL which has been set up by financial

institutions, and at present caters to them, should extend its facility to the public at the earliest.

Recommendation

2.86 The Committee recommend that Stock Holding Corporations should be encouraged in the private sector through suitable incentives.

Conclusion

2.87 The Committee are also informed that the experience of LIC with SHCIL has not been too happy. The Special Secretary, Ministry of Finance also admitted before the Committee that there are some complaints about the way SHCIL is taking time in rendering basic services like delivery, payment and registration of share certificates in the name of the institutions and safe custody of securities. The Committee are also apprised that some of the user institutions has desired a review of the schedule of charges for its various services.

Recommendation

2.88 The Committee recommend that SHCIL should reduce its processing time so as to render efficient services to its customers. They also desire that the present schedule of rates may be reviewed keeping in view growth in the volume of business.

F. Credit Rating information Service of India Ltd. (CRISIL)

2.89 The Credit Rating Information Services of India Limited (CRISIL) was incorporated under the Companies Act on 29th January, 1987. It is promoted by the Industrial Credit and Investment Corporation of India Ltd. together with the Unit Trust of India. Some other financial institutions and banks are also shareholders of CRISIL. It commenced operations in January, 1988. The main role of CRISIL is to provide ratings of debt obligations of companies to the investors in order to enable them to make investment decisions. Its ratings provide a guide to the investors as to the risk of timely payment of interest and principal on a particular debt instrument. CRISIL rates debentures, fixed deposits, short-term instruments and preference shares of companies.

The main functions of CRISIL are as follows:

- (i) to carry on the business of ratings and evaluation of debt obligation of Indian companies;
- (ii) to collect information relating to business enterprises;
- (iii) to provide advice on business strategies including management, technology, productions, marketing and finance.

2.90 The Ministry of Finance while giving a brief post-evidence note on CRISIL stated that as the number of companies borrowing directly from the capital market increases and as the industrial environment becomes more and more competitive and demanding, investors find that a borrower's

size or name are no longer a sufficient assurance of timely payment of interest and principal. The need for an independent and credible agency which judges the credit quality of debt obligations of different companies and assists investors and institutions in making investment decisions has been felt in the capital market for a long time in the recent past.

2.91 The principal objective of CRISIL therefore is rating debt obligations of companies including debentures, fixed deposit programmes commercial paper. The focus of the rating is on credit quality. The rating, therefore, is not a recommendation to invest in a particular obligation as it does not take into account factors such as issue price or market price or the risk level that the investor is willing to take. Nor is the rating a general purpose evaluation of the company in as much as it takes into account the varying terms of the obligation (e.g. secured or unsecured).

2.92 Since the rating evaluates default risk over the life of the debt obligation, CRISIL monitors constantly the rating it assigns. The ratings may be upgraded, downgraded or withdrawn depending upon new information or developments concerning the company whose debt obligation is rated.

2.93 In case of initial rating, the issuer has the right to use the rating publicly or not to use them. In case the issuer decides to use the ratings in any manner, CRISIL also has the right to widely disseminate the ratings through its own publications, through the media as well as through other methods. In case of a change in ratings that have been made use of by the issuer, CRISIL will have the right to publish the revised ratings as and when it makes the revision.

2.94 In evaluating and monitoring ratings, CRISIL employs both qualitative and quantitative criteria.

CRISIL has its headquarters in Bombay and also operates out of two Regional Offices, one at New Delhi and the other at Madras.

2.95 From commencement of operations in January, 1988 until January 1991, CRISIL has completed rating 165 debt instruments covering a debt volume of Rs. 4,258 crores. These debt instruments comprise 93 Fixed Deposit Programmes, 30 Debenture and Bond issues and 42 Commercial Paper Programmes, covering in all 115 companies. In addition, CRISIL has, at the request of State Bank of India and certain nationalised banks completed credit assessments of 39 companies. These credit assessments provide a one-time opinion of CRISIL as to the ability of a company to honour its financial obligations in a timely manner. This facility is extended to institutions lenders who can use it to decide on the terms and conditions of any credit that may be granted to a borrowing company.

2.96 When asked about the capital and capital structure of CRISIL, the Ministry in a written reply stated that the authorised capital of CRISIL is Rs. 5 crores and the paid-up capital is Rs. 4 crores. The share of various participating institutions in CRISIL's capital structure is as follows:—

(1)	Industrial Credit and Investment Corporation of India	18%
(2)	Unit Trust of India	18%
(3)	Asian Development Bank	15%
(4)	Housing Development Finance Corporation Ltd.	6.2%
(5)	Life Insurance Corporation of India, General Insurance Corporation of India and State Bank of India.	5% each
(6)	9 nationalised and non-nationalised banks.	19.25%
(7)	Indian branches of 10 foreign banks operating in India.	19.25%

2.97 During the oral evidence the Special Secretary, Department of Economic Affairs while elaborating the functioning of CRISIL said:

“The rating is purely voluntary. If a company wants its rating to be done, it approaches CRISIL for such ratings. A bad company will obviously not approach CRISIL.”

2.98 He further added:

“To some extent the rating is desirable because it would certainly help the general public including the investing public to know the worth of the company. It is better if the financial profile of a company is made known.”

2.99 When asked to give an appraisal of CRISIL, the Special Secretary, Department of Economic Affairs stated during evidence:

“Rating of CRISIL stands the rigorous scrutiny and its credit rating can be depended upon.”

2.100 In regard to making credit rating mandatory he emphasized:

“The question of making rating a mandatory issue is debatable. It means putting more load on the company. Now, we are in the process of liberalisation of regulation and restrictions.....”

2.101 Enquired whether a company is asked by the stock exchange to have credit ratings done by CRISIL for the benefit of the investors when a company goes to the Stock Exchange for listing, the Special Secretary of the Department of Economic Affairs during oral evidence stated:—

“When a company is approaching a new, CRISIL will find it difficult to give a credit rating. It can give data available over a period of time. So, the mandatory things can come either from the CCI or from the financial Institutions. Once listing is done on a stock exchange, a company must get the credit rating done annually.”

2.102 In their Memorandum placed before the Committee, the Confederation of Engineering Industry stated that expanding the present over-the-counter (OTC) market in public sector funds—an innovation of the State Bank of India—be expanded to include private sector banks. This would impart liquidity to every existing instrument—at least in the urban financial centres. The OTC market could be further boosted by banks pumping in some of their securities.

Conclusion

2.103 The Committee note that keeping in view the growing capital market and an increasingly competitive industrial environment Credit Rating Information Services India Limited (CRISIL) has been brought into existence by some of the public sector financial institutions. The role of the CRISIL is to provide ratings of debt obligations of companies to the investors in order to enable them to make investment decisions. The Committee are informed that CRISIL commenced its operations in January, 1988 and has been raising debentures, fixed deposits, short-term instruments and preference shares of companies. They further note that CRISIL has so far completed in respect of 165 debt instruments covering a debt volume of Rs. 4258/- crores.

2.104 The Committee consider the establishment of CRISIL to be indicative of a healthy capital market. They observe that CRISIL has been readily acceptable in the capital market.

Recommendation

2.105 The Committee expect the Government to provide all encouragement for establishing more such agencies for the guidance of investors. They would, however, like to caution against the exploitation of investors by unscrupulous elements damaging this nascent institution.

Conclusion

2.106 The Committee note that at present credit rating of issues is not compulsory. Although it is the expectation of the Committee that companies desirous of taping the capital market would of their own initiative like to obtain a favourable credit rating, once such categorisation become an accepted standard of credit worthiness in the market, they, nevertheless, feel that with the announced removal of control over determination on premium of shares, the need of having every issue given an appropriate rating by an independent and reliable agency has become all the more acute. The Committee are of the opinion that a totally free capital market cannot be conceived without reliable and universal credit rating of issues.

Recommendation

2.107 The Committee make the following recommendations:

- (a) The credit rating of issues of shares as well as debentures of different kinds should be made compulsory in respect of existing as well as new issues.
- (b) The companies whose shares are already listed on the stock exchange must be persuaded to seek credit rating on an annual basis.
- (c) The SEBI, stock exchange and the financial institution should take all necessary steps to popularise credit rating amongst the investors as also in the corporate world.

G. Over the Counter Exchange of India (OTCEI)

2.108 Explaining the role, function and need to establish the Over the Counter Market the Ministry stated that the OTC Exchange of India was granted recognition by the Government under Section 4 of the Securities Contracts (Regulation Act 1956 on 23rd August, 1989. It has been promoted by the UTI, ICICI, IDBI, IFCI, LIC, GIC, SBI Capital Market and Canbank Financial services. It is expected to commence operation shortly.

2.109 The main role of the OTC Exchange would be to help small and start-up companies to raise finance from the capital market and to provide facilities for trading in shares for the investors. The main functions of the OTC Exchange are the following:

- (i) to provide a forum for listing and trading of shares of small and start-up companies;
- (ii) to provide liquidity to investors for their investments in shares listed on the OTC Exchange;
- (iii) to increase the geographic coverage of stock market operations;
- (iv) to encourage venture capital activities and entrepreneurship.

The need for establishment of OTC Exchange arose because small and start-up companies were experiencing difficulties in raising capital from the market and in listing their shares on the Stock Exchange.

2.110 When asked as to how the OTCEI help small and start-up companies to raise finance from the Capital Market the Ministry in a post-evidence reply stated that the OTCEI will help small and start-up companies in raising finance from the capital market mainly in the following manner:—

- (i) A company seeking listing its shares on the OTCEI may appoint a sponsor, which is either a financial institution or a scheduled bank, or a mutual fund/merchant banking agency

that is approved by the Securities and Exchange Board of India (SEBI).

The sponsor will subscribe to the capital of the company to the extent proposed to be offered to the public directly. Thereafter, the sponsor will sell the shares to the public through its counter as well as the counters of other members and dealers of the OTCEI. This method of raising capital from the public is advantageous to the companies as the costs involved are very low. In case a company decides to raise capital directly from the public, the OTCEI would provide flexibility in regard to the number of collection centres depending upon the size and nature of public offer with a view to minimising issue expenses. The costs of advertisement of public issue would also be kept to a minimum.

- (ii) It is a requirement of the OTCEI that the sponsors should appraise the company and give a certificate regarding investment worthiness of the company which is proposed to be listed on it. The sponsor continues to be associated with the company even after listing as it is required to make a market for the securities for a period of at least 3 years from the date of commencement of trading. In view of this market-making feature of the OTCEI, the companies would find it easier to sell their shares to the public.
- (iii) At present, the listing requirements of Stock Exchange stipulate that a company seeking listing should have a minimum paid-up equity capital of Rs. 3 crores.

2.111 The OTCEI would have different listing guidelines which would in general, permit listing of companies with a paid-up equity capital of less than Rs. 3 crores and thereby provide the facility of listing to small and medium companies.

2.112 During oral evidence, the Chairman UTI stated:

“Basically, the main role of the OTC Exchange is to help small and start-up companies to raise finance from the Capital Market. It also provides facilities for trading in shares for the investors. These companies initially do not have a track record. OTC members are wholesale dealer who will take up the issues. The UTI will be a sponsor as well as a Member. Leading banks, Merchant Banks will be Members. They will apprise the smaller companies in many ways. After the company gets into production its shares will be offered to the public. In that event, the investors will not be misled by the smaller companies only when the companies go into production and has performance record, its shares will be offered to the public.”

Conclusion

2.113 The Committee note that the main role of OTC (over the counter) Exchange is to help small and start-up companies to raise finance from the Capital Market and to provide facilities for trading in shares for the investors. In the process, one of the functions of OTC Exchange is to provide liquidity to investors for their investments in shares listed on the OTC Exchange. The Committee find that a company seeking listing of its shares on the OTCEI may appoint a sponsor, which is either a financial institution or a scheduled bank, or a mutual fund/merchant banking agency that is approved by the Securities and Exchange Board of India (SEBI). They are further informed that the sponsor will subscribe to the capital of the company to the extent proposed to be offered to the public directly. The Committee observe that, thereafter the sponsor will sell the shares to public through its counter as well as the counters of other members and dealers of the OTCEI. The Committee feel that this method of raising capital from the public is advantageous to the companies as the costs involved are very low.

Recommendation

2.114 The Committee, however, emphasize the need of the present OTC market in public sector funds to include private sector bonds as well. They are of the firm view that this would impart liquidity to every existing instrument—at least in the urban financial centres.

CHAPTER III

FACTORS INHIBITING SMALL INVESTORS

3.1 The Chairman, SEBI during evidence, presented the following analysis of investor problems:

"We have been looking at various aspects of our work with reference to building investors' confidence, protecting investors' right and all the various arrangements necessary to give investors protection. We have done an analysis of the kind of problem that the investors have. We are getting about 2000 letters a month from the investors who are in India and also from abroad who have got shares, debentures."

3.2 When asked to furnish details of analysis done by SEBI of the problems faced by investors, SEBI in a written post evidence reply stated that it has been directly receiving increasing number of complaints from residents and non-resident investors. The complaints are largely against companies in whose public issues the investors may have invested or have arisen in the course of their dealings in the stock markets.

3.3 The monthly receipt of complaints has gone up tremendously from 89 in April 1990 to 2,880 in January, 1991. During this ten month period SEBI has been issuing fortnightly Press Releases on Investor Complaints, listing out top 10 companies in terms number of complaints received against them during the previous fortnight.

3.4 The complaints of investors have been classified by SEBI into the following types:

Type I:

The complaints relate to delays in refund of application money or allotment letters. The delay often range from 6 months to even beyond 1 year. Investors who write to these companies, do not generally get any response from them or the registrars to their issues except for a standard reply stating that "as per our records the allotment advice/refund orders have been posted."

Type II:

The complaints in this category relate to:

(i) Delay in receiving dividend and interest warrants on shares, debentures and fixed deposits and (ii) Delay in receiving the maturity value of fixed deposits and debentures on redemption.

These delays often extend to more than 6 months and in some cases beyond a year. Protracted correspondence, by the investor do not evince favourable response from the companies. The number of companies which have not paid interest on debentures or fixed deposits for several years is large. No agency however keeps any track or record of the non-interest paying companies. About 60% of the complaints in category II is on account of non-payment of interest on debentures.

Type III:

Complaints in this category pertain to the post issue stage of a security or arise in the course of dealing in the security on the stock exchanges. Complaints include—

- (i) Delays in receipt of share or debenture certificates after allotment has been made in the public issues.
- (ii) Delays in acknowledging receipt of shares and debenture certificates sent to the company for registration of transfer; and
- (iii) Return of scrips from the company on account of bad delivery. According to statistics available from the Stock Holding Corporation of India, more than 23 per cent of scrips which come for transfer are rejected on the ground of bad delivery.

Type IV:

Complaints in this category relate to non-receipt of Annual Reports of companies and application forms for new and right issues and inadequate disclosure in the prospectus and annual reports not received by investors. The break up of the 8172 complaints received by SEBI between April, 1990 and January, 1991 is as follows:

Type I	33%
Type II	28.2%
Type III	27%
Type IV	11.8%

Besides complaints against the issuers, SEBI receives about 100 complaints every month against brokers. These complaints are primarily on account of sub-broker or a broker not delivering in part or full scrips against the purchases made by the investor, or the payment against sales effected by him or there are discrepancies in the prices.

A. False, Distorted and Misleading Information in Prospectuses

3.5 Before entering the market to raise capital, a company files prospectus with the Registrar of companies giving all details of past and future activities and financial performance.

3.6 Dwelling upon the provisions of Companies Act regarding mis-statement in the Prospectus the Ministry in a written statement stated that sections 62 & 63 of the Companies Act deal with the matters about mis-statement in prospectus. Section 62 deals with civil liability for mis-statement and in such cases of civil liability only the aggrieved investor can file a case in the competent court and ask for damage for loss suffered by him for reasons of untrue statements/omissions etc. Action under section 62 cannot be taken by Registrar of Companies or other office of the Department of Company Affairs Section 63 provides for criminal liability for mis-statement and in such like matters prosecution can be launched by Registrar of Companies. Once, however, a prospectus is filed and taken on record the Registrar of Companies has no machinery to find out whether a statement made in the prospectus was untrue. Unless some shareholder or other person complains to the Registrar of Companies he is not aware of the mis-statement. But once the mis-statement is brought to his notice then he has to deal with it and in suitable cases has to file prosecution in the competent court. There is, however, no machinery available in the Department of Company Affairs for ensuring that the claims made in the prospectus are adhered to. Registrar of Companies has to rely on other persons in this respect and such other persons/bodies can be investors, shareholders' association, SEBI or Merchant Bankers etc.

3.7 While giving details of the only reported cases noticed under the provisions of Section 63 of Indian Companies Act of 1956 Act due to mis-statement in prospectus, the Ministry stated that in the matter of M/s. Apple Leasing and Industries Ltd., Bombay an unstarred question No. 1449 dated 9th March, 1987, was raised in Rajya Sabha. It was asked whether the said company in its public issue claimed that its foreign collaborator, N.C.C. of U.K. spent equivalent of Rs. 300 crores on research, development and other activities annually and whether Government proposed to verify this claim. On checking up the position it was found that in its advertisement given in various newspapers the said company has stated that N.C.C., established in 1966 by the Government of U.K. is the world centre of information Technology and the only organisation of its kind in the world. It was further stated that N.C.C. spends over \$ 300 Million (equivalent to Rs 360 crores) on research, development and other activities. On checking up the position the statement was found to be untrue. Prosecution was however filed by the Registrar of companies, Maharashtra Bombay charging that this is a mis-statement under section 63/68 of the Companies Act, 1956. The learned Magistrate took cognizance of the complaint and issue process against all the accused. The cases under section 63 and 68 had, however, been disposed off by the court relieving the accused directors under section 633 of the Companies Act, 1956.

3.8 Section 633 of the Companies Act, 1956 provides as under:

"Power of court to grant relief in certain cases. If in any proceeding for negligence, default, breach of duty misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him either wholly or partly, from his liability or such terms as it may think fit."

Conclusion

3.9 The Committee note that under section 8 of the Capital Issue Control Act, the promoters of issue are liable for punishment for misleading statements in the prospectus or any other false statements made in the application for consent to the issue. The Committee feel that the disclosure norms in the case of existing units should outline the risks the industry in general and the unit in particular are prone to.

Recommendation

3.10 The Committee desire that after the intended repeal of the Capital Issue Control Act, 1947 alternative safeguards should be created to penalise a company or a persons for misleading investors. The SEBI may be suitably empowered to take proper action in the matter. The Committee also desire that a statement or industry and company risks should be incorporated in the issue documents and advertisements released by the Companies/ Merchant Bankers.

B. Manipulation of Market Price of Shares

3.11 Asked to indicate the reasons in case of some issues where the price of shares offered to public was much more than the market prices of these shares, the Ministry of Finance elaborated that the pricing of new shares and of convertible debentures of existing companies are determined on the basis of 'share valuation guidelines'. These guidelines have recently been circulated widely to enable everyone to become broadly aware of the parameters used by the CCI. The prices of the shares offered to the public in the issues referred to were never more than the market price of the shares ruling at the time of the offer. It is true that the market prices of certain companies shares declined after the offer was closed. The reasons for decline in market price of shares was due to various factors including supply and demand factors and emergence of speculative tendencies as well. If, subsequently, the market price of its share goes down due to any reason, the terms of offer are not changed retrospectively.

3.12 When it was pointed out to the Ministry that the market price of certain shares like Garden, L&T, Oswal Agro etc. declined after the offer was closed, the Ministry stated that market price of companies shares depend on various factors and it is not possible to pin-point any reasons for decline of share prices of any Company Valuations of shares are done

on the basis of appropriate date of a company on the date of their application to CCI. If subsequently the price of shares goes down either due to poor performance of company or various other market considerations, no valuation can take care of such eventuality.

3.13 The Ministry further stated that there are chances that companies may manipulate market price of their shares at the time of their application to CCI for Capital Issues. Hence for calculating the Market Value of shares average market price of shares on the basis of highs and lows of quotation of companies shares in the preceding 12 months and preceding three years is taken into consideration. It is, however clarified that Average Market Value of shares is not the only factor in calculating the premiums on company's shares.

Conclusion

3.14 The Committee note that at present the premium on shares issued to the public is being sanctioned by CCI on the basis of market quotations prevailing at the time of application to CCI for capital issue. It has come to their notice that during a period of 3-6 months, before the public issue companies manipulate stock market to raise market quotations of their shares abnormally and manage to get higher premium sanctioned by the CCI. They are constrained to further observe that the share price of several companies stumbled down after the closure of issue resulting in loss to uninformed investors, particularly, those residing in smaller towns. However, the situation is going to change after the policy decision of the Government to remove Government control over capital issue as well as pricing issue is implemented. Although the Government have discounted any possibility of shares getting over-valued by CCI and even though guidelines existing for calculating premium taking into account share prices over a period of 12 months, the Committee are not convinced that this is enough to neutralise manipulations of the promoters of the issue as corporate plans for expansion of business and capital base can be drawn years in advance and share prices appropriately manipulate. The Committee apprehend that with the removal of control over pricing of issue such as unscrupulous practices may receive fillip, at least in the initial phase of de-control.

3.15 The Committee are of the opinion that even though as a long term objective de-control of share pricing is laudable, the situation at present is not conducive to leaving the market totally unregulated. In their opinion a folprof monitoring system, a responsible merchant banking sector and an infrastructure which can facilitate quick access to latest trading information are essential pre-requisites before market forces are given full freedom to determine the share premium. In their opinion it will be of immense help to the ordinary investor, if he can be given an assessment of the capital issue from a reliable agency and steps are taken to perempt price rigging in respect of new issues.

Recommendation

The Committee recommend:—

3.16 The Securities Exchange Board of India should monitor the prices of shares of companies which intend to raise funds in the capital market before as well as after the issue of shares and debentures of different categories.

3.17 The premium over shares should be determined by companies/ merchant bankers in accordance with the guidelines announced by SEBI and which should in-turn ensure that the guidelines are being followed.

3.18 Suitable norms for determining the premium should be laid down taking into account state of the industry and position of the company in the industry as a whole.

3.19 Government should consider the desirability of legislation to check manipulation of prices of shares and debentures march to safeguard the freedom intended to be given to individual companies against any kind of misuse. Prudential norm should also be established to relate the size of issue to the equity base of the company.

3.20 Freedom of fixing share prices should be initially restricted to companies which are above an appropriate capital base line while companies with smaller capital base and also the companies entering the capital market for the first time should not have the same degree of freedom.

3.21 SEBI should ensure that merchant bankers evolve commonly acceptable evaluation norms and methodology to ensure objective in the pricing of shares. It should also ensure that such details are given wide publicity through the prospectus and other issue documents.

3.22 Due encouragement should be given by the Government for developing capital market infrastructure which includes computerized information networking between the stock exchanges, merchant bankers and the brokers.

C. Delayed Refund Orders

3.23 About the steps taken by CCI to check delays in issue of refund orders so as to protect the interests of small investors and to ensure timely refund to investing public as per statutory provisions, the Ministry of Finance stated that according to sub-Section(2-A) of Section 73 of the Companies Act, 1956, whenever the moneys received from applicants for shares or debentures are in excess of the aggregate of the application moneys relating to the shares or debentures in respect of which allotments have been made, the company shall repay the moneys to the extendt of such excess forthwith without interest, and if such money is not repaid within 8 days from the day the company becomes liable to pay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the 8th day, be jointly and severely liable to repay that money with interest at such rate, not less than 4% and not

more than 15%, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money. The Department of Company Affairs have prescribed the following rates of interest with effect from 15th June, 1988:—

- (a) 4% where the delay in repayment is not more than 15 days;
- (b) 5% where the delay is more than 15 days but not more than 30 days;
- (c) 12% where the delay is more than 30 days but not more than 60 days;
- (d) 15% where the delay is more than 60 days.

Sub-Section (2-B) provides that if default is made in complying with the provisions of Sub-Section(2-A), the company and every officer of the company who is in default shall be punishable with fine which any extend to Rs.5000/-, and where repayment is not made within 6 months from the expiry of the 8th days, also with imprisonment for a term which may extend to one year.

3.24 The Committee was informed by the Ministry that the consent letters issued by the Controller of Capital Issues also contain the following conditions:—

- (a) The company shall scrupulously adhere to the time limit of 10 weeks from the date of closure of the subscription list for allotment of all securities and despatch of allotment letters/certificates and refund order.
- (b) The company shall, at the time of filling its application for listing to the regional Stock Exchange, furnish an undertaking for compliance of the above condition along with a scheme incorporating the necessary details of the arrangement for such compliance.
- (c) The company shall file with the Executive Director or Secretary of the regional Stock Exchange within 5 working days of the expiry of the stipulated period as above a statement signed by the Board certifying that the allotment letters, securities and the refund order have been despatched within the prescribed time limit as per the condition above. A copy of the statement shall be endorsed to the Office of the CCI quoting his consent order and date.
- (d) Non-Compliance of conditions above shall be punishable by the Stock Exchange in addition to the action that may be taken by other competent authorities.

3.25 Asked to state the extent to which the relevant provisions of rules have been acted upon in practice and whether there is a system available to ensure compliance of these provisions, the Ministry in a written reply state that whenever complaints of investors regarding non-receipt of Refund Orders are received in the Ministry, these are taken up with the concerned Stock Exchanges for ascertaining the facts and for taking

appropriate action. Such complaints of investors are taken up by the Investor's Service Cell of Stock Exchanges with the concerned companies for the redressal of the grievances. According to the information furnished by the Bombay Stock Exchange, which is the largest Stock Exchange in the country, the number of complaints in respect of non-receipt of refund orders/allotment advices received since January, 1989 are as under:—

Period	Nos.
January, 89 to December, 89	10,626
January, 90 to August, 90	21,239

3.26 Asked what action has been taken in this regard, the Ministry further stated that the above complaints were immediately taken up by the Bombay Stock Exchange with the concerned companies and copy endorsed to the investors for their information with a request that if their complaint is not solved/settled, they should write back to the Exchange. By and large all such complaints are attended to by the companies concerned. During the last two and a half years, the Bombay Stock Exchange has suspended dealings in the securities of three companies for delay in the issue of refund orders as per the following details:

S.No.	Name of the Company	Period of suspension	
		From	To
1.	All Seasons Food Ltd.		3 days
		16.5.88—19.5.88 (excluding the intervening holiday on 18.5.88)	
2.	Gujarat Nylons Ltd.		3 days
		24.9.90—26.9.90	
3.	Vitro Pharma Products Ltd.		3 days
		24.9.90—26.9.90	

3.27 When asked to give instances of departure from the guidelines that refund order should be issued within ten weeks alongwith reasons for such departure and the action taken by the CCI in this regard, the Ministry of Finance explained that according to the guideline No. F1/63/SE/87 dated the 8th January 1988 issued by the Ministry of Finance, a company entering the capital market is required to scrupulously adhere to the time-limit of 10 weeks from the date of closure of the subscription list for allotment of securities and despatch of allotment letters/certificates and refund orders. The Bombay Stock Exchange, has pointed out that, in spite of its best efforts to ensure strict adherence to the above guidelines, there have been a few cases where the companies have not been able to adhere to this time limit because of totally unavoidable factors like delay in receipt of applications from the various centres by the issue houses, delay by the State Government in issue of certificates relating to consolidated payment

of stamp duty, delay in the despatch by the Postal Department, etc. A statement giving names of these companies with the details relating to the 70th day from the date of closure of subscription list and the date of completion of posting of refund order together with remarks thereon is enclosed at Appendix 'D'. The Bombay Stock Exchange, has recently been stipulating payment of interest on excess application money repaid after the 70th day from the date of closure of the public issue as a condition precedent for granting extension of time for despatch of refund order after the 70th day.

3.28 Reliance Petrochemicals Ltd. and Gujarat Refractories Ltd. (Ref. 4 of 1988 and 12 of 1989 in Appendix 'D') apart from the margin of 70 days, which is the authorised time, took almost another 70 and 60 days respectively to make such refunds and that in both these cases, Ahmedabad Stock Exchange had granted extension.

3.29 When asked why CCI did not take any action against these companies, there representative of the Ministry during the evidence stated:—

"The powers are entirely with the stock exchange. The point is well taken that the stock-exchanges must apply their mind and should not grant extensions liberally."

3.30 When asked to furnish full details of cases of Reliance Petrochemicals Ltd., and Gujarat Refractories Ltd. including amounts involved, the plea made to Ahmedabad Stock Exchange, the ground on which it had granted extension without payment of interest and the reason why CCI did not take it up on its own, the Ministry of Finance in a modified written reply stated that it has now been clarified by Bombay and Ahmedabad Stock Exchanges that the time was extended for despatch of share certificates and not for refund orders.

3.31 In regard to Gujarat Refractories Ltd. It has now been clarified by Ahmedabad Stock Exchange that refund orders were despatched by the company within the stipulated period. Extension of time upto 19.8.89 was granted by the Ahmedabad Stock Exchange for despatch of share certificates for complying with procedural requirements.

3.32 When asked why CCI has not enquired about all the glaring departures from guidelines to safeguard interest of the investing public and what corrective steps CCI would take to avoid such recurrence in future, the Ministry of Finance in a written reply stated that according to the guidelines dated 8.1.88 by this Ministry, Stock Exchanges should monitor despatch of refund orders by companies within time limit prescribed under section 73 of the Companies Act, 1956. Stock Exchanges generally insist upon payment of interest by companies whenever there is delay in the despatch of refund orders, some times companies are not able to despatch refund orders within the time limit on account of reasons beyond their control, e.g. Law and Order problem, inability of postal agencies to handle

large number of refund orders within a short period of time etc. This Ministry will enquire into cases where companies deliberately delay the despatch of refund orders and failed to pay interest for the delayed period, if such cases are brought to the notice of this Ministry. The Department of Company Affairs which administers the Companies Act, 1956 can also take action against the company in such cases under the provision of Section 73 of the said Act.

3.33 Regarding the delay in despatch of refund orders to unsuccessful investors SEBI in written reply state that one of the major complaints from the investors is about the delay in getting refund orders. It accounts for about 33% of the investors complaints received by SEBI on an average. The delay results in blocking investors' funds for a longer period than planned or envisaged by the investors thus affecting their liquidity. These funds might otherwise have been utilised for applying for other new issues for investing in the secondary market.

3.34 The question of refunds arises only in case of over-subscription in public issues. In order to determine the magnitude of the problem and estimate the amount of investors' funds which remain locked up due to delay in despatch of refund orders, SEBI had made a study of public issues in 1990. During the year, against a public offer of Rs. 570 crores, the total amount collected by the issuing companies was of the order of Rs. 5000 crores. According to the study, 11 companies had collected Rs. 2314 crores against public offer of Rs. 161.99 crores. Taking into account that only 50% of the issue amount was collected at the time of application, over Rs. 2000 crores of investors' funds would have remained blocked in the companies for a period of 3 months. The companies were in a position to earn a minimum of Rs. 43 crores during the period by way of interest @ 8% on these funds. Assuming 50 per cent of the refunds are made on time and an average delay of 1½ months for the balance, the interest loss to the unsuccessful applicants is conservatively estimated to be around Rs. 10 crores at the minimum rate of 8%.

3.35 When asked about the reasons for delay SEBI stated that according to its analysis the reasons for delays in refund orders are the following:—

(a) The issuers and the bankers to the issue have a vested interest in delaying the refunds; as the survey mentioned above indicated, over Rs. 2000 crores of unsuccessful applicant' funds were blocked in the companies in 1990;

(b) the issuers, bankers, registrars to the issue and the banking system do not have the requisite infrastructure to manage the issues;

(c) bottleneck in the postal system;

(d) lack of effective monitoring on the part of the Stock Exchanges and other regulating agencies despite provisions in the Companies Act, 1956, and directives issued from time by the Ministry of Finance.

3.36 SEBI further stated that it had the following concrete proposals to lesson the magnitude of delay in refunds.

(a) *Deposit by Companies with the Regional Stock Exchange*

A company while applying for permission to list its securities on one or more Stock Exchanges should be required to keep a deposit with the Regional Stock Exchange in the following manner:

- (i) 2% of the amount of public offer in respect of the issues with public offer upto Rs. 50 crores (excluding reserved categories) and;
- (ii) 1% of the amount of public offer in respect of issues with public offer of more than Rs. 50 crores (excluding reserved categories).

The deposit would be refunded by the Regional Stock Exchanges under certain conditions. This proposal will be discussed in the next meeting of the Standing Committee of the Presidents of Stock Exchanges to be held during 1991 and suitable action would be taken on the basis of the discussions.

(b) *Raising of Minimum Subscription Amount*

Companies raising capital by fresh issues are allowed to retain Oversubscription of equity to the extent of 15% of the amount. The present system of allotment provides for a minimum application of Rs. 1000 (i.e. 100 shares of Rs. 10/- each or 10 shares or 1 debenture of Rs. 1000/- each) according to the circular issued by Ministry of Finance on May 7, 1985.

Companies receive maximum number of applications in the smaller category of 100/200 shares. In case of equity issues, 80 to 90% of the total applications belong to this category. Statistics show that an investor in this category sometimes may have a chance of one twenty in 20 depending on the size of the issue and the extent of oversubscription. Unsuccessful applicants are naturally high in this category resulting in greater weightage to small category of applications, also provides incentives for putting in multiple applications. The minimum application of Rs. 1000/- was fixed in 1985. Since then, the cost of investment has gone up; Besides, the minimum issued equity capital of a company for eligibility for listing on a Stock Exchange has been increased from Rs. 1 crore to Rs. 3 crores. For these and other reasons stated above, it may not be inappropriate or unrealistic now to raise the minimum application amount to Rs. 3000/- and in multiples of Rs. 1000/- thereafter, from the present level of Rs. 1000/-.

This may help bring down the number of applications in the smaller categories, reduce the incidence of multiple applications and result in a reduction of the refund orders. UTI is of the view the minimum amount of application for public issues of capital should be increased from the existing level of Rs. 1000/- (100 shares) to Rs. 2000/- (200 shares). At the same time, the trading lot in Stock Exchange should be kept at 100 shares

since the price of several shares is high. Further, the interests of small investors may be looked after by the UTI and other Mutual Funds.

(c) Proposed System of applying for New Issues

Under the present system of applying for a public issue, the application money is sent either by cheque/draft/cash alongwith the application. There is thus a period of time between the investor parting with his funds and his receipt of allotment advice or refund order. SEBI is working out a system for reducing this time difference so that investors would be required to part with funds against firm allotment or commitment of firm allotment.

(d) Registration of Registrars

Registrars play a critical role in issue management. Only a limited number of Registrars serve the new issue market. This results in overburdening of the few efficient ones. Authorisation of Registrars on the lines of Merchant Bankers could be considered as a step to improve their standards of service and bring about a greater degree of competition among them.

Conclusion

3.37 The Committee find that one of the major complaints from investors in about the delay in getting refund orders. They are concerned to note that on an average such complaints account for about 33% of the investors complaints received by SEBI. In fact in Bombay Stock Exchange alone 21237 such complaints were received during the first eight months of 1990. The Committee are surprised to find that as against such magnitude of complaints Bombay Exchange had taken action only against three defaulting companies. The Committee are not able to know as to what prevented it from taking an action against the remaining defaulting companies. In their view, it is indicative of the lack of sufficient monitoring especially the manner in which Committee were given wrong information in regard to alleged default by M/s. Reliance Industries Ltd. and Gujarat Refractories Ltd.

3.38 The Committee are informed that the main reasons for delay in refund orders are lack of effective monitoring on the part of the Stock Exchanges and other regulating agencies, enforcement of relevant provision in the Companies Act, 1956 and the directives issued by the Ministry of Finance from time to time. The other factors responsible for delays in receipt of refund orders are bottlenecks in postal system, vested interest of promoters, bankers' lack of requisite infrastructure to manage the issue. The Committee, however, are of the opinion that large over-subscription of securities offered to public is one of the primary reasons for the problem of delays in refunding amounts. The Committee find that both SEBI and UTI have put forth a few useful suggestions to remove this imbalance in the capital market whereby too many investors are aspiring for shares/debentures of a few known companies.

Recommendation

3.39 The Committee urge the Government to promptly examine these suggestions made by SEBI and UTI and to come forward with a package of measures as will reduce delays experienced by investors in receiving refund orders and implement it at the earliest.

D. Odd Lots of Shares

3.40 The system of allotment of odd lots by the issue of Bonus or Rights shares or through a conversion of shares in case of debentures cause a lot of inconvenience to investors as odd lots are not readily tradable.

3.41 In this regard the Ministry stated that odd lots of shares arise through the issue of Bonus shares or Rights shares when the Bonus or Rights is in the ratio other than 1:1 Odd lots of shares also arise when the shares that emanate from convertible debentures after conversion are not in market lots.

3.42 The Stock Exchanges are also aware of the problem faced by the investors in trading odd lots of shares. The Stock Exchange Bombay has appointed authorised dealers in odd lots with certain norms for the purchase of odd lots such as that the maximum rate of discount should not exceed 10% of the ruling market rate. The Stock Exchange also conduct separate sessions for dealings in odd lots on alternative Saturdays.

3.43 Institutions such as the GIC and the UTI are also operating schemes for purchase of odd lots with a view to minimising the problems faced by investors having odd lots of shares.

3.44 Expressing Government's views on UTI scheme on purchase of odd lots of share and the successfulness of the scheme, the Ministry explained that this scheme is primarily to help small investors who do not hold marketable lots of shares/debentures. This scheme was launched on 1st October, 1990. Salient features of the scheme are as under:—

- (i) It enable the holder of odd lot shares/debentures for their conversion into units (not cash);
- (ii) A nominal service fee of only 2% of gross consideration subject to a maximum of Rs. 50/- per application is charged. The application may contain one or more scrips of the same company;
- (iii) The consideration for odd-lot shares is fixed on the basis of the closing market prices on the day before the day on which the application is tendered;
- (iv) Stamp duty on transfer of shares/debentures in favour of Unit Trust of India is borne by UTI;
- (v) The scheme operates throughout the year, (except in the month of June) in the offices of UTI at Bombay, Calcutta, New Delhi, Madras and Ahmedabad.

3.45 According to UTI, the scheme has received overwhelming response from odd lot share/debenture holders. As on 24/1/1991, the Trust had offered to buy odd-lot shares of 122 companies and odd-lot debentures of 47 companies. As on 18/1/1991, the Trust has received 4534 applications with a total net consideration of Rs. 1.19 crores.

Conclusion

3.46 The Committee find that shares in odd lots get less than the quoted price in the market. They feel that small investors often lose on account of issue of odd-lots by companies, sometimes purposely, by the issue of bonus or rights shares or through conversion of shares in case of debentures.

Recommendation

3.47 The Committee urge the Ministry to ensure that the facility of retention of 15% excess money should in no case be allowed to result in issue of shares in odd lots. At the same time, they would expect, keeping in view the wide reach of banks, the Ministry to persuade Public Sector Banks to operate schemes for purchase of odd lots from the shareholders.

E. False Trading—Insider Trading

3.48 Explaining the steps taken to avoid insider trading and trading in stock exchanges, the Ministry in a written reply stated that there are no specific statutory provisions at present prohibiting insider trading in the Stock Exchanges. However, section 307 of the Companies Act, 1956 provides that every company shall keep a register showing, in respect of each director of the company, the number, description and amount of any shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by him, or in trust for him, or of which he has any right to become the holder whether on payment or not. Further, the said register is required to be kept at the registered office of the company and shall be open to inspection as follows:

- (a) during the period beginning fourteen days before the date of company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and
- (b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Central Government or of the Registrar.

3.49 In a memorandum submitted by Confederation of Engineering Industry it was stated that insider trading is prevalent. The management of a company are responsible for the efficient working of the organisation and they should not take undue advantage of their position detrimental to the interests of the company. Very often the persons in the management of a company who have knowledge of some exclusive price sensitive information

use it in the stock market to make a neat pile for themselves. The worst hit is the small investor who witnesses the sudden fluctuations in the stock prices.

Conclusion

3.50 The Committee note that there are no specific statutory provisions at present prohibiting insider trading in the stock exchange—even though some provisions to check unhealthy practices have been provided in the Companies Act. The Committee understand that often persons in management of a company who have knowledge of some exclusive price sensitive information use it in the stock market to make financial gains for themselves and that this hits the small investor hard. The Committee need hardly to point out that such undesirable practices depress investors' confidence in the capital market. The Committee also learn that Ministry of Finance have issued instructions in 1985 to the companies to furnish details to the stock exchange in regard to the number of shares held by its Directors, personnel at the Secretarial Financial Accounts Department, Auditor, Legal Advisors and by the spouse and children of each of them as also the details of changes in the shares holding pattern of each of them. The Committee are also informed that these provisions are not being implemented.

Recommendation

3.51 The Committee deprecate Government's inaction in enforcing its own instructions. They urge immediate enforcement of these instructions through random checking of Register of Shareholders of companies listed on the stock exchanges. They would also like stock exchanges to confirm whether companies have been furnishing the necessary statement of share holding of their officers including their family members.

F. Bunching of Capital Issues

3.52 Asked as to the extent to which CCI has been able to regulate public subscription of new issues of capital and avoid undue concentration in a particular period, the Ministry in a written reply stated that:

"The consent order by which the companies are permitted to raise capital from the market has the validity period of 12 months. A company may not necessarily go to the market in the same year that the consent is given therefore, the figures of consents and capital raised must be seen independently."

3.53 It was further added that:

"Since the companies do not necessarily implement the consent immediately after they are granted, it is not possible to regulate concentration in a particular period. The flow of securities in the capital market for public subscription is a continuous process and the companies enter the capital market on the basis of their own assessment regarding the response which they are likely to have from the subscribing public. CCI, however, broadly tries to

regulate the flow of public sector bonds in the capital market to avoid bunching during a particular period. During 1990-91 State Bank of India have been asked to oversee this aspect."

3.54 It was pointed out to the Ministry that there were large issues of capital of more than Rs. 1000 crores each during the year 1989 and that a number of them were bunched together within a very short period as a result of which several issues came to market with limited disclosures in their prospectus.

3.55 When asked for the reasons leading to this state of affairs, the Ministry in a written reply stated that while issuing consents the CCI does not stipulate that the company would issue the capital of a particular time and the companies are free to go to the capital market any time during the period of 12 months. Issue of consent depends on the number of applications received during a particular period and, therefore, the timing of issue of consents cannot be determined by CCI. Hence it will not be possible to avoid bunching of capital issues during a particular period as companies have adequate time during the validity period of consent to finalise their tie up arrangements and to go to capital market at a time when they are confident of investors response.

3.56 It was noted from the material applied by the Ministry of Finance that during the period 1985-90, the value of consents given has risen from about 2,200 crores to over Rs. 12,000 crores, which is an increase of 600%.

3.57 Explaining the bunching of issues, the representatives of the Ministry during the oral evidence said:

"The entrepreneur has a right to go to the market within 12 months from the date he receives the sanction."

3.58 When asked whether it can be made obligatory for the entrepreneur to go to the market within a year's time, the special Secretary, Department of Economic Affairs during the evidence said:

"When he has to raise it in the market within 12 months, obviously he is the best judge to see when he will go to the market. He would like to choose an appropriate time where his issue will be over subscribed. Therefore, we cannot really force the entrepreneur to say that he must operate the consent within a month or two. We can only give you the figures of the amount sanctioned and the amount, according to us actually raise in the market."

3.59 Asked how CCI can prevent bunching when market forces go to determine when an entrepreneur should go to the market to collect the money, the representative of the Ministry of Finance during oral evidence stated:

“Suppose one or two companies have come out with mega issues. Then the market forces will be such that the small entrepreneur would not like to go to the market at that time. He will certainly wait for the market to absorb the mega issues and then decide when to go to the market within the 12 months period. Our experience has always been that once a mega issues is declared or announced, others take their time and enter the market only after the market is able to absorb the mega issue.

Conclusion

3.60 The Committee note that number of issues are floated simultaneously in the market as a result of which the small investors are unable to invest in more than one or two issues while during the lean period their capital remains practically idle because there is no issue they can invest in. The Committee while being aware of the fact that the choice of deciding the time for going to the market lies primarily with the companies, they would, nevertheless, expect Government to take steps towards ensuring that public issues of companies are so spread as to avoid bunching.

Recommendation

3.61 The Committee recommend that the Government should in consultation with SEBI take necessary steps to ensure that issue of shares and debentures are evenly spread during the financial year. For this purpose necessary consultation may be initiated within the financial sector and a scheme of incentives and disincentives designed to bunching of issues.

G. Utilization of the Proceeds of Issue

3.61 A. In all consents for raising capital a standard condition is imposed that the proceeds of the issue will not be used for purpose other than those described in the application without permission of Government in writing.

3.62 Asked whether there has been any departures from these standard conditions during the period 1985-90 and the proceeds of the issue have been used for objects other than those described in the application without permission of Government in writing, the Ministry in a written reply stated that during the period 1985-90, a case of M/s. Atlas Soya Protein Ltd. where the proceeds of the public issue was not utilised for all the three objects of the issue has come to the notice of CCI in March, 1990. The company is reported to have utilised the proceeds only for one object. This case is under examination, and is under correspondence with the company.

3.63 Asked whether excess resources raised are used for purposes other than announced, the Ministry stated that after examining company's requirements, excess subscriptions to the extent to only 15% of the issue

is allowed to be retained by companies. The permission for retention of 15% excess subscription is granted after applicant company justifies the need for additional funds to this extent.

3.64 When asked how is 'need' for additional funds established, the Ministry in a written reply stated that retention of over subscription upto 15% of the issue is permitted for meeting the fund requirements of the company provided the intention to retain such over-subscription mentioned in the original application to CCI has been noted by the office of CCI and the company has mentioned in prospectus/letter of offer their intention to retain such over-subscription. It may also be noted that over-subscription can't be predicted, with certainty at the time of the sanction of the public issue.

3.65 While explaining the problems faced by investors due to under-subscription of rights/public issues of some companies, the Ministry of Finance in a written reply stated that subscription to the issue of a company depends on a variety of factors including prevailing investment climate, various options open to investors etc. which cannot precisely be prejudged by CCI. While granting permission for Capital Issue by a company, CCI takes into account factual details of the project and various parameters laid down in the guidelines issued by Government regarding capital issues.

3.66 When asked whether there have been any defaulting cases, the Ministry stated that an instance has however, come to the notice of CCI where a company could not get to rights issue fully subscribed. On the basis of experience of developments in the capital market, guidelines were issued in April, 1990 providing *inter-alia* that companies can proceed with allotment of shares only after a minimum subscription of 90% of the issue is received. In case of subscription below 90%, the entire amount collected with applications will have to be refunded to the applicants at the end of 90 days from the closure of the issue.

3.67 In this context the Ministry furnished the following details about issue and subscription of Convertible Debenture issue by M/s. Usha Rectifier Corporation (India) Ltd. in 1989.

1. Date of consent	:	30.8.1989
2. Amount of issue		Fully convertible Debentures Rs. 714.495 crores.
3. Details of Subscription:		

Category	(Rs. in crores)	
	Amount Consented	Amount Subscribed
(a) Rights Issue	251.90	3.52

(b) Convertible Debentures to holders' on rights basis	274.50	91.38
(c) Public issue by prospectus	162.00	175.35

(Subscription details are based on the
figures furnished by the Company)

3.68 It was pointed out to the Ministry that even though the debenture holders and the share holders of the company itself have shown little confidence in the investment proposals, they were still allowed to retain excess subscription amount. Explaining this phenomenon, the representatives of the Ministry of Finance during oral evidence stated:—

“The rights issue is for the existing shareholder and not only for the promoters. Naturally the promoters will also be shareholders. There is no question about it. So, what happened in this case the institutions who are also shareholders might have decided that it is not worth to take the rights issue up. It is entirely a question of their judgement.”

3.69 He further added:

“There have been cases in the past where public issue have not been fully subscribed. Today what we are doing is this. We have now stipulated that unless the issue is under written. They cannot go to the market. In the alternative, 90 per cent of the issue must at least be subscribed. Otherwise the entire money must be refunded. Our guidelines thus is that if they have to go to the market, they have to secure at least 90% subscription. If 90 per cent is not subscribed, the Companies will not be allowed to retain the money. In this very case, if they had gone now to the market, the entire money would have been refunded.”

3.70 When asked why Convertible Debentures have been highlighted separately the Ministry explained during the oral evidence that:

“The rule says that if there is any shortfall in one category and there is also a total shortfall in the whole issue. You can adjust it against one another. In this case the total public issue has been over subscribed. As there is a total shortfall in the issue of over subscription in the public issue can be adjusted against the rights issue which is not fully taken up.”

H. Duplicate share or transfer of shares/debentures

3.71 It has been alleged that the procedure for issuing duplicate share/debenture certificate is very time consuming. When asked whether any thought has been given to simplifying the procedure, the Ministry in a note

* In terms of the CCI consent the shortfall in this category has been added to the public issue by the company.

furnished to the Committee stated that the Companies (Issue of Share Certificate) Rules, 1960 provide for issue of duplicate share certificates. According to Clause 3 of Rule 4 of the said Rules:

“No duplicate share certificate shall be issued in lieu of those that are lost or destroyed without the prior consent of the Board and without payment of such fees, if any, not exceeding Rs. 2/- and on such reasonable terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence as the Board thinks fit.”

By applying this rule, the companies generally insist for an advertisement in newspapers regarding loss of share/debenture certificates. The companies also insist that the shareholders should submit an indemnity bond against all claims, losses, expenses, damages, etc., that may be made or sustained by the company by the reason or in consequence of the company having issued duplicate certificate and if the original shares/debentures are found/lodged at a later date. Some companies also insist upon guarantees from banks, etc. The costs towards press advertisements indemnity bond, etc. are to be borne by the shareholders. It is proposed to take up the matter of simplification of the existing procedure referred to above with the Department of Company, Affairs and SEBI.

Conclusion

3.72 The committee note that existing procedure for issuing depuplicate shares/debentures is very time consuming and cumbersome thus causing considerable hardship to investors who may be desirous of disinvesting their holdings.

Recommendation

3.73 The Committee desire that the Government should promptly look into this aspect and simplify the procedure for issue of duplicate shares/debentures within a reasonable time limit.

I. Management Information System

3.74 Asked about the nature and scope of Management Information System adopted by the organisation for obtaining feed back on various spheres of its activity, the Ministry in a written reply stated that companies are required to report to the Controller of Capital Issues the action taken by them on the consent letter and the amount subscribed and paid up as a result thereof. The report is to be submitted by companies as soon as the issue of capital is made and is then followed up by quarterly reports until the issue has been fully subscribed and paid up. These reports are to be forwarded to CCI within 30 days of the date on which the report is due. On the basis of these reports as assessment is made about the amounts raised by the companies for which consents had been given.

J. Disclosure through Annual Reports

3.75 Asked why the earlier system of sending complete annual report, cannot be revived in addition to the usual disclosure requirements and why the annual report should not contain a brief statement on all major policy decisions of the company and the justification thereof, the Ministry in a detailed note stated that Section 219 of the Companies Act 1956 has been amended by companies (Amendment) Act, 1988 and provides that instead of sending the full balance-sheet and profit and loss account etc. to its members by a company whose shares are listed on a recognised Stock Exchange, it will be enough if the salient features thereof are sent to its members. The members are, however entitled to obtain a copy of the full balance-sheet and profit and loss account etc. on their request free of cost. The option is, however, available with the listed companies to send full copies of the balance-sheet and profit and loss account etc. to its members the companies whose shares are not listed on the stock exchange in so far as sending or a full copy of its balance-sheet and profit and loss account etc. to be sent to its members continue to be a mandatory requirement. This is meant to reduce the cost of sending the printed accounts by the listed companies to its members inter-alia by way of saving in the cost of paper, printing and postage in view of the number of share-holders of such companies being in tens of thousands and in some cases in several lakhs. The right of the shareholders to obtain full copy of the balance sheet and profit and loss account etc. has still been preserved as they can call for a copy thereof from the company free of cost and failure to furnish the same is a punishable offence. All those companies, whose shares are not listed on a Stock Exchange are still under a duty to send complete annual report to shareholders etc. There are now about 2,20,000 companies at work in the country. The number of companies, whose shares are listed in a stock exchange will be less than 10,000. Having regard to this background it may not be worthwhile to reverse the amendment of Sec. 219, which was recently made in 1988.

3.76 As per the requirement of Section 217 of the Companies Act, 1956, the annual accounts are also accompanied by the report of the Board of Directors, which inter-alia contains facts, which are material for appreciation of the state of company's affairs by its members unless such material will not, in the opinion of the Board of Directors, be harmful to the business of the company or any of its subsidiary. Persons are entitled to do business in the form of a company. Information once given under law becomes public and can be utilised by competitors and business rivals. In terms of Section 17, 31, 237, 293, 294, 314 etc. of the Act, some important decisions being taken by a company can be with the approval of shareholders in General Body Meeting only. In regard to the suggestion that all major policy decisions of a company and justification thereof be given in the Annual Report, it is felt that the existing provisions of the Act are adequate in the interest of the company and its shareholders.

3.77 Asked whether the report should also give a comparative performance of the company over the last five years, the Ministry stated that the existing provisions of Section 211 read with Schedule VI of the Companies Act, already provide for giving comparative figures of the last year in the accounts of the present year and also a true and fair view of the profit or loss and also of the state of affairs of the company at the end of the financial year. Companies Act covers all sorts of companies, public, private, small and big engaged in manufacture, distribution, trade etc. including export and import etc. The total number of companies in the country at present will be about 2,20,000 out of which public limited companies will be only about 20,000. As per format of prospectus vide schedule II to the Act, to be issued by a Public company at the time of public issue, it is required to contain particulars of assets and liabilities of profit and losses and of dividend paid for each of the last 5 financial years. The enlightened management of various large sized companies are already giving data of comparative performance over the years by way of charts, diagrams, accounting ratio etc. The annual report of all the previous years is always in the hands of the shareholders and they can prepare, if they so like the figures of comparative performance as per their own requirements and liking. It is felt that existing provisions of the Companies Act which cover all sorts of companies are adequate to give reasonable information to all the shareholders.

Conclusion

3.78 It was represented before the Committee by a leading trade organisations that the earlier system of sending complete annual reports to the investors should be revived and that the annual reports of companies should contain a brief statement of all major policy decisions of the company with justification thereof. In this regard the Committee have been informed by the Government that the existing provisions are adequate in the interest of company and its shareholders.

Recommendation

3.79 The Committee are not fully convinced of the stand taken by the Government. They therefore, recommend that the matter be considered further in consultation with Department of Company Affairs and compliance reported to them within a period of six months.

K. Assistance to Small Investors

3.80 Asked regarding the role and functions of CCI in protecting the interests of small investors. The Ministry of Finance while explaining its responsibility in a written reply stated that for the protection of small investors, the CCI has issued guidelines. Some of the important guidelines relate to a minimum subscription of 90% in case of public and rights issues by a company, a minimum gap of one year between two issues of a company and to the monitoring of use of funds by Public Financial

Institutions. Besides, under the revised Clause 40 of the Listing Agreement relating to take-over of companies, the minority shareholders willing to sell their holdings will now be offered the negotiated price or the highest quoted price during the preceding six months, whichever is higher. CCI has also issued guidelines relating to disclosure in institutional transactions of shares hereby sale by Institutions of 1% of company's shares will be made public. Before entering the market for making a public issue, the companies also file a Prospectus with the Registrar of Companies and the Stock Exchanges giving all the details of the past working and its future plans. Prospectus is also supplied freely to the public for their knowledge and benefit before they subscribe to the issue. The Department of Company Affairs and Stock Exchanges thus also watch over the interest of the investors.

3.81 Asked whether the system of complaints of investors being attended to by recognised stock exchange working satisfactorily and the monitoring mechanism in the office of the CCI to ensure that these complaints are attended to by the concerned companies with due promptitude, the Ministry stated that the complaints of investors received in the Office of the Controller of Capital Issues are referred to the concerned Stock Exchanges who take it up with the concerned companies for grievance redressal. The exchanges monitor these complaints through their own machinery/committees set up for this purpose. In the larger interests of the investors and to monitor the redressal of investors complaints by the Stock Exchanges/Companies, Government had sometime back set up Securities and Exchange Board of India (SEBI).

3.82 On whether CCI's office is presently equipped to meet the increase in grievances as the number of grievances have substantially increased and whether the role of CCI is limited to merely forwarding the investor's grievances to the stock exchanges, the Ministry in a written reply stated that it is the endeavour of the CCI's office to take suitable measures from time to time for the redressal of investors grievances. The complaints of investors against listed companies are taken up with the concerned Stock Exchanges, instead of writing directly to the companies, because the companies are listed with the Stock Exchanges on the basis of the Listing Agreement. The establishment of the SEBI in 1988 by the Ministry is considered a major step taken by the Government for investors protection. SEBI is also actively involved in the work relating to redressal of grievances of investors against stock brokers and listed companies.

3.82 A. It was seen that generally the response from stock exchanges in regard to complaints of investors is not very encouraging. Asked what are the CCI's views in opening grievances cells in stock exchanges, the Ministry in a note furnished to the Committee stated that Stock Exchanges take action against their members under the Bye-laws and Regulations whenever investors make complaints against them. Similarly, the Complaints of investors against listed companies are also taken up by the Stock

Exchanges with the companies concerned for the redressal of the grievances. This Ministry had issued instructions to the Stock Exchanges in March, 1985 to set up a grievance cell in the Stock Exchanges under the charge of a senior Officer for expeditious settlement of complaints of investors. Some further instructions regarding Grievances Cell were issued by this Ministry to the Stock Exchanges in June, 1986 with a view to making the handling of complaints more systematic. According to these instructions, complaints against brokers should be attended to promptly and settled. Stock Exchanges were also asked to take suitable action in respect of complaints against listed companies, including suspension of trading in the shares of the company. Action against the members of the Stock Exchanges and the listed companies vest mainly with the Stock Exchanges. Therefore, it is essential that the Grievances Cell in Stock Exchanges should function effectively and efficiently in order to protect the interests of the investing public. With SEBI having come into operation, it is expected that this aspect of the work of Stock Exchanges would be galvanized effectively.

3.83 Asked how exactly is constant administrative monitoring of the working of the office of CCI done by senior officers, the Ministry of Finance in a written reply stated that as the office of CCI forms part of Department of Economic Affairs in the Ministry of Finance, the senior officers of the Department/Ministry who supervise the work of the office of CCI ensure that the officers discharge their duties effectively.

Conclusion

3.84 The Committee note that CCI seeks to protect the small and inexperienced investors in the Capital Market through the concerned Stock Exchanges. They find that CCI had issued instructions to the Stock Exchanges under the charge of a senior officer for expeditious settlement of investors complaints. Further instructions in this regard were issued in June, 1986 with a view to handle the complaints more systematically. The Committee note that apart from seeking to ensure prompt attention to complaints against brokers the Ministry had also asked the Stock Exchanges to take suitable action including suspension of trading in the shares of the company in respect of complaints against listed companies found guilty of casual attitude towards investors' grievances.

3.85 The Committee are however not convinced that mere threat of suspending share transfers of defaulting companies or even the action of delisting such companies is going to have impact on such companies whose aim is to merely take investors for granted.

Recommendation

3.86 The Committee desire that punitive action against such companies should be made deterrent.

L. Redressal of Grievances of Small Investors: Guidelines issued by CCI to Stock Exchanges

3.87 Explaining how CCI protect small inexperienced investors in the Capital Market, the Special Secretary, Department of Economic Affairs, Ministry of Finance during the oral evidence stated:—

“if the company's track record is not examined, if you allow laissez-faire system to operate here, the persons who are going to get hurt in the process are small investors. Institutional investors are quite capable of taking care of themselves. LIC, GIC, UTI are big players. But the small investors need to be protected. The consent is given after taking into account all these parameters. That is an important factor, here.

Number two is obviously small investors also may have genuine complaints vis-a-vis company either in regard to share transfer or in regard to non-payment when he subscribes to the share capital, he does not get back the money on time if the issue is oversubscribed. All these matters need to be monitored. This is where CCI performs the role through the stock exchanges concerned. In Bombay Stock Exchanges, in a particular year, there are 22,000 complaints and according to the Executive Director of the Bombay Stock Exchanges, nearly 98% were small investors complaints and hardly 2% are with reference to big investors. It is here CCI plays a role. Stock Exchanges are told to redress the grievances. In some case, company still defaults, the 'concerned company is de-listed for a few days."

Conclusion

3.88 The Committee also note that instructions have been issued by CCI to Stock Exchanges for opening a separate grievance cell where small investors can lodge their complaints.

Recommendation

3.89 The Committee recommend that all further follow up action which may be required should be taken up by such cells at their own cost and to the entire satisfaction of the complainants. Receipt of complaints should be promptly acknowledged. The Committee desire that such cells should keep close contact with their counterparts in the other Stock Exchanges for prompt action by them.

M. Listing Agreement—Clause 40-40A

3.90 Explaining the procedure followed to implement the guidelines issued recently for the protection of small investors, the Ministry stated that Clause 40 of the Listing Agreement of the Stock Exchanges has been amended recently by substituting it with a new Clause 40A&B* (Appendix). This clause basically relates to the situation where there is a substantial acquisition of shares or a takeover offer. The listed companies are required to make necessary disclosures in the Stock Exchanges who have the power either to suspend the trading in the securities of the companies or to delist the securities of the companies if the companies do not comply with the provisions of Clause 40A&B.

3.91 Asked what is the role of CCI in regulating take-over of one company by another the Ministry of Finance in a written reply stated that the new Clause 40A provides, *inter alia*, for the following:—

- (a) When any person acquires or agrees to acquire any shares in the company and when the total nominal value of such shares so acquired or agreed to be acquired, together with the total nominal value of the shares already held by such person, exceeds or shall exceed the aggregate 5% of the voting capital of the company, the Stock Exchange shall be notified within 2 days of such acquisition or such agreement for acquisition by the company, by the authorised intermediary and also by the acquirer.
- (b) When any person holds shares which in the aggregate, carry less than 10% of the voting rights in the company, he shall not acquire any shares which, when aggregate the shares already held by him, shall carry 10% or more of the voting rights unless he notifies the Stock Exchange and fulfils the conditions specified in Clause 40B. Provided that nothing in the above sub-clause shall apply to a person who, on an application to the SEBI, is specifically granted exemption.

3.92 The main thrust of the new Clause 40B is that a Public announcement of a take-over offer shall be made both by the offerer company and the offeree company when:—

- (a) any person in his own name or in the name of any other person acquires, whether by a series of transactions over a period of time or otherwise, shares which when aggregated with shares already held or acquired by such person shall carry 10% or more of the total voting rights of the offeree company, or

* At the time of factual verification the Ministry has stated that the Government has made certain Amendments in clause 40 A&B of listing Agreement between Stock Exchanges and Companies' (Circular dated 7th August, 1991 attached to Appendix E of the Report).

- (b) secure the control of management of a company by acquiring or agreeing to acquire, irrespective of the percentage of the voting capital, the shares of the Directors or other members who, by virtue of their shareholdings of their relatives nominees, family interest, and group control or manage the company.

3.93 Asked whether any guidelines have been published by CCI for stock exchanges, the representative of Ministry of Finance during oral evidence stated that the guidelines issued by the Ministry are binding on the Stock Exchanges, the listed companies, merchant bankers and others concerned. Asked whether CCI is able to enforce these guidelines in regard to companies, the representative of the Department stated that all companies seeking listing on a Stock Exchange are required to execute a Listing Agreement with the Exchange. It requires the listed company to make certain disclosures and perform certain acts, as per the agreement. Under the Listing Agreement, the company undertakes, for instance, to provide facilities for prompt transfer, registration, sub-division and consolidation of securities without any special charges; to notify the stock exchange of any attachment or prohibitory orders; to give due and proper notice of closure of transfer books and record dates; to forward copies of annual reports and balance sheets, of notices and circulars dispatched to the shareholders, and to file with the Stock Exchange annual schedules showing the distribution of its securities. The Listing Agreement also empowers a Stock Exchange to suspend or remove from listing the securities of a company at any time and for any reason which the Exchange consider proper in its absolute discretion. In exercise of this power, Stock Exchanges have from time to time suspended/delisted companies which have defaulting.

3.94 Asked what punitive steps are taken against defaulting companies the Ministry stated that Section 13 of the Capital Issues Control Act 1947 provides for penalties as indicated below:—

- (a) Whoever contravenes, or attempts to contravene, any of the provisions of this Act, or of any order made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.
- (b) If the person committing an offence punishable under this section is a company or other body corporate, every Director, Manager, Secretary or other officer thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

3.95 When asked whether these guidelines issued for guidance are mandatory, the Special Secretary of Department of Economic Affairs, Ministry of Finance Stated:—

“When we recommend to a stock exchange to de-list a particular company, it is for them to decide whether to de-list or not. It is the function of the Bombay Stock Exchange or any other stock exchange. No guideline can say you de-list.”

3.96 Asked whether CCI is equipped to take punitive action against defaulting companies, the representative of the Ministry of Finance stated during oral evidence:—

“Default can take place in two forms. One is by way of wrong information in the prospectus. One remedy is, the company law can take care of it. The other remedy is through the Controller of Capital Issues. The remedy under the Companies Act is certainly available to you, in case your deposits are not repaid on time or the company has done something in violation of company law. You have got the option to go to the Registrar of Companies to initiate action. With specific reference to a company which defaults in respect of prospectus, we can either take suo-moto action or through stock exchanges. No company would like its name to be delisted. This is as bad as criminal prosecution.”

3.97 The new clause 40-B of the Act provides that a public announcement of a take over shall be made both by the offerer company and the offeree.

3.98 Asked how the provisions of clause 40-B, compare with the position obtaining in other countries the Ministry of Finance stated that the provisions of the Clause 40-B of the Listing agreement are comparable with similar provisions in U.S.A., U.K., Australia and Singapore:

- (1) In the United States any person who, alongwith persons acting in concert with him owns 5% of an equity security through acquisitions, is required to make a disclosure to the Securities and Exchange Commission and Stock Exchanges where the security is listed within 10 days after such acquisition. In case he intends to acquire substantial shares he may make a tender offer.
- (2) In United Kingdom, takeovers are mainly governed by 'The City Code on Take-overs and Mergers which requires a mandatory bid by anyone who, together with persons acting in concert, has acquired 30% or more of the voting rights of the company, or who owning between 30% and 50% has increased his holding by 2% within a year. The price offered must not be less than the highest price paid for the shares of the same class during the preceding 12 months.

3. Under the Australian code of takeover, there is a prohibition of an acquisition which has the effect of increasing a person's entitlement of voting share beyond 20% unless an acquisition is made by the means authorised by the code. The bidder in a takeover scheme is required to send to each shareholder a takeover offer containing details about his activities, financial position, motive for takeover, and price and number of shares intended to be acquired etc. The price of the share offered should not be less than its highest during the last four months before the takeover bid.

4. In Singapore, mandatory offer is required where a person alongwith person acting in concert with him has acquired 25% of the voting right of the company or where he holds shares between 25% and 30% and has acquired additional shares carrying 3% of the voting rights in the preceding 12 months.

Conclusion

3.99 The Committee note that in order to discourage take over of established companies, the Government amended the Clause 40 of the listing of the Stock Exchange by substituting a new Clauses 40 A and B which are intended to discourage take over of companies in a clandestine manner suitable guidelines have also been issued to the Stock Exchange in this regard. The Committee are informed that violation of listing agreements have from time to time resulted in suspension of delisting of defaulting companies by the Government.

Recommendation

3.100 The Committee would like to be informed whether in view of various steps taken for liberalising of FERA regulations, the changes intended to be brought out in FERA itself and possible repeal of Capital Issue Control Act, the listing agreements of the Stock Exchanges with special references to special Clauses 40A and B, would require any modifications.

Machinery for verifying claims of company new shares

3.101 Explaining machinery for verifying claims of companies issuing new shares and also regulating trading practices of brokers, the Ministry of Finance in a written reply stated that issue and allotment of new shares by a company supervised by the concerned regional Stock Exchange. The basis of allotment of shares is finalised by the company in consultation with the concerned Stock Exchange and the Stock Exchange grants listing permission for the new shares of the company when company certifies despatch of allotment letters or refund advices to all the applicants for the issue. The Stock Exchanges also regulate the trading practices of its broker members under its Bye-laws and Regulations as stipulated in the Memorandum and Articles of Association to which the broker members subscribe.

3.102 It was further added that:

Under Section 8 of Capital Issues (Control) Act, 1947 while making any application for consent or recognition to an issue of capital no person shall give any information or make any statement which he knows, or has reasonable cause to believe, to be false or not true in any provisions of Capital Issues (Control) Act, 1947 or of any order made thereunder is liable for punishment under Section 13 of this Act. The facts stated in application of companies for capital issues are certified by principal officer of the company. Further all applications of companies contain a certificate from Auditors that they have verified the information furnished by the companies in their application and that they have found the same correct. Although no specific machinery exists for verifying each and every assertion made by a company in the prospectus, a company will be liable for civil and criminal action under the Companies Act for mis-statements in the prospectus.

Conclusion

3.103 The Committee note that the basis of the allotment of the shares is presently finalised by the company permitting the issue in conclusion with the stock exchange concerned which in turn regulate the trading practices of its members.

Recommendation

3.104 The Committee desire that ever after the removal of Control over Capital Issues, the Government should ensure that the basis of allotment of shares is fair and transparent and that the shares of Public Limited Companies are held as widely as possible. The Committee are keen to ensure that no opportunity is provided to manipulative forces to concentrate share holdings in their hands. The Committee desire that public sector mutual funds should play an effective role towards the achievement of this objective.

3.105 In a Non-official Memorandum submitted to the Committee it has been stated:

“In the present scenario where the stock market has gone berserk, when prices of the share are zooming up like a rocket, the situation is ripe for a hefty gain by unscrupulous industrialists with the connivance of FIs and banks. The sufferer would be the common man who has no information or inkling of the inside situation. There are numerous ways and means to hoodwink the gullible investor. I am stating herebelow few of the oft repeated techniques adopted by unscrupulous industrialist in which brokers and stock exchange members play active role and financial institutions are more than the mere spectators as they do not stand to lose anything, yet the managers of these FIs are able to make hefty personal gains.

The modus-operandi is first of all, that an industrialist whose shares were selling at below par a month or two months back appoints a few brokers at important stock exchanges throughout the country who in turn do shadow purchases and sales of these shares at gradually increasing prices so that the increased prices are quoted in the daily stock exchange bulletins/National economic Newspapers. This is done in order to attract innocent investors who are given the impression that the price of that particular share is on the bullish trend. When the prices of the shares reach the range of Rs. 30 to 40 per share against the face value of Rs. 10/- the industrialist who happens to be the promoter of the Company off-loads his promoters quota shares in the market and in the process make a profit of Rs. 20 to 30 per share, which was not even getting sold at par a month or two back.

Now at this stage where the role of the financial institutions and the bank is of very crucial nature. The Company whose share was selling at less than par should most probably be a Company which has taken project finance from such financial institutions/ banks and promoters have given undertaking not to off-load their statutory promoters quota shares so long as the loan is outstanding. Since promoters quota shares are no different than the others, there is no way to know as to who is selling in the market. Banks and financial institutions neither take the custody of the promoters shares nor do ever care to conduct their physical verification. They are merely content by the undertaking which is being violated by such industrialists at their will. The amount so collected against the sale of shares by the promoter/industrialist, gets converted into either personal fixed deposits or is used towards the payment of the over due instalments or towards payment of unsecured loans and overdrafts. The banks or financial institutions do not even bother to find out the sources of such payments to them because they are content with the realisation of their overdues. After the payment of the over dues instalments, these institutions are requested to convert the unsecured loans from promoters into equity share capital and that too at par. Firstly, these unsecured loans from promoters are more or less bogus types of outstanding loans from associate/ sister-concerns. Secondly, the promoters get the shares which on one hand is selling at 3 to 4 times more than the face value whereas he gets them at par. This is done with the active help of financial institutions so that both of them can make equal gain by off-loading these shares."

3.106 It was further stated:

“As per the provisions of Sec. 84 of the Companies Act, forged shares do not give any right to holder of a forged shares certificates against the Company. In view of this, it is of utmost importance that the FIs should be extra careful about the source of funds deposited with them against realisation of their over-dues from sick units. It is no wonder that many such companies which were perennially short of funds may be approaching financial institutions and banks to refund the full amount of loan. How do the promoters of such companies suddenly become flush with funds, should be looked into by the financial institutions.”

3.107 It was added:

“Yet another mal-practice adopted by industrialists in connivance with the financial institutions is that the financial institutions are approached by the promoters to allow them the permission to issue promoters quota shares to some of their nominees at par value whereas in the market the same may be selling 3 to 4 times over. This permission is of-course granted with a mere stipulation that the nominee would not sell the shares till the currency of the loan and also with the rider that the par value of these shares would be utilized by the promoters to pay back the next instalment in six months to one year time to the financial institutions. These shares are sold immediately and the gain so made is divided between the promoters, financial institutions and the nominees.”

Recommendation

3.108 The Committee desire that in order to discourage the promoters from manipulating the share prices of their companies, particularly, when such shares are being quoted at par or below par, the banks and financial institutions should take custody of the shares of promoters who have availed of project finance from such financial institutions/banks or at least conduct a periodic physical verification of such shares.

The Committee feel that this step is essential to ensure that promoters fulfil usual undertaking given to the financial institutions/banks not to off load statutory promoters quota of shares during the period loans from financial institutions/banks are outstanding.

3.109 The Committee are apprised that some unscrupulous elements raise funds from the security market by trading in fake/forged share certificates. The Committee desire the SEBI to investigate such allegations. The Committee further desire that in the event of any pre-mature refund of loans by a company whose shares are listed in any stock exchange/the financial institutions/banks which have loaned the funds should invariably

enquire into the sources of funds in order to discourage transaction of fake/forged share certificate in the security market.

3.110 The Committee understand that a practice has developed under which financial institutions encourage promoters to issue shares to some of the nominees of the financial institutions out of promoters' quota at par even though in the market the same shares may be selling at a premium. They are further apprised that despite the stipulation that the nominees must not sell such shares during the currency of the loan taken by the promoters these are nevertheless sold immediately to make quick gains. The Committee feel that this practice apart from being unethical also hurts the interests of ordinary shareholder of a company. The Committee desire that SEBI should take measures to stop this practice.

CHAPTER IV

SECURITIES AND EXCHANGE BOARD OF INDIA

A. Securities and Exchange Board of India

4.1 The Securities and Exchange Board of India (SEBI) was established as a non-statutory body, through a Government Resolution dated the 12th April, 1988 under the overall administrative control of the Ministry of Finance, SEBI is headed by a Chairman who is supported by suitable staff to carry on its functions. SEBI shall:

- (a) with all matters relating to development and regulation of securities market and investor protection and advise Government on these matters;
- (b) prepare a comprehensive legislation for the regulation and development of the securities market;
- (c) carry out such functions as may be delegated to the Board/ Chairman by the Central Government for the development and regulation of securities market.

4.2 Asked in what way it will help strengthening the capital market, the Ministry of Finance in a written reply stated that SEBI will play an effective role in developing and promoting the orderly growth of the stock market and would ensure investor protection and prevent insider trading thereby strengthening the capital market.

4.3 Explaining the rationale of setting up SEBI by the Government, the representative of the Ministry of Finance during oral evidence stated:

“The need was felt for an organisation like SEBI because the capital market of India has been growing very fast.”

“Therefore, Government thought that there was a need for an overall body to take care of all aspects of the capital market development. The intention was to have a comprehensive approach to the development of the capital market which can only take place when there is investors' confidence. Therefore the protection of the investors' interest was given importance along with the capital market.”

4.4 In this regard the Chairman, SEBI during the oral evidence stated:

“The investors' confidence is shaken in the capital market where he feels that he is not getting a fair deal. Then shying away of the investor from the Capital market will affect flow of funds. This

was the rationale for having a body like SEBI and I may submit that we have today 80 countries around the world—both developed and developing—those with fully developed capital market and the smaller countries of the world all have what they call Comprehensive Security Exchange Commission called by different names but essentially with the same objective of promoting the healthy development of capital market by giving investor protection. This was the objective for which SEBI was set up. The idea was that to enable it to perform its function effectively there shall be a comprehensive legislation which would incorporate the provisions of numerous pieces of legislations. Now, I can say that they deal with different aspects of capital market, different aspects of investors protection and they are all brought under one agency so that we can take a comprehensive look at the growth of the capital market and investor protection. Government has been trying its best to give shape to this legislation and I understand that it is at the advanced stage and I hope that we will have this legislation soon which will establish SEBI as a statutory body giving adequate powers to look into all aspects of capital development—as the Government Resolution says—and enables SEBI to function effectively.”

Rules & Procedures

4.5 According to the Government Resolution under which SEBI was originally set up the Board shall be free to determine its own procedures, and will have powers to call for records, returns, notes, memoranda, data or any other material relevant to its working from official bodies and also hold discussions with them. The main achievements of SEBI relate to registration of Merchant Bankers, assistance rendered to Government in formulation of guidelines relating to stock-market and publication of technical papers/pamphlets on various aspects of the capital market.

4.6 Asked if the Board has drafted any rules/regulations etc. for the securities market, the Ministry in a written reply stated that SEBI had prepared draft guidelines for Mutual Funds and Merchant Bankers and a draft amendment to Clause 40 of the Listing Agreement between companies and Stock Exchanges. These were taken into account when Government issued guidelines and amended Clause 40 of the Listing Agreement.

Investors Problems

4.7 Asked as to how SEBI plans to tackle the investor's problem, the Chairman, SEBI during the oral evidence stated:

“In the absence of statutory power, we have issued press releases indicating the names of companies against whom complaints are received. This is a sort of negative list highlighting the maximum number and nature of the complaints.”

4.8 When asked as to how many press releases have been issued so far, the Chairman, SEBI said:—

“We have issued 7 or 8. As a matter of fact companies whose names figured in the press releases approached us and apprised us of the special arrangements that they have taken to look into the investors' problem. They do it because it is not complimentary to find one's name in such a negative list.”

4.9 The Ministry further stated that since September, 1990, SEBI has been issuing fortnightly Press Release on the investor complaints received by it. Each Press Release highlights the number of complaints received by SEBI during the previous fortnight, analyses the complaints and also highlights names of the top 10 companies in terms of complaints received. A copy each of the Press Releases is enclosed in Appendix F.

4.10 Explaining, the steps taken regarding disclosure in prospectus, the SEBI stated that Ministry of Finance had issued guidelines for merchant bankers in April 1990 with a view to providing a broad framework for regulating merchant banking activities and imparting greater responsibility to merchant bankers. The SEBI has been entrusted with the responsibility of administering these guidelines. (Under the guidelines, SEBI will authorise merchant bankers and oversee their activities).

Clause 11 (Appendix 'G') of the SEBI Bill, 1992, refers to the measures that SEBI may take for protecting the interests of investors in securities and help promote the growth of the market thereof. SEBI is free to devise its own measures within the provisions of the overall planning frame work of Government.

Authorisation of Merchant Bankers

4.11 The main steps taken by SEBI regarding authorisation of merchant bankers are given below:

(i) SEBI has categorised merchant bankers into three categories as indicated below:

Category I: Those authorised to act in the capacity of lead manager/co-manager/advisor or consultant to an issue, portfolio manager and underwriter in an issue as mandatorily required. Minimum networth Rs. 1 crore.

Category II: Those authorised to act in the capacity of co-manager/advisor or consultant in an issue or portfolio manager. Minimum Networth Rs. 50 Lakhs; and

Category III: Those authorised to act only in the capacity of advisor or consultant in an issue. Minimum Networth Rs. 20 lakhs.

(ii) All issues (public or rights) would be managed by atleast one authorised merchant banker functioning as a sole manager or lead manager;

- (iii) Lead manager will have specific responsibility to SEBI for Pre and Post-Issue activities, in terms of *inter-se allocation of responsibilities*.
- (iv) In order to ensure a direct stake in the issues managed by them, Lead Managers would be required to accept minimum 5% of under writing commitment or Rs. 25 lakhs whichever is lower.
- (v) Lead Manager concerned will submit to SEBI a certificate for exercise of Due Diligence "in independently verifying the contents of the prospectus and reasonableness of the views expressed therein."
- (vi) The Lead Manager concerned will ensure that publicity/advertisement material meets the requirements of the relative guidelines from the Government of India or from SEBI and also will make necessary arrangements and take reasonable care to ensure that information given or views expressed either by promoter or others about the issue or the project for which the issue is made, in Press/Brokers' conference, or investors' meet arranged or actively participated by them are in line with the contents of the prospectus.
- (vii) A code of conduct has been evolved for merchant bankers directed at high standards of service, exercise of independent professional judgement and necessary professional ethics in dealing with clients or other merchant bankers.
- (viii) SEBI may suspend or cancel authorisation for violation of terms of authorisation.

4.12 According to SEBI compliance of terms of authorisation by merchant bankers and the code of conduct are expected to bring about desired orientation in their awareness of responsibilities to investors and issuers of securities and efficient discharge of service which should pave way for sustained confidence of investors in the capital market and orderly development and growth of the capital market. Until now, 68 Merchant Bankers have been given SEBI authorisation.

Grading of Prospectus

4.13 After consultation with representatives of Industry, Chambers of Commerce and Industry, Merchant Bankers, and cross section of investors and Institute of Chartered Accountants of India, SEBI has also designed a format of prospectus.

4.14 Grading of prospectus taking into account the quality of disclosures made, the quality of Auditors' Report forming part of the prospectus, and compliance of the prescribed requirements is also under consideration of SEBI. This will enable objective evaluation of the merchant bankers and provide a valuable input in examining suspension, continuation, cancella-

tion of authorisation by SEBI. Furthermore, the grading of the prospectus will be noted in the performance file of the relative lead manager which measure should induce merchant bankers to strive for improved quality of disclosures as also help them get all the required information/documents from the company for exercise of 'due diligence.'

4.15 During the oral evidence, Chairman, SEBI said:—

"This is only a very small part of the measures we can take, we can do a lot more as soon as we get statutory power."

Powers of SEBI

4.16 When asked what are the powers SEBI ought to have to be more effective, Chairman, SEBI during oral evidence stated:—

"We ought to have powers to enforce the way in which prospectuses are prepared, to cast responsibility not only on the directors who prepare the prospectus but also on the merchant bankers and lead managers who lend their support to the prospectus. We must have the power to deauthorise them if they are found guilty. To make deauthorisation really effective, I want Registrar of Companies to be told that he shall not register a prospectus from a company if the lead manager or the merchant banker is not in a current status of authorisation."

4.17 In a separate note to the Committee specifying the teeth needed by SEBI, apart from getting statutory powers, to enable it to perform its functions better the Chairman, SEBI indicated his views in a written post evidence reply as:—

- A. At present the securities laws are fragmented in various Acts, each administered by a separate authority. There is also a maze of guidelines and circulars which do offer certain remedies to investors. But these have become ineffective as they are not implemented or enforced. There is therefore a clear need for a single comprehensive legislation administered by one single authority. Appropriately, this authority can be vested in SEBI.
- B. The Stock Exchanges do not function now as effective self-regulatory organisations. On one hand, they do not have sufficient powers to enforce discipline among their members and act as deterrent on erring companies, and on the other, they do not also exercise fully whatever powers are given to them. They function more as closed clubs rather than institutions in which investors can repose confidence.
- C. SEBI is at present functioning within its limited scope but these functions are still of peripheral nature. SEBI's limited powers emanate from Govt. guidelines only at present.

D. SEBI would need to have the following powers to:—

- (1) Make rules, regulations and guidelines to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of SEBI legislation;
- (2) Authorise, register, regulate, supervise and establish code of conduct for any inter-mediarieis associated with the securities market including merchant bankers, Mutual Funds, sub-brokers and registrars to the issue;
- (3) Promote, recognise, regulate and supervise designated agencies as self-regulatory organisations for particular categories of intermediaries associated with the securities market who may be authorised to perform such functions and exercise such powers and responsibilities as Securities Board may specify;
- (4) Ensure redressal of investor grievances including framing of rules, regulations and guidelines for redressal, and formation and registration of investor associations;
- (5) Provide financial and other forms of help for the registered investor associations;
- (6) Levy and collect fees at such rates as may be prescribed from time to time, from—
 - (i) The Stock Exchanges and on operations of Stock Exchanges;
 - (ii) Merchant bankers, Mutual Funds, Sub-brokers, registrars to the issue, and other intermediaries in the capital market whose activities are authorised, registered, supervised and regulated by the Securities Board;
- (7) Perform regulatory, developmental and such other functions as may be specifically authorised by the Central Government or under any law;
- (8) Exercise the powers now exercised by the Central Government under the Capital Issues (Control) Act, 1947;
- (9) Exercise the powers now exercised by the Central Government under the Securities contract (Regulation) Act, 1956. SEBI in its present form is a precursor to the proposed statutory Board to be set up for promoting orderly and healthy growth of the securities market and for investor protection. Work relating to giving statutory powers to SEBI is in progress. The proposed legislation is expected to give SEBI suitable statutory powers for promoting orderly and healthy growth of the securities market and for investor protection. It is submitted that the functions and powers of SEBI will have to be in harmony with the policies and

objectives of the Government which is accountable to the Parliament.

B. CCI & SEBI

4.18 During the oral evidence it was pointed out by the Committee that perhaps SEBI was created because CCI felt the need for it since the latter was not able to handle the total work. It was felt that failure to rationalise the situation in which organisations *viz*; CCI & SEBI, were functioning would only lead to more Governmental control and which is not necessarily going to benefit the capital market.

4.19 Asked as to how both these organisations can be integrated and streamlined, the Ministry in a written reply stated that the Controller of Capital Issues (CCI) is at present administering two Acts *viz.* the Capital Issues Control Act, 1949 and the Stock Exchange Regulation Act. The Securities and Exchange Board of India (SEBI) was set up to deal with matters relating to development and regulation of the securities market and investor protection and to advise Government on these matters. Once SEBI legislation is passed by the Parliament the Stock Exchange Regulation Act will be repealed and SEBI will take over such powers of the Central Govt. as are provided to it under that Act. SEBI will also perform promotional and developmental functions relating to the securities business, including authorising and regulating the intermediaries through specific guidelines, prescribing disclosure standards, curbing fraudulent and unhealthy practices in the securities and ensuring investor protection and redressal of investors grievances. SEBI will also coordinate and monitor the working of trading in Stock Exchanges and in other markets where securities are traded. It will also recognise, coordinate and monitor working of collective investment schemes, including Mutual Funds, except those Mutual Funds which are specifically exempted by the Government. Apart from the above SEBI will, *inter alia*, take steps to prevent insider trading, fraudulent and unhealthy practices in the securities market and promote appropriate institutional structure and market systems conducive to healthy growth and development of securities market.

4.20 The CCI under the Capital Issues Control Act deals with the issue of securities by the private and public sector companies, unless such issues are exempted under the Capital Issues Control Act. On the basis of the applications received from the companies, the CCI undertakes detailed scrutiny of their applications with regard to, *inter alia*, the various statutory approvals which the companies may have to require for its project with regard to the objective for which it is raising the funds, the Appraisal Report for its project, the Debt Equity Ratio, availability of term loan wherever required and approval for the means of financing for the project, etc. CCI has also to ensure that the company has, alongwith its proposal, Resolutions from its General Body of shareholders and Certificates from its Auditors and Principal Officers with regard to the facts and details in the application.

4.21 In case of companies asking for premium for issue of capital, the balance-sheets of the company and the price movement of the company's shares on the Stock Exchanges are also examined. Further, discussions with representatives of the company and Merchant Bankers, are also required to be held on various points, to ensure that approvals are in Consonance with policy and guidelines.

* 4.22 It would, therefore, be clear that the functions of the CCI under the Capital Control Act will be entirely different from what SEBI will be required to do. Broadly speaking, SEBI, once it becomes a statutory body, could deal only with the secondary market monitoring, promotion & developments. Policy issues and regulating directives would continue to be with the CCI/Government, as would the Primary market. The CCI would also continue to function as the link between SEBI and the Government.

4.23 The CCI also Acts as Joint Secretary (Inv.) in the Department of Economic Affairs. Therefore, he has certain additional functions to perform apart from being merely a CCI. He is incharge of the Foreign Investment and Technology Division of the Department and coordinates the work of foreign investment policy. JS (Inv.) also looks after the relating to dis-investment by FERA companies and cases relating to investment proposals for MRTP companies.

4.24 The Ministry further stated that in view of the above, it can be concluded that while on SEBI legislation being passed, the work of the CCI relating to Stock Exchange Regulation Act would be transferred to SEBI, the work relating to Capital Issues Control and other matters mentioned above would continue to be handled by the CCI and JS (Inv.) and the Government does not propose to transfer these functions to SEBI.

C SEBI Bill 1992

4.25 While presenting the Central Government's Budget for 1992-93 on 29th February, 1992, the Finance Minister stated:

"27. Financial sector reform also includes reform of the capital markets, which will increasingly play a vital role in mobilising and allocating resources from the public. Several initiatives announced in my Budget speech last year have since been implemented. The Securities and Exchange Board of India (SEBI), has now been established on a statutory basis. As we gain experience, additional powers will be given to SEBI to strengthen its capability. The Government has introduced the securities and Exchange Board of India Bill, 1992 (reproduced at Appendix G) in the Parliament to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of and to regulate, the securities market and for matters connected therewith or incidental thereto."

4.26 When asked whether the SEBI Bill already introduced in the Parliament is proposed to be further modified taking into account the latest policy pronouncements of Finance Minister in regard to removal of Capital Issues Control and opening of mutual funds to private sector, the Ministry in a written reply stated that the Finance Minister has announced in his Budget speech for 1992-93 that as experience is gained additional powers will be given to SEBI to strengthen its capability. At present, under the provisions of the SEBI ordinance 1992, SEBI will register, inter alia, banker to an issue, trustees, registrars to an issue, merchant bankers, underwriters, investment advisers on the basis of regulation framed in this regard by it. SEBI will also register and authorise all mutual funds which are primarily involved in the capital market and frame regulations for their orderly functioning and for ensuring investor protection. The relevant sections of the SEBI Bill are 11, 12 and 30 (Appendix G).

4.27 According to the Section 4(1) of the Securities and Exchange Board of India Bill, 1992—

4 (1) The Board shall consist of the following members, namely:—

- (a) a Chairman;
- (b) two members from amongst the officials of the Ministries of the Central Government dealing with Finance and Law;
- (c) one member from amongst the officials of the Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934;
- (d) two other members.

to be appointed by the Central Government.

4.28 According to Section 12 of Securities and Exchange Board of India Bill, 1992:

“12.(1) No stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the rules made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so

for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.

(2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard".

4.29 However, the Securities Contracts (Regulation) Act, 1956 has been amended by Securities and Exchange Board of India Act, 1992 as follows:

‘Section 6—

- (i) in sub-section (1) for "Central Government", substitute "Securities and Exchange Board of India";
- (ii) in sub-section (2), for "by the Central Government", substitute "by the Securities and Exchange Board of India";
- (iii) in sub-section (3) for "Central Government", wherever it occurs, substitute "Securities and Exchange Board of India"."

SEBI & Primary Capital Market

4.30 When the Ministry was asked as to what will be the Role of SEBI in regard to the Primary Capital Market, as the SEBI Bill, 1992, focussed largely on secondary security market and provides no role for the board in this regard, and whether this dimension will be added to the SEBI with the possible repeal of Capital Issues (Control) Act, 1947, the Ministry stated that SEBI is empowered to authorise and register bankers to an issue, registrar to an issue, custodian, underwriters etc. Who are involved in the management and marketing of an issue. Any further role of SEBI in the primary capital market would have to be examined after the SEBI Bill is considered and passed by the Parliament and after experience has been gained.

4.31 The clause 17(c) of the SEBI Bill, 1992 provides that if at any time the Central Government is of the opinion that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification, supersede the Board for such period, not exceeding six months as may be specified in the notification. In this context, when asked whether the Government would delete this clause to insulate the functioning of SEBI as also capital market from undue Government interference, the Ministry stated that clause 17(c) of the

SEBI Bill refers to the power of Central Government to supersede the Board, and is an enabling provision so that Government may take appropriate action, if deemed expedient in the public interest.

4.32 The Ministry further mentioned that the sub-section (4) of the section 17 provides that the Government shall cause a full report of my action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

4.33 The Committee note that Securities and Exchange Board of India which was set up under a Government Resolution in 1988 has now been given necessary statutory footing with the issue of an ordinance to this effect on 30 January 1992. They hope that the Bill embodying the provisions of the ordinance and under consideration of the Parliament will be enacted soon. However, they note that the bill seeks to empower SEBI to authorise and register bankers to an issue and other parties who are involved in the management and marketing of an issue. The Committee feel that these provisions alone may not be sufficient to equip the Board for a meaningful role once control over capital issue is removed and if the Capital Issue Control Act is repealed.

Recommendation

4.34 The Committee desire the Government to review the legal framework within which SEBI is functioning or will function after the enactment of SEBI bill concurrently with the intended removal of control over capital issues and consequent changes in the statutes.

Conclusion

4.35 The Committee have been informed that SEBI has already initiated a number of steps for safeguarding the interests of small investors and these include grading of prospects publishing of fortnightly list of companies against whom investors have complained, guidelines for mutual funds and merchant bankers. They hope that SEBI will, in due course of time, emerge as a strong watch-dog of the Security market in the interest of investors, particularly, small investors.

Recommendation

4.36 The Committee desire that SEBI should come out with appropriate publication consolidating therein all the relevant legal provisions, the guidelines issued to various institutions of the Capital market and circulars issued for the benefit of investors. They also desire that such a publication should be widely circulated.

Conclusion

4.37 The Committee note that there are certain grey areas in the proposed legislation for SEBI, in regard to its role in the primary capital market, protection of small investors and delegation of powers to the Board/ under Security Contract Regulation Act and now liberalised capital market.

They further note that the Ministry intend to gain more experience before effecting any modifications in the statute already governing the functioning of the Board.

Recommendation

4.38 The Committee desire that the Government should keep the developments in capital market under constant watch and effect necessary changes in the law as soon as experience gained in regard to various matters mentioned above necessitates.

Conclusion

4.39 The Committee are not convinced by the argument put forth by the Ministry that the role of SEBI should be confined to secondary security market while regulation of primary capital market should be entrusted to Controller of Capital Issues.

Recommendation

4.40 The Committee are of the view that both the segments of the market are inter-linked and any demarcation between the two would be impracticable. Moreover, they also note the fact that SEBI is already performing various functions in relation to primary stock market. This stand of the Committee has been vindicated by the recent policy changes announced by the Finance Minister in the Parliament.

4.41 The Committee urge the Ministry to review their stand and desire that whatever limited regulation of the capital market is necessary after the removal of control over capital issues should be entrusted to SEBI.

Conclusion

4.42 The Committee note that regarding the Constitution of the Board, every member and the Chairman is to be appointed/nominated by the Central Government. They find that in Section 4 of this Bill the qualifications of two members have been left undefined. The Committee are of the view that both the industry and the public life of India should be represented in this institution.

Recommendation

4.43 The Committee desire that the two Members of the Board whose qualifications have been left undefined, should be nominated by the Ministry, in a manner so that one each represent the capital market institution and the other investing public. They also desire that both the Members should be eminent figures, well-known for their professional competence, public service and integrity.

Conclusion

4.44 The Committee find that Section 12 of the SEBI Act, 1992 provides that no stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, under-writer,

portfolio manager, investment advisor and such other intermediaries who may be associated with the securities market can buy, sell or deal in securities except under and with the conditions of a certificate of registration to be obtained from the Board in accordance with the rules made under the Act. In this context, the Committee note that there already exists the practice of stock brokers being registered with the recognised stock exchanges. They further note that under Section 6 of the Securities Contract Regulation Act, 1956 as amended vide Securities Exchange Board of India Act, 1992 the SEBI has been vested with substantial control over the member-brokers of the stock exchanges. In view of this the rationale for dual registration for the stock brokers is not clear.

Recommendation

4.45 Although the Committee appreciate the need for effective intervention by SEBI for the protection of investors' interest they shall like to be assured that the scheme of dual registration will not result in undue interference in the working of stock-brokers or undue bureaucratisation of an essentially commercial activity.

Conclusion

4.46 The Committee note that Section 17 of the SEBI Bill provides for supersession of the Board in circumstances which include, *inter-alia*, grave emergency rendering the Board defunct, persistant default by the Board of the directions issued by the Central Government or any other circumstance which make such supersession necessary in the public interest. The Committee are concerned to find that the Government have given itself such wide powers of supersession of the Board, which are susceptible to arbitrary use. They wish to particularly underline the scope provided for such misuse in Sub-Section 'C' of the Clause 17 of the Bill.

Recommendation

4.47 The Committee would like to caution to Government that powers likely to vest with it under the new legislation, should be used with greatest circumspection in order to maintain public confidence in the SEBI as an independent institution in the service of investing public.

4.48 The Committee would also like the Ministry to review Sub-Clause 'C' of Clause 17 after certain amount of experience is gained with a view to substituting it by a more definite set of grounds, on the basis of which supersession of the powers can be contemplated.

APPENDIX-A

**STATEMENT SHOWING YEAR OF RECOGNITION AND
LOCATION OF RECOGNISED STOCK EXCHANGES**

Sl. No.	Stock Exchange	Year of recognition	Location
1	2	3	4
1.	Stock Exchange Bombay	1957	Bombay
2.	Ahmedabad Share and Stock Brokers Association	1957	Ahmedabad
3.	Calcutta Stock Exchange Association Ltd.	1957	Calcutta
4.	Madras Stock Exchange Ltd.	1957	Madras
5.	Delhi Stock Exchange Assn. Ltd.	1957	New Delhi
6.	Hyderabad Stock Exchange Ltd.	1958	Hyderabad
7.	Share Brokers Association (MP Stock Exchange)	1958	Indore
8.	Bangalore Stock Exchange Ltd.	1963	Bangalore
9.	Cochin Stock Exchange Ltd.	1979	Cochin
10.	Uttar Pradesh Stock Exchange Assn. Ltd.	1982	Kanpur
11.	Pune Stock Exchange Ltd.	1982	Pune
12.	Ludhiana Stock Exchange Association Ltd.	1983	Ludhiana
13.	Gauhati Stock Exchange Ltd.	1984	Gauhati
14.	Mangalore Stock Exchange Ltd.	1985	Mangalore
15.	Magadh Stock Exchange Association.	1986	Patna
16.	Jaipur Stock Exchange Ltd.	1989	Jaipur
17.	Bhubaneswar Stock Exchange Assn. Ltd.	1989	Bhubaneswar
18.	Saurashtra Kutch Stock Exchange Ltd.	1989	Rajkot
19.	Over the Counter Exchange of India	1989	Bombay
20.	Vadodara Stock Exchange Ltd.	1990	Baroda
21.	Coimbatore Stock Exchange Ltd., Coimbatore	18.9.91	Coimbatore
22.	Meerut Stock Exchange Ltd. Meerut.	20.11.91	Meerut

APPENDIX 'B'

Code of conduct for Advertisements

1. A reference to an advertisement is a reference to any kind of publicity material about the organisation and its activities and sales literature/advertisement, including, an advertisement which is, or forms part of, any publication, notice, poster, sign, label, showcard, circular, catalogue, or the document, picture, film, radio or television programme or any other kind of recording.
2. No sales literature/advertisements shall be published unless they are approved by the designated person.
3. An advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.
4. An advertisement shall be considered to be misleading if it contains:—
 - a) Misleading Statements:— Representations made about the performance or activities of the organisation in the absence of necessary explanatory or qualifying statements, and which may give an exaggerated picture of the performance or activities, than what it really is.
 - b) An inaccurate portrayal of a past performance or its portrayal in a manner which implies that past gains or income will be repeated in the future.
 - c) Statements promising the benefits of wing units or investing in the schemes of the Mutual Funds without simultaneous mention of material risks associated with such investments.
5. The advertisement shall not be so designed in content and format or in print as to be likely to be misunderstood, or likely to disguise the significance of any statement. Advertisements shall not contain statements which directly or by implication or by omission may mislead the investor.
6. The sales literature may contain only information, the substance of which is included in the Fund's current advertisements in accordance with this code.
7. Advertisements shall not be so framed as to exploit the lack of experience or knowledge of the investors. As the investors may not be sophisticated in legal or financial matters, care should be taken that the advertisement is set forth in a clear, concise, and understandable manner. Extensive use of technical or legal terminology or complex language and

the inclusion of excessive details which may detract the investors should be avoided.

8. The advertisement shall not contain information, the accuracy of which is to any extend dependent on assumptions.

9. The advertisement shall not compare one Fund with another, implicitly or explicitly, unless the comparison is fair and all information relevant to the comparison is included in the advertisement.

10. The Fund which advertises yield must use standardised computations such as annual dividend on face value, annual yield on the purchase price, and annual compounded rate of return.

11. Mutual Funds shall indicate in all advertisements, the names of the Settlor, Trustee, Manager and or Financial Advisor to the Fund, bringing out clearly their legal status and limited liability of these entities, distinction between each of them, both legally and in terms of their functions, responsibilities and obligations.

12. All advertisements shall also make a clear statement to the effect that all Mutual Funds and securities investments are subject to market risks, and there can be no assurance that the Fund's objectives will be achieved.

13. If however, in any Advertisement a Mutual Fund guarantees or assures any minimum rate of return or yield to prospective investors, resources to back such a guarantee shall also be indicated.

14. If any existing Mutual Fund indicates the past performance of the Fund in advertisements, the basis for computing the rates of return yield and adjustments made (if any) must be expressly indicated with a statement that, such information is not necessarily indicative of future results and may not necessarily provide a basis for comparison with other investments.

APPENDIX 'C'

C. Guidelines issued by SEBI on accounting practices for Mutual Funds

The disclosure and reporting by Mutual Funds will be in two parts:—

- (a) disclosure to shareholders/unit holders of the scheme of the funds; and
- (b) disclosure to the SEBI.

The Mutual Funds are expected to adopt their accounting policies in line with the disclosure requirements as indicated below.

A. DISCLOSURES TO SHAREHOLDERS/UNIT HOLDERS

(1) Timing of Implementation

The disclosure and reporting requirements prescribed hereunder shall be effective for accounting years ended on or after 31st March, 1991.

(2) Accounting year

The accounting year of all schemes of a Mutual Fund shall end on the same date. For a new scheme commenced during the accounting year, the disclosure and reporting requirements would apply for the period beginning from the date of its commencement and ending on the last date of the accounting year chosen by that Mutual Fund.

(3) Framework of Disclosure and Reporting

Disclosure and reporting framework shall comprise:

- i. bi-annual disclosure; and
- ii. annual disclosure and reporting

(4) Bi-annual Disclosure

Bi-annually, within two months thereafter, every Mutual Fund shall issue an advertisement of its unaudited financial results in one English daily newspaper circulating in the whole or substantially the whole of India and in a newspaper published in the language of the region, where the registered office of the Mutual Fund is situated. The advertisement shall give information on financial results as prescribed by SEBI.

(5) Annual Disclosure and Reporting

Each Mutual Fund shall have an option to either:

- a) Advertise in one English daily newspaper circulating in the whole or substantially the whole of India and in a newspaper

published in the language of the region where the registered office of the Mutual Fund is situated, a schemewise summary of balance sheet and revenue account.

or

- b) Not to advertise, but send to all its unitholders its annual report containing information and particulars set out in paras 6-10 hereunder. Mutual Fund is free to send to all its unitholders the information and particulars of all its schemes in the annual report.

(6) *Annual Report*

The annual report on the operations of the Fund shall be sent within six months from the date of close of the accounts. This annual report shall contain, *inter alia*, the following

- i) Report of the Board of Trustees on the operations of the various schemes of the Fund and the Fund as a whole during the year and future outlook of the Fund;
- ii) Balance Sheet and Revenue Account;
- iii) Auditor's Report;
- iv) Brief statement of the Board of Trustees on the following aspects:
 - a) Liabilities and responsibilities of the Trustees and the settlor;
 - b) Investment objective of each scheme;
 - c) Basis and policy of investment underlying the scheme.
 - d) If the scheme permits investment partly or wholly in shares, bonds, debentures and other scrips of securities whose value can fluctuate, a statement on the following lines.

"The price and redemption value of the units, and income from them, can go up as well as down with the fluctuations in the market value of its underlying investments."

(7) *Contents of Balance Sheet*

- 7.1 The Balance Sheet shall give schemewise particulars of its assets and liabilities. It shall also disclose, *inter alia*, accounting policies relating to valuation of investments and other important areas.
- 7.2 If investments are carried at costs or written down cost, their aggregate market value shall be stated separately in respect of each type of investment, such as equity shares, preference shares, convertible debentures listed on recognised stock exchange, non-convertible debentures or bonds further differentiating between those listed on recognised stock exchange and those privately placed.
- 7.3 The Balance Sheet shall disclose under each type of investment the aggregate carrying value and market value of non-performing investments. An investment shall be regarded as non-performing if it

has provided on returns in the form of dividend or interest for more than 2 years as at the end of the accounting year of the Mutual Fund.

(8) *Contents of Revenue Account*

- 8.1 The Revenue Account shall give schemewise particulars of the income, expenditure and surplus of the Mutual Fund.
- 8.2 If profit on sale of investments shown in the Revenue Account includes profit/loss on inter-scheme transfer of investments within the same Mutual Fund, the aggregate of such profit recognised as realised, shall be disclosed separately without being clubbed with the profit/loss on sale of investments to third parties.
- 8.3 Accounting policy in respect of recognition of revenue and income from investments (including dividend and interest) should be disclosed.
- 8.4 The Balance Sheet and the Revenue Account shall be signed by schemewise Fund Manager/s and the Board of Trustees.

(9) *Auditor's Report*

- 9.1 All Mutual Funds shall be required to get their accounts audited in terms of a prescription to that effect in their trust deeds. The Auditor's Report shall form a part of the Annual Report. It should accompany the Abridged Balance Sheet and Revenue Account. The auditor shall report to the Board of Trustees and not to the unitholders.
- 9.2 He shall opine upon whether:
 - i) The Balance Sheet gives a true and fair view of the schemewise state of affairs of the Fund as at the balance sheet date; and
 - ii) The Revenue Account gives a true and fair view of the schemewise surplus/deficit of the Fund for the year/period ended at the balance sheet date.

(10). *Perspective Historical Per Unit Statistics*

- 10.1 This statement shall disclose, *inter-alia*, the following schemewise per unit statistics for the past 3 years.
 - (a) net assets value, per-unit;
 - (b) gross income per-unit broken up into the following components.
 - i. income other than profit on sale of investments, per unit;
 - ii. income from profit on inter scheme sales/transfer of investment, per unit;
 - iii. income from profit on sale of investment to third party, per unit;
 - iv. transfer to revenue account from past years' reserve, per unit;

B. Disclosure to SEBT

All Mutual Funds shall, inter alia, file a Detailed Annual Report with SEBT within 6 months from the end of each accounting year. This Detailed Annual Report, apart from containing all information, disclosures and reports contained in the Annual Report furnished to the unitholders, shall give greater details of the investments and deposits held by the Mutual Funds such that the entire schemewise portfolio of the Mutual Fund stands disclosed to SEBI alongwith indentification of performing and non-performing investments/deposits.

In addition each Mutual Fund shall furnish to SEBI such further information, as may be called for by SEBI, in respect of its annual report and financial results.

APPENDIX— 'D'

STATEMENT GIVING DETAILS ABOUT DELAY IN DESPATCH OF REFUND ORDERS

No.	Name of Company	70th day from the date of closure of the subscription list.	Date of completion of posting of refund orders	Remarks
1	2	3	4	5
1988				
1.	Garden Silk Mills Ltd.	12.4.88	19.4.88	—
2.	Bhor Wavelock Ind. Ltd.	11.5.88	19.5.88	—
3.	Unitel Communications Ltd.	15.7.88	16.7.88	Posting Commenced on 15.7.88
4.	Reliance Petro-Chemicals Ltd.	9.11.88	20.1.89	Time was extended by Ahmedabad Stock Exchange.
5.	Adhinath Textiles Ltd.	23.12.88	24.12.88	—
6.	TVS Electronics Ltd.	26.1.89	31.1.89	—
7.	Unipon India Ltd.	9.2.89	15.2.89	Time extended by Ahmedabad Stock Exchange.
8.	K.G. Gluco Boils Ltd.	15.2.89	23.2.89	No. Extn. granted Interest was paid to applicants in "farmers" category.
9.	Johnmeyers Granite Ltd.	25.2.89	22.4.89	Applicants had been given an opportunity to withdraw their applications.
10.	KEC International Ltd.	16.2.89	18.2.89	—
1989				
1.	Videocon Appliances Limited	18.03.89	28.03.89	Extn. granted upto 25.3.89. Large number of refunds.
2.	Maxxon India Ltd.,	18.04.89	28.04.89	Posting Commenced on 21.4.89
3.	Ganesh Anhydride Ltd.,	13.04.89	22.04.89	
4.	Deepak Fertilizers and Petrochemicals Corp. Ltd..	24.03.89	13.03.89	Posting Commenced on 23.3.89
5.	Acrysil India Ltd.,	24.04.89	27.04.89	Extn. Granted upto 27.4.89
6.	VXL India Ltd.,	01.05.89	15.05.89	Extn. granted upto 15.5.89
7.	Eurotex Industries Ltd.,	26.05.89	27.05.89	Postal strike on 25.5.89

1	2	3	4	5
8.	Shri Krishna Petro Yarns Ltd.,	25.05.89	31.05.89	Mailing commenced on 22.5.89
9.	Protchem Industries Ltd.,	11.07.89	12.07.89	Despatch Commenced on 10.7.89
10.	Switching Technologies Cunther Ltd.,	27.7.89	09.08.89	Extension granted upto 16.8.89 stationery was not received in time due to floods.
11.	Eastcoast Steel Ltd.,	03.08.89	16.08.89	Extention granted upto 16.8.89
12.	Gujarat Refractories Ltd.,	12.06.89	19.06.89	Time granted by Ahmedabad Stock Exchange.
13.	Pharmaceutical Products of India Ltd.,	12.08.89	19.08.89	Time extended upto 19.8.89 Company was asked to pay interest.
14.	Dr. Beck & Co. Ltd.,	16.08.89	17.08.89	Posting commenced on 5.8.89
15.	Vinyl Chemicals Ltd.,	09.09.89	30.09.89	Extension granted upto 30.9.89. Company was asked to pay interest.
16.	Rajashree Sugars Ltd.,	20.11.89	30.11.89	Despatch had commenced earlier.
17.	Pee Cec Cosma Sope Ltd.,	20.11.89	25.11.89	Delay due to Parliamentary election schedules.
18.	Konark Synthetics Ltd.,	25.11.89	04.12.89	Extension given upto 4.12.89
19.	U.B. Petroproducts Ltd.,	30.11.89	19.01.89	Allotment was made on 27.11.89. Company was asked to pay interest.
20.	Shri Raj Travels & Tours Ltd.,	08.12.89	09.12.89	—
21.	Essar Gujarat Ltd.,	01.12.89	15.12.89	Extended upto 15.12.89
22.	Electrosteel Castings (I) Ltd.,	02.12.89	27.12.89	—
23.	Siro Plast Ltd.,	17.01.90	20.01.90	—
24.	Simbhaul Sugar Mills Ltd.,	19.01.90	25.01.90	—
25.	Bonanza Pharmaceuticals Limited.	19.01.90	03.02.90	—
26.	VBC Ferro Alloys Limited.	29.01.90	09.02.90	—
27.	Unity Steels Ltd.,	26.02.90	24.04.90	Time extended by Ahmedabad Stock Exchange
28.	Ispat Alloys Ltd.,	03.03.90	24.03.90	—

APPENDIX 'E'
MINISTRY OF FINANCE
(Department of Economic Affairs)
Stock Exchange Division

Clause 40 of the Listing Agreement was amended because of certain deficiencies observed in its implementation in the recent past. Some of the major deficiencies were the following:

- (i) Indirect acquisition of shares/control of management were not covered.
- (ii) acquisition of shares less than 25% of the voting capital of a company also could result in takeover of its management without invoking provisions of clause 40.
- (iii) the price at which the shares of the remaining shareholders would be acquired depended on the acquisition price declared by the acquirer. If part of the acquisition cost of the controlling shares was paid unofficially then such deals are neither reported nor included in the rate at which shares of remaining shareholders are acquired.

Clause 40 was substituted by Clause 40 A & B in order to remove the deficiencies indicated above and to provide a greater measure of protection to the investors.

Amendment to Clause 40 A and B of the Listing Agreement.

Clause 40A—Substantial acquisition of shares.

The Company agrees that the following shall also be the conditions for continued listing.

- (a) When any person acquires or agrees to acquire any shares in the Company and when the total nominal value of such shares to be acquired or agreed to be acquired together with the total nominal value of the shares already held by such person, exceeds or shall exceed in the aggregate 5% of the voting capital of the Company, the Stock Exchange shall be notified within 2 days of such acquisition or such agreement for acquisition, by the Company, by the authorised inter-mediary and also by the acquirer.
- (b) When any person holds shares which in the aggregate carry less than 10% of the voting rights in the Company, he shall not acquire any shares which, when aggregated with the shares already held by him, shall carry 10% or more of the voting

rights unless he notifies the Stock Exchange and fulfils the conditions specified in Clause 40 B.

Provided that noting in the above sub-clause shall apply to a person who on an application to the SEBI is specifically granted exemption.

- (c) The Company shall notify the Stock Exchange within 7 days about any information which has an effect on its assets and liabilities or financial position or on the general course of its business leading to movements in the price of the shares and in particular information about transactions mentioned above.
- (d) The above conditions shall not be applicable to an acquisition by a person who has announced his firm intention to make an offer to the Company and also notified the Stock Exchange.

Clause 40 B—Take-Over Offer.

- 1. The Company also agrees that it is a condition for continuous listing that whenever a take over offer is made to or by it whether voluntarily or compulsorily, the following requirements shall be fulfilled.
- 2. A public announcement of a take-over offer shall be made both by the offeror company and the offeree company when:—
 - (a) any person in his own name or in the name of any other person acquires, whether by a series of transactions over a period of time or otherwise, shares which, when aggregated with shares already held or acquired by such person, shall carry 10% or more of the total voting rights of the offeree company, or
 - (b) Secure the control of management of a company by acquiring or agreeing to acquire, irrespective of the percentage of the voting capital, the shares of the Directors or other members, who by virtue of their shareholdings together with the shareholdings of their relatives, Nominees, family interest, and group control or manage the company, or
- 3. If the offer is made by a person other than the ultimate offerer the identity of such other person shall be disclosed at the outset in the public announcement as also in the notification to the Stock Exchange.
- 4. The offer shall be placed, in the first instance before the Board of directors of the offeree company and shall contain the following particulars, namely—
 - (a) detailed terms of offer,
 - (b) identity of the offerer,
 - (c) details of offerer's existing holding in the offeree company.
 - (d) all conditions to which the offer is subject, and

- (e) confirmation by the auditors of the offeror that resources available to the offeror are sufficient to satisfy full acceptance of the offer.
- 5. All the above information shall be made equally available to all the shareholders (both of the offeror company and the offeree company) at the same time and in the same manner, along with copies of all documents and announcements hearing an offer which shall simultaneously be lodged with SEBI.
- 6. (a) The offer document (addressed by the offerer company to the offeree company) shall contain the following information:—
 - (i) financial information of the offeror company,
 - (ii) intention of the offeror company regarding continuation of the business of the offeree company,
 - (iii) intention of the offeror company regarding any major changes to be introduced in the the business of the offeree company.
 - (iv) long term commercial justification of the offeror company for the proposed offer, and
 - (v) such other details as may be prescribed by SEBI.
- (b) The offer must state the extent to which its directors have an interest in the bid.
- 7. Dealings in any securities by the offeror company or the offeree company and by any of their associates for and on behalf of discretionary investment clients, during an offer period, shall be notified to the Stock Exchange by the respective company.
- 8. The offerer company shall, either before or immediately after making the offer to the offeree company, make an offer to the remaining members of the offeree company to purchase their shares at a price not lower than either the highest price during the immediately preceding 6 months or the negotiated price.
- 9. The offer to the remaining shareholders of the transferee company shall be to acquire from them an aggregate minimum of 20 per cent of the total shares of that company. Such offer, however, shall not result in the public shareholding being reduced to less than 20 per cent of the voting capital of the company, subject to (10) below :
- 10. From each of the shareholders accepting such offer, the acquirer shall acquire his full holding upto 100 shares of the face value of Rs.10 each or upto 10 shares if the face value is Rs.100
- 11. When the Directors of an offeree company sell shares to a purchaser as a result of which the purchaser is acquired to make an

offer, the directors shall ensure that as a condition of the sale, the purchaser undertakes to fulfil his obligations.

12. The Board of Directors of the offeree company shall not, without the approval of the shareholders in General meeting:

- (a) issue any authorised but unissued shares,
- (b) issue any Securities carrying rights of conversion into or subscription for shares, or
- (c) sell, dispose of or acquire or agree to sell, dispose of or acquire, assets of a substantial amount.

13. Notwithstanding anything contained in Clause 40 A and Clause 40 B, above, nothing shall apply to acquisition of shares in the company by:—

- (1) Unit Trust of India
- (2) SBI Capital Markets Ltd.
- (3) Canbank Financial Services Ltd.
- (4) LIC Mutual Funds
- (5) Such other agencies or mutual funds as may be specified by SEBI from time to time.
- (6) In pursuance to orders of amalgamations, mergers and acquisitions passed by the Court under Sec. 391 and 394 of the Companies Act.
- (7) In pursuance to orders passed by the BIFR under Sick Industrial Companies (Special Provisions) Act, 1985.

14. The provisions contained in this clause will be without prejudice to the approval required to be obtained under the Companies Act, MRTP Act and Foreign Exchange (Regulation) Act, 1973.

Appendix—E-I

F.No. 1/57/SE/89-A
Government of India
Ministry of Finance
(Department of Economic Affairs)
Stock Exchange Division

New Delhi, the 7th August, 1991

To

Adviser, SEBI.

**The President/Executive Director,
Ahmedabad/Bombay/Calcutta/Delhi/Jaipur,
Magadh/Madras Stock Exchange.**

**The President/Secretary,
Bangalore/Bhubaneswar/Cochin/Gauhati/
Hyderabad/Mangalore/Ludhiana/M.P./Pune/
S.K.S.E./U.P./Vadodara Stock Exchange.**

**Subject: *Amendment in Clause 40 A & B of the Listing Agreement
between Stock Exchanges and Companies.***

Dear Sir,

The Government have considered the various suggestions for amendments in Clause 40 A & B of the Listing Agreement received from the Stock Exchanges and the SEBI. Accordingly, Stock Exchanges are directed to amend the Listing Agreement as indicated below:

- (i) The word "shares" wherever it appears in Clause 40 & B will be substituted by the word "securities";
- (ii) In Clause 40B(8), the words "at price not lower than highest price during the immediately preceding six months or the negotiated price" will be substituted by the words "at a price not lower than either the average of highest weekly prices during the

immediately preceding 26 weeks from the public announcement of the take-over offer or the negotiated price, whichever is higher. This price will be paid by way of cash only".

2. Please acknowledge the receipt of the letter.

Yours faithfully,

(G.BHUJABAL)
DEPUTY DIRECTOR (SE)
TELE: 3012229.

Copy to concerned Financial Institutions.

Appendix 'F'

PRESS RELEASE

Following the first Press Release of the Securities and Exchange Board of India (SEBI) on investor complaints, ICICI has agreed to take up with the concerned issuers, the investor complaints in respect of public issues for which it acted as merchant banker. Oswal Agro Mills Limited has taken steps to redress the investor complaints featuring in SEBI's earlier Press Release of September 7, 1990 and the present one. The Chairman of the company, Shri Abhay Oswal has also given a personal assurance to Shri G.V. Ramakrishnan, Chairman SEBI to look into the complaints against M/s Oswal Agro Mills Limited and M/s Bindal Agro Chem. Limited.

The Bombay Stock Exchange has also taken steps against some of the companies which figured in SEBI's first Press Release dated 7.9.90 namely Manail Petrochemicals Limited, Gujarat Nylons Limited and Vitro Pharma Products Limited. It has issued a show cause notice to Manail Petro for suspension of dealings of the securities of the company and decided to suspend trading of Gujarat Nylons and Vitro Pharma Products for 3 days between September 24 and September 26, 1990 on account of failure to attend to investor complaints pertaining to non-receipt of refund order/allotment letter against their last issue.

These are encouraging developments and SEBI hopes that other issuers, merchant bankers, stock exchanges and other agencies would also step forward to aid and speed up the redressal of investor grievances.

During the fortnight ended September 15, 1990 SEBI has received 194 investor complaints of which 50 (25.8%) pertained to non-receipt of/delays in receipt of refund order/allotment letter 48 (24.8%) were in respect of non-receipt of dividend, interest on debentures and fixed deposits, 63 (32.5%) related to transfer problems, lost certificates, delays on the part of companies in recording the transfer and balance 33 (17%) for miscellaneous matters related to primary and secondary market such as non-receipt of application forms, annual reports, proceeds against buy-back excess allotment money paid to the issuer, late receipt of call notice etc.

The top 10 companies by number of complaints received have been indicated in the following table, the "star" appearing a name is indicative that the name has also figured in the previous Press Release of September 7, 1990.

Name of Company	No. of Complaints	Type of Complaints	Registrars to the issue	Merchants to the issue	Bankers to the issue
* Dynamatic Forgings (I) Ltd.	13	Type 2	Datamatics Limited		
* Manail Petro Chemicals Ltd. (Feb'90 issue)	10	Type 1	Quality Consultancy Company Pvt. Ltd.		SBI Caps
* Oswal Agro Mills Limited	7	Type 2/ Type 3			
* Usha Rectifier Corp. (I) Ltd.	5	Type 1/ Type 2		SBI Caps Canfina, BOI, Indbank and others	
Reliance Capital and Finance Trust Ltd.	4	Type 1/ Type 4			
Cetex Petro-Chemicals Ltd. (Feb'90 issue)	3	Type 1	Computer Age Management Service Pvt. Ltd.	SBI Caps ICICI and DSP	
Century Tubes Ltd.	3	Type 2			
Videocon VCR Ltd. (Jan'90 issue)	3	Type 1	Computronics India	SBI Caps, ICICI, Canfina BOI Finance	
Gujarat Ambuja Proteins Ltd. (Mar'90 issue)	3	Type 1	Core Consultants Pvt. Ltd.	PNB Caps, SBI Canfina	
Reliance Industries Ltd.	3	Type 2			

NOTE :

1. For complaints pertaining to public issues, dates of issue and names of Merchant Bankers are mentioned.
2. Type 1 : Non-receipt of refund order/allotment letter
Type 2 : Non-receipt of dividend, interest on debentures/fixed deposits
Type 3 : Non-receipt of share/debenture certificate
Type 4 : Miscellaneous such as non-receipt of rights forms, preferential shares, annual reports etc.

PRESS RELEASE
INVESTOR COMPLAINTS

Following the second Press Release of the Securities and Exchange Board of India, SBI Capital Markets Limited has agreed to review their own-in-house systems and procedures and take up suitably with the companies concerned, the Investor Complaints in respect of public issues

in which they have acted as merchant Banker. A representative of Manali Petrochemicals Limited also called on SEBI and has assured SEBI that it will take immediate steps for redressal of the complaints.

During the fortnight ended September 28, 1990 SEBI has received 249 investor complaints, representing a 28% increase over the number of complaints received during the last fortnight. Of these 86(34.5%) pertained to non-receipt of refund order/allotment letter 52(21%) pertained to non-receipt of dividend/interest on debentures fixed deposits etc, 75(30.1%) were in respect of non-receipt of share/debenture certificates after transfer and balance 36(14.4%) for miscellaneous matters relating to non-receipt of annual reports, rights forms, bonus shares preferential allotment etc.

The top 10 companies by number of complaints received have been indicated in the following table. The number of stars appearing against a name indicates the number of times it has figured in SEBI's earlier Press Releases.

Name of Company	No. of Complaints	Type of Complaints	Registrars to the issue	Lead Managers/ Bankers to the issue
Manali Petro Chemicals Ltd. (Feb' 90 issue)	9	Type I	Quality Consultancy Co. Pvt. Ltd.	SBI Caps
Bindal Agrochem Ltd.	7	Type II		
Gujarat Nylons Ltd. (Oct' 89)		Type I	PCS Data Products Ltd.	SBI Caps, ICICI, IFCI DSP Financial Consultant
Oswal Agro Mills Ltd.**	6	Type II Type III		
Dynamatic Forgings (I) Ltd.**		Type II	Detamatics Ltd.	
Usha Rectifier Corp. (I) Ltd.**	6	Type II/ Type III		SBI Caps, Confina, BOI Indbank etc.
Videocon VCR Ltd. (Jan'90 issue)	5	Type I	Computronics India	SBI Caps, ICICI, Confina, BOI Finance
Gujarat Godrej Innovative Chemicals Ltd. (Jan'90 issue)	5	Type I	MN Dastur & Co. Pvt. Ltd.	Confina Hongkong Bank

Name of Company	No. of Complaints	Type of Complaints	Registrars to the issue	Lead Managers/ Bankers to the issue
LML Ltd.*	4	Type II/ Type III		
Gujarat Telephone Cables Ltd.	4	Type I	Datamatics Ltd.	

Type I : Non-receipt of refund order/allotment letter
 Type II : Non-receipt of dividend interest on debentures/fixed deposits
 Type III : Non-receipt of share/debenture certificates
 Type IV : Miscellaneous such as non-receipt of Annual Reports, Bonus Shares, Right issue forms, preferential shares etc.

PRESS RELEASE INVESTOR COMPLAINTS

During the fortnight ended October 15, 1990, SEBI has received 382 investor complaints, representing a 53.4% increase over the number of complaints received during the last fortnight ended September 28, 1990. The number of complaints are double over the fortnight ended September 15, 1990. Out of 382 complaints, 120(31.5%) pertained to non-receipt of refund orders/allotment letters, 70(18.4%) pertained to non-receipt of dividend and interest on debentures/fixed deposits, 152(39.7%) were in respect of non-receipt of share/debenture certificates after sending for transfer and the balance 40(10.4%) for miscellaneous matters relating to non-receipt of annual reports, rights forms, bonus share preferential allotment etc.

The leading merchant bankers, ICICI and SBI Capital Markets Limited, have assured SEBI that they would take up the individual investor complaints with the concerned companies. This step would help to redress the grievances of investors. SEBI hopes that all merchant bankers, registrars to the issue and other agencies would also come forward to protect the investors' interests. Stock Exchanges are also taking action against companies on the basis of investor complaints.

The top 10 companies by number of complaints received have been indicated in the following table. Four companies, namely Usha Rectifier Corp. Ltd, Oswal Agro Mills Ltd., Dynamatic Forgings (I) Ltd, and Manali Petrochemicals Ltd. appeared in all the three fortnightly press release issued by SEBI. The number of stars appearing against a name indicates the number of times it has figured in earlier press releases.

Name of the Company	No. of Complaints	Type of Complaints	Registrars to the issue	Lead Manager/ Merchant Banker to the Issue
1	2	3	4	5
Usha Rectifier Corp (I) Ltd***	32	Type I/II/IV		SBI Caps, Canfina Indbank, BOI and others

1	2	3	4	5
Oswal Agro Mills Ltd:***	16	Type II/ Type III		
Dynamatic Forgings (I) Ltd:***	12	Type II	Datamatics Ltd.	
Manali Petrochemicals Ltd:***	10	Type I	Quality consultancy Co. P. Ltd.	
Bindal Agrochem Ltd:*	8	Type II/ Type III		
Indian Maize & Chemicals Ltd.	6	Type III/ Type IV	PCS Data Products Ltd.	ICICI PNB Caps Girndlays Bank ANZ SBI Caps
Gujarat Nylons Ltd:***	6	Type I	-Do-	SBI Caps ICICI, IFCI DSP
UB Petro Products Ltd.	5	Type I	Share Aids Inc.	ICICI Canfina
Agro Tech India Ltd.	5	Type III	Allied Computer Technics P. Ltd.	SBI Caps, ICICI Canfina PNB Caps

Type I : Non-receipt of refund order/allotment letter.

Type II : Non-receipt of dividend, interest on debentures/fixed deposits.

Type III : Non-receipt of share/debenture certificates.

Type IV : Miscellaneous such as non-receipt of Annual Reports, Bonus Shares, Right issue forms, Preferential Shares etc.

SEVENTH PRESS RELEASE IN RESPECT OF INVESTOR COMPLAINTS

Following SEBI's last Press Release, representatives of M/s Dynamatic Forgings and M/s All Seasons Foods have started collecting investor complaints against their companies personally from SEBI, for quicker redressal. M/s Usha Rectifier has informed SEBI, that they have created a special investors' cell to look into investors' grievances. LML Ltd. has advised SEBI that as per the revival plan of financial institutions/banks, the company shall clear dues of interest on debentures, in consultation with Unit Trust of India, by 31st March, 91.

SEBI has received 849 complaints during the period November 15-26, 1990. Out of these, 234(27.5%) pertained to non-receipt of refund orders/allotment letters, 260(30.7%) pertained to non-receipt of dividend/interest on debentures, fixed deposits etc. 248(29.2%) were in respect of non-receipt of share/debenture certificates after transfer and balance 107 of annual reports, rights forms, bonus shares, preferential allotment, etc.

The names of companies in the first 10 positions by number of companies accounting for 29.3% of the complaints received, have been

indicated in the following table. The number of stars appearing against a name indicates the number of times it has figured in SEBI's earlier Press Releases.

Name of Company	No. of Complaints	Type of Complaints	Registrar to the issue	Lead Manager/ Merchant Bankers to the issue
Dynamatic Forgings*****	78	Type II	Datamatics	
Usha Rectifier Corp.*****	33	Type II/III		
Oswal Agro Mills Ltd.*****	22	Type II/III		
Bindal Agro Chem. Ltd.***	19	Type II/III/ IV		
Gujarat Godrej Innovative Chemicals Ltd.***	18	Type I	Computech Services	Canbank
All Seasons Foods Ltd.*	18	Type II/III		
Essar Gujarat Limited***	17	Type II/III	Karvy Consultants	
Manali Petro-Chemicals Ltd.*****	12	Type I	Quality Consultancy	SBI Caps
LML Ltd.**	11	Type II		
Gujarat Nylons Limited****	10	Type I	Alembic	SBI Caps
Videocon VCR Ltd.*	10	Type I	Computronics India	SBI Caps ICICI Canfina BOI Finance
Haring Grankshafts	8	Type I	MAS Services	SBI Caps BOI Fin. Hongkong Grindlays
Vitro Pharma*	8	Type II/III	Par Computers Sciences (INT)	

Type I : Non-receipt of refund order/allotment letter.

Type II : Non-receipt of dividend, interest on debentures/fixed deposits.

Type III : Non-receipt of share/debenture certificates.

Type IV : Miscellaneous such as non-receipt of Annual Reports, Bonus Shares, Right issue forms, preferential shares etc.

EIGHTH PRESS RELEASE IN RESPECT OF INVESTOR COMPLAINTS

The Press Releases issued by SEBI have by and large evoked an encouraging response from issuers and intermediaries whose names have appeared in them. An increasingly large number of companies have also been approaching SEBI to collect their grievances directly/through their representatives to facilitate the redressal process. Though these steps are

welcome, much more would perhaps have to be done, considering the intensity of the problem. SEBI's official had recently visited the offices of the Oswal Group of Companies in Delhi, to see the new computerised systems which the companies have recently introduced for early redressal of investor grievances. SEBI has been receiving letters from investors informing about favourable response from several companies who were not attending to their complaints earlier. SEBI would request all investors whose grievances have been redressed to advise SEBI accordingly.

SEBI has received 973 complaints during the period November 27-December 13, 1990. Out of these 323(33.2%) pertained to non-receipt of refund orders/allotment letter, 258(26.5%) pertained to non-receipt of dividend/interest on debentures, fixed deposits etc. 260(26.7%) were in respect of non-receipt of share/debenture certificate after transfer and balance 132(13.6%) for miscellaneous matters relating to non-receipt of annual reports, rights forms, bonus shares, preferential allotment, etc.

The names of companies in the first 10 positions by number of complaints accounting for 28.3% of the complaints received have been indicated in the following table. The number of stars appearing against a name indicates the number of times it has figured in SEBI's earlier Press Releases.

Name of Company	No. of Com-plaints	Type of Complaints	Registrars to the issue	Lead Managers/ Merchant Bankers to the Issue
1	2	3	4	5
Usha Rectifier Corp*****	56	Type II/III/ IV		
Dynamatic Forgings*****	53	Type II/III	Datamatics	
Gujarat Godrej Innovative Chemicals Ltd.****	31	Type I/III/ IV	Computech Services	
Oswal Agro Mills Ltd.*****	24	Type I/II/ III/IV		
Gujarat Nylons Ltd:****	21	Type I/III/ IV	Alembic Chemicals	SBI Caps IFCI, ICICI, DSP
Essar Gujarat Ltd.****	18	Type II/III/ IV	Karvy Consultants	
Century Tubes Ltd.***	14	Type II		
All Seasons Foods Ltd.**	13	Type II/III		

1	2	3	4	5
Bindal Agro****	12	Type II/III		
Manali Petrochemicals Ltd.*****	12	Type I	Quality consultancy	SBI Caps.
Rolta (India) Ltd.	11	Type I	—	ICICI, SBI Caps, BOI Finance, etc.
Harig Crankshafts*	11	Type I	MAS Services	SBI Caps, BOI Finance Hongkong Bank Grindlays Bank

PRESS RELEASE

INVESTOR COMPLAINTS

As already indicated in our earlier press releases, some of the merchants managers have shown interest in taking up the matters with the companies to redress the grievances of the investors. Following the last press release, Essar Gujarat arranged to collect the investors complaints from SEBI and responded appropriately to the investors and assured prompt action in future also. Some of the other companies and registrars whose names appeared in our earlier press releases also seem to have taken action and their names do not come in the current list. SEBI hopes that all companies, registrars, merchant bankers, and other agencies would take steps to help in this matter.

During the fortnight ended October 29, 1990, SEBI has received 289 investor complaints; representing an increase of 20 per cent over the number of complaints received during the fortnight ended September 28, 1990. Out of 289 complaints 84 (29.1%) pertained to non-receipt of refund orders/allotment letters, 74 (25.6%) pertained to non-receipt of dividend and interest on debentures/fixed deposits, 95 (32.9%) were in respect of non receipt of share/debenture certificates after sending for transfer and the balance 36 (12.4%) for miscellaneous matters relating to non-receipt of annual reports, rights forms, bonus shares, preferential allotment, etc.

The top 10 companies by number of complaints received have been indicated in the following table. The number of stars appearing against a name indicated the number of times it has figured in earlier press releases. Three companies, namely Dynamatic Forgings (I) Ltd., Usha Rectifier Corp. Ltd., and Oswal Agro Mills Ltd. appeared in all the four fortnightly press releases issued by SEBI, indicating the requirements of more efforts on their part in the interest of investors.

Name of Company	No. of Complaints	Type of Complaints	Registrar to the issue	Lead Manager/ Merchant Banker
Dynamatic Forgings (I) Limited****	26	Type II	Datamatics	
Usha Rectifier Corp. (I) Limited****	10	Type I/ II/IV		SBI Caps, Canfina, Indbank BOI and other
Oswal Agro Mills Limited****	10	Type I/ II/III		
Gujarat Godrej Innovative	8	Type I/ III/IV		Canbank
Essar Gujarat*	7	Type I/II/ III	Karvy Consultants	SBI Caps, Can bank ICICI
Ispat Alloys Ltd.	7	Type III/ IV		SBI Caps, ICICI
UB Petroproducts Ltd.*	6	Type I	Share Aids	ICICI, Canfina
Samrat Bicycles	6	Type III		
Century Tubes*	6	Type II		
Aryan Finefab	6	Type I/III	Computerade Services	ICICI
Apollo Tyres	6	Type I/II/ III	PCS Data	SBI Caps J.M. Fin.

Type I : Non-receipt of refund order/allotment letter.

Type II : Non-receipt of dividend/interest on debentures/fixed deposits.

Type III : Non-receipt of share/debenture certificates.

Type IV : Miscellaneous, such as non-receipt of Annual Reports, Bonus Shares, Right issue forms, preferential shares,etc.

SIXTH PRESS RELEASE IN RESPECT OF INVESTOR COMPLAINTS

Since the past five Press Releases, the number of investor complaints received by SEBI has been growing. During the fortnight ended November 14, 1990 the number of complaints increased significantly to 1,098 from 443 and 671 received during the full months of September and October 1990 respectively. There has been encouraging response from some of the companies and merchant bankers who have figured in the Press Releases. The representatives of companies such as Oswal Agro, Bindal Agro, Essar Gujarat and Computech Services (Registrars of Gujarat Godrej Innovative Chemicals Limited) have started collecting the complaints against their companies personally from SEBI, for quicker redressal. The merchants bankers have also written to the respective companies for early redressal of the complaints sent to them by SEBI. These developments are welcome, but would further need to be consolidated by concrete steps by the companies, resulting in effective redressal of grievances.

Of the 1,098 complaints received during the fortnight, 285 (26%) pertained to non-receipt of refund order/allotment letter, 410 (37.4%) pertained to non-receipt of dividend/interest on debentures, fixed deposits etc. 312 (28.4%) were in respect of non-receipt of share/debenture certificates after transfer and balance 91 (8.2%) for miscellaneous matters relating to non-receipt of annual reports, rights forms, bonus shares, preferential allotment etc.

The names of companies in the first 10 positions by number of complaints accounting for 35% of the complaints received, have been indicated in the following table. The number of stars appearing a name indicates the number of times it has figured in SEBI's earlier Press Releases.

Name of Company	No. of Complaints	Type of Complaints	Registrars to the issue	Lead Managers Merchant Banker to the issue
Dynamatic Forgings India Ltd.	190	Type II	Datamatics Limited	
Usha Rectifier Corp. (I) Ltd.****	42	Type II/ III	SBI Caps	SBI Caps, Canfina, Indbank, BOI and other.
Oswal Agro Mills Ltd.*****	29	Type II/ Type III		
Century Tubes Ltd.**	21	Type II		
Gujarat Godrej Innovative Chemicals Ltd.**	20	Type I		Computech Canbank Services
Gujarat Nylons Limited***	17	Type*/III	Alembic Chemicals	SBI Caps IPCI, ICICI, DSP
All Seasons Foods Ltd.	15	Type II/ Type III		
Essar Gujarat Limited**	15	Type II/ Type III	Karvy Consultants Pvt. Ltd.	SBI Caps, Canbank ICICI
Manali Petro Chemicals Ltd.****	13	Type I	Quality Consultancy Co. (P) Ltd.	SBI Caps
Bindal Agro Chem. Ltd.**	12	Type II/ III/IV		
Aryan Finefabs Limited*	12	Type I	Computrade Services	ICICI

Type I : Non-receipt of refund order/allotment letter.

Type II : Non-receipt of dividend/interest on debentures/fixed deposits.

Type III : Non-receipt of share/debenture certificates.

Type IV : Miscellaneous, such as non-receipt of Annual Reports, Bonus Shares, Right issue forms, preferential shares.

APPENDIX 'G'

**AS INTRODUCED IN LOK SABHA
3 MARCH 1992**

Bill No. 37 of 1992

THE SECURITIES AND EXCHANGE BOARD OF INDIA BILL, 1992

ARRANGEMENT OF CLAUSES

CHAPTER I PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

ESTABLISHMENT OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

3. Establishment and incorporation of Board.
4. Management of the Board.
5. Term of office and conditions of service of Chairman and members of the Board.
6. Removal of member from office.
7. Meetings.
8. Vacancies, etc., not to invalidate proceedings of Board.
9. Officers and employees of the Board.

CHAPTER III

TRANSFER OF ASSETS, LIABILITIES, ETC., OF THE EXISTING SECURITIES AND EXCHANGE BOARD TO THE BOARD

10. Transfer of assets, liabilities, etc., of existing Securities and Exchange Board to the Board.

CHAPTER IV

POWERS AND FUNCTIONS OF THE BOARD

11. Functions of Board.

**CHAPTER V
REGISTRATION CERTIFICATE**

12. Registration of stock-brokers, sub-brokers, share transfer agents, etc.

**CHAPTER VI
FINANCE, ACCOUNT AND AUDIT**

CLAUSES

**13. Grants by the Central Government.
14. Funds.
15. Accounts and audit.**

**CHAPTER VII
MISCELLANEOUS**

**16. Power of Central Government to issue directions.
17. Power of Central Government to supersede the Board.
18. Returns and reports.
19. Delegation.
20. Appeals.
21. Savings.
22. Members, officers and employees of the Board to be public servants.
23. Protection of action taken in good faith.
24. Penalty.
25. Exemption from tax on wealth and income.
26. Cognizance of offences by courts.
27. Offences by companies.
28. Power to exempt.
29. Power to make rules.
30. Power to make regulations.
31. Rules and regulations to be laid before Parliament.
32. Application of other laws not barred.
33. Amendment of certain enactments.
34. Power to remove difficulties.
35. Repeal and saving.**

THE SCHEDULE

**THE SECURITIES AND
EXCHANGE BOARD OF INDIA BILL,
1992**

A

BILL

to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-third Year of the Republic of India Act, 1992.

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Securities and Exchange Board of India Act, 1992.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 30th day of January, 1992.

2. (1) In this Act, unless the context otherwise requires,—

Definitions.

(a) "Board" means the Securities and Exchange Board of India established under section 3;

(b) "Chairman" means the Chairman of the Board;

(c) "existing Securities and Exchange Board" means the Securities and Exchange Board of India constituted under the Resolution of the Government of India in the Department of Economic Affairs No.1(44) SE/86, dated the 12th day of April, 1988;

(d) "Fund" means the Fund constituted under section 14;

(e) "member" means a member of the Board and includes the Chairman;

(f) "notification" means a notification published in the Official Gazette;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "regulations" means the regulations made by the Board under this Act;

(i) "securities" has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956. 42 of 1956.

(2) Words and expressions used and not defined in this Act but defined in the Capital Issues (Control) Act, 1947, or the Securities Contracts (Regulation) Act, 1956, shall have the meanings respectively assigned to them in those Acts. 29 of 1947. 42 of 1956.

CHAPTER II

ESTABLISHMENT OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

Establishment and incorporation of Board.

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board by the name of the Securities and Exchange Board of India.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Board shall be at Bombay.

(4) The Board may establish offices at other places in India.

4. (1) The Board shall consist of the following members, namely:-

Management of the Board.

(a) a Chairman;

(b) two members from amongst the officials of the Ministries of the Central Government dealing with finance and Law;

(c) one member from amongst the officials of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

(d) two other members, to be appointed by the Central Government.

(2) The general superintendence, direction and management of the affairs of the Board shall vest in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board.

2 of 1934.

(3) Save as otherwise determined by regulations, the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by that Board.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank of India respectively.

(5) The Chairman and the other members referred to in clauses (a) and (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

Term of office and conditions of service of Chairman and members of the Board.

5. (1) The term of office and other conditions of service of the Chairman and the members referred to in clause (d) of sub-section (1) of section 4 shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 4, at any time before the expiry of the period prescribed under sub-section (1), by giving him notice of not less than three months in writing or three months' salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the expiry of the period prescribed

under sub-section (1), by giving to the Central Government notice of not less than three months in writing.

Removal of member from office.

6. (1) The Central Government shall remove a member from office if he—

- (a) is, or at any time has been, adjudicated as insolvent;
- (b) is of unsound mind and stands so declared by a competent court;
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;
- (d) is appointed as a director of a company;
- (e) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest:

Meetings.

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

7.(1) The Board shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairman or, if for any reason, he is unable to attend a meeting of the Board, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority votes of the members present and voting and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have a second or casting vote.

**Vacancies, etc.
not to invalidate
proceedings of
Board.**

8. No act or proceeding of the Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board;

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

**Officers and em-
ployees of the
Board.**

9. (1) The Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The term and other conditions of service of officers and employees of the Board appointed under sub-section (1) shall be as may be determined by regulations.

CHAPTER III

TRANSFER OF ASSETS, LIABILITIES, ETC., OF THE EXISTING SECURITIES AND EXCHANGE BOARD TO THE BOARD

10. (1) On and from the date of establishment of the Board,—

(a) any reference to the existing Securities and Exchange Board in any law other than this Act or in any contract or other instrument shall be deemed as a reference to the Board;

(b) all properties and assets, movable and immovable, of, or belonging to, the existing Securities and Exchange Board, shall vest in the Board;

(c) all rights and liabilities of the existing Securities and Exchange Board shall be transferred to, and be the rights and liabilities of, the Board;

(d) without prejudice to the provisions of clause (c), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Securities and Exchange Board immediately before that date, for or in connection with the purpose of the said existing Board shall be deemed to have been incurred, entered into, or engaged to be done by, with or, for, the Board;

(e) all sums of money due to the existing Securities and Exchange Board immediately before that date shall be deemed to be due to the Board;

(f) all suits and other legal proceedings instituted or which could have been instituted by or against the existing Securities and Exchange Board immediately before that date may be continued or may be instituted by or against the Board; and

Transfer of assets, liabilities etc. of existing Securities and Exchange Board to the Board.

(g) every employee holding any office under the existing Securities and Exchange Board immediately before that date shall hold his Office in the Board by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the Board had not been established and shall continue to do so as an employee of the Board or until and expiry of the period of six months from that date if such employee opts not to be the employee of the Board within such period.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, absorption of any employee by the Board in its regular service under this section shall not entitle such employee to any compensation under that Act or other law and no such claim shall be entertained by any court, tribunal or other authority.

CHAPTER IV

POWERS AND FUNCTIONS OF THE BOARD

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

Functions of Board.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

- (a) regulating the business in stock exchanges and any other securities markets;
- (b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;
- (c) registering and regulating the working of collective investment schemes, including mutual funds;
- (d) promoting and regulating self-regulatory organisations;
- (e) prohibiting fraudulent and unfair trade practices relating to securities markets;
- (f) promoting investors' education and training of intermediaries of securities markets;
- (g) prohibiting insider trading in securities;
- (h) regulating substantial acquisition of shares and take-over of companies;

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges and intermediaries and self-regulatory organisations in the securities market;

(j) performing such functions and exercising such powers under the provisions of the Capital Issues (Control) Act, 1947 and the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government;

(k) levying fees or other charges for carrying out the purpose of this section;

(l) conducting research for the above purposes;

(m) performing such other functions as may be prescribed.

29 of 1947.

42 of 1956. .

CHAPTER V

REGISTRATION CERTIFICATE

12 (1) No Stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the rules made under this Act:

Registration of
stock-brokers,
sub-brokers,
share transfer
agents, etc.

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.

(2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

(3) The Board may by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:

Provided that no order under this subsection shall be made unless the person concerned has been given a reasonable opportunity of being heard.

CHAPTER VI

FINANCE, ACCOUNTS AND AUDIT

13. The Central Government may, after the appropriation made by Parliament by law in this behalf, make to the Board grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

Grants by the Central Government.

14. (1) There shall be constituted a Fund to be called the Securities and Exchange Board of India General Fund and there shall be credited thereto—

Fund

(a) all grants, fees and charges received by the Board under this Act; and

(b) all sums received by the Board from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Board;

(b) the expenses of the Board in the discharge of its functions under section 11;

(c) the expenses on objects and for purposes authorised by this Act.

15. (1) The Board shall maintain proper accounts and the relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit.

(2) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals

as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

(4) The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

CHAPTER VII

MISCELLANEOUS

16. (1) Without prejudice to the foregoing provisions of this Act, the Board shall, in exercise of its powers or the performance of its functions under this act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Power of Central Government to issue directions.

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

17. (1) If at any time the Central Government is of opinion—

Power of Central Government to supersede the Board.

(a) that on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or

(b) that the Board has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Returns and reports.

18. (1) The Board shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion

and development of the securities market, as the Central Government may from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Board shall, within sixty days after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

19. The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such condition, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary.

Delegation.

20. (1) Any person aggrieved by an order of the Board made under this Act, or the rules or regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

Appeals.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

Saving.

21. Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

Members, officers and employees of the Board to be public servants.

22. All members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Protection of action taken in good faith.

23. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or any member, officer or other employee of the Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Penalty

24. Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Exemption from tax on wealth and income.

25. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax, 1961 or any other enactment for the time being in force relating to tax on wealth, income, profits or gains—

27 of 1957.
43 of 1961.

(a) the Board;

(b) the existing Securities and Exchange Board from the date of its constitution to the date of establishment of the Board, shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

26. (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board with the previous sanction of the Central Government.

Cognizance of
offences by
courts.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

27. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

Explanation for the purposes of this section.—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

Offences by
companies.

Power to exempt.

(b) "director", in relation to a firm, means a partner in the firm,

28. If the Central Government is of the opinion that it is necessary or expedient so to do in public interest, it may, by order published in the Official Gazette, exempt any person or class of persons buying or selling securities or otherwise dealing with the securities market from the operation of the provisions of sub section (1) of section 12.

Power to make rules.

29. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- (a) the terms of office and other conditions of service of the Chairman and the members under sub-section (1) of section 5;
- (b) the additional functions that may be performed by the Board under section 11;
- (c) the conditions subject to which registration certificate is to be issued under sub-section (1) of section 12;
- (d) the manner in which the accounts of the Board shall be maintained under section 15;
- (e) the form and the manner in which returns and report to be made to the Central Government under section 18;
- (f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

Power to make regulations.

30. (1) The Board may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the times and places of meeting of the Board and the procedure to be followed at such meetings under sub-section (1) of section 7 including quorum necessary for the transaction of business;

(b) the term and other conditions of service of officers and employees of the Board under sub-section (2) of section 9;

(c) the amount of fee to be paid for registration certificate and manner of suspension or cancellation of registration certificate under sub-sections (2) and (3) of section 12.

31. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Rules and
regulations to be
laid before
Parliament.

32. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of
other laws not
barred.

33. The enactments specified in Parts I and II of the Schedule to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Board.

Amendment of
certain enact
ments.

Power to remove difficulties

34. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and saving.

Ord. 5 of 1992.

35.(1) The Securities and Exchange Board of India Ordinance, 1992, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the corresponding provisions of this Act.

THE SCHEDULE

(see section 33)

AMENDMENT OF CERTAIN ENACTMENTS

PART I

AMENDMENTS TO THE CAPITAL ISSUES (CONTROL) ACT, 1947

(29 OF 1947)

In section 10, for "to that Government" substitute "to that Government or the Securities and Exchange Board of India".

PART II

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 OF 1956)

1. Section 2, in clause (h), for sub-clause(ii), substitute the following:—

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

2. Section 6,—

(i) in sub-section (1) for “Central Government”, substitute “Securities and Exchange Board of India”;

(ii) in sub-section (2), for “by the Central Government”, substitute “by the Securities and Exchange Board of India”;

(iii) in sub-section (3) for “Central Government” wherever it occurs, substitute “Securities and Exchange Board of India”;

3. Section 9, for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";

4. Section 10, for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";

5. Section 17, in sub-section(1) for "licence granted by the Central Government", substitute "licence granted by the Securities and Exchange Board of India";

6. Section 21, for "Central Government", substitute "Securities and Exchange Board of India";

7. Section 22A, in sub-section (3), for clause (b), substitute the following:—

"(b) that the transfer of the securities is in contravention of any law or rules made thereunder or any administrative instructions or conditions of listing agreement laid down in pursuance of such laws or rules";

8. In sub-section (2) of section 23, for "Central Government under section 21 or section 22," substitute "Securities and Exchange Board of India under section 21 or the Central Government under section 22";

9. After section 29, insert the following:—

Power to delegate.
 "29A. The Central Government may, by order published in the Official Gazette, direct that the powers exercisable by it under any provision of this Act shall, in relation to such matters and subject to such condition, if any as may be specified in the order, be exercisable also by the Securities and Exchange Board of India."

STATEMENT OF OBJECTS AND REASONS

Securities and Exchange Board of India (SEBI) was established in 1988 through a Government Resolution to promote orderly and healthy growth of the securities market and for investors' protection SEBI has been monitoring the activities of stock exchanges, mutual funds and merchant bankers, etc., to achieve these goals.

The capital market has witnessed tremendous growth in recent times, characterised particularly by the increasing participation of the public. Investors' confidence in the capital market can be sustained largely by ensuring investors' protection. With this end in view, Government, decided to vest SEBI immediately with statutory powers required to deal effectively with all matters relating to capital market. As Parliament was not in session, and there was an urgent need to instill a sense of confidence in the public in the growth and stability of the capital market, the President promulgated the Securities and Exchange Board of India Ordinance, 1992 (No. 5 of 1992) on the 30th January, 1992.

3. The Bill seeks to replace the aforesaid Ordinance.

•

NEW DELHI; MANMOHAN SINGH

the 24th February, 1992.

**PRESIDENTS RECOMMENDATION
UNDER ARTICLES 117 AND 274 OF
THE CONSTITUTION OF INDIA**

[Copy of letter No. 1(44)/SE/86, dated the 25th February, 1992 from Dr. Manmohan Singh Minister of Finance to the Secretary-General, Lok Sabha].

The President having been informed of the subject matter of the proposed Bill to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto, recommends under Clause (1) of article 117 and article 274 of the Constitution for introduction and under Clause (3) of article 117 thereof for consideration, of the above Bill in Lok Sabha.

Notes on clauses

Clause 2 seeks to define certain words and expressions used in the Bill.

Clause 3 provides for the establishment of a body corporate by the name of Securities and Exchange Board of India with head quarters at Bomaby.

Clause 4 provides for the constitution of the Board of members consisting of a Chairman, two whole-time members to be appointed by the Central Government and two members to be nominated by the Central Government and one member by the Reserve Bank of India.

Clause 5 makes provisions relating to the term of office and other conditions of service of the Chairman and members appointed by the Central Government.

Clause

Clause 6 provides for the contingencies in which the Central Government may remove a member from office.

Clause 7 makes provisions regarding meetings of the Board.

Clause 8 lays down that any vacancy or defect or irregularity in the constitution of the Board shall not invalidate proceedings of the Board.

Clause 9 provides for the appointment of officers and employees of the Board and the terms and conditions of their service.

Clause 10 provides for transfer of assets and liabilities of the existing Securities and Exchange Board to the Board. It further provides for the transfer of employees of the existing Securities and Exchange Board to the Board.

Clause 11 provides for the powers and functions of the Board with a view to protect the interest of investors in securities and to promote the development of and to regulate the securities market.

Clause 12 provides for the Board to register stock brokers, sub-brokers, share transfer agents and other intermediaries associated with securities market with the exceptions that the existing stock brokers, sub-brokers, etc., may buy, sell or otherwise deal with the securities market without registration for a period of three months from the date of establishment of the Board.

Clause 13 provides for making of grants by the Central Government to the Board to be utilised for the purposes of the Bill.

Clause 14 provides for the constitution of the Securities and Exchange Board of India General Fund. It further provides

that the grants, fees, charges and other sums received by the Board should be credited thereto and all its payments should be made there from.

Clause 15 provides for usual provisions regarding maintenance of proper accounts and other relevant records by the Board as may be prescribed by the Central Government. The accounts of the Board should be audited and certified by the Comptroller and Auditor-General of India which would be laid before the Parliament by the Central Government.

Clause 16 confers on the Central Government the power to issue directions to the Board.

Clause 17 confers on the Central Government the power to supersede the Board. The Central Government through a notification can supersede the Board for a period not exceeding 6 months if it is satisfied that on account of grave emergency, the Board is unable to discharge its duties or that the Board has persistently made defaults in complying with the directions of the Central Government.

Clause 18 provides for the Central Government to call for returns and statements from the Board in regard to matters provided for in the Bill.

Clause 19 provides for the delegations of certain powers of the Board.

Clause 20 provides for a person aggrieved by an order made by the Board to appeal to the Central Government.

Clause 21 saves the suit or proceedings which might be brought against any person under any other law.

Clause 22 specifies that the members, officers and other employees of the Board shall be deemed to be public servants.

Clause 23 provides for usual provision relating to the protection of action taken in good faith.

Clause 24 provides for penalty for contravention of the provisions of the Bill or any rules or regulations made thereunder.

Clause 25 provides the Board with exemptions from tax on wealth and income.

Clause 26 lays down that a court should take cognizance of offences punishable under the provisions of the Bill or any rules or regulations made thereunder on a complaint made by the Board with the previous sanction of the Central Government.

Clause 27 provides that any offence committed by a company and punishable under the Bill would cover the persons in charge of company.

Clause 28 confers on the Central Government in public interest, the power to exempt any person dealing with securities market from the operation of the provisions of sub-clause (1) of clause 12 of the Bill.

Clause 29 confers on the Central Government the power to make rules for carrying out the provisions of the Bill.

Clause 30 empowers the Board to make regulations with the previous approval of the Central Government consistent with the Bill.

Clause 31 lays down that the rules and regulations made under the Bill would be laid before the Parliament.

Clause 32 provides that the provisions of the Bill are not in derogation of the provisions of any other law for the time being in force.

Clause 33 provides for amendments of enactments specified in the Schedule.

Clause 34 seeks to empower the Central Government to remove any difficulty which may arise in giving effect to the provisions of the Bill.

Clause 35 of the Bill seeks to repeal the Securities and Exchange Board of India Ordinance, 1992 and save actions taken thereunder as if taken under the corresponding provisions of the Bill.

FINANCIAL MEMORANDUM

Clause 13 of the Bill contains a provision under which the Central Government may make grants to the Board as may be deemed necessary. Grants will be made after due appropriation made by Parliament by law in this behalf. It is not possible at this stage to visualise the nature and quantum of expenditure which may be involved in the creation and operation of the Fund.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 29 of the Bill empowers the Central Government to make rules regarding:—

- (i) the term of office and other conditions of service of the Chairman and the members under sub-clause (1) of clause 5;
- (ii) the additional functions that may be performed by the Board under clause 11;
- (iii) the conditions subject to which registration certificate is to be issued under sub-clause (1) of clause 12;
- (iv) the manner in which the accounts of the Board shall be maintained under clause 15;
- (v) the form and the manner in which returns and report are to be made to the Central Government under clause 18;
- (vi) any other matter which is to be, or may be prescribed or in respect of which provision is to be made by rules.

2. Clause 30 empowers the Board, with the prior approval of the Central Government, to make regulations regarding:—

- (i) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-clause (1) of clause 7 including quorum necessary for the transaction of business.
- (ii) the terms and other conditions of service of officers and employees of the Board under sub-clause (2) of clause 9;

(iii) the amount of fee to be paid for registration certificate and manner of suspension or cancellation of registration certificate under sub-clauses (2) and (3) of clause 12.

3. The matter with respect to which rules or regulations may be made under the aforesaid provisions are matters of procedure and detail. The delegation of legislative power contained in such provisions is, therefore, of a normal character.

**MEMORANDUM EXPLAINING THE
MODIFICATIONS CONTAINED IN
THE BILL TO REPLACE THE SEC-
URITIES AND EXCHANGE BOARD
OF INDIA ORDINANCE, 1992**

The Securities and Exchange Board of India Bill 1992 which seeks to repeal and replace the Securities and Exchange Board of India Ordinance, 1992 proposes to make certain modifications of drafting nature in sub-clause (2) of clause 2, sub-clause (2) and (3) of clause 7 and sub-clause (2) of clause 27. The modifications are clarificatory in nature.

ANNEXURE

EXTRACT FROM THE CAPITAL ISSUES (CONTROL) ACT, 1947

(29 OF 1947)

* * * * *

10 The Central Government may by order direct that any power or duty which by or under any of the preceding provisions of this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer subordinate to that Government.

* * * * *

Power to
delegate
function

EXTRACTS FROM THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 OF 1956)

* * * * *

2. In this Act, unless the context otherwise requires,— Definitions

* * * * *

(h) "securities" include—

* * * * *

(ii) Government securities; and

* * * * *

6.(1) Every recognised stock exchange shall furnish to the Central Government such periodical returns relating to its affairs as may be prescribed.

Power of Central Government to call for periodical returns of direct inquiries to be made

(2) Every recognised stock exchange and every member thereof shall maintain and preserve for such periods not exceeding five years such books of account, and

other documents as the Central Government, after consultation with the stock exchange concerned, may prescribe in the interest of the trade or in the public interest, and such books of account, and other documents shall be subject to inspection at all reasonable times by the Central Government.

(3) Without prejudice to the provisions contained in sub-sections (1) and (2), the Central Government, if it is satisfied that it is in the interest of the trade or in the public interest so to do, may, by order in writing,—

(a) call upon a recognised stock exchange or any member thereof to furnish in writing such information or explanation relating to the affairs of the stock exchange or of the member in relation to the stock exchange as the Central Government may require; or

(b) appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of a stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order or, in the case of an inquiry in relation to the affairs of any of the members of a stock exchange, direct the governing body to make the inquiry and submit its report to the Central Government.

* * * * *

Power of recognised stock exchanges to make bye-laws.

9.(1) Any recognised stock exchange may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of contracts.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

(a) the opening and closing of mar-

kets and the regulation of the hours of trade;

(b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of and payment for securities, the passing on of delivery orders and the regulation and maintenance of such clearing house;

(c) the submission to the Central Government by the clearing house as soon as may be after each periodical settlement of all or any of the following particulars as the Central Government may, from time to time, require, namely:—

(i) the total number of each category of security carried over from one settlement period to another;

(ii) the total number of each category of security, contracts in respect of which have been squared up during the course of each settlement period;

(iii) the total number of each category of security actually delivered at each clearing;

(d) the publication by the clearing house of all or any of the particulars submitted to the Central Government under clause (c) subject to the directions, if any, issued by the Central Government in this behalf;

(e) the regulation or prohibition of blank transfers;

(f) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(g) the regulation, or prohibition of budlas or carry-over facilities;

(h) the fixing, altering or postponing of days for settlements;

- (i) the determination and declaration of market rates, including the opening, closing, highest and lowest rates for securities;
- (j) the terms, conditions and incidents of contracts, including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;
- (k) the regulation of the entering into, making, performance, rescission and termination, of contracts including contracts between members or between a member and his constituent or between a member and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer, and the responsibility of members who are not parties to such contracts;
- (l) the regulation of taravani business including the placing of limitations thereon;
- (m) the listing of securities on the stock exchange, the inclusion of any security for the purpose of dealings and the suspension or withdrawal of any such securities, and the suspension or prohibition of trading in any specified securities;
- (n) the method and procedure for the settlement of claims or disputes, including settlement by arbitration;
- (o) the levy and recovery of fees, fines and penalties;
- (p) the regulation of the course of business between parties to contracts in any capacity;
- (q) the fixing of a scale of brokerage and other charges;
- (r) the making, comparing, settling and closing of bargains;

- (s) the emergencies in trade which may arise, whether as a result of pool or syndicated operations or cornering or otherwise, and the exercise of powers in such emergencies, including the power to fix maximum and minimum prices for securities;
- (t) the regulation of dealings by members for their own account;
- (u) the separation of the functions of jobbers and brokers;
- (v) the limitations on the volume of trade done by any individual member in exceptional circumstances;
- (w) the obligation of members to supply such information or explanation and to produce such documents relating to the business as the governing body may require.

(3) The bye-laws made under this section may—

- (a) specify the bye-laws the contravention of which shall make a contract entered into otherwise than in accordance with the bye-laws void under (1) of section 14;
- (b) provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely:—
 - (i) fine;
 - (ii) expulsion from membership;
 - (iii) suspension from membership for a specified period;
 - (iv) any other penalty of a like nature not involving the payment of money.

(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and when approved by the Central Government, shall be published in the Gazette of India and also in the

Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and shall have effect as from the date of its publication in the Gazette of India:

Provided that if the Central Government is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication.

Power of Central Government to make or amend bye-laws of recognised stock exchanges.

10.(1) The Central Government may, either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion, if it is satisfied after consultation with the governing body of the stock exchange that it is necessary or expedient so to do and after recording its reasons for so doing, make bye-laws for all or any of the matters specified in section 9 or amend any bye-laws made by such stock exchange under that section.

(2) Where in pursuance of this section any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and on the publication thereof in the Gazette of India, the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised stock exchange concerned.

(3) Notwithstanding anything contained in this section, where the governing body of a recognised stock exchange objects to any bye-laws made or amended under this section

by the Central Government on its own motion. it may, within six months or the publication thereof in the Gazette of India under sub-section (2), apply to the Central Government for revision thereof, and the Central Government may after giving an opportunity to the governing body of the stock exchange to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or the amendment or revision of any bye-laws under this section shall in all cases be subject to the condition of previous publication:

Provided that if the Central Government is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made, amended or revised immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication.

* * * * *

17.(1) Subject to the provisions of sub-section (3) and to the other provisions contained in this Act, no person shall carry on or purport to carry on, whether on his own behalf or on behalf of any other person, the business of dealing in securities in any State or area to which section 13 has not been declared to apply and to which the Central Government may, by notification in the Official Gazette, declare this section to apply, except under the authority of a licence granted by the Central Government in this behalf.

* * * * *

Licensing of
dealers in sec-
urities in certain
areas.

LISTING OF SECURITIES BY PUBLIC COMPANIES

Power to compel listing of Securities by public companies.

21. Notwithstanding anything contained in any other law for the time being in force, if the Central Government is of opinion, having regard to the nature of this securities issued by any public company as defined in the Companies Act, 1956, or to the dealings in them, that it is necessary or expedient in the interest of the trade or in the public interest so to do, it may require the company, after giving it an opportunity of being heard in the matter, to comply with such requirements as may be prescribed with respect to the listing of its securities on any recognised stock exchange.

79 of 1956.

Free transferability and registration of transfers of listed Securities of companies.

(3) Notwithstanding anything contained in its articles or in section 82 or section 111 of the Companies Act, 1956, but subject to the other provisions of this section, a company may refuse to register the transfer of any of its securities in the name of the transferee on any one or more of the following grounds and on no other ground, namely:—

1 of 1956

(b) that the transfer of the security is in contravention of any law;

PENALTIES AND PROCEDURE

23.(1) * * * * * **Penalties.**

(2) Any person who enters into any contract in contravention of the provisions contained in section 15 or who fails to comply with the orders of the Central Government under section 21 or section 22 shall, on conviction, be punishable with fine which may extend to one thousand rupees.

* * * * *

LOK SABHA

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BILL

to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.

(Dr. Manmohan Singh, Minister of Finance)

APPENDIX—H

ESTIMATES COMMITTEE (1990-91)

CHAIRMAN

Shri Jaswant Singh

MEMBERS

2. Shri J.P. Agarwal
3. Shri Era Anbarasu
4. Shri Kamal Chaudhry
5. Shri Anantrao Deshmukh
6. Prof. Prem Kumar Dhumal
7. Shri Balvant Manvar
8. Shri Hannan Mollah
9. Shri Arvind Netam
10. Dr. Debi Prosad Pal
11. Shri Rup Chand Pal
12. Shri Harin Pathak
13. Shri Bhausaheb Pundlik Phundkar
14. Shri Bh. Vijay Kumara Raju
15. Shri Mullappally Ramachandran
16. Shri Y. Ramakrishna
17. Shri Rajeshwar Prasad
18. Shri J. Chokka Rao
19. Shri ChirANJI Lal Sharma
20. Shri Yamuna Prasad Shastri
21. Shri Dhanraj Singh
22. Shri Subedar Prasad Singh
23. Shri Sukhendra Singh
24. Shri Tej Narain Singh
25. Shri Taslimuddin
26. Dr. Thambi Durai
27. Shri Nandu Thapa
28. Shri P.K. Thungon
- *29. Shri K.C. Tyagi
30. Shri Kailash Nath Singh Yadav.

SECRETARIAT

1. Shri G.L. Batra — *Joint Secretary*
2. Shri B.B. Pandit — *Director*
3. Shri K.L. Anand — *Assistant Director*

*Resigned w.e.f. 30.8.1990.

APPENDIX—I

Statement of Recommendations/Observations

S. No.	Para No.	Recommendations/Observations
1	2	3
1.	1.38	Capital Issue Control Act, 1947 should be repealed without further delay. However, such of its provisions which continue to be relevant, particularly in the context of protection of investors against exploitation by unscrupulous elements, should be incorporated in the proposed legislation in regard to the role, functions and powers of SEBI.
2.	1.39	The Office of Controller of Capital Issues should be abolished and such of its functions as continue to be relevant should be transferred to SEBI.
3.	1.40	Public Sector Undertakings should be treated in the same manner as Private Companies in regard to issue of Bonds, Debentures, Shares etc.
4.	1.41	The Committee, however, wish to emphasize the need for providing sufficient legal and administrative safeguards to protect investors particularly the small investors against exploitation by unscrupulous elements and fly-by-night operators in the capital market. The Committee would also like to caution the Government against any legal vacuum between the possible repeal of CCI Act and the creation of alternative mechanism for protection of the investors. They feel that SEBI is best suited to take over this note.
5.	2.15	The Committee welcome the positive trend of stock exchanges being able to reach the investors far and wide and desire further expansion of stock exchanges.
6.	2.17	The Committee feel that cost considerations notwithstanding minor stock exchanges will certainly help in harnessing a large segment of untapped domestic savings for the development of economy and therefore, recommend that Government should

1	2	3
		encourage financial institutions to diversify their operations into minor stock exchanges. The Financial Institutions must at the same time ensure broad basing the list of members through whom the operations are conducted.
7.	2.21	The Committee while appreciating the steps taken so far by the Ministry to promote public awareness about the capital market would like to emphasize the need of disseminating investors information relating to projects, technology, product quality, competitors and market potential etc. on a more extensive scale. They feel this would lead to not only widening the base of the capital market but also developing a healthy capital market. The Committee desire that Government should come forward with adequate audio-visual publicity in this regard to educate the people.
8.	2.22	The Committee hope that early action would also be initiated to amend clause 41 of the Listing Agreement to further safeguard the interests of the investors.
9.	2.36	The Committee strongly urge that in order to encourage small investors to invest more and more sums in various UTI scheme. The Government should remove imbalance between the tax concessions available to corporate investors under Sec. 80M of the Income Tax Act and those given under Sec. 80L of the same Act to small investors.
10.	2.38	The Committee recommend that the Government should look carefully into the aspect of benefit available to small investors under mutual funds so that resources flow directly to UTI rather than being mopped up by banks and public/private companies through fixed deposits and over subscription of mega issues of shares and debentures. The Committee would expect the Government to address itself to this abnormality without further delay.
11.	2.39	The Committee also welcome the steps taken by UTI in diverting commission so far given to agents of non-individual investors to those bringing in the savings of the individual investors.

1	2	3
12.	2.66	The Committee would like the SEBI to take effective punitive measures to prevent small investors from being misled in any manner and insist upon full disclosures by Fund Managers of full facts and risks involved. In this regard they would expect SEBI to play a crucial role and the Government to further strengthen SEBI for that purpose.
13.	2.68	The Committee desire Government to ensure that the guidelines issued by SEBI should be strictly adhered to and the impact of these guidelines as also the nature of violations, if any reported to Parliament.
14.	2.70	The Committee are, however, keen that this step should not be allowed to degenerate into a haven for unscrupulous chit fund operators in respect of whom investors have had better experience in the past. Government/SEBI should evolve fool-proof criteria for permitting private companies to establish mutual funds. They desire that such permission should be given only to companies having long existence and proven track record, particularly, in regard to the quality of service provided to the investors.
15.	2.70(A)	The Committee also desire that Government/SEBI should take all necessary steps to protect small investors from unscrupulous fund management and to provide stringent and other legal penalties for those agents and persons who are guilty of cheating unsuspecting investors.
16.	2.86	The Committee recommend that Stock Holding Corporations should be encouraged in the private sector through suitable incentives.
17.	2.88	The Committee recommend that SHCIL should reduce its processing time so as to render efficient services to its customers. They also desire that the present schedule of rates may be reviewed keeping in view growth in the volume of business.
18.	2.105	The Committee expect the Government to provide all encouragement for establishing more such agencies for the guidance of investors. They would, however, like to caution against the exploitation of investors by unscrupulous elements damaging this nascent institution.

1	2	3
19.	2.107	<p>(a) The credit rating of issues of shares as well as debentures of different kinds should be made compulsory in respect of existing as well as new issues.</p> <p>(b) The companies whose shares are already listed on the stock exchange must be persuaded to seek credit rating on an annual basis.</p> <p>(c) The SEBI, stock exchange and the financial institutions should take all necessary steps to popularise credit rating amongst the investors as also in the corporate world.</p>
20.	2.114	The Committee, however, emphasize the need of the present OTC market in public sector funds to include private sector bonds as well. They are of the firm view that this would impart liquidity to every existing instrument—at least in the urban financial centres.
21.	3.10	The Committee desire that after the intended repeal of the Capital Issue Control Act, 1947 alternative safeguards should be created to penalise a company or a person for misleading investors. The SEBI may be suitably empowered to take proper action in the matter. The Committee also desire that a statement of industry and company risks should be incorporated in the issue documents and advertisements released by the Companies/Merchant Bankers.
22.	3.16	The Committee recommend that the Securities Exchange Board of India should monitor the prices of shares of companies which intend to raise funds in the capital market before as well as after the issue of shares and debentures of different categories.
23.	3.17	The premium over shares should be determined by companies/merchant bankers in accordance with the guidelines announced by SEBI and which should in turn, ensure that the guidelines are being followed.
24.	3.18	Suitable norms for determining the premium should be laid down taking into account state of the industry and position of the company in the industry as a whole.

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25.	3.19	Government should consider the desirability of legislation to check manipulation of prices of shares and debentures in order to safeguards the freedom intended to be given to individual companies against any kind of misuse. Prudential norm should also be established to relate the size of issue to the equity base of the company.
26.	3.20	Freedom of fixing shares prices should be initially restricted to companies which are above an appropriate capital base line while companies with smaller capital base and also the companies entering the capital market for the first time should not have the same degree of freedom.
27.	3.21	SEBI should ensure that merchant bankers evolve commonly acceptable evaluation norms and methodology to ensure objectivity in the pricing of shares. It should also ensure that such details are given wide publicity through the prospectus and other issue documents.
28.	3.22	Due encouragement should be given by the Government for developing capital market infrastructure which includes computerised information networking between the stock exchanges, merchant bankers and the brokers.
29.	3.39	The Committee urge the Government to promptly examine these suggestions made by SEBI and UTI and to come forward with a package of measures as will reduce delays experienced by investors in receiving refund orders and implement it at the earliest.
30.	3.47	The Committee urge the Ministry to ensure that the facility of retention of 15% excess money should in no case be allowed to result in issue of shares in odd lots. At the same time, they would expect, keeping in view the wide reach of banks, the Ministry to persuade Public Sector Banks to operate schemes for purchase of odd lots from the shareholders.
31.	3.51	The Committee deprecate Government's inaction in enforcing its own instructions. They urge immediate enforcement of these instructions through random checking of Register of Shareholders of companies

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		listed on the stock exchanges. They would also like stock exchanges to confirm whether companies have been furnishing the necessary statement of share holding of their officers including their family members.
32.	3.61	The Committee recommend that the Government should in consultation with SEBI take necessary steps to ensure that issue of shares and debentures are evenly spread during the financial year. For this purpose necessary consultation may be initiated within the financial sector and a scheme of incentives and disincentives designed to bunching of issues.
33.	3.73	The Committee desire that the Government should promptly look into this aspect and simply the procedure for issue of duplicate share/debentures within a reasonable time limit.
34.	3.79	The Committee are not fully convinced of the stand taken by the Government. They therefore, recommend that the matter be considered further in consultation with Department of Company Affairs and compliance reported to them within a period of six months.
35.	3.86	The Committee desire that punitive action against defaulting companies whose aim is to merely take investors for granted should be made deterrent.
36.	3.89	The Committee recommend that all further follow up action which may be required should be taken up by such cells at their own cost and to the entire satisfaction of the complainants. Receipt of complaints should be promptly acknowledged. The Committee desire that such cells should keep close contract with their counterparts in the other Stock Exchanges for prompt action by them.
37.	3.100	The Committee would like to be informed whether in view of various steps taken for liberalising of FERA regulations, the changes intended to be brought out in FERA itself and possible repeal of Capital Issue Control Act, the listing agreements of the Stock Exchanges with special references to special Clauses 40A and B, would require any modifications.

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38.	3.104	The Committee desire that ever after the removal of Control over Capital Issues, the Government should ensure that the basis of allotment of shares is fair and transparent and that the shares of Public Limited Companies are held as widely as possible. The Committee are keen to ensure that no opportunity is provided to manipulative forces to concentrate share holdings in their hands. The Committee desire that public sector mutual funds should play an effective role towards the achievement of this objective.
39.	3.108	The Committee desire that in order to discourage the promoters from manipulating the share prices of their companies, particularly, when such shares are being quoted at par or below par, the banks and financial institutions should take custody of the shares of promoters who have availed of project finance from such financial institutions/banks or at least conduct a periodic physical verification of such shares. The Committee feel that this step is essential to ensure that promoters fulfil usual undertaking given to the financial institutions/banks not to off load statutory promoters quota of shares during the period loans from financial institutions/banks are outstanding.
40.	3.109	The Committee are apprised that some unscrupulous elements raise funds from the security market by trading in fake/forged share certificates. The Committee desire the SEBI to investigate such allegations. The Committee further desire that in the event of any pre-mature refund of loans by a company whose shares are listed in any stock exchange/the financial institutions/banks which have loaned the funds should invariably enquire into the sources of funds in order to discourage transaction of fake/forged share certificate in the security market.
41.	3.110	The Committee understand that a practice has developed under which financial institutions encourage promoters to issue shares to some of the nominees of the financial institutions out of promoters' quota at par even though in the market the

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		same shares may be selling at a premium. They are further apprised that despite the stipulation that the nominees must not sell such shares during the currency of the loan taken by the promoters these are nevertheless sold immediately to make quick gains. The Committee feel that this practice apart from being unethical also hurts the interests of ordinary shareholder of a company. The Committee desire that SEBI should take measures to stop this practice.
42.	4.34	The Committee desire the Government to review the legal framework within which SEBI is functioning or will function after the enactment of SEBI bill concurrently with the intended removal of control over capital issues and consequent changes in the statutes.
43	4.36	The Committee desire that SEBI should come out with appropriate publication consolidating therein all the relevant legal provisions, the guidelines issued to various institutions of the capital market and circulars issued for the benefit of investors. They also desire that such a publication should be widely circulated.
44.	4.38	The Committee desire that the Government should keep the developments in capital market under constant watch and effect necessary changes in the law as soon as experience gained in regard to various matters mentioned above necessitates.
45.	4.40	The Committee are of the view that both the segments of the market are inter-linked and any demarcation between the two would be impracticable. Moreover, they also note the fact that SEBI is already performing various functions in relation to primary stock market. This stand of the Committee has been vindicated by the recent policy changes announced by the Finance Minister in the Parliament.
45.	4.41	The Committee urge the Ministry to review their stand and desire that whatever limited regulation of the capital market is necessary after the removal of control over capital issues should be entrusted to SEBI.
47.	4.43	The Committee desire that the two Members of the Board whose qualifications have been left undefined.

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should be nominated by the Ministry, in a manner so that one each represent the capital market institution and the other investing public. They also desire that both the Members should be eminent figures, well-known for their professional competence, public service and integrity.

48. 4.45 Although the Committee appreciate the need for effective intervention by SEBI for the protection of investors' interest they shall like to be assured that the scheme of dual registration will not result in undue interference in the working of stock-brokers or undue bureaucratisation of an essentially commercial activity.

49. 4.47 The Committee would like to caution to Government that powers likely to vest with it under the new legislation, should be used with greatest circumspection in order to maintain public confidence in the SEBI as an independent institution in the service of investing public.

50. 4.48 The Committee would also like the Ministry to review Sub-clause 'C' of clause 17 after certain amount of experience is gained with a view to substituting it by a more definite set of grounds, on the basis of which supersession of the powers can be contemplated.

**LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA
SECRETARIAT PUBLICATIONS**

Sl. No.	Name of Agent	Sl. No.	Name of Agent
ANDHRA PRADESH			
1.	M/s. Vijay Book Agency, 11-1-477, Mylalgadda, Secunderabad-500361.	13.	M/s. Manimala, Buys & Sells, 123, Bow Bazar Street, Calcutta-1.
BIHAR			
2.	M/s. Crown Book Depot, Upper Bazar, Ranchi (Bihar).	14.	M/s. Jain Book Agency, C-9, Connaught Place, New Delhi. (T. No. 351663 & 350806).
GUJARAT			
3.	The New Order Book Company, Ellis Bridge, Ahmedabad-380006. (T. No. 79065).	15.	M/s. J. M. Jaina & Brothers, P. Box 1020, Mori Gate, Delhi- 110006. (T. No. 2915064 & 230936).
MADHYA PRADESH			
4.	Modern Book House, Shiv Vilas Palace, Indore City. (T. No. 35289).	16.	M/s. Oxford Book & Stationery Co., Scindia House, Connaught Place, New Delhi-110001. (T. No. 3315308 & 45896).
MAHARASHTRA			
5.	M/s. Sunderdas Gian Chand, 601, Girgaum Road, Near Princes Street, Bombay-400002.	17.	M/s. Bookwell, 2/72, Sant Nirankari Colony, Kingsway Camp, Delhi-110009. (T. No. 7112309).
6.	The International Book Service, Deccan Gymkhana, Poona-4.	18.	M/s. Rajendra Book Agency IV-DR59, Lajpat Nagar, Old, Double Storey, New Delhi- 110024. (T. No. 6412362 & 6412131).
7.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-400001.	19.	M/s. Ashok Book Agency, BH-82, Poorvi Shalimar Bagh, Delhi-110033.
8.	M/s. Usha Book Depot, 'Law Book Seller and Publishers' Agents Govt. Publications 585, Chira Bazar Khan House, Bombay-400002..	20.	M/s. Venus Enterprises, B-2/85, Phase-II, Ashok Vihar, Delhi.
9.	M&J Services, Publishers, Repre- sentative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor 68, Jyotiba Fule Road, Nalgaum-Dadar, Bombay-400014.	21.	M/s. Central News Agency Pvt. Ltd., 23/90, Connaught Circus New Delhi-110001. (T. No. 344448, 322705, 344478 & 344508).
10.	Subscribers Subscription Services India, 21, Raghunath Dadaji Street, 2nd Floor, Bombay-400001.	22.	M/s. Amrit Book Co. N-21, Connaught Circus, New Delhi.
TAMIL NADU			
11.	M/s. M. M. Subscription Agen- cies, 14th Murali Street, (1st floor) Mahalingapuram, Nungam- bakkam, Madras-600034. (T. No. 476558).	23.	M/s. Books India Corporation Publishers, Importers & Export- ers, L-27, Shastri Nagar, Delhi-110052. (T. No. 269631 & 714465).
UTTAR PRADESH			
12.	Law Publishers, Sardar Patel Marg, P. B. No. 77, Allahabad, U.P.	24.	M/s. Sangam Book Depot, 4378/4B, Murari Lal Street, Ansari Road, Darya Ganj, New Delhi-110002.

**Corrigenda to the Seventh Report of
Estimates Committee (1991-92).**

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<u>Sl. No.</u>	<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
1.	2	1. 7	7	have in the CCI's office	have the CCI's office
2.	10	1. 41	last	this note	this role
3.	14	2. 16	3 from bottom	Theey	They
4.	17	2. 27	4 from bottom	form	from
5.	20	2. 43	3 from bottom	Mutual Furnish	Mutual Funds
6.	25	2. 63	4	Prodential	Prudential
7.	27	2. 70	3	better	bitter
8.	31	F. Title to para 2.89	-	F. Credit Rating information Service	F. Credit Rating Information Service
9.	34	2. 106	3	taping	tapping
10.	36	2. 112	2	raise	raise
11.	39	Title of para 3.5	-	A False, Distorted	A False, Distorted
12.	42	3. 14	12	Althought	Although
13.	42	3. 15	4	folprof	foolproof
14.	46	3. 27	2 from bottom	Precedent	Precedent
15.	56	3. 70	last line	taken up	taken up
16.	57	3. 72	1	deuplicate	duplicate
17.	62	3. 87	4	"if	"If
18.	63	foot notes	2	listing Agreement	Listing Agreement
19.	64	3. 93	3	issues	issued
20.	65	3. 98	2	countiries	countries
21.	65	3. 98	3	Listing agreement	Listing Agreement
22.	66	3. 99	2 from bottom	of	or
23.	67	3. 104	1	controll	control
24.	67	3. 105	3	bersek	beserk