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Important questions on securities Laws

STUDY I

GENESIS AND DEVELOPMENT OF REGULATORY FRAMEWORK

Q1 What is scrip less trading?

Ans. Scripless trading is a term used to describe a procedure of trading in shares, where actual share certificates are not traded but shares are traded in electronic forms, the share traded being adjusted by accounting by an organisation known as depository. In India scripless trading first started with the emergence of OTCEI . But it was very limited. The advent of online automated trading in India brought with it several associated benefits such as transparency in trading and equal opportunity for market players all over the country but the problems related to settlement of trades such as high instances of bad deliveries and long settlement cycles continued. As an answer to these settlement problems and in order to provide a safe and efficient system of trading and settlement, Depositories Act, 1996 was enacted. SEBI notified Regulations in order to provide the regulatory framework for the depositories. Depositories gave a new dimension and a new scope for conducting transactions in capital market-primary as well as secondary, in a more efficient and effective manner, in a paperless form on an electronic book entry basis. It provided electronic solution to the aforementioned problems of bad deliveries and long settlement cycles.Only after the scripless trading our capital market has come up to international level.

Q2 What is the position of Securities Appellate Tribunal? What is the procedure followed by it.

Ans.Section 23A provides that, any person aggrieved by an order of the SEBI, under SEBI Act, or the regulations made there under or by an order made by an adjudicating officer under this Act may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter. However, no appeal shall lie to the Securities Appellate Tribunal from an order made by the Board with the consent of the parties. Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board is received by the person referred to in sub-section (1) and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

Sub-section (4) provides that on receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

Sub-section (5) provides that the Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.

Sub-section (6) further provides that the appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure and powers of Securities Appellate Tribunal

Section 23B provides that the Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings. The Securities Appellate Tribunal shall have, for the purpose of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and

(h) any other matter which may be prescribed.

Sub-Section (3) provides that every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Appeal to Supreme Court

Section 23F provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order. Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Right to Legal Representation

Section 23C provides that the appellant may either appear in person or authorise one or more Chartered Accountants or Company Secretaries or Cost Accountants, in practice or Legal Practitioners or any of its officers to present his/its case before the Securities Appellate Tribunal.

Limitations

Section 23 D provides that the provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

Civil Court not to have jurisdiction

Section 23 E provides that No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction can be granted by any court or other authority in respect of any action taken or to be taken. In pursuance of any power conferred by or under this Act.

Q3 Distinguish between primary market and Secondary market?

Ans.

PRIMARY MARKET

Market for new issues of securities, as distinguished from the Secondary Market, where previously issued securities are bought and sold.

A market is primary if the proceeds of sales go to the issuer of the securities sold. Securities which are issued in the primary market are through public offers, preferential issues, rights issues , ESOPS, bonus issues.

This is part of the financial market where enterprises issue their new shares, debenures and bonds., It is characterized by being the only moment when the enterprise receives money in exchange for selling its financial assets.

Issuers are governed by the requirements of companies Act and ICDR Regulations.

SECONDARY MARKET

The market where securities are traded after they are initially offered in the primary market. Most trading is done in the secondary market.

To explain further, it is Trading in previously issued financial instruments. An organized market for used securities. Examples are the New York Stock Exchange (NYSE), Bombay Stock Exchange (BSE),National Stock Exchange NSE, bond markets, over-the-counter markets, residential mortgage loans, governmental guaranteed loans etc.

The issuers of securities have to first list their securities on the stock exchanges and have to agree on compliance with the stipulations of listing agreement not only for the securities for which application is made by the issuer but all securities issued in past and to be issued in future.

Secondary market ensures liquidity for the financial assets purchased by buyers from the primary market. The issuers find buyers because of this assurance . You can have only limited market as in the case of unlisted companies.

Market is regulated by SEBI and all intermediaries have to obtain a licence from SEBI.The Securites Conracts Regulation Act1956aand rules thereunder are the major laws.

Q 4. Write a note on undisclosed factoring

In undisclosed factoring, a factor buys the goods from a primary party (producer, manufacturer, or seller) and then appoints the same party as its agent to resell those goods and to collect the payments. This arrangement prevents the disclosure that goods are being sold under a factoring agreement. The undisclosed factor, as in all other types of factoring, remains liable for uncollectible payments.

Q 5. What is the Role SEBI In investor protection ?

Or

SEBI was formed for the purpose of promoting and protecting the interests of investors-Elucidate

Section 11 of the Act lays down that it shall be the duty of the Board to protect the interests of the investors in securities. As apex market regulator while developing the markets it has to ensure that interests of the investors are protected.It has achieved this by performing the following functions effectively

(a)regulating the business in stock exchanges and any other securities markets;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(c) registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;

(d) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;

(e) promoting and regulating self-regulatory organisations;

(f) prohibiting fraudulent and unfair trade practices relating to securities markets;

(g) promoting investors' education and training of intermediaries of securities markets;

(h) prohibiting insider trading in securities;

(i) regulating substantial acquisition of shares and takeover of companies;

(j) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

(k) calling 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 is under investigation or inquiry by the Board;

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

(m) levying fees or other charges for carrying out the purposes of this section;

(n) conducting research for the above purposes;

(o) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;

The issuers of securities are made to make certain minimum disclosures as prescribed under Issue of Capital Disclosure Regulations. .It is the duty of merchant bankers to ensure that issuer company makes the disclosures required and he has to exercise due diligence so that statements made in the prospectus are verified and that observations/ comments made by SEBI are adequately taken care of before filing the offer documents with ROC and or Stock Exchanges, Registrars and Share Transfer Agents' activities are monitored to ensure that allotment is made as per the basis approved and that there is no manipulation . Further, refund orders , allotment advice is sent promptly.

In the secondary market SEBI is keeping strict vigilance and surveillance over the activities of brokers, and sub brokers,

SEBI is monitoring the activities of mutual funds, collective investments schemes. In conclusion one can say that by controlling and monitoring the activities of all players SEBI protects the interests of investors.

Q 6 discuss the impact of globalization on the financial decision making.

Ans

Globalisation is the new buzzword that has come to dominate the world since the nineties of the last century with the end of the cold war and the break-up of the former Soviet Union and the global trend towards the rolling ball. The frontiers of the state with increased reliance on the market economy and renewed faith in the private capital and resources, a process of structural adjustment spurred by the studies and influences of the World Bank and other International organisations have started in many of the developing countries. Also Globalisation has brought in new opportunities to developing countries. Greater access to developed country markets and technology transfer hold out promise improved productivity and higher living standard. But globalisation has also thrown up new challenges like growing inequality across and within nations, volatility in financial market and environmental deteriorations.

Another negative aspect of globalisation is that a great majority of developing countries remain removed from the process. Till the nineties the process of globalisation of the Indian economy was constrained by the barriers to trade and investment liberalisation of trade, investment and financial flows initiated in the nineties has progressively lowered the barriers to competition and hastened the pace of globalisation

India opened up the economy in the early nineties following a major crisis that led by a foreign exchange crunch that dragged the economy close to defaulting on loans. The response was a slew of Domestic and external sector policy measures partly prompted by the immediate needs and partly by the demand of the multilateral organisations. The new policy regime radically pushed forward in favour of amore open and market oriented economy.

Major measures initiated as a part of the liberalisation and globalisation strategy in the early nineties included scrapping of the industrial licensing regime, reduction in the number of areas reserved for the public sector, amendment of the monopolies and the restrictive trade practices act, start of the privatisation programme, reduction in tariff rates and change over to market determined exchange rates.

Over the years there has been a steady liberalisation of the current account transactions, more and more sectors opened up for foreign direct investments and portfolio investments facilitating entry of foreign investors in telecom, roads, ports, airports, insurance and other major sectors.

Globalisation has intensified interdependence and competition between economies in the world market. This is reflected in Interdependence in regard to trading in goods and services and in movement of capital. As a result domestic economic developments are not determined entirely by domestic policies and market conditions. Rather, they are influenced by both domestic and international policies and economic conditions. It is thus clear that a globalising economy, while formulating and evaluating its domestic policy cannot afford to ignore the possible actions and reactions of policies and developments in the rest of the world. This constrained the policy option available to the government which implies loss of policy autonomy to some extent, in decision-making at the national level.

Q. 7 How financial markets and financial services are regulated? Examine the role of SEBI

Ans. The financial markets have two major components; the money market and the capital market.
Money market is regulated by the Reserve Bank of India and the capital market is regulated by the apex regulator SEBI

The principal aim of the market regulator is to protect the interests of the investors and regulate the activities of various market players who provide various types of financial services .All such agencies are required to obtain registration from the SEBI. Under section 12 of the Act. SEBI monitors and controls their activities. For this purpose SEBI has prescribed regulations . To ensure that the intermediary rendering financial services is managed by fit and proper persons SEBI has prescribed norms for each of them under respective regulations. These regulations prescribe the regulations aimed at regulating their activities and they are required to follow these during the period they continue to hold the license, which they must renew from time to time.

These Regulations include:

(a) regulating the business in stock exchanges and any other securities markets;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(c) registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;

(d) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;

(e) promoting and regulating self-regulatory organisations;

(f) prohibiting fraudulent and unfair trade practices relating to securities markets;

(g) promoting investors' education and training of intermediaries of securities markets;

(h) prohibiting insider trading in securities;

(i) regulating substantial acquisition of shares and takeover of companies;

(j) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

(k) calling 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 is under investigation or inquiry by the Board;

SEBI is vested with powers of a civil court for carrying out its functions. They have power of inspection, investigation, summoning and examining any person and for discovery of any documents

Q8 The responsibilities of financial managers are linked to goal of measuring liquidity , profitability or both and are also related to the management of assets and funds of any business enterprise.

The responsibilities of financial managers include
1. Investment Decision
2.Finance Decision
3.Divivdent decision
4.Working Capital Decision etc.

Since the Financial Management is the subject that bridges the gap between the investors of fund and the saves of the fund, so is the role of financial manager in an
organisation.
The key responsibilities of Financial Manager in an Organisation are:

1) Arrangement of Short Term and Long Term funds i.e, working capital and term loan for the survival of a particular project.

2) To make decisions regarding the financial feasibility of projects (by checking the Net Present value or Discounted Cash Flows of a particular project)
3) To focus on the Cost Minimisation and Profit Maximation.prepare
(1)cash flow statement
(2)profit and loss a/c
(3)balance sheets

4. The financial manager has to deal with-
(1)anticipation of funds(capitalisation)
(2)anticipation of fund(raising of fund)
(3)allocation of fund(investment decision)
(4)assessment of fund(evaluation of financial activities)

Q 9. Write note on take over of a listed company

In order to prevent take over the of listed company without intimation SEBI Act provides

that if any person fails to:

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make such a public announcement to acquire shares at a minimum price, he shall be liable to a penalty not exceeding five lakh rupees;

(iii) make a public offer by sending letter of offer to the shareholders who sold their shares pursuant to letter of offer,

he shall be liable to a penalty of twenty five crore rupees or three times the amount of profits made out of insider trading; whichever is higher.

Section 15H provides that if a person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Q.10 write note on unique identification number.

SEBI has issued new regulations in 2003 for getting data base Unique Identification Numbers for market participants

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

Q 11 "Financial markets, financial services and financial instruments are integrated part of Financial system " critically examine.

Financial system covers both credit and cash transactions. All financial transactions are dealt with by cash payment or issue of negotiable instruments like cheque, bills of exchanges, hundies etc. Thus a financial system is a set of institutional arrangements through which financial surpluses are mobilised from the units generating surplus income and transferring them to the others in need of them. The activities include production, distribution, exchange and holding of financial assets/instruments of different kinds by financial institutions, banks and other intermediaries of the market. In a nutshell, financial market, financial assets, financial services and financial institutions constitute the financial system.

Financial Markets

Efficient transfer of resources from those having idle resources to others who have a pressing need for them is achieved through financial markets. Stated formally, financial markets provide channels for allocation of savings to investment. These provide a variety of assets to savers as well as various forms in which the investors can raise funds and thereby decouple the acts of saving and investment. The savers and investors are constrained not by their individual abilities, but by the economy's ability, to invest and save respectively. The financial markets, thus, contribute to economic development to the extent that the latter depends on the rates of savings and investment.

The financial markets have two major components; the money market and the capital market., The Capital market again has two major components (a) primary market and (b) Secondary market

Financial Instruments

Savings are linked to investments by a variety of intermediaries through a range of complex financial products called "securities" which is defined in the Securities Contracts (Regulation) Act, 1956 to include shares, scrips, stocks, bonds, debentures, debenture stock, or other marketable securities of like nature in or of any incorporate company or body corporate, government securities, derivatives of securities, units of collective investment scheme, security receipts, interest and rights in securities, or any other instruments so declared by the central government.

Financial services

. The issuers and investors are the consumers of services rendered by the intermediaries while the investors are consumers of securities issued by issuers. Those who receive funds in exchange for securities and those who receive securities in exchange for funds often need the reassurance that it is safe to do so. This reassurance is provided by the law and custom, often enforced by the regulator. The regulator develops fair market practices and regulates the conduct of issuers of securities and the intermediaries so as to protect the interests of investors in securities. The regulator ensures a high standard of service from intermediaries who render specialized financial service and ensure supply of quality securities and non-manipulated demand for them in the market.

Q. 12. Explain Insider trading . Discuss inspection and Investigation mechanism for insider trading . What is the penalty for insider trading?

In simple terms 'insider trading' buying or selling a security, in breach of a fiduciary duty or other relationship of trust , and confidence , while in possession of material , nonpublic information about the security

Thus , in nutshell , insider trading is the buying , selling or dealing in securities of a listed company by a director , member of management , employee of the company , or by any other person such as internal auditor , advisor , consultant , analyst etc, who has knowledge of material inside information which is not available to general public

Insubstantial Investigative Infrastructure

Proving Insider Trading is a bizarrely difficult task owing to the lack of material proof in majority of cases. Insider Trading cannot be proved beyond reasonable doubts unless there is substantial material proof supporting it or when the insider himself confesses in an admissible form, to have indulged in the dealing of confidential information for personal gains, which is very rare a possibility and is not expected to happen in practical world. Indulging in buying and selling of Securities is a legal practice. It is only what's in the mind of the dealer that constitutes the basis of its legality.

Lowering down the degree of proof required to prove a case of Insider Trading would be unaccounted for, as Indian Judiciary has always believed in "acquitting 100 guilty offenders in an attempt not to convict one innocent person". Even though the removal of the words, "by virtue of such connection" came as a relief to SEBI and simplified its task of proving an insider trading case to a great extent, it is still recommended that the SEBI should be granted slightly extended powers for more exhaustive and efficacious investigation of cases involving Insider Trading, which would definitely be helpful in imparting justice and convicting every such violator of the Insider Trading regulations by providing greater degrees of positive evidence supporting every such conviction thus proving every case beyond reasonable doubts. Because despite of not having to prove the connection of the accused with the company, most of the cases are not established owing to the lack of evidence gathered against the accused.

Furthermore, it is necessary that the SEBI should be provided downright assistance of the official government investigative agencies like Central Economic Intelligence Bureau (CEIB) to investigate into the matters relating to Insider Trading so as to improve the standards of investigation and hasten up the process of gathering proof against the insider. SEBI already has access to the CBI (Central Bureau of Investigation) whenever it seeks help in investigation and collection of evidence. But any additional help would prove to be useful and very much welcome by SEBI. Such a practice of official governmental assistance in investigation into Insider Trading matters has also proved to be extremely successful and efficient in the United States, where The Federal Bureau of Investigation (FBI) aids the Securities and Exchange Commission (SEC) in inspecting the cases of Insider Trading in a more comprehensive and yet expeditious way. It has, therefore, shown a higher rate of indictments in the recent past.

Penalty for Insider Trading

Section 15G lays down that if any insider:

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

he shall be liable to a penalty of twenty five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

STUDY III

MONEY MARKET

Q 13 Briefly discuss guidelines for the Issue of commercial paper

Ans

. Issue of Commercial Paper

Corporates and primary dealers (PDs), and the all-India financial institutions (FIs) that have been permitted to raise short-term resources under the umbrella limit fixed by Reserve Bank of India are eligible to issue CP.

A corporate would be eligible to issue CP provided:

(a) the tangible net worth of the company, as per the latest audited balance sheet, is not less than Rs. 4 crore;
(b) company has been sanctioned working capital limit by bank/s or all-India financial institution/s; and
(c) the borrowal account of the company is classified as a Standard Asset by the financing bank/s / institution/s.

Rating Requirement

All eligible participants shall obtain the credit rating for issuance of Commercial Paper from either the Credit Rating Information Services of India Ltd. (CRISIL) or the Investment Information and Credit Rating Agency of India Ltd. (ICRA) or the Credit Analysis and Research Ltd. (CARE) or the FITCH Ratings India Pvt. Ltd. or such other credit rating agencies as may be specified by the Reserve Bank of India from time to time, for the purpose. The minimum credit rating shall be P-2 of CRISIL or such equivalent rating by other agencies. The issuers shall ensure at the time of issuance of CP that the rating so obtained is current and has not fallen due for review.

Maturity

CP can be issued for maturities between a minimum of 7 days and a maximum up to one year from the date of issue. The maturity date of the CP should not go beyond the date up to which the credit rating of the issuer is valid.

Denominations

CP can be issued in denominations of Rs.5 lakh or multiples thereof. Amount invested by a single investor should not be less than Rs.5 lakh (face value).

Limits and the Amount of Issue of CP

CP can be issued as a "stand alone" product. The aggregate amount of CP from an issuer shall be within the limit as approved by its Board of Directors or the quantum indicated by the Credit Rating Agency for the specified rating, whichever is lower. Banks and FIs will, however, have the flexibility to fix working capital limits duly taking into account the resource pattern of companies financing including

CPs. An FI can issue CP within the overall umbrella limit fixed by the RBI i.e., issue of CP together with other instruments viz., term money borrowings, term deposits, certificates of deposit and intercorporate deposits should not exceed 100 per cent of its net owned funds, as per the latest audited balance sheet. The total amount of CP proposed to be issued should be raised within a period of two weeks from the date on which the issuer opens the issue for subscription. CP may be issued on a single date or in parts on different dates provided that in the latter case, each CP shall have the same maturity date. Every issue of CP including renewal should be treated as a fresh issue.

Issuing & Paying Agent (IPA)

Only a scheduled bank can act as an IPA for issuance of CP.

Investment in CP

CP may be issued to and held by individuals, banking companies, other corporate bodies registered or incorporated in India and unincorporated bodies, Non-Resident Indians (NRIs) and Foreign Institutional Investors (FIIs). However, investment by FIIs would be within the limits set for their investments by Securities and Exchange Board of India (SEBI).

Mode of Issuance

CP can be issued either in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI. CP will be issued at a discount to face value as may be determined by the issuer. No issuer shall have the issue of CP underwritten or co-accepted.

Preference for Dematerialisation

While option is available to both issuers and subscribers to issue/hold CP in dematerialised or physical form, issuers and subscribers are encouraged to prefer exclusive reliance on dematerialized form of issue/holding. However, with effect from June 30, 2001, banks, FIs and PDs are required to make fresh investments and hold CP only in dematerialised form.

Payment of CP

The initial investor in CP shall pay the discounted value of the CP by means of a crossed account payee cheque to the account of the issuer through IPA. On maturity of CP, when the CP is held in physical form, the holder of the CP shall present the instrument for payment to the issuer through the IPA. However, when the CP is held in demat form, the holder of the CP will have to get it redeemed through the depository and receive payment from the IPA.

Stand-by Facility

In view of CP being a 'stand alone' product, it would not be obligatory in any manner on the part of the banks and FIs to provide stand-by facility to the issuers of CP. Banks and FIs have, however, the flexibility to provide for a CP issue, credit enhancement by way of stand-by assistance/credit, back-stop facility etc. based on their commercial judgement, subject to prudential norms as applicable and with specific approval of their Boards.

Non-bank entities including corporates may also provide unconditional and irrevocable guarantee for credit enhancement for CP issue provided:

(i) the issuer fulfils the eligibility criteria prescribed for issuance of CP;

(ii) the guarantor has a credit rating at least one notch higher than the issuer given by an approved credit rating agency; and

(iii) the offer document for CP properly discloses the net worth of the guarantor company, the names of the companies to which the guarantor has issued similar guarantees, the extent of the guarantees offered by the guarantor company, and the conditions under which the guarantee will be invoked.

Procedure for Issuance

Every issuer must appoint an Issuing and Paying Agent (IPA) for issuance of CP. The issuer should disclose to the potential investors its financial position as per the standard market practice. After the exchange of deal confirmation between the investor and the issuer, issuing company shall issue physical certificates to the investor or arrange for crediting the CP to the investor's account with a depository. Investors shall be given a copy of IPA certificate to the effect that the issuer has a valid agreement with the IPA and documents are in order.

STUDY IV

CAPITAL MARKET INSTRUMENTS

O 14 Write a short note on dual option warrants

Ans. Dual option warrants are designed to provide the buyer with good potential of capital appreciation and limited downside risk. Dual option warrants may be used to sell equity shares in different markets. For example, equity shares or debentures may be issued with two warrants - one warrant giving right to the purchaser to be allotted one equity share at the end of a certain period and another warrant with a debt or preference share option.

Q 15. Write a short note

Exchange Traded fund

Exchange traded funds (ETFs) are a new variety of mutual fund that first became available in 1993

They are similar to index mutual funds but are traded more like a stock. As their name implies,Exchange Traded Funds represent a basket of securities that are traded on an exchange. As with all investment products, exchange traded funds have their share of advantages and disadvantages.

Advantages of Exchange Traded Funds

Being similar to stocks, exchange traded funds offer more flexibility than a typical mutual fund.

— ETFs can be bought and sold throughout the trading day, allowing for intraday trading - which is rare with mutual funds.

— Traders have the ability to short or buy ETFs on margin.

— Low annual expenses rival the cheapest mutual funds.

— Tax efficiency - due to SEC regulations, ETF tend to beat out mutual funds when it comes to tax efficiency (if it is a non-taxable account then they are equal).

Disadvantages of Exchange Traded Funds

Unfortunately, exchange traded funds do have some negatives:

— Commissions - like stocks, trading exchange traded funds are an extra cost.

— Only institutions and the extremely wealthy can deal directly with the ETF. Companies must buy through a broker.

— Unlike mutual funds, ETFs don't necessarily trade at the net asset values of their underlying holdings, meaning an ETF could potentially trade above or below the value of the underlying portfolios.

— Slippage - as with stocks, there is a bid-ask spread, meaning you might buy the ETF for 15 1/8 but can only sell it for 15 (which is basically a hidden charge).

Q 16 Distinguish between disaster bonds and dual convertible bonds

Ans.

Disaster Bonds

These are issued by companies and institutions to share the risk and expand the capital to link investors return with the size of insurer losses. The bigger the losses, the smaller the return and vice-versa. The coupon rate and the principal of the bonds are decided by the occurrence of the casualty of disaster and by the possibility of borrowers defaults

Dual Convertible Bonds

A dual convertible bond is convertible into either equity shares or fixed interest rate debentures/preference shares at the option of the lender. Depending on the prospects of the project during the conversion period, the lender may exercise either of the options. The fixed interest rate debenture may have certain additional features including higher rate of interest distinct from the original debt instrument

Q 17. Write a note on Hybrid instruments

Hybrid instruments: Hybrid instruments are those which are created by combining the features of equity with bond, preference and equity etc. Examples of Hybrid instruments are: Convertible preference shares, Cumulative convertible preference shares, non convertible debentures with equity warrants, partly convertible debentures, partly convertible debentures with Khokha (buy-back arrangement), Optionally convertible debenture, warrants convertible into debentures or shares, secured premium notes with warrants etc. Futures and options belong to the categories of derivatives.

Q 18.What is meant by sweat Equity?

Sweat Equity Shares

Sweat equity share is a instrument permitted to be issued by specified Indian companies, under Section 79A of Companies Act, 1956 inserted by Companies (Amendment) Act, 1999 w.e.f. 31st October, 1998. According to this section a public company may issue sweat equity shares of a class of shares already issued if the following conditions are fulfilled:

(a) The issue of sweat equity share is authorised by a special resolution passed by the company in the general meeting.

(b) The resolution specifies the number of shares, current market price, consideration if any and the class or classes of directors or employees to whom such equity shares are to be issued.

(c) Not less than one year has elapsed at the date of the issue, since the date on which the company was entitled to commence business.

(d) The sweat equity shares of a company whose equity shares are listed on a recognised stock exchange are issued in accordance with the regulations made by SEBI in this regard.

However, in the case of a company whose equity shares are not listed on any recognised stock exchange, the sweat equity shares are to be issued in accordance with the guidelines as may be prescribed.

The expression "company" means company incorporated, formed and registered under the Companies Act, 1956, and includes its subsidiary company incorporated in a Country outside India.

All the limitations, restrictions and provisions relating to equity shares are also applicable to such sweat equity shares issued under the new Section 79A.

As per explanation II under the Section, sweat equity shares can be issued by the company to employees or directors at a discount or for consideration other than cash, for providing know how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

It may be noted that the intellectual property right, know how or value additions arise as of now mainly in the case of Information Technology related companies and Pharmaceutical companies. Categories of industries which are eligible to issue sweat equity shares have not been indicated by the Government either in the Act or otherwise.

The term "sweat equity" indicates equity issued to directors and long time employees who have toiled from the inception of the company to build it with a brand image and thus contributed significantly by their efforts in this direction.

Since these shares are issued at a discount or for consideration other than cash, the company will generally select those employees and directors as per norms approved by the Board of Directors, based on the know how provided or intellectual property rights created and given for value additions made by such directors and employees to the company.

STUDY V

CREDIT RATING

Q 19. Explain the grading scales for health care institutions

The grading scale for healthcare institutions will have two components. The first will be the hospital classification such as

- Nursing home
- General secondary care
- Specialty secondary care
- Single-specialty tertiary care
- Multi-specialty tertiary care

The second component of the grading scale will be the hospital's grading within that classification on a four-point scale. Thus, a typical grading could read - General secondary care hospital assigned Grade C or Nursing home assigned Grade B.

The hospital classification will be based on the number of specialties offered by the hospital. The definition for various grades, as envisaged currently, is given below:

Grade A: Reflects Very Good Quality of delivered patient care. A healthcare institution graded in this category has facilities, equipment, manpower and service quality levels which are consistent with the highest standards in the Indian healthcare industry.

Grade B: Reflects Good Quality of delivered patient care. A healthcare institution graded in this category has facilities, equipment, manpower and service quality levels which are consistent with high standards in the Indian healthcare industry, although these would be lower than healthcare quality levels in Grade A hospitals.

Grade C: Reflects an Average Quality of delivered patient care. A healthcare institution graded in this category has facilities, equipment, manpower and service quality levels which are consistent with adequate standards in the Indian healthcare industry. Improvements in specific areas would be required for such hospitals to be eligible for a higher grade.

Grade D: The grading reflects Poor Quality of delivered patient care. The healthcare institution graded in this category has facilities, equipment, manpower and service quality levels which are below the average standards in the Indian healthcare industry. The grading indicates that quality standards would need to be set up in the institution and substantial improvements in patient care would be needed to obtain a higher grade.

.Q 20 . Explain the following credit rating symbols

Ans.

ER1 A Excellent Earnings Prospects; Low Risk

ER1C	Excellent Earnings Prospects; High Risk
M1	Indicates very low sensitivity to changing interest rates and other market conditions. This is for debt funds

STUDY VI

CAPITAL MARKET INTERMEDIARIES

Q.21 what action lies against SEBI Registered Intermediaries in case of default under SEBI Act, 1992.

Ans. The action could be any of the following

(i)suspension of certificate of registration for a specified period;

(ii) cancellation of certificate of registration;

(iii) prohibiting the intermediary to take up any new assignment or contract or launch a new scheme for the period specified in the order;

(iv) debarring a principal officer of the intermediary from being employed or associated with any registered intermediary or other registered person for the period specified in the order;

(v) debarring a branch or an office of the intermediary from carrying out activities for the specified period;

(vi) warning the intermediary.

Q 32 Discuss the regulatory framework governing primary market intermediaries.

Ans.

1.SEBI has issued regulations in respect of each intermediary to ensure proper services to be rendered by them to the investors and the capital market.

In the present regime a dozen regulations govern different categories of intermediaries. The broad framework of such regulations is similar to one another. SEBI has issued Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

1 Permanent Registration

Subject to compliance with the SEBI Act, regulations, updation of relevant disclosures and payment of fees registration shall be permanent.

2. Registration for multiple activities

The process for registration for undertaking multiple activities by the same intermediary has been simplified.

3. Registration Form- information divided into two parts

Part 1 of the form will be disclosed and available to the public and Part II will contain such information which will be retained with the Board as regulatory filing.

4. Fit and Proper person requirements

The criteria to determine whether the intermediary is a Fit and Proper person have been revised and are now principle based.

5. Suspension/Cancellation of certificate of registration

The manner of suspension/cancellation of any certificate granted to any person has been provided in the regulations. Consequently the SEBI (Procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002 will be repealed. The procedure for suspension/cancellation has been simplified and the time taken in this regard is sought to be reduced.

Q 22. What a re the duties and responsibilities of the merchant banker with respect to offer documents

Ans

1. The Companies are required to Appointment a lead merchant banker & exercise of due diligence by him
2. Payment of requisite fee in accordance with regulation 24A of Securities and Exchange Board of India (Merchant Bankers) Rules and Regulations, 1992 by the lead merchant banker, along with draft offer document to be paid/filed with the Board.
3. Documents to be submitted along with the Offer Document by the Lead Manager
   i. Memorandum of Understanding (MOU)
   ii. Inter-se Allocation of Responsibilities there are more than one leadmangers
   iii. Due Diligence Certificate
   iv. Certificates Signed by the Company Secretary or Chartered Accountant, in Case of Listed Companies Making Further Issue of Capital
   v. Prescribed Undertaking regarding transactions in securities by the `promoter' the 'promoter group' and the immediate relatives of the `promoters during the period between the date of filing the offer documents with the Registrar of Companies or Stock Exchange as the case may be and the date of closure of the issue to be reported to Stock Exchanges within 24 hours of such transactions
   vi. List of Promoters' Group and other Details
4. <u>Offer Document to be Made Public</u>: The draft offer document filed with the Board shall be made public for a period of 21 days from the date of filing the offer document with the Board.
5. Despatch of Issue Material
6. <u>No Complaints Certificate</u>: To be filed by lead merchant banker after a period of 21 days from the date the draft offer document was made public,
7. The standard of due diligence shall be such that the merchant banker shall satisfy himself about all the aspects of offering, veracity and adequacy of disclosure in the offer documents. The liability of the merchant banker as referred above shall continue even after the completion of issue process.

Due Diligence Certificate

1. The Lead Merchant Banker, shall furnish to the Board a due diligence certificate as specified in Schedule III along with the draft prospectus.
2. In case of a debenture issue, the lead merchant banker shall also furnish to the Board a due diligence certificate given by the debenture trustee in the format specified in Schedule IIIA along with the draft offer document
3. In addition to the due diligence certificate furnished along with the draft offer document, the Lead Merchant Banker shall also:
   i. certify that all amendments suggestion or observations made by Board have been incorporated in the offer document;
   ii. furnish a fresh "due diligence" certificate at the time of filing the prospectus with the Registrar of Companies as per the format specified at Schedule IV of the Regulations
   iii. furnish a fresh certificate immediately before the opening of the issue that no corrective action on its part is needed as per the format specified at Schedule V of the Regulations
   iv. furnish a fresh certificate after the issue has opened but before it closes for subscription as per the format specified at Schedule VI of the Regulations
4. The lead managers who are responsible for conducting due diligence exercise with respect to contents of the offer document, as per inter-se allocation of responsibilities shall sign due diligence certificate

Certificates Signed by the Company Secretary or Chartered Accountant, in Case of Listed Companies Making Further Issue of Capital

The Lead Merchant Banker shall furnish the following certificates duly signed by (Company Secretary) or Chartered Accountants along with the draft offer documents:

i. all refund orders of the previous issues were despatched within the prescribed time and in the prescribed manner;
ii. all security certificates were despatched to the allottees within the prescribed time and in the prescribed manner;
iii. the securities were listed on the Stock Exchanges as specified in the offer documents.
iv. The draft offer document filed with the Board shall be made public for a period of 21 days from the date of filing the offer document with the Board.
v. The lead merchant banker shall, while filing the draft offer document with the Board also file the draft offer document with the stock exchanges where the securities are proposed to be listed
vi. make copies of draft offer document available to the public. host the draft and final offer documents on the websites of the all the lead managers / syndicate members associated with the issue and also ensure that the contents of documents hosted on the websites are the same as that of their printed versions)
vii. obtain and furnish to the Board, an in-principle approval of the stock exchanges for listing of the securities within 15 days of filing of the draft offer document with the stock exchanges.

Q 23 List out the salient features of the code of conduct prescribed by SEBI to Stock Brokers.

Ans. Salient features are

(1) To maintain high standards of integrity, promptitude and fairness in the conduct of all his business.
(2) To act with due skill, care and diligence in the conduct of all his business.
(3) Not to indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours
(4) Not to create false market either singly or in concert with others

(5) To abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the stock exchange from time to time as may be applicable to him.
B. DUTY TO THE INVESTOR

(1 To faithfully execute the orders for buying and selling of securities at the best available market price and not refuse to deal with a Small

((2) Ito issue without delay to his client [or client of the sub-broker, as the case may be] a contract note for all transactions in the form specified by the stock exchange.
(3) Not todisclose or discuss with any other person or make improper use of the details of personal investments and other information of a confidential nature of the client which he comes to know in his business relationship.
(4) BUSINESS AND COMMISSION:

(a) Not to encourage sales or purchases of securities with the sole object of generating brokerage or commission.
(b)Not to furnish false or misleading quotations or give any other false or misleading advice

(5) Not to deal or transact business knowingly, directly or indirectly or execute an order for a client who has failed to carry out his commitments in relation to securities with another stock-broker.
(6) To be fair to clients
(7) Not to make a recommendation to any client who might be expected to rely thereon to acquire, dispose of, retain any securities unless he has reasonable grounds for believing that the recommendation

Q 24. Discuss briefly the provisions of SEBI Act, regarding the penalties leviable on merchant bankers and mutual funds.

Ans. Chapter VIA of SEBI Act, 1992, contains Section 15A to JA which deals with penalties which can be imposed under the Act for various failures, defaults, non-disclosure and other offences

Section 11(2)(i) empowers SEBI to call for information and conduct enquiries and audits of the mutual funds, and , intermediaries connected with such as merchant bankers.

Section 15A lays down that if any person who is required under SEBI Act or any rules or regulations made thereunder:

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

(c) to maintain books of accounts or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

Section 15B lays down that if any person who is registered as an Intermediary and is required under this Act or any rules or regulations made thereunder, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to pay a penalty of one lakh rupees for each day during which such failure continues or one crore rupees wichever is less.

Section 15C lays down that if any listed company or any person who is registered as an Intermediary, after having been called upon by SEBI in writing to redress the grievances of Investor, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to pay a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whchever is less.

Penalties for Default

Section 15D and 15F provide for penalties for default.

Section 15D lays down that in case of mutual funds, if any person who is:

(a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme, including mutual funds, or one crore rupees, whichever is less;

(b) registered with the Board as mutual fund, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(c) registered with the Board as mutual fund, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(d) registered as mutual fund, fails to dispatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(e) registered as mutual fund, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(f) registered as mutual fund, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Section 15E lays down that where any asset management company of a mutual fund registered under SEBI Act fails to comply with any of the regulation providing for restrictions on the activities of such company, it shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Q25 SEBI expects the investors with their eyes and ears open- Comment.

SEBI has prescribed regulations for the disclosures to be made by issuers of securities tapping the market. The entire emphasis of these regulations is to ensure that all the information required by the investor for making an informed decision is available in the offer documents. The issuer is required not only to give the risk factors in the offer documents but he must also draw attention of the prospective investors to such risk factors whenever any advertisement is issued whether on air, T.V, hoardings , newspaper and any other place. It is the duty of hte merchant bankers to exercise due diligence to ensure that disclosure requirements are fulfilled and verify to the possible extent truthfulness of the statements made. Further, important matters of the prospectus or offer documents have to be given along with every application issued. SEBI has thus made mechanism available to investors to invest their money after carefully considering all material.

Q 26Define folioing authorities as per SAT Rules 2000.

Ans

.(a) Presidng officer According to Section 15L, which deals with the composition of the Tribunal, the Securities Appellate Tribunals shall consist of a Presiding Officer and two other members to be appointed by the Central Government by notification.

Section 15M prescribes that a person shall not be qualified for appointment as the Presiding Officer of Securities Appellate Tribunals unless he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court. It has also been prescribed that the presiding officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consulation with chief justice of India or his nominee. A person shall not be qualified for appointment as a member of Securities Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy.

(b) Registrar

"Registrar" means the Registrar of the Appellate Tribunal and includes an officer of such Appellate Tribunal who is authorized by the Presiding Officer to function as Registrar.

(c) Appellate Tribunal

In order to afford proper appellate remedies, Chapter VIB of SEBI Act provides for the establishment of the Securities Appellate Tribunals to consider appeals against SEBI's orders, of penalties.

As per Section 15K, the Central Government is empowered to establish by notifications one or more Appellate Tribunals, to be known as the Securities Appellate Tribunals to exercise the jurisdiction, power and authorities conferred on such Tribunal by SEBI Act

or under the Act or any other law for the time being in force. The Central Government has set up a tribunal at Mumbai

(d) adjudicating officer

An order made by an adjudicating officer under SEBI Act, is appealable

to a Securities Appellate Tribunal having jurisdiction in the matter.

No appeal shall lie to the Securities Appellate Tribunals from an order made

by an adjudicating officer, with the consent of the parties.

Every appeal against the order of the adjudicating Officer,mus t be made within i45 days of the order received by appellant and it shall be in such form and be accompanied by such fee as may be prescribed..

Q 27 When is the stock broker liable for prosecution under SEBI Act' and Regulations made there under.

Ans. A stock broker or a sub-broker shall be liable for prosecution under Section 24 of the Act for any of the following violations, namely—

(i) Dealing in securities without obtaining certificate of registration from the Board as a stock broker or a sub-broker.

(ii) Dealing in securities or providing trading floor or assisting in trading outside the recognized stock exchange in violation of provisions of the Securities Contract (Regulation) Act, 1956 or rules made or notifications issued thereunder.

(iii) Market manipulation of securities or index.

(iv) Indulging in insider trading in violation of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.

(v) Violating the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

(vi) Failure without reasonable cause—

(a) to produce to the investigating authority or any person authorized by him in this behalf, any books, registers, records or other documents which are in his custody or power; or

(b) to appear before the investigating authority personally or to answer any question which is put to him by the investigating authority; or

(c) to sign the notes of any examination taken down by the investigating authority.

(vii) Failure to pay penalty imposed by the adjudicating officer or failure to comply with any of his directions or orders.

Q 28. What are steps initiated by the SEBI to improve the working of the stock brokers?

1. Every stock broker has to compulsorily get registered with SEBI after satisfying capital adequacy norms and fit and proper person requirements.
2. The code of conduct specified for the stock broker is applicable to the trading member, clearing member and self-clearing member and such members shall at all times abide by the same. The code prescribes compulsory issue of contract notes and fixes obligation to avoid manipulation and ensures fair deal to customers.
3. SEBI conducts inspection to ensure adherence to rules
4. Procedure for Action in Case of Default is also laid down

5 Heavy penalties are levied on defaulting stock broker

6 Stock exchanges have been demutualised

STUDY VII

STOCK EXCHANGES

Q. 29. List out any four most important clauses of the listing Agreement.

Ans

Reference	*Subject Matter*	*Requirement*
Clause 16	Book closure/Record Date	(a) Atleast once in a year the books should be closed. (b) Gap between two book closures and/or record dates would be atleast 7 days. (c) No delivery period for all types of corporate actions in case of scrips traded in compulsory dematerialized mode

Reference	*Subject Matter*	*Requirement*
		(d) Intimate atleast 7 days before corporate actions like mergers, de-mergers, splits and bonus shares in case of company whose stock derivatives are available or whose stocks form part of an Index on which derivatives are available.
Clause 19	Convening of a Board Meeting for Declaration/Decision regarding: (e) Issue of debentures carrying a right to subscribe to equity shares. (f) Passing over of dividend (g) Buy-back of securities (h) Further public offer to be made through the fixed price route	(a) Intimate atleast 2 days in advance about the convening of a board meeting to decide the matters (a) to (g) alongside. No prior intimation is required about board meeting in respect of issue of bonus shares if the issue is not in the Agenda of board meeting. (b) Undertakes to recommend to declare all dividend and/or cash bonuses at least 5 days before the commencement of the closure of its transfer books or the record date fixed for that purpose. (c) Prior intimation to the exchange for shares on right basis to the existing shareholders at least two days in advance. (d) Intimation to the exchange at least 48 hours in advance, for determination of issue price.

Reference	*Subject Matter*	*Requirement*
Clause 20 & 22	Decision regarding declaration of dividend, bonus interest payment buy-back of securities, rights, re-issue of forfeited shares, calls to be made.	Furnish information to the Stock Exchanges within 15 minutes of the closure of the Board Meeting.
Clause 32	Cash Flow Statement in the Annual Report, Consolidated Financial Statement and related party disclosures	(a) Companies to prepare Cash Flow Statement in accordance with AS-3 of ICAI and present it under the indirect method. Companies to send a statement containing the salient features of the Balance Sheet, P&L A/c and Auditors' Report to each share holder. Unabridged Annual report to be sent to member of listed exchange on his request. Company will publish Consolidated Financial Statements duly audited by the statutory auditors and file the same with Stock Exchange. (b) Company will also make related party disclosures in its Annual Reports.
Clause 35	Shareholding pattern containing details of promoters holding and non-promoters holding	File with the exchange the shareholding pattern in the prescribed form within 21 days from the end of the quarter on a quarterly basis. The format for reporting the shareholding pattern must include details of shares pledged by the promoters and promoters group and is required to be given for each class of security separately. The additional format should disclose the voting right

Reference	Subject Matter	Requirement
		pattern in the company.

Q 30 Discuss briefly the provisions of the listing agreement with regard to the Corporate Governance.

Ans. The clause 49 of the listing agreement is for ensuring corporate governance main requirements are as under

Composition of Board of Directors

The Board of Directors of the company shall have an optimum combination of executive and non executive directors. Further —

— not less than 50 per cent of the board of directors shall comprise of non-executive directors;

— the number of independent directors would depend on whether the chairman is executive or non-executive;

— if the Board has a Non-Executive Chairman, at least one third of the Board should comprise of independent directors;

— if the Board has an Executive Chairman, at least half of the Board should comprise of independent directors.

If the non-executive Chairman is a promoter or is related to promoters or persons occupying management positions at the board level or at one level below the board, at least one-half of the board of the company should consist of independent directors. The expression "related to any promoter" means:

(a) If the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;

(b) If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

Definition of Independent Director

'Independent director' shall mean non-executive director of the company who –

(a) apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect the independence of the director;

(b) is not related to promoters or persons occupying management positions at the board level or at one level below the board;

(c) has not been an executive of the company in the immediately preceding three financial years;

(d) is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following:

(i) the statutory audit firm or the internal audit firm that is associated with the company;

(ii) the legal firm(s) and consulting firm(s) that have a material association with the company;

(e) is not a material supplier, service provider or customer or a lessor or lessee of the company which may effect the independence of the director;

(f) is not a substantial shareholder of the company, i.e. owning two percent or more of the block of voting shares; and

(g) is not less than 21 years of age.

Nominee Directors are treated as Independent Director

Non executive directors' compensation and disclosures

The clause provides that all fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and require previous approval of shareholders in general meeting.

Disclosures on Remuneration of Directors

The specific disclosures on the remuneration of directors regarding all elements of remuneration package of individual directors summarized under major groups such as salary, benefits, bonuses, pensions etc., details of fixed component and performance linked incentives, along with performance criteria, service contracts, notice period, severance fees, stock option details, if any, and whether issued at a discount as well as the period over which accrued and over which exercisable, should be made in the section on Corporate Governance of the Annual Report.

Limits on Membership of Committees

For the purpose of considering the limit of the committees on which a director can serve, Chairmanship/membership of the Audit Committee and the Share-holders' Grievance Committee alone are to be considered.

Declaration to be signed by CEO

The clause states that all Board members and senior management personnel shall affirm compliance with the code on an annual basis and the Annual Report of the company shall contain a declaration to this effect signed by the CEO.

Board Meetings

The Board shall meet at least four times a year with a maximum time gap of four months between any two meetings.

Board Committees

Every company is required to appoint (i) Audit Committee (ii) Shareholders/Investors Grievance Committee

Subsidiary Company

(i) At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of material non-listed Indian subsidiary company.

(ii) The Audit Committee of the listed holding company shall also review the financial statements, in particular the investments made by the unlisted subsidiary company.

Disclosures

The following disclosures are required to be made under the clause:

(i) Basis of related Party Transactions

(ii) Disclosure of Accounting Treatment

(iii) Risk Management

(iv) Proceeds from public issues,Rights issues,preferential issues etc.

(v) Remuneration of Directors

(vi) Management

(vii) Shareholders.

CEO/CFO Certification

The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:

(a) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief :

  (i) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

  (ii) these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

(b) There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company's code of conduct.

(c) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of the internal control systems of the company pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

(d) They have indicated to the auditors and the Audit committee —

(i) significant changes in internal control over financial reporting during the year;

(ii) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

(iii) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the company's internal control system over financial reporting.

Report on Corporate Governance

The companies have to submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format prescribed in the clause. The report is required to be signed either by the Compliance Officer or the Chief Executive Officer of the company.

Compliance Certificate

The practising Company Secretaries have also been recognised to issue Certificate of Compliance of Conditions of Corporate Governance. The clause provides that the company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors' report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.

Q 31 You are company secretary of a new listed company and your managing director wants you to prepare a note on the obligation of the company regarding publication of financial results.

Ans. a note on the obligation of the company regarding publication of financial results.

Under clause 41 a listed has the following obligations

To submit quarterly results to date and annual financial results to the stock exchange in the manner prescribed.

To submit audited or unaudited quarterly and year to date financial results to the stock exchange within one month of end of each quarter (other than the last quarter), subject to the following:

(a) To submit a copy of the limited review report to the stock exchange within two months from end of the quarter, in case the company opts to submit unaudited financial results

(b) Financial results to be accompanied by auditors report in case the company opts to submit audited financial results

To submit unaudited financial results for the quarter within one month of end of the financial year or to submit audited financial results for the entire financial year within three months of end of the financial year, subject to the following:

— To submit audited financial results for the entire financial year, as soon as they are approved by the Board, in case the company opts to submit unaudited financial results for the last Quarter

— To intimate the option to the stock exchange in writing within one month of end of the financial year, in case the company opts to submit audited financial results for the entire financial year.

Companies having subsidiaries may, in addition to submitting quarterly and year to date stand alone financial results to the stock exchange also submit quarterly and year to date consolidated financial results; and while submitting annual audited financial results prepared on stand-alone basis, it shall also submit annual audited consolidated financial results to the stock exchange.

To submit financial results to the stock exchange within fifteen minutes of conclusion of the meeting of the Board or Committee in which they were approved.

The quarterly financial results submitted shall be approved by the Board of Directors of the company or by a committee thereof, other than the audit committee.

Provided that when the quarterly financial results are approved by the Audit Committee they required be placed before the Board at its next meeting:

Provided further than while placing the financial results before the Board, the Chief Executive Officer and Chief Financial Officer of the company, by whatever name called, have to certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

The Audit Committee shall consist of not less than one third of the directors and shall include the managing director and at least one Independent director.

The financial results submitted to the stock exchange are be signed by the Chairman or managing director, or a whole time director. In the absence of all of them, it shall be signed by any other director of the company who is duly authorized by the Board to sign the financial results.

The limited review report has to be placed before the Board of directors or the Committee before being submitted to the stock exchange.

When the limited review report is placed before the Committee they shall also be placed before the Board at its next meeting.

The annual audited financial results have to be approved by the Board of Directors of the company and shall be signed.

To give prior intimation of the date and purpose of meetings of the Board or Committee in which the financial results will be considered at leasty two clear calendar days prior to the meeting (excluding the date of the intimation and date of the meeting).

To issue a public notice in at least in one English daily newspaper circulating in the whole or substantially the whole of India and in one daily newspaper published in the language of the region, where the registered office of the company is situated.

Where there is a variation between the unaudited quarterly or year to date financial results and the results amended pursuant to limited review for thesame period, and –

(i) the variation in net profit or net loss after tax is in excess of 10% or Rs.10 lakhs, whichever is higher; or

(ii) the variation in exceptional or extraordinary items is in excess of 10% or Rs.10 lakhs, whichever is higher -

the company has to submit to the stock exchange an explanation of the reasons for variations, while submitting the limited review report. The explanation of variations so submitted shall be approved by the Board of Directors:

If the auditor has expressed any qualification or other reservation in respect of audited financial results submitted or published under this clause, the company is required disclose such qualification or other reservation and impact of the same on the profit or loss, while publishing or submitting such results.

If the auditor has expressed any qualification or other reservation in his audit report or limited review report in respect of the financial results of any previous financial year or quarter which has an impact on the profit or loss of the reportable period, the company is required to include as a note to the financial results –

(i) how the qualification or other reservation has been resolved; or

(ii) if it has not been resolved, the reason therefor and the steps which the company intends to take in the matter.

If the company has changed its name suggesting any new line of business, it shall disclose the net sales or income, expenditure and net profit or loss after tax figures pertaining to the said new line of business separately in the financial results and shall continue to make such disclosures for the three years succeeding the date of change in name.

If the company had not commenced commercial production or commercial operations during the reportable period, the company shall, instead of submitting financial results, disclose the details of amount raised, the portions thereof which is utilized and that remaining unutilized, the details of investment made pending utilisation, brief description of the project which is pending completion, status of the project and expected date of commencement of commercial production or commercial operations.

The company shall, within 48 hours of conclusion of the Board or Committee meeting at which the financial results were approved, publish a copy of the financial results which were submitted to the stock exchange in at least in one English daily newspaper circulating in the whole or substantially the whole of India and in one daily newspaper published in the language of the region, where the registered office of the company is situated:

Provided that where the company has opted to submit audited financial results, it shall also publish the qualifications or reservations, if any, expressed by the auditor together with the audited results.

Where the company has submitted consolidated financial results in addition to stand-alone financial results, it shall have an option to publish either stand-alone financial results or consolidated financial results in the newspapers, subject to the following:

(i) If it is desirous of publishing consolidated financial results alone, it shall exercise the option in the first quarter of the financial year and such option shall not be changed during the financial year;

(ii) In case the company changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current year.

(iii) If the company opts to publish only consolidated financial results, it shall give a reference in the newspaper publication, to the places, such as the company's website and stock exchanges' websites, where the standalone results will be available for perusal.

(iv) If the company opts to publish only stand-alone financial results, it shall also publish consolidated figures for turnover, net profit after tax and earnings per share.

STUDY VIII

STOCK EXCHANGE – TRADING MECHANISM

Q 32. Write note on Rolling Settlement

In case of Rolling Settlements, pay-in and pay-out of both funds and securities, is completed on the same day.

The member-brokers are required to make payment for securities sold and/ or deliver securities purchased to their clients within one working day (excluding Saturday, Sunday, bank & Exchange trading holidays) after the pay-out of the funds and securities for the concerned settlement is completed by the Exchange. This is the timeframe permitted to the member-brokers of the Exchange to settle their funds/securities obligations with their clients as per the Byelaws of the Exchange.

The settlement calendar, which indicates the dates of the various settlement related activities, is drawn by the Exchange in advance on a quarterly basis and is circulated among the market participants. The settlement calendars so drawn have been strictly adhered to by the Exchange and there has been generally no case of clubbing of settlements or postponement of pay-in and/ or pay-out during the last over seven years.

The Exchange maintains database of fake/forged, stolen, lost and duplicate securities in physical form with the Clearing House so that distinctive numbers submitted by member-brokers in case of physical securities on delivery may be matched against the database to weed out bad paper from circulation at the time of introduction of such securities in the market. This database has also been made available to the member-brokers so that both delivering and receiving member-brokers can check the entry of fake, forged and stolen shares in the market.

Q 35 Write note on circuit breakers

Ans. Circuit Breakers

In addition to the price bands on individual scrips, SEBI decided to implement index based market wide circuit breakers system, w.e.f., July 02, 2001.The circuit breakers are applicable at three stages of the index movement either way at 10 %, 15 % and 20 %. These circuit breakers will bring about a coordinated trading halt in both Equity and Derivative market.

The market wide circuit breakers can be triggered by movement of either BSE SENSEX or the NSE NIFTY, whichever is breached earlier. The percentage movement are calculated on the closing index value of the quarter. These percentages are translated into absolute points of index variation (rounded off to the nearest 25 points in case of SENSEX). At the end of each quarter, these absolute points of index variations are revised and made applicable for the next quarter. The absolute points of SENSEX variation triggering market wide circuit breaker for a specified time period for any day of the quarter is informed by the Exchange through Press Release from time to time.

Q34 Writ e a note on Basket Trading System

Ans. Basket Trading System

. In the Basket Trading System, the investors through the member-brokers of the Exchange are able to buy/sell all 30 scrips of Sensex in one go in the proportion of their respective weights in the Sensex. The investors need not calculate the quantity of Sensex scrips to be bought or sold for creating Sensex linked portfolios and this function is performed by the system. The investors can also create their own baskets by deleting certain scrips from 30 scrips in the Sensex. Further, the investors can alter the weights of securities in such profiled baskets and enter their own weights. The investors can also select less than 100% weightage to reduce the value of the basket as per their own requirements.

To participate in this system, the member-brokers need to indicate number of Sensex basket(s) to be bought or sold, where the value of one Sensex basket is arrived at by the system by multiplying Rs.50 to prevailing Sensex. For e.g., if the Sensex is 4000, then value of one basket of Sensex would be 4000 × 50= i.e., Rs.2,00,000/-. The investors can also place orders by entering value of Sensex portfolio to be bought or sold with a minimum value of Rs. 50,000/- for each order.

The Basket Trading System provides the arbitrageurs an opportunity to take advantage of price differences in the underlying Sensex and Futures on the Sensex by simultaneous buying and selling of baskets comprising the Sensex scrips in the Cash Segment and Sensex Futures. This is expected to provide balancing impact on the prices in both cash and futures markets.

The Basket Trading System, thus, meets the need of investors and also improves the depth in cash and futures markets.

Q. 35 Write a note on stock options

An option contract conveys the right to buy or sell a specific security or commodity at specified price within a specified period of time. The right to buy is referred to as a call option whereas the right to sell is known as a put option. An option contract comprises of its type a put or call, underlying security or commodity expiry date, strike price at which it may be exercised. Options are generally described by the nature of underlying commodity. An option on common stock is said to be stock option; an option on a bond, a bond option; an option on a foreign currency, a currency option, an option on future contract, a future option; and so on. The specified price at which the underlying commodity may be bought (in the case of call) or sold (in the case of put) is called exercise price or the striking price of the option. To buy or sell the underlying commodity pursuant to option contract is to exercise the option. Most of the option may be exercised at any time, upto and including the expiration date.

The buyer of an option pays the option writer (seller) an amount of money called the option premium or option price. In return, the buyer receives the privilege, but not the obligation, of buying (in the case of call) or selling (in the case of a put) the underlying commodity for the exercise price. In the case of a call option, if the price of the commodity exceeds the exercise price, the call option is said to be in the money and the call option buyer could exercise the option, thereby earning the difference between the two prices-the exercise value or intrinsic value. On the other hand, if the price of the commodity is below the exercise price, the call option is out-of the money and will not be exercised, its intrinsic value is zero. In the case of a put option, if the price of the commodity is below the exercise price, the put option is said to be in-the-money. The put option buyer could exercise the option to earn the difference between the exercise price and the price of the commodity. A put option is said to be out of the money when the commodity price exceed the exercise price.

Option provide investors with the opportunity to hedge investments in the underlying shares and share portfolios and can thus reduce the overall risk related to the investments significantly.

Q 36 Write notes on straight through processing

STRAIGHT THROUGH PROCESSING

. Straight Through Processing (STP) is generally understood to be a mechanism that automates the end to end processing of transactions of financial instruments. It involves use of a system to process or control all elements of the work flow of a financial transaction, what are commonly known as the Front, Middle, Back office and General Ledger. In other words, STP allows electronic capturing and processing of transactions in one pass from the point of order origination to final settlement. STP thus streamlines the process of trade execution and settlement and avoids manual entry and re-entry of the details of the same trade by different market intermediaries and participants. Usage of STP enables orders to be processed, confirmed, settled in a shorter time period and in a more cost effective manner with fewer errors. Apart from compressing the clearing and settlement time, STP also provides a flexible, cost effective infrastructure, which enables e-business expansion through online processing and access to enterprise data.

Advantages of Straight Through Processing

- Reduced risk
- Automation of manual process minimizing errors
- Improved operational efficiency in handling larger volumes
- Facilitates movement towards shorter settlement cycles (T+1)
- Lower cost per trade
- Timely settlement of trades and instructions
- Eliminates paper work and minimizes manual intervention
- Enables increased cross border trading (FII trades)
- Greater transparency with clear audit trail
- Increases competitive advantage of our markets

— Messaging standards as per ISO 15022 standards

Straight Through Processing (STP) thus aims to bring in non-duplication of work, efficiency and automation of the manual procedures right from trade initiation to settlement processes.

Q 37. Write a note on Securities Lending

Securities Lending

Under the scheme, a person with idle shares can lend them to another who does not have the shares to fulfill his obligation under a trade finalised by him. There will be no direct contacts between the borrower and lender of securities. An intermediary who can guarantee the scheme and make good the loss in the borrower who fails to honour his obligations can alone provide substance to the scheme. The borrower has to put up collateral for his borrowings and pay cash margin levied on the securities by the authorities. Income from securities lending is exempt from Capital Gains Tax.

O 38. Distinguish between Listed securities and permitted securities

Ans. Securities traded in the stock exchanges are classified as under:

(1) *Listed Securities:* The securities admitted for dealing on stock exchange after complying with all the listing requirements

(2) *Permitted Securities:* The securities listed on some of the recognised stock exchanges, when permitted to be traded by those stock exchanges where they are not listed are called permitted securities. Such permission is given if suitable provisions exist in the regulations of the concerned stock exchanges

Q 39. What are different types of deliveries on stock exchange?

Ans. Types of delivery in the stock exchanges are spot delivery, hand delivery and special delivery.

The delivery is said to be spot delivery, if the delivery of and payment for securities are to be made on the same day or the next day.

The delivery is said to be hand delivery, if the delivery and payment are to be made on the delivery date fixed by the stock exchange authorities.

A special delivery is one where the delivery is to be made after the delivery period fixed by the stock exchange authorities.

Q 39 Distinguish between futures and options.

Futures trading

A future contract is an arrangement by which a buyer/seller agrees to take/give delivery of the securities on a specified future date at a fixed price and make payment on the delivery date. Such contracts are zero-sum games where the gain equals loss. The clearing house is the counterparty in such contracts. A buyer is called the 'long' and the seller 'short'.

A margin has to be deposited at the clearing house for futures. The size of the market is large and investing public impersonal due to presence of a central depository.

Future markets provide precise price information and make it possible to transfer risk from those who wanted to shed it (hedgers) to those who are willing to accept it (speculators)

Options

An option is a contract between two parties in which the maker of the option (option writer) agrees to buy or sell a specified number of shares at later date for an agreed price (strike price) to the holder of the option (option buyer) on a due date (answer date) and time, when and if the later so desires, in consideration of a sum of money (premium). The strike price or premium is the price which is required to be paid for purchase of right to buy or sell. The premium is influenced by level of interest rate, market liquidity, dividend and expected variance in price in future and time period of option. The terms of the contract allow the holder, not the maker, to cancel the option.

The option buyer is required to notify the option maker on the 'answer day' if he intends to exercise his rights, and in case the former does not do so, the option contract lapses. The premium (option price) is determined on the basis of market volatility, interest rates, the spot price, the duration of the option, the agreed price and investors' sentiment.

Q 40Distinguish between European option system and American option

There are two ways of exercising options—(i) On the expiry date (European options system) and (ii) anytime before the expiry of specified time (American option system). The rate of premium is higher in case of American option system as it covers risk all the times during the option period.

Q 41. Distinguish between bull and bear

Ans. Bull is a person who expects that price of security will go up. He goes on buying security in anticipation that its price will go up and sells them when price goes up. He is an optimist.

Bear on the other hand is person who fears that price will go down. He sells securities in a bid to minimize his losses and buys them again when the price actually goes down.

When the movement is upward, the trend is called 'BULLISH' and when the movement is downward it is called 'BEARISH'. Bear market is a weak or falling market characterised by the dominance of sellers. Whereas Bull market is a rising market with abundance of buyers and relatively few sellers.

STUDY IX

MUTUAL FUNDS

Q 42. Close ended scheme and open ended scheme.

(i) *Open ended mutual funds:* An open ended mutual funds is a fund with a non-fixed number of outstanding shares/units, that stands ready at any time to redeem them on demand. The fund itself buys back the shares surrendered and is ready to sell new shares. Generally the transaction takes place at the net asset value which is calculated on a periodical basis. The net asset value (Net Asset Value per share value of the fund's is total net assets after liabilities divided by the total number of shares outstanding on a given day) of the mutual funds rises or falls as a result of the performance of securities in the portfolio and the stock exchanges.

(ii) *Close ended mutual funds:* It is the fund where mutual fund management sells a limited number of shares and does not stand ready to redeem them. Primary example of such mutual fund is UTI's Master share. The shares of such mutual funds are traded in the secondary markets. The requirement for listing is laid down to grant liquidity to the investors who have invested with the mutual fund. Therefore, close ended funds are more like equity shares. The main differences between close ended and open ended funds are:

	CLOSE ENDED SCHEMES		*OPEN ENDED SCHEMS*
1.	Fixed corpus: no new units can be offered beyond the limit	1.	Variable corpus due to ongoing purchase and redemption
2.	Listed on the stock exchange for buying and selling	2.	No listing on exchange transactions done directly with the fund
3.	Two values available namely NAV and the Market Trading Price	3.	Only one price namely NAV
4.	Mostly liquid	4.	Highly Liquid

Q 43 Define NAV and offer price.

Mutual funds raise money by selling their shares to public and redeeming them at current net asset value. Net asset value is the value of the assets of each unit of the scheme. Thus if the NAV is the more than the face value of Rs. 10/-, there is an appreciation for the investment. If the NAV is less than the face value, it indicates depreciation of the investment. NAV also includes dividends, interest accruals and reduction of liabilities and expenses apart from market value of investments. Every mutual fund shall compute the NAV of each scheme by dividing the net asset of the scheme by the number of units of that scheme outstanding on the date of valuation and public the same at least in two daily newspapers at intervals not exceeding one week. However, the net asset value of any scheme for special target segment or any monthly scheme which are not mandatorily required to be listed in the stock exchange may publish the NAV at monthly or quarterly intervals as permitted by SEBI.

Offer price is the price at which units are offered to the investors.If a funds unit's nominal value is Rs 10 and fund is charging 2% entry load then the offer price will be Rs10.20

Q 44. Write note on money market mutual funds

Ans. Money Market Mutual Funds:

These funds invest in short- term debt securities in the money market like certificates of deposits, commercial papers, government treasury bills etc. Owing to their large size, the funds normally get a higher yield on such short term investments than an individual investor. The schemes of such funds, like other mutual fund schemes would exclusively be governed by SEBI (Mutual Funds) Regulations, 1996. These are preferred by the investors who want to invest for short term and who want liquidity. Returns on these schemes are low and the risk is also minimum

Q 45 .Write a note on offshore mutual funds

Ans. Off-shore Funds:

Such funds invest in securities of foreign companies with RBI permission.

Q 46 What is meant by Asset management company?

Ans. Asset Management Company (AMC)

Under SEBI Regulations, every mutual fund is required to have an Asset Management Company (AMC) incorporated in the Companies Act, 1956 to manage the funds of the mutual fund. The AMC should be approved by SEBI and should enter into an agreement with the trustees of the mutual fund to formulate schemes, raise money against units, invest the funds in accrued securities and after meeting the permissible costs as per norms, distribute income to the unit holders of the funds.

Duties and responsibilities of AMC

(i)the AMC appointed by the trustees with the prior approval of SEBI is responsible for floating schemes for the mutual fund after approval of the same by the trustees and managing the funds mobilized under various schemes; in accordance with the provisions of the Trust Deed and Regulations;

(ii) the AMC can not undertake any other business activity other than activities specified therein and management of mutual funds and such other activities as financial services consultancy, exchange of research and analysis on commercial basis as long as these are not in conflict with the fund management activity itself without the prior approval of the trustees and SEBI;

(iii) the AMC must invest the funds raised under various schemes in accordance with the provisions of the Trust Deed and the Regulations;

(iv) the AMC can not acquire any of the assets out of the scheme property which involves the assumption of any liability which is unlimited or which may result in encumbrance of the scheme property in any way;

(v) the AMC should not take up any activity in contravention of the Regulations;

(vi) no loss or damage or expenses incurred by the AMC or officers of AMC or any person delegated by the AMC, can be met out of the trust property;

(vii) the AMC has to ensure that no offer document of a scheme, key information memorandum, abridged half yearly results and annual results is issued or published without the trustees' prior approval in writing, and contains any statement or matter extraneous to the Trust Deed or Offer Document scheme particulars approved by the trustees and Board;

(viii) the asset management company is required provide an option of nomination to the unitholders in terms of regulation 29A, in the prescribed form ,

(ix) the AMC has to disclose the basis of calculating the repurchase price and NAV of the various schemes of the fund in the scheme particulars and disclose the same to the investors at such intervals as may be specified by the trustees and SEBI;

(x) the trustees shall have the right to obtain from the AMC all information concerning the operations of the various schemes of the mutual fund managed by the AMC at such intervals and in such a manner as required by the trustees to ensure that the AMC is complying with the provisions of the Trust Deed, and Regulations;

(xi) the AMC mustl submit quarterly report on the functioning of the schemes of the mutual fund to the trustees or at such intervals as may be required by the trustees or SEBI;

Q 47 Distinguish between income oriented schemes and growth oriented schemes.

Ans.

S.N0	Income oriented schemes	Growth oriented schemes
1	The fund primarily offer fixed income to investors	These funds offer growth potentialities associated with investment in capital market namely: (i) high source of income by way of dividend and (ii) rapid capital appreciation, both from holding of good quality scrips.
2	The main securities in which investments are made by such funds are the fixed income yielding ones like bonds.	These funds, with a view to satisfying the growth needs of investors, primarily concentrate on the low risk and high yielding spectrum of equity scrips of the corporate sector.
3	Low risk low return schemes	Comparatively high risk and high return

Q48. Distinguish between frontend load and back end load

Ans. Mutual funds can be classified into two types - Load mutual funds and No-Load mutual funds. Load funds are those funds that charge commission at the time of purchase or redemption. They can be further subdivided into (1) Front-end load funds and (2) Back-end load funds.

Front-end load are fees or expenses recovered by mutual funds against compensation paid to brokers, their distribution and marketing costs. These expenses are generally called as sales loads. Front-end load funds charge commission at the time of purchase. Similar to front end loads there are back end loads. Back-end load funds charge commission at the time of redemption.

Q 49 What are hedge funds?

A hedge fund is a private investment fund, charging a performance fee and is open to only a limited number of investors. These funds are like mutual funds, which collect money from investors and use the proceeds to buy stocks and bonds. They can invest on almost any type of opportunity; in any market where in good returns are expected with low risk levels.

Protecting capital and producing good return in all kinds of market conditions, while attempting to minimize the risk, is the main objective of most of the hedge funds.

Hedge funds have grown in size and have a great influence on public securities and private investment markets. Hedge funds are not currently subject to any direct regulation, unlike mutual funds, pension funds and insurance companies. They are limited only by the terms of contacts governing the particular fund.

Hedge funds may be either long or short assets and may enter into futures, swaps, and other derivative contracts. In this way, hedge funds are able to follow complex strategies, intending to profit from market volatility or from falling market.

Characteristics of Hedge Funds:

- A hedge fund generally uses several kinds of financial instruments to reduce risk and add more returns. It tries to reduce the correlation with equity and fixed income markets. Many hedge funds use short selling, leverage, derivatives such as puts, calls, options, futures, etc. to accomplish their goals.
- The nature of hedge funds differs a lot in terms of investment returns, instability and risk symptoms. Normally, hedge fund strategies intend to hedge against Markey fluctuations. However, this does not mean that all hedge funds can give great advantage in unfavorable market conditions.

- The hedge fund managers compensation is linked to his overall performance. This stimulates the fund managers to deliver their best. At times, hedge fund managers may invest their own money in the funds that they manage.
- Most of the investors in hedge funds such as pension funds, endowments, insurance companies, private banks, and high net worth individuals invest in hedge funds to minimize their overall portfolio risk and enhance returns.
- Many hedge funds can produce uncorrelated returns i.e. returns that are not dependant on market fluctuations. Such abnormal returns from hedge funds are a great advantage in difficult market conditions.
- Highly skilled, specialized and experienced fund managers manage hedge funds. They are disciplined and diligent and believe in doing everything within there are of competency and competitive advantage.

Q 50. Mutual funds are essential vehicles for collective investments which provide to the small investors, benefits in stock markets, risk diversification and expert management advice of a fund managers. Comment. And answer the following questions (a) what are the organs of the mutual fund?

(b) What are the benefits of mutual funds

(c) what are the schemes of mutual funds

Ans .

(a) *Organs of mutual fund*

In a mutual fund structure prescribed by SEBI, investors' money is not handed over to anyone else. It is kept in a trust, where investors are the beneficiary, and whose operations are supervised by the trustees.

The trustees appoint a professional manager, the asset management company (AMC) to manage the fund.

The trustees also appoint a custodian, usually a large bank, who holds the funds and the securities.

The AMC makes the investment decisions, but the custodian implements them,
A mutual fund is structured for the protection of investors money from misuse

Regulation ensures that at least two-thirds of the trustees are independent. An independent trustee is one who does not receive any other monetary consideration from the mutual fund, other than the trustee fee

.
The trustee appoints the AMC to manage the funds, and the AMC is accountable to the trustees. TheAMC runs the mutual fund business under the supervision and guidance of the trustees. The trustees are responsible for ensuring that all activities undertaken by the mutual fund are in the interests of the investors who have invested in the fund. Trustees are appointed with the approval of SEBI and they ensure that operational systems and procedures are in place so that no action of the AMC or any other constituent could be detrimental to the investors' interest. Important decisions relating to the fund, such as launching a new product, can be taken
only with the approval of the trustees.

And there is more. The custodian, who actually holds the investor's funds in the bank account and the securities that have been bought for the mutual fund portfolio, has to be independent as well. The AMC who is the investment manager, is created by a sponsor. Such sponsor can also have a bank that offers custodial services. But regulations do not allow the sponsor and the custodian to be owned by the same entity. This ensures that th custody of investors' money and securities is even safer. The custodian is appointed not by the AMC, but by the trustees themselves.

Regulation also requires that investors know what is being done with their money. The investors' money is kept scheme-wise in separate accounts. The entire portfolio of investments of a scheme has to be disclosed to the investors at least every six months. Mutual funds make this disclosure voluntarily on a monthly basis. The scheme accounts are published and publicly available for investors to see the expenses that are being charged to them.
The extent of expenses that can be charged, and the heads under which they can be charged are also subject to regulation. Mutual funds are subject to detailed regulations by SEBI, and are inspected periodically forcompliance.

The structure of a mutual fund is robust, well-thought out and regulated to protect investors' interest. To the informed investors who is willing to look beyond 'guarantees' that are tough to keep anyway in the modern world, mutual funds offer the best choice in financial structure.

Advantages of Mutual Funds

The advantages of investing in a mutual fund are:

1. *Professional Management:* Investors avail the services of experienced and skilled professionals who are backed by a dedicated investment research team which analyses the performance and prospects of companies and selects suitable investments to achieve the objectives of the scheme.
2. *Diversification:* Mutual funds invest in a number of companies across a broad cross-section of industries and sectors.This diversification reduces the risk because seldom do all stocks decline at the same time and in the same proportion. Investors achieve this diversification through a Mutual Fund with far less money than one can do on his own.
3. *Convenient Administration:* Investing in a mutual fund reduces paper work and helps investors

to avoid many problems such as bad deliveries, delayed payments and unnecessary follow up with brokers and companies. Mutual funds save investors time and make investing easy and convenient.

4. *Return Potential:* Over a medium to long term, Mutual funds have the potential to provide a higher return as they invest in a diversified basket of selected securities.
5. *Low Costs:* Mutual funds are a relatively less expensive way to invest compared to directly investing in the capital markets because the benefits of scale in brokerage, custodial and other fees translate into lower costs for investors.
6. *Liquidity:* In open ended schemes, investors can get their money back promptly at net asset value related prices from the mutual fund itself. With close ended schemes, investors can sell their units on a stock exchange at the prevailing market price or avail of the facility of direct repurchase at net asset value (NAV) related prices which some close ended and interval schemes offer periodically or offer it for redemption to the fund on the date of maturity.
7. *Transparency:* Investors get regular information on the value of their investment in addition to disclosure on the specific investments made by scheme, the proportion invested in each class of assets and the fund manager's investment strategy and outlook.

(c) Schemes of Mutual Funds

The MFs in India offer a wide array of schemes that cater to different needs suitable to any age, financial position, risk tolerance and return expectations. These include: open-ended schemes, which provide easy liquidity; close-ended schemes with a stipulated maturity period; growth schemes, which provide capital appreciation over medium to long term; income schemes, which provide regular and steady income to investors; balanced schemes, which provide both growth and income by periodically distributing a part of income and capital gains they earn; money market schemes, which provide easy liquidity, preservation of capital and moderate income; and tax saving schemes, which offer tax rebates to investors under tax laws as prescribed from time to time.

STUDY XI

COLLECTIVE INVESTMENT SCHEMES

Q 51. Write a note on collective Investment scheme

Ans A Collective Investment Management Company is a company incorporated under the provisions of the Companies Act, 1956 and registered with SEBI under the SEBI (Collective Investment Schemes) Regulations, 1999, whose object is to organise, operate and manage a Collective Investment Scheme.

An existing Collective Investment Scheme cannot launch any new scheme or raise money from the investors even under the existing scheme, unless a certificate of registration is granted to it by SEBI.

A registered CIMC is eligible to raise funds from the public by launching schemes. Such schemes have to be compulsorily credit rated as well as appraised by an appraising agency. The schemes also have to be approved by the Trustee and contain disclosures, as provided in the Regulations, which would enable the investors to make informed decision.

A copy of the offer document of the scheme has to be filed with SEBI and if no modifications are suggested by SEBI within 21 days from the date of filing then the CIMC is entitled to issue the offer document to the public for raising funds from them.

They have to be compulsorily listed on the Stock Exchanges as mentioned in the Offer document.

The investors are entitled to receive a copy of the Balance Sheet, Profit and Loss account and a copy of the summary of the yearly appraisal report from CIMC, within two months from the closure of the financial year.

Further, the scheme wise annual report or an abridged form thereof has published in a national daily as soon as possible but not later than two calendar months from the date of finalisation of accounts.

Also, scheme wise un-audited quarterly financial results have to be published in a national daily by CIMC within one month from the close of each quarter.

It is the responsibility of the CIMC to ensure that the disclosures made in the offer document are generally adequate and are in conformity with the Regulations.

STUDY XII

BUY-BACK OF SECURITIES

Q52 Write notes on Escrow Account

Ans. *Escrow Account"* means an account opened by a company with a scheduled commercial bank by way of a security for discharging its obligation and shall consist either of cash or bank guarantee in favour of a merchant banker or deposit of acceptable securities with appropriate margin with a merchant banker or any combination thereof for the purpose of buy-back of securitiess

Q 65 Which securities are not available for buy-back?

Ans. Securities not available for buy-back

1. Securities in lock-in period

In the case of a listed company, securities issued to the promoters, to a group, or to employees, subject to lock-in period as per SEBI (Disclosure and Investor Protection) Guidelines, 2000 are not available for buy-back until the lock-in period expires. [Regulation 19(5)].

2. Non-transferable securities

Securities which are under lien or are pledged or restricted by any court for transfer or which otherwise statutorily cannot be transferred are not available for buy-back until such securities again become freely transferable. [Regulation 19(5)].

3. Disputed securities kept in abeyance

Securities which are under dispute and have been kept in abeyance under Section 206A, or in respect of which transfer or transmission has not been effected, are not available for buy-back.

Before undertaking any buy-back, the company should ensure that no transfer deed is pending for registration.

ISSUE MANAGEMENT AND COMPLIANCES

STUDY XIV

PUBLIC ISSUE OF SECURITIES

Q 53 What do you understand by promoters quota ? what is the rationale behind lock in period for promoters quota shares.

Ans Promoters' quota means the shares reserved for allotment to promoter and group. Promoters' contribution in any issue shall be in accordance with the following provisions as on (i) the date of filing red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with ROC or letter of offer with Designated Stock Exchange, as the case may be, in case of a fast track issue; and (ii) the date of filing draft offer document with the Board, in any other case.

Promoters' contribution

Unlisted Company	In case of Public Issue	Not less than 20% of the post-issue capital
Listed Company	In case of Public Issue	To the extent of 20% of the proposed issue or 20% of the post-issue capital
Listed Company	Composite Issue*	20% of the proposed

		public issue or 20% of the post-issue capital.

* Rights issue component of the composite issue shall be excluded while calculating the post-issue capital.

Promoters' Contribution to be brought in before Public Issue Opens

Promoters shall bring in the full amount of the promoters' contribution including premium at least one day prior to the issue opening date which shall be kept in an escrow account with a Scheduled Commercial Bank and the said contribution/ amount shall be released to the company along with the public issue proceeds.

However, where the promoters' contribution has been brought prior to the public issue and has already been deployed by the company, the company shall give the cash flow statement in the offer document disclosing the use of such funds received as promoters' contribution.

If the promoters' minimum contribution exceeds Rs.100 crores, the promoters shall bring in Rs.100 crores before the opening of the issue and the remaining contribution shall be brought in by the promoters in advance on pro-rata basis before the calls are made on public.

The promoters contribution is subject to lock-in-period of 3 years from the date of commencement of commercial production or date of allotment in the public issue whichever is later.

— Any contribution made by promoters over and above the minimum contribution shall be subject to a lock-in-period of 1 year in case of all the companies.

— In case of issue of securities by a company listed on a stock exchange for at least 3 years and having a track record of dividend payment for at least 3 immediately preceding years promoter's contribution shall not be subject to lock-in-period.

The entire pre-issue share capital, other than that locked-in as minimum promoters' contribution, shall be locked-in for a period of one year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

The logic behind the lock-in requirements is that promoters should have certain stake in the project for which they collect funds from from public, They should not get out of the project for a period of 3 years from the date of commencement of commercial production or date of allotment in the public issue whichever is later.

Q 54 Advantage Products Limited is a listed company with authorized issued and subscribed capital of Rs 25 crore divided into 2.50 crore equity shares of Rs 10 each. Paid up capital of the company is Rs 24 crore and call in arrears were Rs 1 crore. The Company wants to issue bonus shares in the 2:5. As a company secretary of Advantage Products Limited prepare a note highlighting the guidelines applicable to the company.

Ans. Bonus shares are issued by converting the reserves of the company into share capital. It is nothing but capitalization of the reserves of the company. There are some conditions which need to be satisfied before issuing Bonus shares*:*

1) Bonus shares can be issued by a company only if the Articles of Association of the company authorizes a bonus issue. Where there is no provision in this regard in the articles, they must be amended by

passing special resolution act at the general meeting of the company.
2) It must be sanctioned by shareholders in general meeting on recommendations of Board of Directors of company.
3) Guidelines issue by SEBI must be complied with. Care must be taken that issue of bonus shares does not lead to total share capital in excess of the authorized share capital. Since the authorized, issued and subscribed capital is Rs 25 crore , the authorized capital must be increased by amending the capital clause of the Memorandum of association. In this case the bonus issue will be Rs 9.6 crore .However, it is advisable to increase it by at least 10 crore.

4, If the company has availed of any loan from the financial institutions, prior permission is to be obtained from the institutions for issue of bonus shares. If the company is listed on the stock exchange, the stock exchange must be informed of the decision of the board to issue bonus shares immediately after the board meeting.

5.Only fully paid up bonus share can be issued. Partly paid up bonus shares cannot be issued since the shareholders become liable to pay the uncalled amount on those shares.

The bonus issue has to be made out of free reserves, the reserves by revaluation should not be capitalized. Bonus issue should not be made in lieu of dividend. There should be no default in respect to fixed deposits. Bonus issue should be made within 6 month from date of approval.

Q 55 what is the due diligence process of public issue of securities?

Ans. The Lead Managers state that they have examined various documents including those relating to litigation like commercial disputes, patent disputes, disputes with collaborators etc. and other materials in connection with the finalization of the offer document pertaining to the said issue; and on the basis of such examination and the discussions with the Company, its Directors and other officers, other agencies, independent verification of the statements concerning the objects of the issue, projected profitability, price justification, etc., they state that they have ensured that they are in compliance with SEBI, the Government and any other competent authority in this behalf.

When there are more than one lead managers involved in any public issue inter-se allocation of responsibilities must be specified. Accordingly due diligence responsibility

Will also be shared among them.

In case of fast track issue, the lead manager shall furnish a due diligence certificate in the prescribed format along with a copy of red herring prospectus, prospectus or letter of offer as the case may be.

In addition to the due diligence certificate to be furnished alongwith the draft prospectus, lead managers are also required to –

(i) Certify that all the amendments suggested/observations made by SEBI have been given effect to in the prospectus,

(ii) Furnish a fresh due diligence certificate at the time of filing the prospectus with the Registrar of Companies,

(iii) Furnish a fresh certificate immediately before the opening of the issue that no corrective action is needed, and

(iv) Furnish a fresh and final compliance certificate before the issue is closed for subscription.

Q 56 What are the disclosures to be made in the Directors' Report Under ESOP and ESPS Guide lines , 1999?

Directors' report shall contain the following disclosures:

(i) the total number of shares covered by the ESOP as approved by the shareholders;

(ii) the pricing formula;

(iii) options granted, options vested, options exercised, options forfeited, extinguishment or modification of options, money realised by exercise of options, total number of options in force, employee-wise details of options granted to senior managerial personnel and to any other employee who receive a grant in any one year of options amounting to 5% or more of options granted during that year.

(iv)Fully diluted earning per share (EPS) computed in accordance with International Accounting Standards

The Board of Directors are required to disclose either in the Directors Report or in the Annexure to the Director's Report, the following details of the Scheme:

(a) options granted;

(b) the pricing formula;

(c) options vested;

(d) options exercised;

(e) the total number of shares arising as a result of exercise of option;

(f) options lapsed;

(g) variation of terms of options;

(h) money realised by exercise of options;

(i) total number of options in force;

(j) employee-wise details of options granted to—

  (i) senior managerial personnel;

  (ii) any other employee who receives a grant in any one year of option amounting to 5% or more of option granted during that year;

(iii) identified employees who were granted option, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;

(k) diluted Earnings Per Share (EPS) pursuant to issue of shares on exercise of option calculated in accordance with Accounting Standard (AS) 20 'Earning Per Share'.

(l) Where the company has calculated the employee compensation cost using the intrinsic value of the stock options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognised if it had used the fair value of the options, shall be disclosed. The impact of this difference on profits and on EPS of the company shall also be disclosed.

(m) Weighted-average exercise prices and weighted-average fair values of options shall be disclosed separately for options whose exercise price either equals or exceeds or is less than the market price of the stock.

(n) A description of the method and significant assumptions used during the year to estimate the fair values of options, including the following weighted average information:

(1) risk-free interest rate,

(2) expected life,

(3) expected volatility,

(4) expected dividends, and

(5) the price of the underlying share in market at the time of option grant.

Until all options granted in the three years prior to the IPO have been exercised or have lapsed, disclosures shall be made either in the Directors' Report or in an Annexure thereto of the information specified above in respect of such options also and of the impact on the profits and on the EPS of the company if the company had followed the accounting policies specified in these guidelines in respect of such options.

Q 57. Explain the procedure of bidding in book building issues.

Ans. Book Building refers to the collection of bids from investors, which is based on an indicative price range, the issue price being fixed after the bid closing date. The principal intermediaries involved in a book building process are the company, Book Running Lead Manager (BRLM) and syndicate members who are intermediaries registered with SEBI and eligible to act as underwriters. Syndicate members are appointed by the BRLM. The book building process is undertaken basically to determine investor appetite for a share at a particular price. It is undertaken before making a public offer and it helps determine the issue price and the number of shares to be issued. The process begins with consultations between issuer company, the fund managers and the institutional investors. The above process is used to derive a price-band with a median point at which the demand for the company's stock is maximum. The issuer company, in tandem with the lead manager and the book runner, then fixes a price band for the issue. The investor is informed of the price band and he then bids at a price he thinks appropriate.

The bidding is done just like an open auction. The bidding period is kept open for at least five working days. The advertisement announcing the bidding contains the date of the opening of the offer and the closing date. The issue document contains the name of syndicate members who are entitled to receive the bids. Even the offer document contains the conditions of accepting the bids and the procedure of bidding. The bidding centers are electronically connected to maintain transparency and also eliminate the time lag between making and receiving of the bid. Individual and institutional investors have to place their bids only through the 'syndicate members' who have the right to vet the bids. The bids can be revised innumerable number of times before the issue closes. To maintain transparency in the bidding process, at the end of every bidding session the demand for the issue is shown in the graph format on the terminals.

Once the company gets various bids from the investor, it decides the final price at which it is willing to issue the stock. Since the company has already decided the quantum of funds it wants to raise it finalizes the number of shares it will now issue at the price fixed. The issue price for the placement portion and offer to the public shall be the same.

Q 58 Discuss s various formalities for the issue of bonus shares under SEBI Guidelines?

Ans. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 with regard to bonus issues by listed companies.

When a company has accumulated free reserves and is desirous of bridging the gap between the capital and fixed assets, it issues bonus shares to its equity shareholders. Such an issue would not place any fresh funds in the hands of the company. On the contrary, after a bonus issue it would become necessary for the company to earn more to effectively service the increased capital. The shareholder will, however, be benefitted by way of increased return on investment and increased number of shares in their hands.

The following conditions must be satisfied before issuing bonus shares:

(a) Bonus Issue must be authorised by the articles of the company. Such a provision is generally there in articles of almost all the companies as they adopt Table A of Schedule 1 of the Act (Regulation 96).

(b) Bonus Issue must be sanctioned by shareholders in general meeting on recommendation of the Board of directors of the company.

(c) Regulations issued by SEBI must be complied with.

(d) Authorised Capital must be increased where necessary.

The proposed bonus issue should not dilute the value or rights of the fully or partly convertible debentures.

The reserves created by revaluation of fixed assets should not be capitalised. These reserves are in fact capital reserves. However, if the assets are subsequently sold and the profits are realised, such profits could be utilised for capitalisation purposes. In fact the Government has in the past approved issue of bonus shares out of capital reserves representing realised capital profits

Bonus issue should not be made in lieu of dividend

If there are any partly paid-up shares outstanding on the date of allotment, these shares should be made fully paid-up before the bonus issue is made.

The company should not have defaulted in the payment of any interest or principal in respect of its fixed deposits, debt securities issued by it.

The company should not have defaulted in the payment of its statutory dues to the employees such as contribution to provident fund, gratuity, bonus

A company which announces bonus should implement bonus issue within fifteen days issue after the approval of board of directors and does not require shareholders' approval for capitalisation of profits or reserves for making bonus issue as per the Articles of Association and shall not have the option of changing the decision.

However, where the company is required to seek shareholders' approval for capitalisation of profits or reserves for making bonus issue as per the Articles of Association, the bonus issue should be implemented within two months from the date of the meeting of the board of directors wherein the decision to announce bonus was taken subject to shareholders' approval..

Q 59 Outline pre-issue and post issue management activities.

Ans Pre-Issue Activities:

1. Signing of MoU: Signing of MoU between the client company and the merchant banker-issue management activities marks the award of the contract. The role and responsibility of the merchant banker as against the issuing company are clearly spelt out in the MoU.
2. Obtaining appraisal note: An appraisal note containing he details of the proposed capital outlay of the project and the sources of funding is either prepared in-house or is obtained from external appraising agencies viz., financial institutions/banks etc. A project may be funded either by borrowing money from outside agencies or by injecting capital.
3. Optimum capital structure: The level of capital that would maximize the shareholders value and minimize the overall cost of capital has to be determined. This has to be done considering the nature and size of the project. Equity funding is preferable especially when the project is capital intensive.
4. Convening meeting: A meeting of the board of directors of the issuing company is convened. This is followed by an EGM of its members. The purpose of these meetings is to decide the various aspects related to the issue of securities. An application to RBI, seeking its permission is made, where capital

issue of shares is to be offered to NRIs/OCBs or FIIs.

5. Appointment financial Intermediary: Financial intermediaries such as Underwriters, Registrars, etc. have to be appointed. Necessary contracts need to be made with the underwriter to ensure due subscription to offer. Similar contracts when entered into with the Registrars to an issue, will help in share allotment related work, appointment of bankers to an issue for handling the collection of applications at various centers, printers for bulk printing of Issue related stationery, legal advisors and advertising agency. Simultaneously consents from various experts such as auditors, solicitors, legal advisors etc has to be obtained under Section 58 of the Companies Act, 1956.

6. Preparing documents: As part of the issue management procedure the documents to be prepared are initial applications of submission to those stock exchanges where the issuing company intends to get its securities listed. MoU with the registrar, with bankers to the issue, with advisors to the issue and co-managers to the issue, agreement for purchase of properties etc. This has to be sent for inclusion in the prospectus.

7. Due diligence certificate: The lead manager issue a due diligence certificate which certifies that the company has scrupulously followed all legal requirements has exercised utmost care while preparing the offer document and has made a true fair and adequate disclosures in the draft offer document.

8. Submission of offer document: The draft offer document along with the due diligence certificate is filed with SEBI. The SEBI in turn makes necessary corrections in the offer document and returns the same with relevant observations, if any within 21 days from the receipt of the offer document.

9. Finalization of collection centers: In order to collect the issue application forms from the prospective investors to lead manager finalizes the collection centers.

10. Filing with RoC: The offer document completed in all respects after incorporating SEBI observation is filed with Registrar of Companies (RoC) to obtain acknowledgement.

11. Launching the issue: The process of marketing the issue starts once legal formalities are completed and statutory permission for issue of capital is obtained. The lead manager has to arrange for the distribution of public issue stationary to various collecting banks, brokers, investors etc. The issue is opened for public immediately after obtaining the observation letter from SEBI which is valid for a period of 365 days from the date of issue. Conducting press conferences, brokers' meets, issuing advertisements in various newspapers and mobilizing brokers and sub-brokers marks the launching of a public issue. The announcement regarding opening of issue is also required to be made through advertising in newspapers, 10 days before the opening of the public issue.

12. Promoters' contribution: A certificate to the effect that the required contribution of the promoters has been raised before opening the issue, has to be obtained from a Chartered Accountant, and duly filed with SEBI.

13. Issue closure: An announcement regarding the closure of the issue should be made in the newspaper.

Post Issue activities

1. Collect figures of applications money from the controlling branches and as far as possible from other key branches, and send one day report to the SEBI. If the issue is subscribed obtain the certificates from the registrars for 30 per cent/100 percent (as the case may be) subscription and send the copy of the same to the SEBI and the regional stock exchange.

2. Write to the related stock exchange regarding closure of subscription list and advertisements declaring issue to be closed is published.

3. Compliance reports to the SEBI are to be sent. There were four different types of reports in case of subscribed public issues (7, 45, 70 and 90 days reports) and six reports in case of unsubscribed public issues (7, 30, 45, 60, 90 and 100 days reports). With effect from July 1995, only two post-issue reports for public issue are to be submitted (3 and 78 days post-issue monitoring reports) (Annexures 10 (a) and 10(b)). The merchant bankers have to keep the SEBI informed on important developments about the particular issues being lead managed by them during the intervening period of the reports.

4. The following are to be submitted the regional stock exchange:

(a) Statement of valid application

(b) Certificate of 90 percent subscription

(c) Bank certificates

5. Obtain letter from regional stock exchange approving basis of allotment for different categories.

6. Send copy of the letter of regional stock exchange to other exchanges where listing permission is sought.

7. Make public a copy of basis of allotment in two national dailies

8. Publish advertisements mentioning the various dates on which refunds/ allotments and listing were dispatched and sought respectively.

9. In case of delay by more than 78 days the lead manager should see that the interest for the delayed period is paid by the issuer.

10. Confirm that the listing formalities have been completed where the listing has been sought

11. Arrange for permission for dealing in securities

12. Confirm that various commissions/brokerage/payments to various intermediaries ranged by the merchant banker have been paid by the company.

13. Obtain RBI permission of allotment of shares/debentures to NRIs and FIIs.

Q 60 What are the obligations of capital market intermediaries under the prevention of money laundering Act, 2002?

Section 12 of the Prevention of Money Laundering Act, 2002 lays down following obligations on an intermediary:

Every banking company, financial institution and intermediary shall—

(A) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;

(B) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;

(C) verify and maintain the records of the identity of all its clients, in such a manner as may be prescribed.

Provided that where the principal officer of an Intermediary or financial institution or intermediary, as the case may has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed limit so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

The records shall be maintained for a period of ten years from the date of cessation of the transactions between the clients of the banking company or financial institution or intermediary, as the case may be.

Cash Transaction Report

The Prevention of Money Laundering Act, 2002 and the Rules thereunder require every intermediary to furnish details of the following cash transactions:

(A) All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency.

(B) All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month.

Suspicious Transaction Report

The Prevention of Money Laundering Act, 2002 and the Rules notified thereunder require every intermediary to furnish details of suspicious transactions whether or not made in cash. Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith –

(a) gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime; or

(b) appears to be made in circumstances of unusual or unjustified complexity; or

(c) appears to have no economic rationale or bonafide purpose; or

(d) gives rise to a reasonable ground of suspicioun that it may involve financing of the activities relating to terrorism.

Broad categories of reason for suspicion and examples of suspicious transactions for an intermediary are indicated as under:

Identity of Client

— False identification documents

— Identification documents which could not be verified within reasonable time

— Non-face to face client

— Doubt over the real beneficiary of the account

— Accounts opened with names very close to other established business entities

Suspicious Background

— Suspicious background or links with known criminals

Multiple Accounts

— Large number of accounts having a common account holder, introducer or authorized signatory with no rationale

— Unexplained transfers between multiple accounts with no rationale

Activity in Accounts

— Unusual activity compared to past transactions

— Use of different accounts by client alternatively

— Sudden activity in dormant accounts

— Activity inconsistent with what would be expected from declared business

— Account used for circular trading

Nature of Transactions

— Unusual or unjustified complexity

— No economic rationale or bonafide purpose

— Source of funds are doubtful

— Appears to be case of insider trading

— Investment proceeds transferred to a third party

— Transactions reflect likely market manipulations

— Suspicious off market transactions

Value of Transactions

— Value just under the reporting threshold amount in an apparent attempt to avoid reporting

— Large sums being transferred from overseas for making payments

— Inconsistent with the clients apparent financial standing

— Inconsistency in the payment pattern by client

— Block deal which is not at market price or prices appear to be artificially inflated/deflated

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Q 61. Define

(a) Out of money 1. For a call, when an option's strike price is higher than the market price of the underlying asset.

2. For a put, when the strike price is below the market price of the underlying asset.

(b) Call option Basically, an option that would be worthless if it expired today Call option An option contract gives the buyer the right, but not the obligation to buy/sell an underlying asset at a pre-determined price on or before a specified time. The option buyer acquires a right, while the option seller takes on an obligation. It is the buyer's prerogative to exercise the acquired right. If and when the right is exercised, the seller has to honour it. The underlying asset for option contracts may be stocks, indices, commodity futures, currency or interest rates

What are the types of options?

Broadly speaking, options can be classified as 'call' options and 'put' options. When you buy a 'call' option, on a stock, you acquire a right to buy the stock. And when you buy a 'put' option, you acquire a right to sell the stock. You can also sell a 'call' option, in which, you will acquire an obligation to deliver the stock.

(C) strike price

the strike price (or exercise price) is a key variable in a derivatives contract between two parties. Where the contract requires delivery of the underlying instrument, the trade will be at the strike price, regardless of the spot price (market price) of the underlying instrument at that time.

Formally, the strike price can be defined as the fixed price at which the owner of an option can purchase (in the case of a call), or sell (in the case of a put), the underlying security or commodity.

STUDY X

VENTURE CAPITAL

Q 62 what is a venture capital? How does it operate?

Ans Venture capital is the capital that is invested in equity or debt securities (with equity conversion terms) of young unseasoned companies promoted by technocrats who attempt to break new path. It is a source of finance for new or relatively new, high risk, high profit potential products as the projects belong to untried segments or technologies. It is difficult for the promoters to obtain finance from conventional sources. The venture capitalists step-in to fill this gap. The venture capitalists are knowledgeable and sophisticated investors who come forward to face higher risks with the calculated hope of making much higher gains when the new projects succeed. They work on the theory that the greater the risk, the greater will be the profit. The success of a venture capital project depends on the care with which the projects are evaluated and selected for investment and the trust in the capabilities of the promoters in making a successs of their projects. Venture capitalists take faster decisions in appraising projects and releasing funds than Banks and FIs

Venture Capital is money provided by professionals who invest alongside management in rapidly growing companies; Venture Capital derives its value from the brand equity, professional image, constructive criticism, domain knowledge, industry contacts; they bring to table at a significantly lower management agency cost.

Q 63 What do you understand by the following in relation to venture capital funds:

(a) Incubators
(b) Angel Investors
(c) Private equity players?

Ans. The “venture funds” available could be form:

Incubators

An incubator is a hardcore technocrat who works with an entrepreneur to develop a business idea, and prepares a Company for subsequent rounds of growth & funding. EVentures, Infinity are examples of incubators in India.

Angel Investors

An angel is an experienced industry-bred individual with high net worth. Typically, an angel investor would invest only his chosen field of technology, take active participationin day-to-day running of the Company invest small sums in the range of USD 1-3 million not insist on detailed business plans sanction the investment in up to a month help company for "second round" of funding.

Private Equity Players

They are established investment bankers. They typically invest into proven/ established businesses. They have "financial partners" approach and invest between USD 5-100 million.

Q 64. What is a placement memorandum? List out its essential contents.

Ans

The venture capital fund established as a trust before issuing any units file a placement memorandum with SEBI which should give details of the terms subject to which monies are proposed to be raised from investors.

A venture capital fund established as a company should before making an offer inviting any subscription to its securities, file with SEBI a placement memorandum which shall give details of the terms subject to which monies are proposed to be raised from the investors.

The placement memorandum should contain the following, namely:

(i) details of the securities that are being offered;

(ii) details of investments that are proposed to be made;

(iii) details of directors of the company;

(iv) tax implications that are likely to apply to investors;

(v) manner of subscription to the securities that are to be issued;

(vi) manner in which the benefits accruing to investors in the securities are to be distributed; and

(vii) details of the asset management company, if any, and of fees to be paid to such a company.

The placement memorandum is to be issued for private circulation only after the expiry of twenty-one days of its submission to SEBI. However it has been provided that if within twenty one days of submission of the placement memorandum, SEBI communicates any amendments to the placement memorandum, the venture capital fund should carry out such amendments in the placement memorandum before such memorandum is circulated to the investors.

Amendments or changes to any placement memorandum already filed with SEBI can be made only if a copy of the placement memorandum indicating the changes is filed with SEBI and secondly within twenty one days of such filing, if SEBI has not communicated any objections or observations on the said amendments or changes.

Q 65 Explain briefly investment criteria for foreign venture capital investor.

Ans. Investment Criteria for a Foreign Venture Capital Investor

All investments to be made by foreign venture capital investors should be subject to the following conditions:

(a) it should disclose to SEBI its investment strategy.

(b) it can invest its total funds committed in one venture capital fund.

(c) it shall make investments as enumerated below:

(i) at least 66.67% of the investible funds should be invested in unlisted equity shares or equity linked instruments.

(ii) not more than 33.33% of the investible funds may be invested by way of:

(a) subscription to initial public offer of a venture capital undertaking whose shares are proposed to be listed;

(b) debt or debt instrument of a venture capital undertaking in which the foreign venture capital investor has already made an investment by way of equity.

(c) preferential allotment of equity shares of a listed company subject to lock in period of one year.

(d) the equity shares or equity linked instruments of a financially weak company or a sick industrial company whose shares are listed.

A "financially weak company" means a company, which has at the end of the previous financial year accumulated losses, which has resulted in erosion or more than 50% but less than 100% of its net worth as at the beginning of the previous financial year.

(e) Special Purpose Vehicles which are created for the purpose of facilitating or promoting investment in accordance with these Regulations.

The investment conditions and restrictions stipulated in clause (c) of regulation 11 shall be achieved by the Foreign Venture Capital Investor by the end of its life cycle.

(f) It shall disclose the duration of life cycle of the fund.

Q. 66 Discuss the norms for winding of venture capital scheme.

Ans, A scheme of a venture capital fund set up as a trust should be wound up if—

(a) the period of the scheme, if any, mentioned in the placement memorandum is over;

(b) in the opinion of the trustees or the trustee company, that the scheme should be wound up in the interests of investors in the units;

(c) if seventy five percent of the investors in the scheme pass a resolution at a meeting of unit holders that the scheme be wound up or if SEBI so directs in the interests of investors.

A venture capital fund set up as a company should be wound up in accordance with the provisions of the Companies Act, 1956. It should be wound up in accordance with the provisions of the statute under which it is constituted. The trustees or trustee company of the venture capital fund set up as a trust or SEBI of Directors in the case of the venture capital fund is set up as a company (including body corporate) should intimate SEBI and investors of the circumstances leading to the winding up of the Fund or Scheme.

No further investments should be made on behalf of the scheme so wound up on and from the date of intimation. Within three months from the date of intimation, the assets of the scheme should be liquidated, and the proceeds accruing to investors in the scheme be distributed to them after satisfying all liabilities.

Q 67. Write a note on Off shore venture funds

Offshore funds

Commonly there are two alternatives available to offshore investors participating in Indian venture capital investments. The offshore investors can either use an 'offshore structure' or a 'unified structure'.

Offshore structure

Under this structure an investment vehicle, which could be a LLC or an LP organized in a jurisdiction outside India, makes investments directly into Indian portfolio companies. There would generally be an offshore manager for managing the assets of the fund and an investment advisor in India for identifying deals and to carry out preliminary due-diligence on prospective investment opportunities. Unified structure

This structure is generally used where domestic (ie Indian) investors are expected to participate in the fund. Under this structure, a trust or a company is organized in India. The domestic investors would directly contribute to the trust whereas overseas investors pool their investments in an offshore vehicle and this offshore vehicle invests in the domestic trust. The portfolio investments are made by the trust. The trust would generally have a domestic manager or an adviser. The offshore fund may also have its own offshore manager/adviser. This structure also enables the domestic manager to draw its share of carry directly from the trust.

The regulatory framework

In India, both domestic and offshore venture capital funds investing in India are regulated by the Securities and Exchange Board of India (SEBI). Until recently, SEBI only regulated the domestic VCFs vide its SEBI (Venture Capital Funds) Regulations, 1996 (as amended by SEBI (Venture Capital Funds (Amendment)) Regulations 2000) (VCF Regulations). However, in September 2000, SEBI announced a new set of guidelines enabling foreign venture capital and private equity investors to register with itself. The new guidelines are called the SEBI (Foreign Venture Capital Investors) Regulations, 2000 (FVCI Regulations)

Q 68 Explain the procedure for registration of venture capital fund in India

Ans. The applicant for registration as Venture Capital Fund should fulfil the following conditions:

(1) if the application is made by a company, -

(a) memorandum of association has as its main objective, the carrying on of the activity of a venture capital fund;

(b) it is prohibited by its memorandum and articles of association from making an invitation to the public to subscribe to its securities;

(c) its director or principal officer or employee is not involved in any litigation connected with the securities market which may have an adverse bearing on the business of the applicant;

(d) its director, principal officer or employee has not at any time been convicted of any offence involving moral turpitude or any economic offence.

(e) it is a fit and proper person.

(2) if the application is made by a trust, -

(a) the instrument of trust is in the form of a deed and has been duly registered under the provisions of the Indian Registration Act, 1908 (16 of 1908);

(b) the main object of the trust is to carry on the activity of a venture capital fund;

(c) the directors of its trustee company, if any, or any trustee is not involved in any litigation connected with the securities market which may have an adverse bearing on the business of the applicant;

(d) the directors of its trustee company, if any, or a trustee has not at any time, been convicted of any offence involving moral turpitude or of any economic offence;

(e) the applicant is a fit and proper person.

(3) if the application is made by a body corporate

(a) it is set up or established under the laws of the Central or State Legislature.

(b) the applicant is permitted to carry on the activities of a venture capital fund.

(c) the applicant is a fit and proper person.

(d) the directors or the trustees, as the case may be, of such body corporate have not been convicted of any offence involving moral turpitude or of any economic offense.

(e) the directors or the trustees, as the case may be, of such body corporate, if any, is not involved in any litigation connected with the securities market which may have an adverse bearing on the business of the applicant.

(4) the applicant has not been refused a certificate by SEBI or its certificate has not been suspended or cancelled under the Regulations 30.

The securities and Exchange Board of India will scrutinize application ,.The applicant should be given an opportunity to remove, within thirty days of the date of receipt of communication, the objections indicated by SEBI. On being satisfied that it is necessary to extend the period, SEBI can extend such period by such further time not exceeding ninety days and if it is meeting the criteria for registration it will grant the certificate. However, no application will be refused unless the applicant is given an opportunity to be heard. The decision of SEBI to reject the application should be communicated to the applicant within thirty days. Any applicant whose application has been rejected cannot carry on any activity as a venture capital fund

Q 69 Explain the procedure for registration of venture capital fund in India

Ans. The applicant for registration as Venture Capital Fund should fulfil the following conditions:

(1) if the application is made by a company, -

- (a) memorandum of association has as its main objective, the carrying on of the activity of a venture capital fund;
- (b) it is prohibited by its memorandum and articles of association from making an invitation to the public to subscribe to its securities;
- (c) its director or principal officer or employee is not involved in any litigation connected with the securities market which may have an adverse bearing on the business of the applicant;
- (d) its director, principal officer or employee has not at any time been convicted of any offence involving moral turpitude or any economic offence.
- (e) it is a fit and proper person.

(2) if the application is made by a trust, -

- (a) the instrument of trust is in the form of a deed and has been duly registered under the provisions of the Indian Registration Act, 1908 (16 of 1908);
- (b) the main object of the trust is to carry on the activity of a venture capital fund;
- (c) the directors of its trustee company, if any, or any trustee is not involved in any litigation connected with the securities market which may have an adverse bearing on the business of the applicant;
- (d) the directors of its trustee company, if any, or a trustee has not at any time, been convicted of any offence involving moral turpitude or of any economic offence;
- (e) the applicant is a fit and proper person.

(3) if the application is made by a body corporate

- (a) it is set up or established under the laws of the Central or State Legislature.
- (b) the applicant is permitted to carry on the activities of a venture capital fund.
- (c) the applicant is a fit and proper person.
- (d) the directors or the trustees, as the case may be, of such body corporate have not been convicted of any offence involving moral turpitude or of any economic offense.
- (e) the directors or the trustees, as the case may be, of such body corporate, if any, is not involved in any litigation connected with the securities market which may have an adverse bearing on the business of the applicant.

(4) the applicant has not been refused a certificate by SEBI or its certificate has not been suspended or cancelled under the Regulations 30.

The securities and Exchange Board of India will scrutinize application ,.The applicant should be given an opportunity to remove, within thirty days of the date of receipt of communication, the objections indicated by SEBI. On being satisfied that it is necessary to extend the period, SEBI can extend such period by such further time not exceeding ninety days and if it is meeting the criteria for registration it will grant the certificate. However, no application will be refused unless the applicant is given an opportunity to be heard. The decision of SEBI to reject the application should be communicated to the applicant within thirty days. Any applicant whose application has been rejected cannot carry on any activity as a venture capital fund

STUDY XV

DEBT MARKET

Q 70. What is asset securitization?

Ans. Asset securitization is a financial instrument of structured finance in which loan interest and receivables are packed and sold in the form of ABS securities. Asset securitization maximizes capital & minimizes risk due to its diversification nature.

This is the process which helps create a financial instrument by combining other financial assets and then marketing them to investors. Again, in this process certain assets from the balance sheet of a company get separated and are used as collateral for the issuance of securities. The securitized assets like commercial papers, notes or bonds are typically sold through special purpose vehicle (SPV) in order to provide funding.

Asset securitization differs from collateralized debt or traditional asset backed lending. Loans are sold to a third party through a special purpose vehicle (SPV) or trust. This SPV issues one or more debt instruments - asset backed securities whose interest and principal payments are dependent on the cash flows coming from the underlying assets.

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Q71. What is the bail out take over? Describe the procedure for bail out take over prescribed under SEBI(Substantial Acquisition nand Take Over Rules.

Ans. Bail out takeovers.

Substantial acquisition of shares in a financially weak company not being a sick industrial company, in pursuance of a scheme of rehabilitation approved by a public financial institution of a scheduled bank isreferred to as "the lead institution"). Is called bail out take over.

(2) The lead institution is responsible for ensuring compliance with the following

(3) It has to appraise the financially weak company taking into account the financial viability, and assess the requirement of funds for revival and draw up the rehabilitation package on the principle of protection of interests of minority shareholders, good management, effective revival and transparency.

(4) The rehabilitation scheme should also specifically provide the details of any change in management.

(5) The scheme may provide for acquisition of shares in the financially weak company in any of the following manner :

a. outright purchase of shares, or
b. exchange of shares, or
c. a combination of both :

The scheme as far as possible may ensure that after the proposed acquisition the erstwhile promoters do not own any shares in case such acquisition is made by the new promoters pursuant to such scheme.

"Fnancially weak company" means a company, which has at the end of the previous financial year accumulated losses, which has resulted in erosion of more than 50 per cent but less than 100 per cent of its net worth as at the beginning of the previous financial year that is to say of the sum total of the paid-up capital and free reserves.

Manner of acquisition of shares.

(1) Before giving effect to any scheme of rehabilitation the lead institution has to invite offers for acquisition of shares from at least three parties.

(2) After receipt of the offers under sub-regulation (1), the lead institution must select one of the parties having regard to the managerial competence, adequacy of financial resources and technical capability of the person acquiring shares to rehabilitate the financially weak company.

(3) The lead institution should provide necessary information to any person intending to make an offer to acquire shares about the financially weak company and particularly in relation to its present management technology, range of products manufactured, shareholding pattern, financial holding and performance and assets and liabilities of such company for a period covering five years from the date of the offer as also the minimum financial and other commitments expected of from the person acquiring shares for such rehabilitation.

Manner of evaluation of bids.

The lead institution is required to evaluate the bids received with respect to the purchase price or exchange of shares, track record, financial resources, reputation of the management of the person acquiring shares and ensure fairness and transparency in the process.

After making evaluation as aforesaid the offers received shall be listed in order of preference and after consultation with the persons in the affairs of the management of the financially weak company accept one of the bids.

Person acquiring shares to make an offer.

The person acquiring shares who has been identified by the lead institution, on receipt of a communication in this behalf from the lead institutionhas to make a formal offer to acquire shares from the promoters or persons in charge of the affairs of the management of the financially weak company, financial institutions and also other shareholders of the company at a price determined by mutual negotiation between the person acquiring the shares and the lead institution.

Lead institution may offer the shareholdings held by it in the financially weak company as part of the scheme of rehabilitation.

Person acquiring shares to make public announcement.

(1) The person acquiring shares from the promoters or the persons in charge of the management of the affairs of the financially weak company or the financial institution has tol make a public announcement of his intention for acquisition of shares from the other shareholders of the company.

(2) Such public announcement must contain relevant details about the offer including the information about the identity and background of the person acquiring shares, the number and percentage of shares proposed to be acquired, offer price, the specified date, the date of opening of the offer and the period for which the offer shall be kept open and such other particulars as may be required by the Board.

(3) The letter of offer should be forwarded to each of the shareholders other than the promoters or the persons in charge of the management of the financially weak company and the financial institutions.

(4) If the offer referred results in the public shareholding being reduced to 10 per cent or less of the voting capital of the company, the acquirer shall either—

a. within a period of three months from the date of closure of the public offer, make an offer to buy out the outstanding shares remaining with the shareholders at the same offer price, which may have the effect of delisting the target company; or
b. undertake to disinvest through an offer for sale or by a fresh issue of capital to the public which shall open within a period of six months from the date of closure of the public offer, such number of shares so as to satisfy the listing requirements.

(5) The letter of offer shall state clearly the option available to the acquirer under sub-regulation (4).

(6) For the purposes of computing the percentage referred to in sub-regulation (4), the voting rights as at the expiration of twenty days after the closure of the public offer shall be reckoned.

(7) While accepting the offer from the shareholders other than the promoters or persons in charge of the financially weak company or the financial institutions, the person acquiring shares shall offer to acquire from the individual shareholder his entire holdings if such holding is up to hundred shares of the face value of rupees ten each or ten shares of the face value of rupees hundred each.

Competitive bid.

. No personcan make a competitive bid for acquisition of shares of the financially weak company once the lead institution has evaluated the bid and accepted the bid of the acquirer who has made the public announcement of offer for acquisition of shares from the shareholders other than the promoters or the persons in charge of the management of the financially weak company.

Exemption from the operations of Chapter III.

(1) Every offer which has been made in pursuance of regulation 30 shall be accompanied with an application to the Board for exempting such acquisitions from the provisions of Chapter III of these regulations.

(2) For considering such request the Board may call for such information from the company as also from the lead institution, in relation to the manner of vetting the offers evaluation of such offers and similar other matters.

(3) Notwithstanding grant of exemption by the Board, the lead institution or the acquirer as far as may be possible, shall adhere to the time limits specified for various activities for public offer specified in Chapter III.

Acquisition of shares by a State level public financial institution.

Where a proposal for acquisition of shares in respect of a financially weak company is made by a State level public financial institution, the provisions of these regulations insofar as they relate to scheme of rehabilitation prepared by a public financial institution, shall apply except that in such a case the Industrial Development Bank of India, a corporation established under the Industrial Development Bank of India Act, 1964 (10 of 1964), shall be the agency for ensuring compliance with these regulations for acquisition of shares in the financially weak company.

Q72. Define Acquirer and Control

Ans.

a. acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer;
b. "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.
   Explanation: —
   i. Where there are two or more persons in control over the target company, the cesser of any one of such persons from such control shall not be deemed to be a change in control of management nor shall any change in the nature and quantum of control amongst them constitute change in control of management:
      Provided that the transfer from joint control to sole control is effected in accordance with clause (e) of sub-regulation (1) of regulation 3.
   ii. If consequent upon change in control of the target company in accordance with regulation 3, the control acquired is equal to or less than the control exercised by person(s) prior to such acquisition of control, such control shall not be deemed to be a change in control;]

Q 73 .Define persons acting in concert

a. person acting in concert" comprises,—
   1. persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company,
   2. Further, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :
      i. a company, its holding company, or subsidiary or such company or company under the same management either individually or together with each other;
      ii. a company with any of its directors, or any person entrusted with the management of the funds of the company;
      iii. directors of companies referred to in sub-clause (i) of clause (2) and their associates;
      iv. mutual fund with sponsor or trustee or asset management company;
      v. foreign institutional investors with sub-account(s);
      vi. merchant bankers with their client(s) as acquirer;

vii. portfolio managers with their client(s) as acquirer;

viii. venture capital funds with sponsors;

ix. banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer :
any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2 per cent of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2 per cent of the paid-up capital of the latter company.
Note : For the purposes of this clause "associate" means,—
   a. any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and
   b. family trusts and Hindu undivided families

STUDY XIII
DEPOSITORIES

Q.74 What is meant by demat?

Ans. The term Demat, in India, refers to a dematerialised account for individual Indian citizens to trade in listed stocks or debentures required for investors by The Securities Exchange Board of India SEBI In a demat account, shares and securities are held electronically instead of the investor taking physical possession of certificates. A Demat Account is opened by the investor while registering with an investment broker (or sub broker). The Demat account number is quoted for all transactions to enable electronic settlements of trades to take place.

Access to the Demat account requires an internet password and a transaction password as well as initiating and confirming transfers or purchases of securities. Purchases and sales of securities on the Demat account are automatically made once transactions are executed and completed.

The demat account reduces brokerage charges, makes pledging/hypothecation of shares easier, enables quick ownership of securities on settlement resulting in increased liquidity, avoids confusion in the ownership title of securities, and provides easy receipt of public issue allotments.

It also helps avoid bad deliveries caused by signature mismatch, postal delays and loss of certificates in transit. Further, it eliminates risks associated with forgery, counterfeiting, and loss due to damage stock certificates. Demat account holders also avoid stamp duty (as against 0.5 per cent payable on physical shares), filling up of transfer deeds, and obtain quick receipt of benefits like stock splits and bonuses.

Q 75 What is meant by depository participant?

Ans. In India, a Depository Participant (DP) is described as an agent of the depository. They are the intermediaries between the depository and the investors. The relationship between the DPs and the depository is governed by an agreement made between the two under the Depositories Act. In a strictly legal sense, a DP is an entity who is registered as such with SEBI under the subsection 1A of Section 12 of the SEBI Act. As per the provisions of this Act, a DP can offer depository-related services only after obtaining a certificate of registration from SEBI.

SEBI (D&P) Regulations, 1996 prescribe a minimum net worth of Rs. 50 lakh for stockbrokers, R&T agents and non-banking finance companies (NBFC), for granting them a certificate of registration to act as DPs. If a stockbroker seeks to act as a DP in more than one depository, he should comply with the specified net worth criterion separately for each such depository. No minimum net worth criterion has been prescribed for other categories of DPs; however, depositories can fix a higher net worth criterion for their DPs.

Q 76, Distinguish between depository and a custodian

"Depository" is generally (or historically) used to talk about central institutions (nearly utilities) that register the initial deposit of securities on request of the issuer. There are two depositories viz. NSDL and CDSL are formed under Depositories Act.. They are market infrastructure institutions.

- "Custodian" describes a firm (generally banks) that holds securities on behalf of depositng firms.They are registered with SEBI as a secondary market intermediary.

Depositories are meant for de-materialisation of securities. Custodians keep physical securities .

Q 77; What is immobilisation and dematerialisation

Immobilisation – Where physical share certificates are kept in vaults with the depository for safe custody. All subsequent transactions in these securities take place in book entry form. The actual owner has the right to withdraw his physical securities as and when desired. The immobilization of fresh issue may be achieved by issuing a jumbo certificate representing the entire issue in the name of depository, as nominee of the beneficial owners.

Dematerialisation – No Physical scrip in existence, only electronic records maintained by depository. This type of system is cost effective and simple and has been adopted in India.

Q 78. Distinguish between dematerisation and rematerialisation

Dematerialisation is a process by which the physical share certificates of an investor are taken back by the Company and an equivalent number of securities are credited his account in electronic form at the request of the investor. An investor will have to first open an account with a Depository Participant and then request for the dematerialisation of his share certificates through the Depository Participant so that the dematerialised holdings can be credited into that account. This is very similar to opening a Bank Account

Rematerialisation is exactly reverse process of dematerialisation. Investor gets back the secuirities in physical form and his account in electronic record is debited to that extent/

The difference between the two comes out best when we study the steps involved

Dematerialisation

1. Investor opens account with DP
2. Fills Dematerialisation Request Form (DRF) for registered shares
3. Investor lodges DRF and certificates with DP
4. DP intimates the Depository
5. Depository intimates Registrar/Issuer
6. DP sends certificates and DRF to Registrar/Issuer
7. Registrar/Issuer confirms demat to Depository
8. Depository credits investor a/c

Rematerialisation

1Client submits Rematerialisation Request Form (RRF) to DP
2.DP intimates Depository
3.Depository intimates the Registrar/Issuer
4.DP sends RRF to the Registar/Issuer
5.Registrar/Issuer prints certificates and sends to Investor
6.Registrar/Issuer confirms remat to Depository
7.Investor's account with DP debited

Q79. What is the eligibility criteria for voluntary delisting?

· Any consolidation of holdings or acquisitions by management by management by which Public Shareholding falls below minimum limits. The promoters may opt for delisting

.Eligibility criteria

Company may delist securities provided that –

· 1. Securities are listed for minimum 3 yrs,.

· 2. Provided further that exit opportunity is given to investors and exit price is determined by book building process for that opportunity.

Q 71 What is IPO grading?.

IPO Ratings, IPO Grading and IPO Ranking are among the few popular inputs investor's uses before applying in an initial public offerings IPO.

IPO Ratings are provided by various financial institutions & independent brokers. Few popular IPO Rating providers in India are Capital Market, Money Control, S P Tulsian's IPO recommendations etc.

IPO Grading is provided by SEBI approved rating agencies including CRISIL, CARE and ICRA. IPO Grading is designed to provide investors an independent, reliable and consistent assessment of the fundamentals of IPO Issuer Companies. As IPO Grading is decided much earlier then the issue price or issue dates are finalize (usually on the IPO filing) and they just tell about the fundamentals of the company, investors should not consider them as 'Buy IPO' or 'Skip IPO' recommendations.

Q 80 What is a green shoe option? Explain its significance

Green shoe Option (GSO). is a post listing price stabilizing mechanism, by which the company intends to ensure that the shares price on the Stock exchanges does not fall below the issue price.

The term “Green shoe option” derived its name from the company in US which excercised this mechanism for the first time.

The Securities and Exchange Board of India (SEBI) guidelines permit exercise of the green shoe option by a company making a public issue. A pre-issue contract is required to be entered into for this purpose with an existing shareholder — often one of the promoters. The guide lines requires the promoter to lend his shares to be used for price stabilisation to be carried out by a stabilising agent on behalf of the company.

The stabilizing agent can be one of the lead book runner and the stabilization period can be for a period of maximum period of 30 days from the date of allotment of shares.

The company then goes on to make allotment, including over allotment, to the extent it has exercised the green shoe option. The proceeds of the public issue to the extent it relates to such over-subscription permitted by the green shoe option is, however, kept in an escrow account to be used in the price stabilisation exercise (explained clearly how these funds are to be used).

Green shoe option is to be exercised in an IPO. The SEBI guideline requires the promoters of the company to lend some shares (the maximum upper limit being 15% of the total number of shares being issued through IPO) to the stabilizing agent whose duty is to monitor the post listing price of the companies share in the stock exchange.

How Green shoe option works?

The entire process of a greenshoe option works on over-allotment of shares. Say, for instance, that a company is planning to issue only 100,000 shares, but in order to utilize the greenshoe option, it actually issues 115,000 shares, in which case the over-allotment would be 15,000 shares. However the point that the company does not issue any new shares for the over-allotment should be noted.

The 15,000 shares used for the over-allotment are actually borrowed from the promoters with whom the stabilizing agent enters into a separate agreement. For the subscribers of a public issue, it makes no difference whether the company is allotting shares out of the freshly issued 100,000 shares or from the 15,000 shares borrowed from the promoters. Once allotted, a share is just a share for an investor.

For the company, however, the situation is totally different. The money received from the over-allotment is required to be kept in a separate bank account (which is GSO bank Account) .

The main job of the stabilizing agent begins only after trading in the share starts at the stock exchanges.

In case the shares are trading at a price lower than the offer price, the stabilizing agent starts buying the shares by using the money lying in the separate bank account. In this manner, by buying the shares when others are selling, the stabilizing agent tries to put the brakes on falling prices. The shares so bought from the market are handed over to the promoters from whom they were borrowed.

In case the newly listed shares start trading at a price higher than the offer price, the stabilizing agent does not buy any shares.

Then how would he return the shares? At this point, the company by exercising the green shoe option issues new shares to the stabilizing agent, which are in turn handed over to the promoters from whom the shares were borrowed

STUDY XVI

RESOURCE MOBILISATION IN INTERNATIONAL CAPITAL MARKET

Q 81 . Write a note on FCCB

Ans. International offering may made by companies for tapping the international capital markets are foreign Currency convertible bonds (FCCBs)

The FCCBs are unsecured, carry a fixed rate of interest and an option for conversion into a fixed number of equity shares of the issuer company. Interest and redemption price (if conversion option is not exercised) is payable in dollars. Interest rates are very low by Indian domestic standards. FCCBs shall be denominated in any freely convertible Foreign Currency. However, it must be kept in mind that FCCB issue proceeds need to conform to ECB end use requirements.

FCCBs have been popular with issuers. Local debt markets can be restricted with comparatively short maturities and high interest rates.

Q82. Write a note on Overseas Depository bank

Ans Overseas Depository Bank

It is the bank which is authorised by the issuing company to issue Depository Receipts against issue of ordinary shares or Foreign Currency Convertible Bonds of issuing company.

Q 83 List out various approvals required for Global Depository Receipts and documentation there for.

Ans. Approvals required for issue of GDRs

The issue of GDRs/FCCBs requires the Approval of a Board of Directors, shareholders, "In principle and Final" approval of Ministry of Finance, Approval of Reserve Bank of India, In-principle consent of Stock Exchange for listing of underlying shares and In-principle consent of Financial institutions

1. Approval of Board of Directors

2. Approval of Shareholders

A special resolution under Section 81(1A) of the Companies Act, 1956 is required to be passed at a duly convened general meeting of the shareholders of the company. In case of Euro optionally convertible debentures, resolution is also required to be passed under Section 81(3)(b). Approvals under Sections 94, 16 and 31 of the Companies Act, 1956 may also be obtained, if required

3. Approval of Ministry of Finance—"In Principle and Final"

   In case of FCCB issue exceeding US $ 100 million, the company needs to apply Ministry of Finance for approval private placement of ADR/GDR will also not require prior approval provided the issue is lead managed by investment banker.

4. (Approval of Department of Company Affairs

   The issuer company requires approval from Deptt. of Company Affairs under Section 81(3)(b), where the convertible bonds are being issued, which after such conversion are likely to increase the subscribed capital of the company.

   Approval as to compliance of Section 187C, non-applicability of provisions relating to prospectus and Section 108 for transfer of shares are also sought for.

5. Approval of Reserve Bank of India

   The issuer company has to obtain approvals from Reserve Bank of India under circumstances specified under the guidelines issued by the concerned authorities from time to time.

   RBI vide its press release dated January 20, 2000 granted general permissions to make an international offering of rupee denominated equity shares of the company by way of issue of ADR/GDR.

   FCCB covered under the automatic route requires no RBI approval.

   FCCB issue which exceeds USD 50 million but does not exceed 100 million need to apply to RBI.

6. In-principle consent of Stock Exchanges for listing of underlying shares

7. In-principle consent of Financial Institutions

   Where term loans have been obtained by the company from the financial institutions, the agreement relating to the loan contains a stipulation that the consent of the financial institution has to be obtained. The company must obtain in-principle consent on the broad terms of the proposed issue.

Q84 What do you understand by offering circular under Euro issues

Offering Circular is a mirror through which the prospective investors can access vital information regarding the company in order to form their investment strategies. It is to be prepared very carefully giving true and complete information regarding the financial strength of the company, its past performance, past and envisaged research and business promotion activities, track record of promoters and the company, ability to trade the securities on Euro capital market.

The Offering Circular should be very comprehensive to take care of overall interests of the prospective investor. The Offering Circular for Euro-issue offering should typically cover the following contents:

(i) Background of the company and its promoters including date of incorporation and objects, past performance, production, sales and distribution network, future plans, etc.

(ii) Capital structure of the company-existing, proposed and consolidated.

(iii) Deployment of issue proceeds.

(iv) Financial data indicating track record of consistent profitability of the company.

(v) Group investments and their performance including subsidiaries, joint venture in India and abroad.

(vi) Investment considerations.

(vii) Description of shares.

(viii) Terms and conditions of global depository receipt and any other instrument issued along with it.

(ix) Economic and regulatory policies of the Government of India.

(x) Details of Indian securities market indicating stock exchange, listing requirements, foreign investments in Indian securities.

(xi) Market price of securities.

(xii) Dividend and capitalisation.

(xiii) Securities regulations and exchange control.

(xiv) Tax aspects indicating analysis of tax consequences under Indian law of acquisition, membership and sale of shares, treatment of capital gains tax, etc.

(xv) Status of approvals required to be obtained from Government of India.

(xvi) Summary of significant differences in Indian GAAP, UK GAAP and US GAAP and expert's opinion.

(xvii) Report of statutory auditor.

(xviii) Subscription and sale.

(xix) Transfer restrictions in respect of instruments.

(xx) Legal matters etc.

(xxi) Other general information not forming part of any of the above

A copy of the Offering Circular is required to be sent to the Registrar of Companies, the Securities Exchange Board of India and the Indian Stock Exchanges for record purposes.

O 85 Discuss the end use of external commercial borrowings under the approval route.

Ans. (1) ECB can be raised only for investment [such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), implementation of new projects, modernization/expansion of existing production units] in real sector - industrial sector including small and medium enterprises (SME) and infrastructure sector - in India. Infrastructure sector for the purpose of ECB is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport (vi) industrial parks (vii) urban infrastructure (water supply, sanitation and sewage projects) and (viii) mining, refining and exploration;

(2) Overseas direct investment in Joint Ventures (JV)/Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.

(3) The first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares;

(4) ECB can be rasied by corporates engaged in the development of integrated township as defined by Ministry of Commerce and Industry, DIPP, SIA (FC Division). Integrated township includes housing, commercial premises, hotels, resorts, city and regional level urban infrastructure facilities such as roads and bridges, mass rapid transit systems and manufacture of building materials. Development of land and providing allied infrastructure forms an integrated part of township's development. The minimum area to be developed should be 100 acres for which

norms and standards are to be followed as per local bye-laws/rules. In the absence of such bye-laws/rules, a minimum of two thousand dwelling units for about ten thousand population will need to be developed.

(5) Buyback of FCCB subject to terms and conditions.

End-uses not Permitted

(i) Utilisation of ECB proceeds is not permitted for on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate except banks and financial institutions eligible.

(ii) Utilisation of ECB proceeds is not permitted in real estate. However, the term real estate excludes development of integrated township as defined by Ministry of Commerce and Industry, DIPP, SIA (FC Division) .

(iii) Utilisation of ECB proceeds is not permitted for working capital, general corporate purpose and repayment of existing Rupee loans.

STUDY XVII

INDIAN DEPOSITORY RECEIPTS

Q 86. Write a note on Indian Depository Receipt.

Indian Depository Receipt means any instrument in the form of a depository receipt created by Domestic Depository in India against the underlying equity shares of issuing company. “Domestic Depository” means custodian of securities registered with SEBI and authorised by the issuing company to issue Indian Depository Receipts.
Overseas Custodian Bank means a banking company which is established in a country outside India and has a place of business in India and acts as custodian for the equity shares of issuing company against which IDRs are proposed to be issued by having a custodial arrangement or agreement with the Domestic Depository or by establishing a place of business in India

The Central Government vide its powers conferred by clause (a) of sub-section (1) of section 642 read with section 605A of the Companies Act, 1956, notified Companies (Issue of Indian Depository Receipts) Rules, 2004. These rules are applicable only to those companies incorporated outside India, whether they have or have not established any place of business in India.

STUDY XVIII

INVESTOR PROTECTION

Q 87 Write a note on ombudsman in the stock market

"Ombudsman" means any person appointed under SEBI (Ombudsman) Regulations, 2003 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 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.

Q 88. What do you mean by investor protection? Investor protection is the responsibility of SEBI- Explain

Ans. Capital markets provide sources of funding for companies and in doing so, achieve more effective mobilization of investors' savings. In the capital market there are not only issuer companies but there are large number intermediaries. Since the entire market depend upon the savings and given the fact that individual investor as compared to other players is in a weaker position it becomes necessary to ensure that he is not taken for a ride. Investor confidence is vital for the success of the market.

The first objective of SEBI is protecting the interest of the investors in securities. SEBI as a market regulator ensures that it ensures that fit and proper persons are allowed function in the market. Section 12 of the SEBI Act, provides that no intermediary can function unless it is registered with SEBI. SEBI has issued different t regulations for each of the market intermediaries which prescribe capital adequacy norms and also fit and proper person requirements. It makes regulations for their operations and puts them under surveillance mechanism. SEBI Act provides for their inspection and investigation. Huge penalties and prosecution provisions have established deterrents

SEBI has also setup office of Ombudsman, powers and functions of Ombudsman, procedure for redressal of Grievances and implementation of the award.

SEBI has made issue of Capital Disclosure Regulations to ensure that issuers make adequate and truthful disclosures so that the investors take informed decisions. SEBI ensures that issuers through the listing agreement that issuers make periodic and event based disclosures. These disclosures help the investors to take buy, hold or sell decisions. Periodic disclosures are also mandatory for the mutual funds.

Q 89 Discuss the role of stock exchanges in investor grievances.

Ans. The following are of investors' grievances for which complaints could be lodged with Stock Exchanges

In case of any public issue

Non-receipt of:

- Refund order
- Interest on delayed refund
- Allotment advice
- Share certificates
- Duplicates for all of the above
- Revalidations

The issuer company is required to keep a security deposit of 1% of the issue amount with stock exchanges which will be refunded only after satisfying that investors' grievances are resolved.

In case of a listed security

Non-receipt of the certificates after:

- transfer
- transmission
- conversion
- endorsement
- consolidation
- splitting
- duplicates of securities

Regarding listed

Debentures,

non-receipt of:

- interest due
- interest on delayed payment
- redemption proceeds

The investor can also approach the exchange for resolving the dispute through arbitration.

Exchange suspends trading or may delist a security in extreme cases. Before taking these hard steps show cause notices are issued by the exchange.

Q. 90 What is investor education ? Discuss role of SBI in investor education

Ans An increased need for financial education is felt on account of the increasing number of financial products, its complexity, importance of retirement savings, increased growth of secondary market. This 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. , 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.

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.

Q 91. Discuss briefly the provisions of SEBI(Prohibition of Manipulative and unfair Trade practices) Rules.

The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003.

Under these rules "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-

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

The rules make provision for prevention of trading ie buy, sell or otherwise deal in securities in a fraudulent manner. Further, they provide for Prohibition of manipulative, fraudulent and unfair trade practices such as a false statement made without reasonable ground for believing it to be true

The rules provide for appointing "Investigating Authority" means any officer of the Board not below the rank of Division Chief, authorized by the Board to undertake investigation under Section 11C of the Act;

The investigating authority has a right and powers of the court for summoning and examining the person on oath. After considering the report the Board may

a) Issue a warning or censure

(b) suspend the registration of the intermediary; or

(c) cancel of the registration of the intermediary