

## SECURITIES LAWS AND COMPLIANCES

### PART B — ISSUE MANAGEMENT AND COMPLIANCES

### STUDY XVIII - INVESTOR PROTECTION

#### LEARNING OBJECTIVES

The study will enable the students to understand

- Concept and need for investor protection and education
- Rights and responsibilities of investors
- Grievances of investor and redressal mechanism
- Legal framework for Investor Protection in India
- Investor Education and Protection Fund
- Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001
- Websites for investor protection
- Investor education/financial literacy

#### INTRODUCTION

Capital market plays an extremely important role in promoting and sustaining the growth of an economy. It is an important and efficient conduit to channel and mobilize funds to enterprises, and provide an effective source of investment in the economy. It plays a critical role in mobilizing savings for investment in productive assets, with a view to enhancing a country's long-term growth prospects, and thus acts as a major catalyst in transforming the economy into a more efficient, innovative and competitive marketplace within the global arena.

In addition to resource allocation, capital markets also provide a medium for risk management by allowing the diversification of risk in the economy. A well-functioning capital market tends to improve information quality as it plays a major role in encouraging the adoption of stronger corporate governance principles, thus supporting a trading environment, which is founded on integrity. Capital market has played a crucial role in supporting periods of technological progress and economic development throughout history. Among other things, liquid markets make it possible to obtain financing for capital-intensive projects with long gestation periods. This certainly held true during the industrial revolution in the 18th century and continues to apply even as we move towards

the so-called “New Economy”.

The existence of deep and broad capital market is absolutely crucial and critical in spurring the growth of our country. An essential imperative for India has been to develop its capital market to provide alternative sources of funding for companies and in doing so, achieve more effective mobilization of investors' savings. Capital market also provides a valuable source of external finance.

For a long time, the Indian market was considered too small to warrant much attention. However, this view has changed rapidly as vast amounts of international investment have poured into our markets over the last decade. The Indian market is no longer viewed as a static universe but as a constantly evolving market providing attractive opportunities to the global investing community.

#### I. WHO REGULATES WHICH TYPE OF ENTITY

Given below is a list of types of intermediaries/service providers in the financial market. The names of the relevant regulatory bodies are given in the second column.

ENTITY	REGULATOR
AUDITORS	The Institute of Chartered Accountants of India/Controller & Auditor General of India (ICAI/CAG)
BANKS	Reserve Bank of India (RBI)
BANKS - ISSUE COLLECTION	Securities & Exchange Board of India (SEBI)
CHIT FUNDS	RBI
COMPANIES - ALL	Ministry of Corporate Affairs (MCA)/Registrar of Companies (ROC)
COMPANIES - LISTED	MCA/ROC/SEBI/Stock Exchanges
COMPANY SECRETARIES	The Institute of Company Secretaries of India (ICSI )
CO-OPERATIVE BANKS	RBI
CREDIT RATING AGENCIES	SEBI
CUSTODIAL	SEBI

SERVICES	
DEBENTURE TRUSTEES	SEBI
DEPOSITORIES	SEBI
DEPOSITORY PARTICIPANTS	SEBI
FINANCIAL & INVESTMENT	
CONSULTANTS	-
FOREIGN BROKERS	SEBI
FOREIGN DEBT FUNDS	SEBI
FOREIGN INVESTMENT	
INSTITUTIONS	SEBI
INSURANCE BROKERS/ AGENTS	Insurance Regulatory & Development Authority (IRDA)
INSURANCE COMPANIES	IRDA
INVESTMENT BANKERS	SEBI
INVESTOR ASSOCIATIONS	SEBI
MUTUAL FUND BROKERS/ AGENTS	Association of Mutual Funds of India (AMFI)/ SEBI
MUTUAL FUNDS & ASSET	
MANAGEMENT COMPANIES	SEBI
NBFCs	RBI
NEWSPAPERS & MAGAZINES	Press Council of India (PCI)
PLANTATION	SEBI

COMPANIES	
PORTFOLIO MANAGERS	SEBI
PRIMARY DEALERS	RBI
RADIO	Ministry of Information & Broadcasting (MIB)
REGISTRARS & SHARE TRANSFER	
AGENTS	SEBI
SOLICITORS & LEGAL ADVISORS	Bar Council of India (BCI)
STOCK BROKERS	SEBI
STOCK EXCHANGES	SEBI
SUB-BROKERS	SEBI
TV MIB	
VENTURE CAPITAL FUNDS	SEBI

## II. RIGHTS AND RESPONSIBILITIES OF INVESTORS

Investor Rights	Investor Obligations
<i>The right to get</i>	<i>The obligation to</i>
— The best price	— Sign a proper Member- Constituent Agreement
— Proof of price/brokerage charged	— Possess a valid contract or purchase/sale note
— Your money/shares on time	— Deliver securities with valid documents and proper signatures
— Shares through auction where delivery is not received	
— Square up amount where delivery not	

received in auction	
— Statement of Accounts from trading member	
<i>The right for redressal against</i>	<i>The obligation to ensure</i>
— Fraudulent price	— To make payment on time
— Unfair brokerage	— To Deliver shares on time
— Delays in receipt of money or shares	— To send securities for transfer to the company on time
— Investor unfriendly companies	— Forwarding all the papers received from the company under objections to the broker on time

### The Rights of Investor as a shareholder

To receive the share certificates, on allotment or transfer (if opted for transaction in physical mode) as the case may be, in due time.

To receive copies of the Annual Report containing the Balance Sheet, the Profit & Loss account and the Auditor's Report.

To participate and vote in general meetings either personally or through proxy.

To receive dividends in due time once approved in general meetings.

To receive corporate benefits like rights, bonus, etc. once approved.

To apply to Company Law Board (CLB) to call or direct the calling of an Annual General Meeting.

To inspect the minute books of the general meetings and to receive copies thereof.

To proceed against the company by way of civil or criminal proceedings.

To apply for the winding up of the company.

To receive the residual proceeds.

*Besides the above rights, which investors enjoy as an individual shareholder, investors also enjoy the following rights as a group:*

To requisition an Extra-ordinary General meeting.

To demand a poll on any resolution.

To apply to CLB to investigate into the affairs of the company.

To apply to CLB for relief in cases of oppression and/or mismanagement.

#### Rights of Investors as a debenture holder

To receive interest on redemption of debentures in due time.

To receive a copy of the trust deed on request.

To apply for winding up of the company if the company fails to pay its debt.

To approach the Debenture Trustee with your grievance.

You may note that the above mentioned rights may not necessarily be absolute. For example, the right to transfer securities (in physical mode) is subject to the company's right to refuse transfer as per statutory provisions.

#### Responsibilities of an Investor as a security holder

While you may be happy to note that you have so many rights as a stakeholder in the company that should not lead you to complacency; because you have also certain responsibilities to discharge.

To be specific

To remain informed

To be vigilant

To participate and vote in general meetings

To exercise your rights on your own or as a group.

### III. COMMON GRIEVANCES OF INVESTORS

The general grievances the investors have against companies can be listed as under:

1. Furnishing inadequate information or making misrepresentation in prospectus, application forms, advertisements and rights offer documents.
2. Delay/non-receipt of refund orders, allotment letters and share certificates/ debenture certificates/bonds.
3. Delay/non-receipt of share certificates/debenture certificates after transfer.
4. Delay in listing of securities with stock exchanges.
5. Delay/non-receipt of share certificates/bonds/debentures after endorsement of part payment/call money.
6. Delay/non-receipt of share certificates/bonds/debentures after sub division or consolidation.

7. Delay/non-receipt of letter of offer of rights issue.
8. Delay/non-receipt of bonus shares/right shares.
9. Delay/non-receipt of notices for meetings/annual reports.
10. Delay/non-receipt of interest warrants and dividend warrants.
11. Fixing unduly high premium on shares.
12. Difficulties in sending odd lots.
13. Obtaining undue benefits by company insiders.
14. Delay/default in payment of interest and repayment of deposits.

In respect of each of the above grievances complaints can be lodged with the Registrar of Companies, stock exchanges or SEBI as the case may be and in certain cases, they can be pursued with the Company Law Board also to obtain remedies and relief.

#### IV. REDRESSAL OF INVESTOR GRIEVANCES

The following table indicates nature of investors' grievances and the authorities to be approached:

<i>Nature of grievance</i>	<i>Concerned Authority</i>
<i>In case of any public issue</i>	
Non-receipt of:	
- Refund order	- SEBI
- Interest on delayed refund	- Ministry of Company Affairs
- Allotment advice	- Stock Exchange
- Share certificates	- Registrars to the Issue
- Duplicates for all of the above	
- Revalidations	
<i>In case of a listed security</i>	
Non-receipt of the certificates after:	
- transfer	- SEBI
- transmission	- Ministry of Company Affairs
- conversion	- Stock Exchange
- endorsement	
- consolidation	
- splitting	

- duplicates of securities Regarding listed	- SEBI
Debentures, non-receipt of	
- interest due	- Ministry of Company Affairs
- redemption proceeds	- The Debenture Trustees
<i>Nature of grievance</i>	<i>Can be taken up with</i>
- interest on delayed payment	— - Stock Exchange
Regarding bad delivery of shares	— - Bad delivery cell of the stock exchange
Regarding shares or debentures in unlisted companies	— - Ministry of Company Affairs
Deposits in collective investment schemes like plantations, etc.	— - SEBI
Units of Mutual Funds	— - SEBI
Fixed Deposits in Banks and Finance Companies	— - Reserve Bank of India
Fixed Deposits in manufacturing companies	— - Ministry of Company Affairs

Investor Information Centres have been set up in every recognised stock exchange which take up all complaints regarding the trades effected in the exchange and the relevant member of the exchange.

Moreover two other avenues are always available to the investors to seek redressal of their complaints:

1. Complaints with Consumers Disputes Redressal Forum.
2. Suits in the Court of Law.

But considering the cost and time involved, the investor should better opt for these methods only as a last resort, after exhausting other simpler and direct methods of redressal of their grievances.

SEBI has issued rules, regulations and guidelines to monitor the working of various players both in the primary market and secondary market including stock exchanges and mutual funds. In particular, SEBI guidelines provide for due diligence to be carried out by each intermediary in the performance of his work.

## V. LEGAL FRAMEWORK FOR INVESTOR PROTECTION IN



## INDIA

In order to afford adequate protection to the investors, provisions have been incorporated in different legislations such as the Companies Act, Securities Contracts (Regulation) Act, Consumer Protection Act, Depositories Act, and Listing Agreement of the Stock Exchanges supplemented by many guidelines, circulars and press notes issued by the Ministry of Finance, Ministry of Company Affairs and SEBI from time to time. The legislations as well as the rules and regulations notified thereunder specify disclosure requirements to be complied with by the companies and also punishments and remedies for failure of compliance.

### 1. Companies Act, 1956

#### Acceptance of Deposits

Section 58 A - This section provides that no Company shall invite any public deposits without issuing an advertisement in accordance with the Companies (Acceptance of Deposit) Rules, 1975. In the said advertisement the Company is under obligation to indicate its financial position as also details about the Company's business, Board Directors etc. A copy of the said advertisement has to be filed with the Registrar of Companies.

In terms of sub-section 9 where a Company fails to repay any deposit or part thereof, the Company Law Board may either on its own or on the application of the depositors, by order direct the Company to make re-payment of such deposits thereof forthwith or within such time and subject to such conditions as may be specified in the order.

Sub-section 10 provides for penalty in the case of failure to comply with any order made by the Board under sub-section 9.

*Section 58AA:* In this Section the Companies Act has recognized that a small depositor means a depositor who has deposited in a financial year a sum not exceeding Rs. 20,000/- in a company and includes its successors, nominees and legal representatives. This section inter alia, provides that in case of any default made by a company in the re-payment of such deposits and part thereof or interest thereon, it shall give an intimation within 60 days about such default to the Company Law Board (CLB). It is also provided

that upon default in re-payment to small depositors, no company shall accept any further deposits from small depositors until the matured deposits and interest accrued thereon have been paid fully.

#### Mis-statements in Prospectus

*Section 63:* This Section deals with criminal liability for misstatement in prospectus issued by a company. For such misstatements, the section provides for imprisonment upto 2 years which and fine which may extend to Rs. 50,000/- or with both and the offence is compoundable.

*Section 68:* This section deals with the penalty for fraudulently inducing persons to invest money in security of a company and provides for imprisonment upto 5 years or fine upto Rs. 1 lakh.

#### Non-payment of Dividend

*Section 205:* This section, inter alia, requires a company who has declared a dividend for any financial year to deposit the amount of such dividend (including interim dividend, if any) in separate bank account within 5 days from the date of declaration of such dividend.

*Section 205A:* This section provides that where a dividend has been declared by a company which has not been paid or claimed within 30 days from the date of such declaration, the company shall within 7 days of expiry of the said period of 30 days transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by a company in this behalf.

This section also provide for penalty for non complying with the above requirement and the same by way of interest @ 12% on the amount of unpaid/unclaimed dividend not transferred to the special account.

*Section 205C:* This section provides for establishment of Investors' Education and Protection Fund by the Central Government. Various types of unpaid/unclaimed amounts of application money/matured deposits/matured debenture etc. are to be credited to the said fund. The said accumulation in this fund are to be utilized for promotion of investors' awareness and protection of investors' interests.

#### Transfers and Transmission of Securities

Regarding transfers and transmissions of securities

necessary provisions are available in Section 111, 111A and 113 of the Companies Act. As regards listed companies, the clauses in the listing agreement contain provisions for prompt issue of certificates after effecting transfers.

Failure to comply with the provisions of Companies Act can be brought before the Company Law Board through an appeal under Section 111 and 111A. After hearing the parties Company Law Board may by order direct the company to register the transfer.

**Failure to Send Financial Statements**

*Section 219:* This section provides for the right of a member for copies of Balance-sheet and auditors Report.

Sub-section 3 makes the default in complying with this requirement punishable with fine which may extend to Rs. 5,000/-.

Besides, Section 621 of the Companies Act, 1956 permits the shareholder to proceed against the company and its officers in a court of law generally for offences committed under the Companies Act including prospectus, abridged prospectus, allotment, listing, transfer of shares, dividend payment etc. committed by the company as well as its officers under various provisions in the Act.

**Protection to Debentureholders**

Section 117A to 117C protect the debenture holders, and the new sections contains stringent punishments for default.

## 2. SEBI Act, 1992

In the preamble to the SEBI Act, 1992 two objectives are mentioned. The first objective is protecting the interest of the investors in securities and the second is to promote the development of and to regulate the securities market and for matters connected therewith or incidental thereto. Thus priority is accorded to investor protection in the SEBI Act.

*Section 11 in Chapter IV* of the SEBI Act lists out the functions of the SEBI. There are 15 functions provided for SEBI in this section. Section 11(2)(e) stipulates prohibition of fraudulent and unfair practices relating to securities markets as one of these functions and Section 11(2)(g) provides for prohibition of insider trading in securities. In pursuance of this provision the Board had notified the SEBI (Prohibition of fraudulent and unfair practices relating to securities markets)

Regulations, 1995 on 25th October, 1995 in exercise of Section 30 of SEBI Act which empowers SEBI to make regulations for different purposes of the Act. These regulations have now been replaced with SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 w.e.f. 17.7.2003.

*Section 15A to Section 15HA* provide for penalty in respect of failure to furnish information, return, etc., failure by any person to enter into agreement with clients, failure to redress investors' grievances, certain defaults in case of mutual funds, failure to observe rules and regulations by an asset management company, default in case of stock brokers, insider trading, non-disclosure of acquisition of shares and takeovers, fraudulent and unfair trade practices.

*Section 24* provides for punishment with imprisonment upto 10 years or with fine which may extend to Rs. 25 crores or with both. If any person contravenes or attempts to contravene or abets the contravention of the provision of SEBI Act or any rules or regulation.

As regards violation of provisions in the listing agreement, investors can forward their complaints to the stock exchanges with whom the company is listed to initiate action. The Investors are also at liberty to file complaints before the District Forum, State Commission or National Commission established under Section 9 of the Consumer Protection Act. In the case of listed companies investors are entitled to forward their complaints to the company and SEBI and the latter takes up the matter with the companies. SEBI has the power to take action including criminal proceeding where necessary against persons responsible for delay.

Powers under the Companies Act, 1956

SEBI has delegated powers to take action against listed companies under 45 Sections of the Companies Act in relation to issue and transfer of securities and non-payment of dividend. SEBI is empowered to deal with violations and defaults under Sections 55 to 58, 59 to 84, 108 to 110, 112 & 113, 116 to 122, 206 and 206A & 207, committed by listed companies as well as public companies which intend to make public issues and get their securities listed on any recognised stock exchange. Under Section 209A, officers of SEBI are

also authorised to undertake inspection of books of the company in regard to matters covered under Section 55A, and SEBI need not give previous notice to the company in this regard.

3. Securities Contracts (Regulation) Act, 1956

*Section 23* provides for penalties which may extend to 10 years or with fine which may extend to Rs. 25 crores or with both for contravention of the provisions of the Act.

*Section 23A to Section 23H* provide for penalty in respect of failure to furnish information, return etc., failure by any person to enter into an agreement with clients, failure to redress investor grievances, failure to segregate securities or moneys of client or clients, failure to comply with provisions of listing conditions or delisting conditions or grounds, excess dematerialization or delivery of unlisted securities, failure to furnish periodical returns, contravention with any provision of the act where no separate penalty is provided.

*Section 23M* provides for penalty for imprisonment for a term which may extend to 10 years or with fine which may extend to Rs. 25 crore or both for contravention or attempts to contravene or abates the contravention of the provisions of the Act or any rules or regulations or bylaws.

4. Reserve Bank of India Act, 1938.

*Section 45 QA* of the Reserve Bank of India Act gives a depositor similar rights as are provided under Companies Act to approach CLB for payment of matured deposits in the case of NBFCs

5. Indian Penal Code

*Economic Offence Wings of the Police Departments* have powers under IPC to take up the cases of cheating, forgery and misappropriation etc. relating to investments.

Stock exchanges can also take up the issues pertaining to securities in terms of the conditions of listing agreement, rules and regulations

## VI. PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES

SEBI Regulations prohibiting the Fraudulent and Unfair Trade Practices relating to Securities Market have been divided into 3 chapters. While Chapter I deals with preliminary matters, Chapter II provides for prohibition of fraudulent and unfair trade

practices relating to securities markets and Chapter III prescribes the powers and procedure for investigating into alleged contraventions and issuing directions and orders including suspension or cancellation of registration of an intermediary guilty of such contraventions.

The following definitions contained in Regulation 2 are important—

1. "dealing in securities" includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in Section 12 of the Act.
2. "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—
  - i. a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
  - ii. a suggestion as to a fact which is not true by one who does not believe it to be true;
  - iii. an active concealment of a fact by a person having knowledge or belief of the fact;
  - iv. a promise made without any intention of performing it;
  - v. a representation made in a reckless and careless manner whether it be true or false;
  - vi. any such act or omission as any other law specifically declares to be fraudulent;
  - vii. deceptive behaviour by a person depriving another of informed consent or full participation;
  - viii. a false statement made without reasonable ground for believing it to be true;
  - ix. the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other

than the market price.

And "fraudulent" shall be construed accordingly.

Nothing contained in this clause shall apply to any general comments made in good faith in regard to –

- a. the economic policy of the government
- b. the economic situation of the country
- c. trends in the securities market or
- d. any other matter of a like nature

whether such comments are made in public or in private.

#### Prohibition of certain dealings in securities

Regulation 3 provides for prohibition of certain dealings in securities it lays down that no person shall directly or indirectly—

- a. buy, sell or otherwise deal in securities in a fraudulent manner;
- b. use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- c. employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- d. engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

#### Prohibition of manipulative, fraudulent and unfair trade practices

Regulation 4 provides that—

1. Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
2. Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:
  - a. indulging in an act which creates false or misleading appearance of trading in the securities market;

- b. dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;
- c. advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;
- d. paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;
- e. any act or omission amounting to manipulation of the price of a security;
- f. publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
- g. entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;
- h. selling, dealing or pledging of stolen or counterfeit security whether in physical or dematerialized form;
  - i. an intermediary promising a certain price in respect of buying or selling of a security to a client and waiting till a discrepancy arises in the price of such security and retaining the difference in prices as profit for himself;
  - j. an intermediary providing his clients with such information relating to a security as cannot be verified by the clients before their dealing in such security;
- k. an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;
- l. an intermediary reporting trading transactions to his clients entered into on their behalf in an inflated manner in order to increase his commission and brokerage;
- m. an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position;



- n. circular transactions in respect of a security entered into between intermediaries in order to increase commission to provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;
- o. encouraging the clients by an intermediary to deal in securities solely with the object of enhancing his brokerage or commission.
- p. an intermediary predating or otherwise falsifying records such as contract notes.
- q. an intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract.
- r. planting false or misleading news which may induce sale or purchase of securities.

#### Power of the Board to order investigation

Regulation 5 provides that, where the Board, the Chairman, the member or the Executive Director (hereinafter referred to as “appointing authority”) has reasonable ground to believe that—

- a. the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market in violation of these regulations;
- b. any intermediary or any person associated with the securities market has violated any of the provisions of the Act or the rules or the regulations,

it may, at any time by order in writing, direct any officer not below the rank of Division Chief (hereinafter referred to as the “Investigating Authority”) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market or any other person and to report thereon to the Board in the manner provided in Section 11C of the Act.

#### Powers of Investigating Authority

The Investigating Authority has been vested with the following powers in respect of the conduct of investigation, namely:

- 1. to call for information or records from any person specified in Section 11(2)(i) of the Act;
- 2. to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in Section 12

of the Act) which intends to get its securities listed on any recognized stock exchange where the Investigating Authority has reasonable grounds to believe that such company has been conducting in violation of these regulations;

3. to require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of the investigation;
4. to keep in his custody any books, registers, other documents and record produced under this regulation for a maximum period of one month which may be extended upto a period of six months by the Board.

The Investigating Authority may call for any book, register, other document or record if the same is needed again.

However if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced, the Investigating Authority has been put under obligation to give certified copies of such books, registers, other documents and record to such person on whose behalf the books, registers, other documents and record were produced;

5. to examine orally and to record the statement of the person concerned or any director, partner, member or employee of such person and to take notes of such oral examination to be used as an evidence against such person. However the said notes are required to be read over to, or by, and signed by, the person so examined;
6. to examine on oath any manager, managing director, officer or other employee of any intermediary or any person associated with securities market in any manner in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

Power of the Investigating Authority to be exercised with prior approval

The Investigating Authority have also been vested with the following powers subject to the specific approval from the Chairman or Member, namely:

- a. to call for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation;
- b. to make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of any books, registers, other documents and record, if in the course of investigation, the Investigating Authority has reasonable ground to believe that such books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner may be destroyed, mutilated, altered, falsified or secreted;
- c. to keep in his custody the books, registers, other documents and record seized under these regulations for such period not later than the conclusion of the investigation as he considers necessary and thereafter to return the same to the person, the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized. However, the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.
- d. The regulations provided that subject to the provisions of Regulation every search or seizure made has to be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

Duty to co-operate, etc.

The Regulation imposes on every person in respect of whom an investigation has been ordered under regulation 7, a duty to produce to the Investigating Authority or any person authorized by him such books, accounts and other documents and record in his custody or control and to furnish such statements and information as the Investigation Authority or the person so authorized by him may reasonably require for the purposes of the investigation; and to appear before the Investigation

Authority personally when required to do so by him under regulation 6 or regulation 7 to answer any question which is put to him by the Investigation Authority in pursuance of the powers under the said regulations.

Regulation further a duty imposes on every manager, managing director, officer and other employee of the company and every intermediary referred to in Section 12 of the Act or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

Additionally, such person has also been put under the obligation to allow the Investigating Authority to have access to the premises occupied by such person at all reasonable times for the purpose of investigation; extend to the Investigating Authority reasonable facilities for examining any books, accounts and other documents in his custody or control (whether kept manually or in computer or in any other form) reasonably required for the purposes of the investigation; and provide to such Investigating Authority any such books, accounts and records which, in the opinion of the Investigating Authority, are relevant to the investigation or, as the case may be, allow him to take out computer out-prints thereof.

#### Submission of report to the Board

After the completion of investigation, the Investigating Authority takes into account all relevant facts and submit a report to the appointing authority:

However, it has been provided that the Investigating Authority may submit an interim report pending completion of investigations if he considers necessary in the interest of investors and the securities market or as directed by the appointing authority.

#### Enforcement by the Board

SEBI, if satisfied after considering the report referred to in regulation 9, that there is a violation of these regulations and after giving a reasonable opportunity of hearing to the persons concerned, issue such directions or take such action as mentioned in regulation 11 and regulation 12. It has been

provided in the regulation that SEBI may, in the interest of investors and the securities market, pending the receipt of the report of the investigating authority referred to in regulation 9, issue directions under regulation 11. It has been further provided that SEBI may, in the interest of investors and securities market, dispense with the opportunity of pre-decisional hearing by recording reasons in writing and should give an opportunity of post-decisional hearing to the persons concerned as expeditiously as possible.

SEBI may issue or take any of the following actions or directions, either pending investigation or enquiry or on completion of such investigation or enquiry, namely:

- a. suspend the trading of the security found to be or prima-facie found to be involved in fraudulent and unfair trade practice in a recognized stock exchange;
- b. restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
- c. suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
- d. impound and retain the proceeds or securities in respect of any transaction which is in violation or prima facie in violation of these regulations;
- e. direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction;
- f. require the person concerned to call upon any of its officers, other employees or representatives to refrain from dealing in securities in any particular manner;
- g. prohibit the person concerned from disposing of any of the securities acquired in contravention of these regulations;
- h. direct the person concerned to dispose of any such securities acquired in contravention of these regulations, in such manner as the Board may deem fit, for restoring the status-quo ante;

(2) SEBI should issue a press release in respect of any final order passed in atleast two newspapers of which one shall have nationwide circulation and also put the order on the website of the Board.

Suspension or cancellation of registration

SEBI may in the interests of investors and securities market take the following action against an intermediary:

- a. Issue a warning or censure
- b. suspend the registration of the intermediary; or
- c. cancel of the registration of the intermediary

## VII. UNIQUE IDENTIFICATION NUMBER

In November 2003, SEBI initiated the process of creation of a Central database of market participants and investors. SEBI (Central Database of Market Participants) Regulations, 2003 requires every specified intermediary, other entity, specified listed company and specified investor to make application for allotment of Unique Identification Number for itself and for its related persons. Unique Identification Number means the Identification Number generated in the Central Database for and allotted to each applicant under the regulations. Specified intermediaries, investors, listed company mean such intermediaries or other entities as may be specified by SEBI in the notification published in the Official Gazette pursuant to Regulations. Till date, almost all the intermediaries have been specified for obtaining Unique Identification Number. The regulations also deal with grant and revocation of Unique Identification Number, continuing obligations, action in case of violation such as acting, dealing etc. without obtaining Unique Identification number, action for giving false statement, failure to intimate changes and failure to make application for newly added related person. However, SEBI vide its circular dated April 27, 2007 made PAN, the sole identification number for all participants in the securities market, irrespective of the amount of transaction. Therefore, SEBI vide its circular dated June 25, 2007 discontinued with the requirements of Unique Identification Number, though the regulation have not yet been repealed.

Major Highlights of the Regulations are provided below:

Unique Identification Numbers for market participants

Every specified intermediary, other entity, specified listed company and specified investor is required to make an application for allotment of unique identification numbers for itself and for its related persons in accordance with the regulations.

Unique Identification Numbers for Specified Intermediary and Other Entity

The Regulations provide that on and from such date as may be notified by the SEBI in the official gazette, no specified intermediary or other entity shall act as such, unless it has obtained a unique identification number from the Designated Service Provider and the following related persons have been allotted unique identification numbers by the Designated Service Provider:

- i. its principal officer and personnel engaged in the operational activities of the intermediary for which a certificate of registration is required or taken from the Board;
- ii. its promoters, other than the Central or State Government or any statutory authority;
- iii. its directors, in case it is a body corporate;
- iv. its partners, in case it is a partnership firm;
- v. its associates and their directors;
- vi. the sponsors, trustees, asset management companies and asset managers, where applicable;
- vii. its proprietor, where applicable; and,
- viii. relatives of the natural persons mentioned in sub-clauses (i) to (vii) above.

However such person may continue to act as an intermediary or other entity if it has made applications for allotment of unique identification number under regulation 7 before the notified date and where such application has been rejected by the Board, an appeal has been filed and such appeal is pending for disposal. Every certificate of registration issued to a specified intermediary by the Board after commencement of the regulations has been made subject to the condition that prior to commencement of its activities, the intermediary shall obtain a unique identification number for itself and for the persons mentioned in the Regulations.

#### Unique Identification Number for Specified Listed Company

The Regulations require that on and from such date as may be notified by the Board in the official gazette, no specified listed company or a company which intends to get its securities listed shall issue any securities which are proposed to be listed on a recognized stock exchange, unless –

- a. it has obtained a unique identification number from the Designated Service Provider; and,
- b. the following related persons have been allotted unique

identification numbers by the Designated Service Provider:

- i. its promoters, other than the Central or State Government or any statutory authority;
- ii. its directors and officers;
- iii. its designated employees;
- iv. its subsidiaries, its holding company and the holding company's subsidiaries, if any;
- v. its associates and their directors; and,
- vi. relatives of the natural persons mentioned in sub-clauses (i) to (iii) and (v) above.

It has however been provided that a specified listed company may, make an issue of securities which are proposed to be listed in any recognized stock exchange if it has made an application for allotment of unique identification number before the notified date, till the disposal of the application and where an appeal has been filed, till such appeal is disposed of.

#### Unique Identification Numbers for Specified Investors

The Regulations provide that on and from such date as may be notified by the Board in the Official Gazette, no specified investor, not being a body corporate, shall buy, sell or deal in any securities which are listed on any recognized stock exchange or in units of a mutual fund or a collective investment scheme or subscribe to securities which are proposed to be listed on any recognized stock exchange or units of a mutual fund or a collective investment scheme unless he has been allotted a unique identification number.

It is further provided that on and from such date as may be notified by the Board in the Official Gazette, no specified investor being a body corporate shall buy, sell or deal in any securities which are listed on any recognized stock exchange or in units of a mutual fund or a collective investment scheme or subscribe to securities which are proposed to be listed in any recognized stock exchange or units of a mutual fund or a collective investment scheme unless such specified investor, its promoters and directors have been allotted unique identification numbers.

The Regulations also provide that on and from such date as may be notified by the Board in the Official Gazette, no specified investor, being a Foreign Institutional Investor, a sub-



account or a Foreign Venture Capital Investor shall buy, sell or deal in any securities which are listed on any recognized stock exchange or in units of a mutual fund or a collective investment scheme or subscribe to securities which are proposed to be listed in any recognized stock exchange or units of a mutual fund or a collective investment scheme unless it has been allotted a unique identification number.

Every intermediary has been prohibited, after such specified date, from dealing in or allotting such securities on behalf of or to a specified investor unless the investor has been allotted a unique identification number. However, specified investor who has applied for allotment of a unique identification number before the notified date, till the disposal of his application or, where he has filed an appeal, till the disposal of the appeal, as the case may be, has been exempted from the application of the regulations.

Application by specified intermediary or other entity

Every specified intermediary or other entity is required to make an application in accordance with the Regulations to the Designated Service Provider for allotment of unique identification numbers for itself and for its related persons.

Application by specified listed company

Every specified listed company is required to make an application to the Designated Service Provider in accordance with Regulations for allotment of unique identification numbers for itself and for its related persons. Every public company specified in the notification issued under regulation 5 and which intends to get its securities listed in a recognized stock exchange shall make an application to the Designated Service Provider for allotment of unique identification numbers for itself and for the related persons mentioned in Regulation 4 simultaneously with the filing of the offer document with the Central Listing Authority.

Application by specified investor

Every specified investor is required to make an application to the Designated Service Provider for allotment of our unique identification number.

Person holding a unique identification number not required to obtain another unique identification number

The regulations provides that no person is required to apply for

or be allotted another unique identification number, if he already holds a unique identification number allotted to him under the regulations in any other capacity. Further, where any person holding a unique identification number subsequently becomes an intermediary or a listed company or a related person of any of them, he is required to disclose such facts to the Designated Service Provider.

#### Maintenance of records

The Designated Service Provider have been put under obligation to maintain such books, records and documents, in such manner and for such period as may be specified by the SEBI.

#### Format of application

Every application made by a specified investor or a related person of a specified intermediary or specified listed company being a natural person, is required to be made in Form A specified in the Schedule accompanied with a specified fee.

Similarly every application made by a specified listed company, specified intermediary, a related person of any of the above or a specified investor, not being a natural person, is required to be made in Form B specified in the Schedule accompanied with a specified fee.

#### Procedure on Receipt of Application

After receiving an application for allotment of unique identification number, the Designated Service Provider shall, if the application is not found defective, allot to the applicant a unique identification number within thirty days of receipt of the application. In case it is found that any such application is defective, the Designated Service Provider may intimate the defect to the applicant and give it an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period as the Board may allow on a request made in this behalf. However in these cases any defect in the application is intimated and the defect is not rectified by the applicant within the said period of fifteen days or, as the case may be, or further period allowed, Designated Service Provider shall refer the application to the Board, which may either direct the Designated Service Provider to allot the unique identification number or reject the application after giving an opportunity to the applicant to make representations.

## Criteria to Determine Specified Intermediaries, Specified Listed Companies and Specified Investors

For specifying the intermediaries, listed companies or investors SEBI may take into consideration the following factors:

- i. in respect of intermediaries or other entities – their kind and the nature of functions performed by them, their network and other similar factors;
- ii. in respect of listed companies or companies which intend to get their securities listed – their paid up capital, the number of their public shareholders, the volume of trading in their securities, the proposed issue size and other similar factors; and,
- iii. in respect of investors – the quantum of investment made by them in the securities of any listed company or their volume of trading in securities in a particular financial year.

## False Statements and Revocation of Unique Identification Number

No person can make a false statement or misrepresent any fact in any application made to the Designated Service Provider under these regulations. Every application made to the Designated Service Provider under these regulations and every intimation made under regulations shall be certified to be true and correct:

- i. in case of an intermediary, by its whole time director, managing partner, managing trustee or sole proprietor, as the case may be, and by its compliance officer;
- ii. in case of a listed company, by its whole time director and its Company Secretary or auditor; and,
- iii. in case of an investor, by him.

## Revocation of Unique Identification Number

If in any case it is found that the unique identification number was obtained by a person through fraud or misrepresentation or was allotted to him under a mistake, the Board may, without prejudice to other action that it may take under any law for the time being in force and after giving him an opportunity of making representations, revoke the unique identification number allotted to him or to the related persons. Upon revocation of the unique identification number of a person, the provisions of the regulations shall apply from the date of revocation, as if no unique identification number was allotted to

him. The Regulations also provide that every order passed by the Board under the regulations shall be in writing.

#### VIII. INVESTORS EDUCATION AND PROTECTION FUND

Investor Education and Protection Fund (IEPF) has been established under Section 205C of the Companies Act, 1956 by way of Companies (Amendment) Act, 1999, for promotion of investors' awareness and protection of the interests of investors.

Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001 (IEPF Rules) stipulate the activities related to investors' education, awareness and protection for which the financial sanction can be provided under IEPF.

##### i. Activities stipulated under Rules

- Education programme through Media
- Organizing Seminars and Symposia
- Proposals for registration of Voluntary Associations or Institution or other organizations engaged in Investor Education and Protection activities
- Proposals for projects for Investors' Education and Protection including research activities and proposals for financing such projects
- Coordinating with institutions engaged in Investor Education, awareness and protection activities.

##### ii. Activities undertaken by IEPF

- Educating and creating awareness among investors through Voluntary associations or organizations registered under IEPF. – 65 associations have been registered so far
- Educating investors through Media, Conducted panel discussions on DD (Delhi, Mumbai, Kolkata, Chennai and Ahmedabad), Telecast of TV Video spots on DD & private channels, print advertisement in national as well as regional newspapers. All these programmes have been undertaken in Hindi, English and regional languages
- Organizing seminars and workshops through associations registered under IEPF
- Financing research projects pertaining to investor education, awareness
- Coordinating with institutions engaged in investor education, awareness – Indian Institute of Capital Markets

(IICM) has been engaged for conducting research/study on unclaimed dividend, interest etc. and also conducting “Training of Trainers” programme.

[www.iepf.gov.in](http://www.iepf.gov.in) — IEPF Website Launched by Ministry of Corporate Affairs

Financial literacy allows the investors to fully appreciate opportunities and associated risks, take informed decisions and participate actively in the economic growth story of the country by converting savings into investments. Ministry of Corporate Affairs (MCA) has set up the Investor Education and Protection Fund (IEPF) with the dedicated purpose of empowering investors through education and awareness building.

As a step towards achieving this objective, MCA on 27th September, 2007 launched a website [www.iepf.gov.in](http://www.iepf.gov.in). It would provide information about IEPF and the various activities that have been undertaken/ funded by it. This website fulfils the need for an information resource for small investors on all aspects of the financial markets and would attempt to do it in the small investors’ language. Ministry of Corporate Affairs intends to cover many other areas like lifetime investment strategy, insurance, plantation companies, fixed deposits, small savings and banking. It is also proposed to introduce several investor-friendly services like online help desks, webcasts, quiz contests, investment planning worksheets, retirement planning, tax guides, working with financial advisors and investor alerts. This website provides information on various aspects such as Role of Capital Market, IPO Investing, Mutual Fund Investing, Stock Trading, Depository Account, Debt Market, Derivatives, Indices, Indices (Comic Strip), Index Funds, Investor Grievances & Arbitration (Stock Exchanges), Investor Rights & Obligations, Dos and Don’ts etc.

[watchoutinvestors.com](http://watchoutinvestors.com) — Website Sponsored by Investor Education and Protection Fund, Ministry of Corporate Affairs  
Funded by MCA

[watchoutinvestors.com](http://watchoutinvestors.com) is a flagship website aided and sponsored by the Investor Education and Protection Fund of the Ministry of Corporate Affairs, Government of India.

A free public service...

— Arms investors with a self-defense tool to protect themselves from entities and persons who have been indicted by a

regulator for an economic default and/or for non-compliance of laws/guidelines and/or who are no longer in the specified activity

— Provides a user-friendly, Quick Search leading to details of the selected entity/person

#### Mission

To prevent unscrupulous entities from harming investors and, in the process help build public confidence in the financial system, thereby enabling flow of public investment to the right avenues.

#### The website

watchoutinvestors.com has been created to provide information to the investors in respect of unscrupulous entities who have committed frauds or who have not been complying with the economic laws of the land. Many of these entities keep reappearing to harm the investors again, often with a new company or changed company names or by floating new schemes, taking advantage of short public memory and exploiting greed.

Though penal regulatory action has been taken against many of such entities, information about such actions was scattered and was in a difficult-to-access, difficult-to-use format across a large number of sources i.e. websites, databases, publications, notifications and orders of the government and of other organizations, agencies, courts of law, tribunals and commissions. It was almost impossible for an investor to locate an indicted entity at any regulator's website and worse, the absence of a combined database of actions taken by all regulators prevented the investors from assessing the extent of defaults by a given entity.

Over several years, watchoutinvestors.com has undertaken the huge job of collating, value adding, cleaning, standardizing, reformatting and tabulating information on all regulatory actions of the past few years. This first-of-its-kind-in-the-world website is now a national web-based registry covering entities including companies intermediaries, and wherever available persons associated with such entities, who have been indicted for an economic default and/or for non-compliance of laws/guidelines and/or who are no longer in a specified activity. In fact, this site is easier to search and navigate than the official websites of the very regulatory agencies whose actions have been tracked and

listed by it.

Regulators covered

The website covers the orders of several regulatory bodies, including the following:

- Bombay Stock Exchange
- Central Depository Services (India) Ltd.
- Company Law Board
- Debt Recovery Tribunals
- Employees' Provident Fund Organization
- Insurance Regulatory & Development Authority
- Ministry of Corporate Affairs, Registrars Of Companies
- National Housing Bank
- National Securities Depository Ltd.
- National Stock Exchange of India Ltd.
- Reserve Bank of India
- Securities and Exchange Board of India

Daily updation

The website is updated on a daily basis.

Why should investors use this website?

watchoutinvestors.com enables investors to do a fast, efficient and user-friendly search and provides them with the information on such entities/persons which they can use:

- before making any new investments with such entities
- for continuously reviewing their existing portfolio vis-a-vis such entities.
- for getting automatic email alerts on companies in their portfolio for new actions(mywatchout).
- when dealing with such entities in any manner

Simple search results

The search results are provided in a simple tabular format. For each entry, the reason for the action and the action taken by the regulatory body is provided in a summary form and the source document is attached, wherever available, for authenticity and details. Decisions of the higher appellate authorities are also provided. All regulatory charges and actions are rewritten in simple English, and standardized.

ENTITY	PERSON	COMPETENT AUTHORITY	REGULATORY CHARGES	REGULATOR ACTION
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The website also allows investors to check for dubious name

changes of thousands of companies.

Increasing usage

*watchoutinvestors.com* is being used by lakhs of investors. The website is also helping investors indirectly by increasing usage by regulators, investment bankers, stock exchanges and law firms.

Concept, design and maintenance

Prime Investors Protection Association and League (PIPAL)

Investor Helpline

A project sponsored by Investor Education and Protection Fund (IEPF), Ministry of Corporate Affairs, Government of India. If an investor has any grievance described below, he can just Log on to: [www.investorhelpline.in](http://www.investorhelpline.in)

Investor Helpline: A novel concept

- A free of charge, Single dedicated portal to handle investor grievances.
- Right from filing grievances to tracking status, the interaction with administrator has been made online to make it user friendly.
- Specific Forms for Different types of Grievances.

#### GRIEVANCE TYPES

- Non Receipt of Refund Order/ Allotment Advise related
- Non-Receipt of Dividend
- Non-Receipt of Share certificates / Units after allotment / transfer/ Bonus Transmission etc.
- Non-Receipt of Debentures / Bond Certificate or Interest / Redemption Amount
- Offer for Rights Issue
- Non-Receipt of Investments and returns thereon on Collective Investment Schemes/ Plantation Companies
- Non-Receipt of Annual Report / AGM Notice / Proxy Form
- Non-Registration of Change in Address of Investor
- Non-Receipt of Fixed / Public Deposits related amounts
- Demat related Grievances
- General Form

#### IX. OMBUDSMAN

Ombudsman in its literal sense is an independent person appointed to hear and act upon citizen's complaint about government services. This concept was invented in Sweden and the idea has been widely adopted. For example, various



banks, insurance companies have appointed Ombudsman to attend to the complaints of their customers.

SEBI vide its Notification SO(953)E dated 21.8.2003 has issued SEBI (Ombudsman) Regulations, 2003. Regulation 2(l) of the Regulations defines Ombudsman as under:

“Ombudsman” means any person appointed under regulation 3 of these regulations and unless the context otherwise requires, includes stipendiary Ombudsman.

Regulation 2(n) of the Regulations defines stipendiary Ombudsman as a person appointed under regulation 9 for the purpose of acting as Ombudsman in respect of a specific matter or matters in a specific territorial jurisdiction and for which he may be paid such expenses, honorarium, sitting fees as may be determined by the Board from time to time.

The regulations further deal with establishment of office of Ombudsman, powers and functions of Ombudsman, procedure for redressal of Grievances and implementation of the award.

The term “complaint” under the Regulation means a representation in writing containing a grievance as specified in regulation 13 of these regulations; and “complainant” means any investor who lodges complaint with the Ombudsman and includes an investors association recognised by the Board.

An “investor” means a person who invests or buys or sells or deals in securities.

“listed company” has been defined in the Regulations to mean a company whose securities are listed on a recognised stock exchange and includes a public company which intends to get its securities listed on a recognised stock exchange.

**Establishment of Office of Ombudsman**

SEBI has been empowered to appoint, on recommendation of a Selection Committee, one or more Ombudsmen for such territorial jurisdiction as may be specified from time to time by an order. The Selection Committee referred in sub-regulation(2) should consist of the following members, namely:

- a. an expert in the areas relating to financial market operations to be nominated by the Chairman;
- b. a person having a special knowledge and experience of law, finance or economics, to be nominated by the Chairman.
- c. a representative of the Board not below the rank of Executive Director who shall be Secretary of the Selection Committee,

to be nominated by the Chairman.

At the request of SEBI, the Selection Committee may also prepare a panel of persons out of which a person may be appointed as Stipendiary Ombudsman. The panel so constituted can remain in force for a maximum period of two years and shall be reconstituted from time to time. It has also been provided that any person in the existing panel shall be eligible to be included in the reconstituted panel.

#### Location of Office

The regulations provide that the office of the Ombudsman shall be located at the Head Office of the Board and if more than one Ombudsman are appointed then the office of any such Ombudsman may be located at any other office of the Board or any other place as may be specified by the Board from time to time. The Regulations further provide that the Stipendiary Ombudsman when appointed for any specific complaint or complaints shall be located at such place as may be specified. In order to expedite disposal of complaints, the Ombudsman or Stipendiary Ombudsman, as the case may be, may hold sittings at such places within his area of jurisdiction as may be considered necessary and proper by him. SEBI may provide the premises and other infrastructure including staff or secretarial assistance for the office of Ombudsman or Stipendiary Ombudsman, as the case may be.

#### Eligibility Criteria for Appointment of a Ombudsman

In order to be appointed as an Ombudsman, a person is required to be—

- i. a citizen of India;
- ii. of high moral integrity;
- iii. not below the age of forty five years; and
- iv. either a retired District Judge or qualified to be appointed a District Judge, or having at least ten years experience of service in any regulatory body, or having special knowledge and experience in law, finance, corporate matters, economics, management or administration for a period of not less than ten years, or an office bearer of investors' association recognised by the Board having experience in dealing with matters relating to investor protection for a period of not less than 10 years.

However a person is not qualified to hold the office of the

Ombudsman if—

1. he is an un-discharged insolvent;
2. he has been convicted of an offence involving moral turpitude;
3. he has been found to be of unsound mind and stands so declared by a competent court;
4. he has been charge sheeted for any offence including economic offences;
5. he has been a whole-time director in the office of an intermediary or a listed company and a period of at least 3 years has not elapsed.

#### Tenure

A person appointed as an Ombudsman will hold office for a term of three years and shall be eligible for reappointment for another period of two years. No person can hold the office of Ombudsman after attaining the age of sixty-five years. However the Board, at any time, before the expiry of the period specified may terminate the services of the Ombudsman by giving him notice of not less than three months in writing or three months salary and allowances in lieu thereof. Ombudsman also has the right to relinquish his office, at any time, before the expiry of period specified by giving to the Board notice of not less than three months in writing.

#### Remuneration

The salary, allowances, honorarium or fee payable to, and other terms and conditions of service of, an Ombudsman will be determined by the Board from time to time.

#### Stipendiary Ombudsman

The Board may appoint a person as a Stipendiary Ombudsman out of the panel prepared for the purpose of acting as an Ombudsman in respect of a specific matter or matters in a specific territorial jurisdiction, as may be specified in the order of appointment. A person is eligible to be appointed as Stipendiary Ombudsman if he—

- a. has held a judicial post or an executive office under the Central or State Government for at least ten years; or
- b. is having experience of at least ten years in matters relating to consumer or investor protection; or
- c. has been a legal practitioner in corporate matters for at least 10 years; or

- d. has served for a minimum period of ten years in any public financial institution.

The Stipendiary Ombudsman is entitled to exercise all powers and functions as are vested in a Ombudsman. The Stipendiary Ombudsman is also entitled to be paid such fees or honorarium and allowances for the services rendered by him, as may be determined by the Board from time to time.

#### Territorial Jurisdiction

Every Ombudsman or Stipendiary Ombudsman exercises jurisdiction in relation to an area as may be specified by the Board by an order.

#### Powers and Functions of Ombudsman

The Ombudsman has the following powers and functions:

- a. to receive complaints specified in regulation 13 against any intermediary or a listed company or both;
- b. to consider such complaints and facilitate resolution thereof by amicable settlement;
- c. to approve a friendly or amicable settlement of the dispute between the parties;
- d. to adjudicate such complaints in the event of failure of settlement thereof by friendly or amicable settlement.

The Ombudsman is required to draw up an annual budget for his office in consultation with the Board and shall incur expenditure within and in accordance with the provisions of the approved budget and submit an annual report to the SEBI within three months of the close of each financial year containing general review of activities of his office. The ombudsman is also under obligation to furnish from time to time such information to the Board as may be required by the Board.

#### Procedure for Redressal of Grievance

A person may lodge a complaint on any one or more of the following grounds either to the Board or to the Ombudsman concerned:

- i. Non-receipt of refund orders, allotment letters in respect of a public issue of securities of companies or units of mutual funds or collective investments schemes.
- ii. Non-receipt of share certificates, unit certificates, debenture certificates, bonus shares;
- iii. Non-receipt of dividend by shareholders or unit-holders;
- iv. Non-receipt of interest on debentures, redemption amount of

- debentures or interest on delayed payment of interest on debentures;
- v. Non-receipt of interest on delayed refund of application monies;
  - vi. Non-receipt of annual reports or statements pertaining to the portfolios;
  - vii. Non-receipt of redemption amount from a mutual fund or returns from collective investment scheme;
  - viii. Non-transfer of securities by an issuer company, mutual fund, Collective Investment Management Company or depository within the stipulated time;
  - ix. Non-receipt of letter of offer or consideration in takeover or buy-back offer or delisting;
  - x. Non-receipt of statement of holding corporate benefits or any grievances in respect of corporate benefits, etc;
  - xi. Any grievance in respect of public, rights or bonus issue of a listed company;
  - xii. Any of the matters covered under Section 55A of the Companies Act, 1956;
  - xiii. Any grievance in respect of issue or dealing in securities against an intermediary or a listed company.

#### Procedure for filing a complaint

Any person who has a grievance against a listed company or an intermediary relating to any of the matters specified above may himself or through his authorised representative or any investors association recognised by the SEBI, make a complaint against a listed company or an intermediary to the Ombudsman within whose jurisdiction the registered or corporate office of such listed company or intermediary is located. The Regulations provide that if SEBI has not notified any Ombudsman for a particular locality or territorial jurisdiction, the complainant may request the Ombudsman located at the Head Office of the SEBI for forwarding his complaint to the Ombudsman of competent jurisdiction. The complaint is required to be in writing duly signed by the complainant or his authorised representative (not being a legal practitioner) in the Form specified in the Schedule to the regulations and supported by documents, if any. The Ombudsman may dismiss a complaint on any of the grounds specified under the Regulations or when such complaint is frivolous in his opinion.

No complaint to the Ombudsman shall lie—

- a. unless the complainant had, before making a complaint to the Board or the Ombudsman concerned, made a written representation to the listed company or the intermediary named in the complaint and the listed company or the intermediary, as the case may be, had rejected the complaint or the complainant had not received any reply within a period of one month after the listed company or intermediary concerned received his representation or the complainant is not satisfied with the reply given to him by the listed company or an intermediary;
- b. unless the complaint is made within six months from the date of the receipt of communication of rejection of his complaint by the complainant or within seven months after the receipt of complaint by the listed company or intermediary under clause (a) above;
- c. if the complaint is in respect of the same subject matter which was settled through the Office of the Board or Ombudsman concerned in any previous proceedings, whether or not received from the same complainant or along with any one or more or other complainants or any one or more of the parties concerned with the subject matter;
- d. if the complaint pertains to the same subject matter for which any proceedings before the Board or any court, tribunal or arbitrator or any other forum is pending or a decree or award or a final order has already been passed by any such competent authority, court, tribunal, arbitrator or forum;
- e. if the complaint is in respect of or pertaining to a matter for which action has been taken by the SEBI under Section 11(4) of the Act or Chapter VIA or Section 12(3) of the Act or any other regulations made thereunder.

Power to call for information

An Ombudsman may require the listed company or the intermediary named in the complaint or any other person, institution or authority to provide any information or furnish certified copy of any document relating to the subject matter of the complaint which is or is alleged to be in its or his possession. In the event of the failure of a listed company or the intermediary to comply with the requisition made without any sufficient cause, the Ombudsman may, if he deems fit, draw the

inference that the information, if provided or copies if furnished, would be unfavourable to the listed company or intermediary. The Ombudsman is required to maintain confidentiality of any information or document coming to his knowledge or possession in the course of discharging his duties and shall not disclose such information or document to any person except and as otherwise required by law or with the consent of the person furnishing such information or document. The Ombudsman has been empowered to disclose information or document furnished by a party in a complaint to the other party or parties, to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play in the proceedings. However these provisions shall not apply in relation to the disclosures made or information furnished by the Ombudsman to the Board or to the publication of Ombudsman's award in any journal or newspaper or filing thereof before any Court, Forum or Authority.

#### Settlement by Mutual Agreement

As soon as it may be practicable so to do, the Ombudsman shall cause a notice of the receipt of any complaint along with a copy of the complaint sent to the registered or corporate office of the listed company or office of the intermediary named in the complaint and endeavour to promote a settlement of the complaint by agreement or mediation between the complainant and the listed company or intermediary named in the complaint. If any amicable settlement or friendly agreement is arrived at between the parties, the Ombudsman may pass an award in terms of such settlement or agreement within one month from the date thereof and direct the parties to perform their obligations in accordance with the terms recorded in the award. For the purpose of promoting a settlement of the complaint, the Ombudsman may follow such procedure and take such actions as he may consider appropriate.

#### Award and Adjudication

In case the matter is not resolved by mutually acceptable agreement within a period of one month of the receipt of the complaint or such extended period as may be permitted by the Ombudsman, he may, based upon the material placed before him and after giving opportunity of being heard to the parties, give his award in writing or pass any other directions or orders

as he may consider appropriate. The award on adjudication shall be made by Ombudsman within a period of three months from the date of the filing of the complaint. No award shall however be invalidated by reason alone of the fact that the award was made beyond the said period of three months. The Ombudsman should send his award to the parties to the adjudication to perform their obligations under the award.

#### Finality of Award

An award given by the Ombudsman shall be final and binding on the parties and persons claiming under them respectively. Any party aggrieved by the award on adjudication may within one month from the receipt of the award or corrected award may file a petition before the Board setting out the grounds for review of the award.

#### Review of Award

An award may be reviewed by the SEBI only if there is substantial mis-carriage of justice, or there is an error apparent on the face of the award.

Where a petition for review of the award is filed by a party from whom the amount mentioned in the award is to be paid to the other party in terms of the award, such petition shall not be entertained by the Board unless the party filing the petition has deposited with the Board seventy-five percent of the amount mentioned in the award. However SEBI may, for reasons to be recorded in writing, waive or reduce the amount to be deposited.

SEBI may review the award and pass such order as it may deem appropriate, within a period of forty five days of the filing of the petition for review. The award passed by the Ombudsman shall remain suspended till the expiry of period of one month for filing review petition or till the review petition is disposed off by the Board, as the case may be.

The Board may determine its own procedure consistent with principles of natural justice in the matter of disposing of review petition and may dismiss the petition in limine if it does not satisfy any of the grounds specified in the Regulations.

#### Cost and Interest

The Ombudsman or the Board, as the case may be, have been empowered to award reasonable compensation along with interest including future interest till date of satisfaction of the



award at a rate which may not exceed one percent per mensem.

The Ombudsman in the case of an award, or the Board in the case of order passed in petition for review of the award, as the case may be, may determine the cost of the proceedings in the award and include the same in the award or, in the order as the case may be. The Ombudsman or the Board may impose cost on the complainant for filing complaint or any petition for review, which is frivolous.

#### Implementation of the Award

The award will be implemented by the party so directed within one month of receipt of the award from the Ombudsman or an order of the Board passed in review petition or within such period as specified in the award or order of the Board. If any person fails to implement the award or order of the Board passed in the review petition, without reasonable cause —

1. he shall be deemed to have failed to redress investors' grievances and shall be liable to a penalty under Section 15C of the Act;
2. he shall also be liable for —
  - a. an action under Section 11(4) of the Act ; or
  - b. suspension or delisting of securities; or
  - c. being debarred from accessing the securities market; or
  - d. being debarred from dealing in securities; or dealing in securities; or
  - e. an action for suspension or cancellation of certificate of registration; or
  - f. such other action permissible which may be deemed appropriate in the facts and circumstances of the case.

#### Display of the Particulars of the Ombudsman

Every listed company or intermediary is required to display the name and address of the Ombudsman as specified by the Board to whom the complaints are to be made by any aggrieved person in its office premises in such manner and at such place, so that it is put to notice of the shareholders or investors or unit holders visiting the office premises of the listed company or intermediary. The listed company or intermediary is required to give full disclosure about the grievance redressal mechanism through Ombudsman in its offer document or client agreement. Any failure to disclose the grievance redressal mechanism

through Ombudsman or any failure to display the particulars would attract the penal provisions contained in Section 15A of SEBI Act.

#### X. INVESTOR EDUCATION

An increased need for financial education is felt in both developed and developing countries. In developed countries, the increasing number of financial products, its complexity, importance of retirement savings, increased growth of secondary market has made the imparting of financial education imperative for all age groups, including students so that individuals are educated about financial matters as early as possible in their lives. In the developing countries, the growing number of investors, technically advanced financial markets, liberalised economy etc. necessitates imparting of financial education for better operation of markets and economy and in the interest of investor. Further imparting of financial education is international concern due to growth of international transactions, international financial instruments like ADR, GDR, IDR etc., mobility of individuals from one country to another etc. Initiatives taken so far on financial literacy in India

Investor education forms an important part of SEBI's efforts to protect the interest of the investors in securities markets. A series of information brochures and pamphlets have been issued in the past for the benefit of the investors. These publications indicate the various risks associated with capital market investment, the rights of the investors, the responsibilities and details of the grievance redressal machinery available to them and the remedy/relief to be obtained from different agencies like SEBI, Ministry of Company Affairs, Stock Exchanges, Reserve Bank of India and Registrars to the Issue, apart from seeking relief through Consumers Disputes Redressal Forums, Company Law Board and Court of Law. The investors associations registered with SEBI, the stock exchanges and professional bodies also conduct investor education programmes from time to time to appraise the investors of the changes in the law and regulations and the methods of protecting themselves against malpractices and delays cropping up in the market. This is further supplemented by the journals and magazines in the field of corporate investment as well as newspaper articles which highlight the

newly emerging problems, pitfalls and the methods to protect.  
IEPF

Ministry of Corporate Affairs has taken various initiatives to educate investors, particularly, since 2001, the Investor Education and Protection Fund (IEPF) has been working for educating the investors and for creating greater awareness about investments in the corporate sector.

So far, it has more than 20 NGOs/Voluntary Organisations registered including the ICSI, and funded for the activities like organizing seminars/interactive workshops/awareness programmes, publishing magazines, pamphlets, developing websites etc.

Spots on education and awareness of investors have been telecast on the Doordarshan and private TV channels. Panel discussions on investor related issues have also been telecast over the Doordarshan. Besides, interactive workshops with NGOs/Voluntary Organisations (VOs) in this field and “Training the Trainers” programmes have been funded under the Investor Education and Protection Fund window.

Securities Market Awareness Campaign

SEBI has also launched a comprehensive securities market awareness campaign for educating investors through workshops, audio-visual clippings, distribution of educative investor materials/booklets, dedicated investor website etc. It has also recognised certain investor associations through which the investor is educated.

Financial Literacy-cum-Counselling Centre

RBI has advised State Level Bankers’ Committee convenor banks to set up, on a pilot basis, a financial literacy-cum-counselling centre in any one district, and based on the experience gained, to ask the concerned lead banks to set up such centres in other districts. It has also undertaken a project on financial literacy by asking banks to introduce comic books explaining terms like inflation, how to open an account, interest rates, etc.

#### XI. SEBI (INFORMAL GUIDANCE) SCHEME, 2003

In the interests of better regulation of and orderly development of the Securities market, SEBI has issued SEBI (Informal Guidance) Scheme 2003 w.e.f. 24.6.2003. The following persons may make a request for informal Guidance under the

scheme:

- a. any intermediary registered with the SEBI.
- b. any listed company.
- c. any company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the Board or the Central Listing authority.
- d. any mutual fund trustee company or asset management company.
- e. any acquirer or prospective acquirer under the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1987.

The Guidance Scheme, further deals with various aspects such as the nature of request, fees to be accompanied along with request letter, disposal of requests, SEBI's discretion not to respond certain types of requests and confidentiality of requests etc.

The informal guidance may be sought for and given in two forms:

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

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

The request seeking informal guidance should state that it is being made under this scheme and also state whether it is a request for a no-action letter or an interpretive letter and should be accompanied with a fee of Rs. 25,000/- and addressed to the concerned Department of SEBI. It should also describe the request, disclose and analyse all material facts and circumstances involved and mention all applicable legal provisions. SEBI may dispose off the request as early as possible and in any case not later than 60 days after the receipt of the request. The Department may give a hearing or conduct an interview if it feels necessary to do so. The requestor shall

be entitled only to the reply. The internal records or views of SEBI shall be confidential.

SEBI may not respond to the following types of requests:

- a. those which are general and those which do not completely and sufficiently describe the factual situation;
- b. those which involve hypothetical situations;
- c. those requests in which the requestor has no direct or proximate interest;
- d. where the applicable legal provisions are not cited;
- e. where a no-action or interpretive letter has already been issued by that or any other Department on a substantially similar question involving substantially similar facts, as that to which the request relates;
- f. those cases in which investigation, enquiry or other enforcement action has already been initiated;
- g. those cases where connected issues are pending before any Tribunal or Court and on issues which are subjudice; and,
- h. those cases where policy concerns require that the Department does not respond.

Where a request is rejected for non-compliance, the fee if any paid by the requestor shall be refunded to him after deducting therefrom a sum of Rs. 5,000/- towards processing charges.

However SEBI is not be under any obligation to respond to a request for guidance made under this scheme, and shall not be liable to disclose the reasons for declining to reply the request.

#### Confidentiality of Request

Any person submitting a letter or written communication under this scheme may request that it receive confidential treatment for a specified period of time not exceeding 90 days from the date of the Department's response. The request shall include a statement of the basis for confidential treatment. If the Department determines to grant the request, the letter or written communication will not be available to the public until the expiration of the specified period. If it appears to the Department that the request for confidential treatment should be denied, the requestor will be so advised and such person may withdraw the letter or written communication within 30 days of receipt of the advise, in which case the fee, if any, paid by him would be refunded to him. In case a request has been withdrawn under clause (c), no response will be given and the

letter or written communication will remain with the SEBI but will not be made available to the public. If the letter or written communication is not withdrawn, it shall be available to the public together with any written staff response.

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

The guidance offered through the letters issued by Departments is conditional upon the requestor acting strictly in accordance with the facts and representations made in the letter. SEBI shall not be liable for any loss or damage that the requestor or any other person may suffer on account of the request not being replied or being belatedly replied or the Board taking a different view from that taken in a letter already issued under this scheme. Where the Department finds that a letter issued by it under this scheme has been obtained by the requestor by fraud or misrepresentation of facts, notwithstanding any legal action that the Department may take, it may declare such letter to be non est and thereupon the case of the requestor will be dealt with as if such letter had never been issued. Where SEBI issues a letter under this scheme, it may post the letter, together with the incoming request, on the SEBI website in accordance with the Guidance Scheme.

#### LESSON ROUND-UP

- In order to afford adequate protection to the investors, provisions have been incorporated in different legislations such as the Companies Act, Securities Contracts (Regulation) Act, Consumer Protection Act, Depositories Act, and Listing Agreement of the Stock Exchanges supplemented by many guidelines, circulars and press notes issued by the Ministry of Finance, Ministry of Company

Affairs and SEBI from time to time.

- Investor Education and Protection Fund (IEPF) has been established under Section 205C of the Companies Act, 1956 by way of Companies (Amendment) Act, 1999, for promotion of investors' awareness and protection of the interests of investors.
- Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001 (IEPF Rules) stipulate the activities related to investors' education, awareness and protection for which the financial sanction can be provided under IEPF.
- In the developing countries, the growing number of investors, technically advanced financial markets, liberalised economy etc. necessitates imparting of financial education for better operation of markets and economy and in the interest of investor.
- Ministry of Corporate Affairs has taken various initiatives to educate investors, particularly, since 2001, the Investor Education and Protection Fund (IEPF) has been working for educating the investors and for creating greater awareness about investments in the corporate sector.
- [www.iepf.gov.in](http://www.iepf.gov.in) provide information about IEPF , various activities that have been undertaken/ funded by it. It also fulfils the need for an information resource for small investors on all aspects of the financial markets and would attempt to do it in the small investors' language.
- [watchoutinvestors.com](http://watchoutinvestors.com) is a flagship website aided and sponsored by the Investor Education and Protection Fund of the Ministry of Corporate Affairs, Government of India.
- SEBI has also launched a comprehensive securities market awareness campaign for educating investors through workshops, audio-visual clippings, distribution of educative investor materials/booklets, dedicated investor website etc.
- RBI has advised State Level Bankers' Committee convenor banks to set up, on a pilot basis, a financial literacy-cum-counselling centre in any one district, and based on the experience gained, to ask the concerned lead banks to set up such centres in other districts.
- Investor Information Centres have been set up in every

recognised stock exchange which take up all complaints regarding the trades effected in the exchange and the relevant member of the exchange.