Securities Law

The e-Newsletter

An Effort of the National University of Advanced Legal Studies, Kochi

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From the Desk of the Director:

It is with great enthusiasm that the students at this University, at the Centre for Law and Development in particular, have taken the initiatives on Securities Law. We believe that if India has to roar and scale the heights the world over, that it aspires to, a good foundation has to be laid in the fields of law relating to markets, and more particularly the one of relevance here.

It requires efforts by policy makers, legislators, regulators, market players and other stakeholders to come together in defining the contours of the Securities Law arena. To be sure, it requires a real time redefining as per the requirements of times.

This initiative of the "*Securities Law – the e-Newsletter*" is to position itself as the one stop indicator of the real time developments with a brief but deep analysis. I am sure that the enthusiasm exhibited by the forces behind and the contributors of pieces would be acknowledged and appreciated adequately once the readers recognise the standard, contemporaneity and relevance of the content.

I would like to thank the Hon'ble Vice-Chancellor Prof. Dr. Rose Varghese and the members of faculty who have been pillars of strength. A special gratitude is due to all the students contributing to the initiatives.

I, on behalf of each well-wisher, place on record our appreciation on the endeavours put in by the students and wish the e-Newsletter great patronage, success and relevance in contributing to the knowledge of Securities Law to everyone.

Dr. Balakrishnan K.
Director, CLD

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BACK STABBING BY FRONT RUNNING: INDIAN PERSPECTIVE

Archana Iyer

"*The quickest predators on the planet swim in oceans of data, move through interconnected computer networks associated with electronic trading platforms, and can place bids and offers for future contracts faster than a human can blink, all the while looking for large trades to pick off.*" -- Gregory Scorpino

The phenomenon of 'front running' began to be debated assiduously in the wake of what the citizens of the finance world refer to as the epochal 'Black Monday', when on October 19, 1987, the stock markets around the world crashed, shedding a huge value in a very short time. The practice of front-running is first said to have appeared in the Chicago Board Operations Exchange (CBOE), the world's largest and first organized stock exchange, when in the 1970's, liquidity and institutional participation increased substantially as volume exploded, and which in turn developed a number of abuses with respect to listed options trading, including 'front-running' as identified by the United States' Securities and Exchange Commission in 1977.

Front Running is often defined as 'buying or selling of securities ahead of an anticipated large order, which is not known to the market, with a view to benefit from the subsequent price rise.' Another popular definition for front-running postulates, 'Front-running is a broker's or analyst's use of non-public information to acquire securities or enter into options or futures contracts for his or her own benefit, knowing that when the information becomes public, the price of the securities will change in a predictable manner.' Front running is not clearly defined by any law in India.

Front-running is closely related to the trade tactic of insider trading which is illegal, while done in breach of a fiduciary duty, in most of the jurisdictions. Insider trading is the malpractice of using unpublished price sensitive information in trading the shares of a company by an insider in the company. Insider trading is regulated by Securities and Exchange Board of India (SEBI) (Prohibition of Insider Trading) Regulations 2015.

Front running is prohibited primarily because an effective insider (without fiduciary duty) who has access to unpublished price sensitive information may misuse such information to manipulate the market and gain profits, thereby adversely affecting market integrity. Front running in India is currently regulated by SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

Regulation 6(b) of the former SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 stated that 'no person shall on his own behalf or on behalf of any person, knowingly buy, sell or otherwise deal in securities, pending the execution of any order of his client relating to the same security for purchase, sale or other dealings in respect of securities'. Regulation 4(2)(q) of the current Regulations states that, "Dealing in securities shall be deemed to be fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following namely:- (q) an intermediary buying or selling securities in advance of a substantial client order or whereby a future or option position is taken about an impending transaction in the same or related future or options contract."

Therefore, the 1995 Regulations prohibited 'any person' from indulging in front running whereas the term used in the 2003 Regulations is 'intermediaries'. Some of the persons envisaged as intermediaries in the 2003 Regulations include stock brokers, merchant bankers, portfolio managers, investment advisors, Foreign Institutional Investors, Asset Management companies etc.

The 2003 Regulations prevented SEBI and Securities Appellate Tribunal (SAT) from booking several persons on account of front running since they would not fall under the ambit of 'intermediaries' as stated in Regulation 4 (2) (q). In the case of *Dipak Patel v. Securities and Exchange Board of India,* SAT had held that the 2003 Regulations only barred front running by intermediaries and the same would not be applicable to any other person. The order also suggested that front running by non-intermediaries would not amount to market manipulation. In the instant case, Dipak Patel was a portfolio manager with Passport India Investment, a Mauritius based Foreign Institutional Investor (FII). SEBI alleged that Patel had worked with his relatives to indulge in front-running on stocks before his FII client placed large orders. The distinction between the provisions in the 1995 Regulations and 2003 Regulations was made, with respect to the use of the terms 'any person' and 'intermediaries' respectively in the case of persons involved in front running.

On the proposal of Mr. U.K. Sinha, Chairman of SEBI, the 2003 Regulations in the context of front-running, were proposed to be re-examined, to decide whether the aspects relating to front-running would require further strengthening or improvement. Thus, on September 6, 2013, an amendment to the 2003 Regulations was notified in the way of an 'Explanation' to Regulation 4(2) which reads as follows:

"For the purpose of this sub-regulation, for the removal of doubts, it is clarified that the acts or omissions listed on this sub-regulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of Reg. 3, notwithstanding that it is not included in this sub-regulation or is described as being committed only by a certain category of persons in this sub-regulation."

SAT diverged from the position taken by it in the *Dipak Patel Case,* in *Vibha Sharma & Anr. v. SEBI,* where the Tribunal held that 'front-running' even by a person other than an intermediary is illegal. The Tribunal held the following:

Liberal interpretation of concept of front-running – Definition of front running cannot be put to a straight – jacket formula since front running is always considered detrimental irrespective of whether it is done by an individual or an intermediary.

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Exchange of information – Jitender Sharma, the spouse of Vibha Sharma, an equity dealer in securities with Central Bank of India and Vibha Sharma, a day trader, exchanged information relating to future trades and on the basis of this information, Vibha Sharma gained profits.

Not mere Coincidence – Trades by Vibha Sharma was not coincidental especially since there was a 100% matching of trades between Vibha Sharma's sale orders and the Bank's purchase orders at a price significantly higher than Last Traded Price on 14 days, thereby gaining her undue profits.

The above mentioned judgment does not fully set a precedent for non-intermediaries being sanctioned under Reg. 4 (2) (q) for front running since Vibha Sharma was booked mainly under Reg. 3 of the 2003 Regulations for fraudulently dealing in securities.

One of the more recent decisions by SEBI on front-running was its impounding of unlawful gains worth nearly 15 crores from brokerage firm Sharekhan and 15 other entities with its order dated 31st Aug, 2015, when investigation revealed that the trades in the accounts of at least seven entities referred to as 'front runners' were in the nature of front-running the orders and trades of the 'Sterling Group' and the that the subsequent orders placed by the front-runners matched almost completely with the orders placed by the Sterling Group.

The Regulations provide for procedure for investigation and if the court is satisfied of the offence, take actions as given under Regulation 12 which includes suspending or cancelling the registration of the intermediary or take such actions so as to restore *status quo ante* as given under Reg. 11.

For effective prevention of front running and other fraudulent trade practices which adversely affect the market integrity and cause loses to the client companies, it is imperative that the application of the Regulations as a whole be extended to 'any person' engaging in fraudulent acts, not just to those indulging in front running. That is the most efficacious solution to keep the market predators at bay.

NEW ERA FOR START-UPS IN INDIA

By Nilima Rajdev and Paulose Abraham

The present century is characterized by innovation being the driving force of economies and these innovations are commercialized by startup companies. They are mushrooming at an active pace in India and the foremost requirement of a start up is funding. Funding can be obtained through listing shares in stock exchanges. Presently, most of the startups in India are funded by Angel Investors and Venture Capitalists. The companies who want to list are advised by Institutional Investors to list in overseas market due to the restrictions in the Indian markets. After the 2008 financial crisis, it was realized that the growth of the country depends largely on startups. SEBI has recognized the unique nature of these companies and identified the requirement of differential treatment to them. It is also recognized that if the capital raising process in India Is not made more sympathetic to these companies, they would be consumed by foreign stock exchanges. In order to create a favorable environment for these companies, SEBI has notified a new platform for Small and Medium Enterprises (SMEs) in India.

Need for a Different Platform: Already in the present, all major startups or companies that were startups have registered themselves in foreign jurisdictions, an example in this regard is Flipkart, therefore for the Indian economy to tap into these resources more laws need to be made which would favour these startups and promote and protect their interests at the same time to prevent these capital outflows. The fact is that these companies are unique in nature, and require different treatment. If the capital raising process in India is not made further relaxed for such issuers, they may be driven to list on stock exchanges outside India and this only leads to a larger loss to the Indian markets.

Requirements of Listing: Public Issue of shares include Initial Public Offer, further public Offer and Offer for Sale. Shares issued for public issue should comply with disclosure requirements in the prospectus under Section 26 of the Companies Act, 2013 and Companies (Prospectus and Allotment of Securities) Rules, 2014. The sources of promoter contribution and name and address of the Chief Finance Offer should be given in the prospectus. Particulars relating to management perception of the risk factor of the project, gestation period of the project, extent of progress made in the project and deadline for completion of the project must also be disclosed in the prospectus.

The requirements for a start-up would come under the requirements for a SME and it was covered under Chapter XB and Chapter XC of Securities and Exchange Board of India (Issue of Capital and Disclosure Regulations), 2009 and as per other schedules in ICDR Regulations. Currently the situation is as follows:

1. **Lock-in Requirements:** Presently, promoter or founder must hold twenty percent of post issue share capital for a period of three years from the date of listing in the institutional trading platform.
2. **Pricing:** The issue price is determined based on earnings per share and average return on net worth.
3. **Disclosure Requirements:** The offer document should be displayed on the website from the date of filing, the issuer, the merchant banker and the SME exchange where the specified securities offered through the offer document are proposed to be listed. All underwriting and subscription arrangements made by the merchant banker should be disclosed in the offer document. The minimum Application value of securities offered to a person should also be disclosed in the offer document. All details of arrangement of market making should also be disclosed in the offer document.

Further, there should be disclosure of the objects of the issue, inter-alia on the purpose of issue, means of financing such project, proposed deployment status of the proceeds at each stage of the project, Interest of promoters and directors, etc. ICDR provides for disclosure of the basis for issue price including disclosure of Earnings Per Share, Diluted Earnings Per Share, Price earnings ratio, pre-issue Average Return on Net Worth and other such details.

Proposed Changes by Alternative Capital Raising Platform: The propositions made by SEBI would only modify the present Institutional Trading Platform (ITP) system to form a platform for alternative capital raising. The modification would be regarding relaxation of certain requirements of a company to be listed.

Lock-in Requirements: The lock-in for all shareholders of entire pre-issue capital is to be limited to six months. Earlier the lock-in for promoters' shares had been limited to three years.

Pricing: It is proposed that startups may price their shares based on projections and any other parameters chosen by the startup.

Disclosure Requirements: The proposed guidelines permit disclosure of the objects in very broad terms such as "general corporate purpose". Further the proposed guidelines provide for disclosure of all criminal and regulatory actions, separate disclosure regarding claims related to direct and indirect taxes, policy for materiality shall be defined by the company and disclosed in the offer document. Complete details of the creditors should also be disclosed on the webpage of the company.

Companies where any person (individually or collectively with persons acting in concerns) who holds twenty five percent or more will be considered a professionally managed company and is eligible for listing in the existing main board. These companies though will have to abide by the compliances under ICDR Regulations as required and no exemptions given for SMEs will be available for them.

The conclusion we can draw is that the emergence of alternative capital markets, besides the already existing main ones, may be viewed as a positive institutional change. Overall what the proposed law is doing is that the requirements for listing have been considerably reduced

EXEMPTION OF PASSIVE INCREASES IN SHAREHOLDERS' VOTING RIGHTS FROM THE MANDATORY OFFER REQUIREMENTS.

By Akshay Dinesh Shah

The SEBI has recently issued a Discussion Paper on "Review of policy relating to forfeiture of partly paid-up shares – Amendments to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011". The capital market regulator proposes to include a new exemption whereby any increase in a shareholders' percentage on account of forfeiture of shares or unavailability of voting rights of other shareholders will not trigger a mandatory offer.

The issue here is that in case of partly paid up shares, the voting rights can be exercised by holder of shares only to the extent of those shares for which the amount is paid up, as per section 47, Companies Act 2013. Further, the 2013 Act by way of section 106 (1) allows for the articles of the company to provide that no member shall exercise voting rights for shares which are registered in his name for which any calls or sums payable by him remain unpaid.

The Table F of Schedule 1 of the Companies Act 2013 provides the procedure for forfeiture of partly paid up shares if a member fails to pay any call or installment on any call on the day appointed. In that case the Board of Directors may serve the shareholder with a notice and may forfeit such shares in respect of which notice has been served and not complied with.

Now, the prevention of voting rights in case of partly-paid shares and forfeiture of shares as discussed above will result in the increase of the remaining shareholders holding in the company in terms of percentage. A question then arises as to whether such incidental increase in the voting rights would trigger the mandatory offer requirements under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (referred to as "Takeover Regulations").

In the context of incidental increase in voting rights and mandatory offer requirements, it is important to note the ruling of the Hon'ble Securities Appellate Tribunal (SAT) in *Raghu Hari Dalmia & Ors v. SEBI* (2011). The SAT had ruled in November 2011 that the increase in voting rights of the appellants in a scheme of buy back of shares was not by reason of any act on their part but was incidental to buy back of shares of other shareholders.

It held that 'such a passive increase (in the) proportion of voting rights would not attract regulation 11(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Subsequently, the open offer obligations arising as a result of a buy back were brought under the scope of exemptions through the automatic route in the new SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011.

The Takeover Regulations, according to regulation 10 provide a general exemption from obligation to make an open offer in cases like rights issues, buybacks, etc. The regulations are silent on the aspect of increase in voting rights due to forfeiture or non-payment of shares.
SEBI, essentially proposes to amend the Takeover Regulations to include another exemption to cover such scenarios.

The proposed amendment is a laudable effort by SEBI to exempt "passive" increases in shareholding from the mandatory offer requirement. This is in line with the *Raghu Hari Dalmia* ruling of the SAT that incidental increase in voting rights "without a positive act" of an acquirer will not attract the mandatory offer requirements.

The amendment proposes to make only a single exemption in case of forfeiture but follows the same principle in *Raghu Hari Dalmia.* The SEBI should allow for exemptions in other cases of passive increases which are currently not covered explicitly under the exemptions.

SEBI PIT REGULATIONS 2015 AND 1992: A COMPARATIVE ANALYSIS

By *Devika Suresh* and *Aakash Kumbhat*

When it comes to defining the term "Insider", there is no unanimity in the laws of most major financial economies of the world. Most often, an insider is considered to be one who has access to "material price-sensitive non-public information of the company" in respect of its securities. Such persons generally range from being top-level executives such as the CEO, to service providers such as lawyers, chartered accountants, company secretaries and so on.

Thus a person is said to have committed the act of insider trading when, in possession of such information, he misappropriates the same for buying and selling securities of the concerned company at the cost of other investors so as to obtain better terms than those available to them.

In the absence of laws governing insider trading even after the liberalisation of the Indian economy, there arose an imminent need for regulatory measures. This led to the enactment of the SEBI Act, 1992 that established the Securities Exchange Board of India (SEBI) which outlawed insider trading by adopting the SEBI (Insider Trading) Regulations, 1992. However, the true legislative intent was not satisfied with these Regulations and thus these were amended in 2002 and renamed SEBI (Prohibition of Insider Trading) Regulations, 1992. Despite these changes, there still existed multiple technical lacunae which formed the basis for a total revision of the Regulations. These changes were brought about by the recommendations of the N.K. Sodhi Committee Report approved by the SEBI in 2014. Thus in 2015, SEBI adopted the *SEBI (Prohibition of Insider Trading) Regulations*, 2015, which came into force on 15/05/2015. Right from the definition of the pivotal term of 'insider', the regulations seek to bring about an era of change in the securities market by seeking to align it with the standards achieved by economically advanced jurisdictions.

The most notable feature of the Regulations of 2015 is the inclusion of certain notes at the end of individual Regulations which expressly set out the true legislative intent for which the provisions were formulated. These notes would definitely aid the regulatory bodies while interpreting the provision for its enforcement. It is thus a positive step in the direction of capturing the spirit of the legislature and supports the 'substance over form' approach.

The scope of the term 'insider' has been greatly widened by expanding the definition of a 'connected person'. The previous regulations covered a specific set of people under the definition of connected person. However, under the new regulations, such persons are said to include any person who is associated with the company (directly/ indirectly /through frequent communication with employees) that can reasonably put them in possession of unpublished price sensitive information (UPSI). The scope of 'connected persons' under the Regulations has been widened to include persons associated with the company in a contractual, fiduciary or employment relationship or having direct or indirect access to UPSI. It has also been added that a person must possess such information in the present and not in the past. Mere possession or access to such information would be necessary and the means through which this is received is not taken into consideration.

Further, the compliance officer is required to keep track of trading by employees and connected persons. Given the expanded scope of the term, this may prove to be a cumbersome task for the compliance officer. The position of a compliance officer is also a creation of the requirement under the new regulation, whereby he is to be responsible for compliance of policies, maintenance of records and overall supervision of the board of directors of the company or organization.

Unlike the 1992 regulation which deemed 'relatives' to be connected persons, the 2015 regulation introduces the term 'immediate relatives'. As per the definition provided, only those who consult a person for trading in securities or are financially dependent on him are included in this category.

The concept of unpublished price sensitive information (UPSI) has also been revamped. Unlike before, when information would remain 'unpublished' if it had not been published by the company or its agents, the new regulations seek to identify it with what is 'generally available' or not. 'Generally available' has been defined to include information that is readily available to the public on a non-discriminatory basis. The earlier regulations also had reference only to information about a company while the present definition extends to securities too.

'Trading' has been defined in the new regulations to mean and include 'subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities'. Since the term 'deal' has been used, even pledging or creation of security interest would come under the ambit of 'trading'.

The term 'working day' has been substituted with 'trading day' in the 2015 regulations to refer to days when the recognized stock exchanges are open for trading. The charge of insider trading has been extended to securities listed and proposed to be listed on stock exchanges. This is an expansion from the 1992 Regulations which only applied with respect to companies that were listed.

The Regulations, having recognised the practical reality of commercial transactions allows for firms to communicate UPSI in connection with contemplated transactions subject to certain conditions. Prospective investors could often require non-public information about a company in order to assess the merits of a particular transaction. In these situations, investors look to obtain the UPSI not for insider trading but for due diligence on a company's finances and business. Regulation 3(3)(i) thus provides an exception to Regulation 3(1) i.e. cases where an insider may communicate UPSI or cases where any person may procure UPSI from insider. While it provides that the exception would be in case of 'takeover' under SEBI Takeover Regulations, note given thereunder also speaks of 'mergers and acquisitions.

Further note indicates that the instance of 'takeover' under Regulation 3(3)(i) is only one of the species, by use of words 'such as'.

Regulation 3(3)(ii) covers cases where no open offer under Takeover Regulation is required (say in case of mergers and acquisition or change in control) the Board of Directors of company if of the opinion that the purpose of transaction (merger and acquisition) is in the interest of the company – then UPSI shall be disseminated in such manner as the Board of Directors decides, at least two trading days prior to the proposed transaction.

Further, certain conditions have been imposed to ensure that insider price sensitive information is not misused. Thus via the charging provision of Regulation 4, an insider is prohibited from trading in securities when in possession of UPSI. Proviso, thereto gives three exceptions or rather circumstances in which an insider is allowed to do so. The note annexed uses the words "*When a person who has traded in securities has been in possession of UPSI, his trades would be presumed* (**emphasis supplied**) *to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant* (**emphasis supplied**) *for determining whether a person has violated the regulation.*" This clearly indicates that a proceeding for an alleged commission of insider trading would totally disregard motive or *mens rea* on the part of the alleged actor as a factor to punish him. In case of connected persons, the onus to prove the absence of possession of UPSI is on those connected persons whereas it is on the SEBI in all other cases.

The 2015 regulations also provide for 'trading plans' through which a person can formulate such a plan, get it approved by the compliance officer and conduct trade accordingly after six months of public disclosure of the plan. This has been introduced as a relief for persons who may perpetually be in possession of UPSI and cannot trade.

Another newly introduced concept relates to disclosures by other connected persons. Any company listed on a stock exchange may mandate a connected person/class of connected persons to make disclosures relating to holdings or trading in securities in such forms and at such time intervals as they may determine.

The Board also has the under power Regulation 10 to issue sanctions in accordance with the provisions of the SEBI Act, 1992. Further, under Regulation 11, it can now issue directions through guidance notes or circulars to remove any difficulties in the interpretation or application of the provisions of these regulations.

The schedule attached to the regulations also mandate companies to formulate a code of conduct for regulating and monitoring trade by employees and connected persons. They are also required to ensure fair disclosure of material information. Compliance with these rules can prove to be a complicated process which may require a dedicated team just to monitor trading activities of employees.

By bringing about a well structured regime that also provides for due diligence exercises to be carried out effectively, the 2015 regulations offer significant changes which can greatly boost investor confidence and protection.

A COMMENT ON PROHIBITION OF INSIDER REGULATIONS 2015

By *Raviteja P.A.N.V.*

The domestic securities market regulator SEBI notified the Prohibition of Insider Trading Regulations in January 2015, which replaced the SEBI ([Prohibition of Insider Trading) Regulations, 1992. These new regulations, which are based on the recommendations of the N K Sodhi Committee, seek to enhance the ambit of insider trading and its prohibition. The new Regulations largely reflect the 1992 Regulations albeit with many additions.

These Regulations are applicable to Unpublished Price Sensitive Information (UPSI) in relation to a company, as well as securities listed or those proposed to be listed. Also, any person, whether related to the company or not, may come within the purview of these regulations if he is expected to have access or possess unpublished price sensitive information.

The Regulations define Unpublished Price Sensitive Information as any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available is likely to materially affect the price of the securities. Here, generally available information has been defined as *information which is available to the public on a non-discriminatory basis.*

The definition of "connected person" now includes any person who is or has during six months prior to the concerned act, has been associated with the company, including through frequent communication with its officers or as a director, officer, vendor and others with an access to unpublished price sensitive information. In addition the term now also includes immediate relatives, holding/subsidiary or associate company, mutual fund, stock exchange or clearing house official, banker and others.

The ambit of definition of term 'insider' has been significantly widened, according to which an insider is any connected person or any person in possession of or having access to unpublished price sensitive information.

The regulations for the first time provide a clear cut definition of "Trading" which means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell or deal in any securities. Also, the note appended clarifies that it is intended to curb the activities based on unpublished price sensitive information which is strictly not buying, selling or subscribing, such as pledging etc.

The regulations do not permit connected persons to trade when the trading window is closed on account of unpublished price sensitive information, usually upon the occurrence of certain events like declaration of financial results and is opened upon cooling-off period of 48 hour of relevant information becoming generally available.

The Regulations cast a mandatory duty on the Key Managerial Personnel, Promoters as well as employees of the company, to disclose the details of trading when its value crosses Rs. Ten Lakhs. Further, the board of directors of every listed company and market intermediary have to draw up a code of conduct to regulate, monitor and report trading by its employees and other connected persons in accordance with the regulations. However, companies with large shareholder and employee bases may find this exercise cumbersome as it would require dedicated resources just to monitor their trading activities.

The Regulations for the first time introduce the concept of a trading plan for insiders who are constantly in possession of Unpublished Price Sensitive Information, so as to ensure transparency. Under the trading plan, an insider who wishes to trade in securities should submit a trading plan in advance to the compliance officer for approval and upon its approval it has to be submitted to the Stock Exchanges where the securities of the company are listed. The trading can commence after 6 months from the public disclosure of the plan, which allows Unpublished Price Sensitive Information to become generally available. However, the note appended states that, this is only a statutory cool-off period and would not grant immunity from action if the insider were to be in possession of the same unpublished price sensitive information both at the time of formulation of the plan and implementation of the same.

The Regulations make it clear that, the trading plan shall not be for a period less than 12 months without overlap of any period for two consecutive trading plans, it has to set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and establish that trading in securities under plan shall not be for market abuse.

The Regulations also provide that a trading plan which has been approved by the Compliance Officer has to be implemented mandatorily and shall be irrevocable. In addition to which, no deviation is allowed with execution of any trade in securities outside the scope of trading plan.

However, there are certain issues which crop up due to the inclusion of large third-party communities under the ambit of term insider, the major one being that it will be impractical for the for listed companies to get disclosure compliance from them as even entities that normally operate outside the capital market may be required to formulate a code as envisaged under the Regulations depending on their exposure to unpublished price sensitive information. Also, it is an argument that, additional risks have been imposed on the Compliance officials as they are made responsible to oversee the trading activities of every individual who falls under the term 'insider', which also includes a large number of third parties.

The Regulations do not specifically provide for penalties. It is stated that the provisions of SEBI Act 1992 would be applicable. According to which, insider trading is publishable with a penalty of up to twenty-five crore rupees or three times the profit made out of insider trading, whichever is higher.

SEBI is also empowered to prohibit an insider from investing in or dealing in securities, declare violative transactions as void, order return of securities so purchased or sold.

The Regulations, also, prescribe that the management, in addition to the penalty by the regulator, can also initiate disciplinary action against violators with steps that can include wage freeze, suspension, ineligibility for future participation in stock options and withholding of promotions. The Guidance Note on Regulations issued by SEBI in August, 2015 provides further clarifications to aspects involving ESOPS, contra trade and pledging of securities.

Also, position with respect to trading by compliance officers has been clarified, according to which, if a compliance officer wishes to trade in securities, he has to inform and obtain the approval of the board of directors, on whom the power is conferred to stipulate necessary procedures

The Regulations aim to safeguard the interests of investors. They are no doubt, better equipped to ensure compliance and enforcement.

QUESTIONING SEBI'S DOMINANCE: AN ANALYSIS OF THE SECURITIES LAWS (AMENDMENT) ACT, 2014

By *Samyukta Ramaswamy and Sreelakshmi S.*

INTRODUCTION

Globalization and the booming IT sector have to a large extent accelerated the dissemination of secured information in the corporate sector. In an environment where the nation's economy and political scenario is largely influenced by the corporate world in ensuring financial stability to the country, it was essential to have a regulating authority to ensure the protection of its stakeholders. The Securities Exchange Board of India (SEBI) was established with this objective. This paper seeks to examine and critically analyze the increasing prominence of the Securities Exchange Board of India (SEBI) in the corporate sector with the enforcement of the Securities Laws (Amendment) Act, 2014. The paper delves into the several loopholes in the existing Act peeking into to the problem of insider trading. In addition to this, it also compares the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the aforesaid Act, in terms of efficacy to rectify the said loopholes.

THE SECURITIES LAW (AMENDMENT) ACT, 2014

The Securities Laws (Amendment) Act came as an aftermath of the landmark Sahara and Saradha scams which projected flaws and loopholes left by the then existing regulatory regime in the securities market transactions sector. The Saradha scam was a major financial scandal in the nation which resulted from a faulty ponzi scheme that was run by the aforementioned consortium of around 200 private companies. A ponzi scheme in itself is a fraudulent practice whereby the investors are paid returns from their own investments and not from the profits of the company.

The ripples of the Saradha scam were widespread. Thus taking note of the gravity of the situation, albeit the parliament not being in session, the President with his emergency law making powers promulgated an ordinance three times in a row. When the third one expired, an immediate meeting was tabled to pass a Bill in effect to the same and bring about an effective and efficient regulatory mechanism.

This resulted in the passing of the Securities Law (Amendment) Act, 2014 which worked at bringing in requisite changes to the SEBI Act of 1992, the Securities Contracts (Regulation) Act of 1956 and the Depositories Act of 1996 to plug the loopholes in all the three acts. However the new amendment act gave unwarranted power to SEBI in the regulatory regime of the securities market.

QUESTIONING SEBI'S DOMINANCE AND THE LOOPHOLES OF THE AMENDMENT ACT

As per section 11 C (8) of the SEBI Act, 1992, for the seizure of any suspicious documents to be destroyed on reasonable grounds, the SEBI had to seek permission from a first class Judicial Magistrate, but later on when the ordinances were promulgated, these impediments were done away with and the seizure became a matter of cakewalk for the SEBI. This meant that the control bridle was in the clutches of the executives. However the Act came in with a welcome change by bringing back the erstwhile procedures, but the latest position of the government to appoint a special judge or magistrate from where the sectoral regulator could obtain permission for such seizures.

Secondly, the new Act granted SEBI, the powers to utilize the disgorged funds in a manner they like. Generally under such situations, the priority must be to use it to recoup the innocent investors.

Thirdly, the new Act has brought in an addition in the form of section 15 JB (4), which states that no appeal will lie against any order passed by SEBI in the settlement proceedings. This renders it unconstitutional because in case a party receives an adverse order, it leaves them with no scope of going for an appeal. Therefore the only option left with the individual is to either file a writ petition under Art. 226 or challenge this provision as unconstitutional, since it stands in violation of his/her fundamental rights.

Shifting our focus to the problem of insider trading alone, it is a known fact that the act in itself is not just illegal but puts the investors or shareholders at a great economic disadvantage too. Keeping in mind the detrimental impact of insider trading on the financial markets as well as the stakeholders, India took its first step in regulating insider trading through the constitution of a committee under the chairmanship of Mr P. J Thomas. Based on the recommendations of this committee, the Securities and Exchange Board of India (SEBI) acting as a watchdog over the markets enacted the SEBI Act, 1992 as well as the SEBI (Prohibition of Insider Trading) Regulation 1992 to protect the interests of these stakeholders and the financial market in its entirety. This regulation, however, proved to be very vague in its content and failed to provide a clear understanding of the law giving rise to a large number of loopholes that has already been covered in the above paragraphs. The reminder of this article aims to make a comparative analysis between the 1992 SEBI regulations and the recent SEBI (Prohibition of Insider Trading) Regulations enacted as of May 2015.

To begin with, the new regulations widened the scope of applicability of the regulation to any and all entities dealing in securities whether they are listed on the Stock Exchange or to be listed. Thus, the new regulation seeks to bring within its ambit securities that have been issued by any entity that is amenable to price discovery through an inter-play of supply and demand on a public platform while the previously existing regulation was restricted only to companies that were listed on the Stock Exchange.

Secondly, the definition of an 'insider' under the 2015 regulation has been narrowed down to 'connected persons' and only those who are 'in possession of unpublished price-sensitive information (UPSI)' as opposed to the earlier regulation which also included within its scope 'persons deemed to be a connected person'. A 'connected person' as defined in the earlier regulation included only the director or a person deemed to be a director or any other person for that matter having a business or a professional relationship with the specific company for which there exists a reasonable expectation to have access to UPSI in relation to the entity. However, upon looking into the provisions of the new regulations, an observation that can be drawn is that the scope of 'connected person' has been widened to include not only directors but any individual who is associated with the entity in any capacity whatsoever by virtue of being in a contractual, fiduciary or even an employment relationship, but also public servants having statutory positions as well as immediate relatives- those who are financially dependent on such individual.

By narrowing down this definition, the new regulation brings about more clarity in the law. Furthermore, by limiting the scope of the law to only those 'in possession' in comparison to anyone who had 'received' or 'had access' to such UPSI, the criteria for arriving at who an insider is has been narrowed down keeping in mind that even this simple definition could be over-reaching. With regard to generally available information, the clause 'UPSI', had too wide a connotation in the previous regulation. This issue was redressed in the current regulation where 'generally available information' is considered to be any information that has the capability of being evaluated by any individual without constituting a breach of law.

A change has also been brought about in the recent regulation with respect to communication of information to include prohibition on disclosing and procuring UPSI and also trading on them, that is to say, the mere disclosure of UPSI irrespective of whether it has been utilised to gain an unfair advantage constitutes an offence whereas the previously existing regulation failed to clearly mention whether the offence of insider trading is committed only by trading on unpublished information or on immediate receipt of such information. Thus, the term 'dealing' has been replaced with the term 'trading' so as to reduce its scope to just market abuse.

One of the most note-worthy changes though is the inclusion of defences to the offence of insider trading. It has been newly prescribed that the charge of insider trading must be done in a clear, precise and in a reasonable manner and must also apply the concept of *mens rea* that was absent in the former regulation.

The newly executed regulation also introduced the concept of 'Trading plans' for the first time, where insiders who are in possession of UPSI's all year round are required to formulate a trading plan to be approved by a Compliance officer after which it would be publicly disclosed and mandatorily implemented. This was to provide insiders, a safe harbour under the regulations and to facilitate compliant trading especially towards acquisitions. However, the mandate that a trading plan must necessarily be implemented is subject to debate in light of the fact that proving cases of insider trading would be more difficult.

Lastly, with regard to the disclosure of information, the previous regulation stipulated the mandatory disclosure of information by anyone who enjoyed more than 5% voting rights in the company whereas the current one extended it to immediate relatives as well. Apart from this, it also contains an enabling provision that allows listed companies to seek information from those to whom UPSI's are provided.

In conclusion, SEBI's dominance over the corporate sector proves to be a cause for concern in light of the recent Insider Trading Regulations containing provisions that has extended the scope of liability of persons falling within the purview of this law as has been mentioned in the above paragraphs, by virtue of which, powers conferred upon SEBI to regulate cases dealing with securities has increased enormously, thus creating a worrisome scenario that could potentially lead to its complete domination over the corporate sector in India.

PONZI SCHEMES: A COMPARATIVE TAKE ON INDIA AND THE USA

By *Sanjana Banerjee* and *Athif Ahmed Nazeem*

An investment fraud involving a large number of investors is a rude wake up call for the regulating authorities. Unfortunately though it is often too late for the common investor. This article focuses on one such investment fraud - Ponzi schemes and compares how the current legislation and regulatory bodies in India and the U.S.A deal with these schemes and what India can learn from it.

PONZI SCHEME

A Ponzi Scheme is a scam investment in which investors are lured with exceptionally high returns. It uses their money in the form a Collective Investment Scheme (CIS) to pay off their existing investors i.e they use the old investors to bring more investors in and then they use the new investors to pay back the old one's. Once the liability reaches beyond a certain limit and the company is not able to pay back the money to the investors, it eventually disappears with the investors' money.

The rationale behind investing in a Ponzi scheme is 'higher than usual' returns. Usually the promised rate of return is high enough to excite the investor's urge but not so high as to arouse suspicion among the investors. For example the well-known Madoff scam promised the investors a return of around 10% and promised in perpetuating the fund. One Madoff fund concentrating in Standard & Poor's 500 Stock Index reported an annual return of 10.5% for 17 years. Even during the collapse of financial markets around November 2007 the fund reported an annual return of 5.6% which admittedly was not exceptionally high but was unusually consistent

COMPARISON BETWEEN INDIA AND USA

REGULATIONS IN THE USA

Post Madoff, which was a turning point in the legislative framework, Investment advisers were given prime importance. Various regulations were incorporated in the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act). One of the key changes made to this Act was the investment adviser registration and the elimination of a long standing and frequently used exemption from registration frequently referred to as 'private adviser exemption' . The Act also lays down specific guidelines as to whether an investment adviser is eligible to register himself with the State or the SEC. The Dodd Frank Act also authorises the SEC to promulgate rules that would impose a 'fiduciary duty' on the investment advisers and their broker dealers and to also exercise a standard of care. A uniform fiduciary standard of care should be implemented. This was a reference point for further legislations and helped the SEC make the brokers more accountable

The SEC constituted a number of departmental changes such as taking of 'surprise tests' and reviews by third parties in order to ensure that no scam is being committed. However, monitoring hedge funds individually is hardly sustainable. One method of regulation involved evolving OTC Contracts with the establishment of organized markets and clearing those corporations whenever they exceed some predefined thresholds. Increased transparency was given more emphasis than regulation. USA established a mechanism of transparency by making it mandatory for the hedge funds to report, comprising of a mandatory registration disclosing any conflict of interest and containing information. The Commission also suggested Third Party Reviews for those registered investment advisers who are handling their client's assets but have not kept them with an independent firm. A third party would be given the responsibility to submit a report in which they will have to mention in detail the safeguards that are being taken to protect the investor's assets. These exams will determine whether a fraud is being committed or not by not only concentrating on the obvious signs of fraud but also looking out for subtle signs.

REGULATIONS IN INDIA

The Indian Legislature has sadly been extremely slow on the uptake and as a result many well known ponzi schemes have been able to thrive undetected. The most controversial of which is the Saradha Scam in West Bengal in which the group collected around ₹ 2,460 Crore from over 1.7 million depositors before it collapsed in April 2013. In response to this the State Government announced a relief fund to the tune of ₹500 Crore (US$75 million) they made no attempt to bring back the money . There is no current legislation in India, which issues guidelines for the court or a special tribunal for recovery.

When it comes to tackling Ponzi Schemes as a whole, the new Securities Law Amendment Act (2014) is a progressive step to help the SEBI fight Ponzi Schemes. The major Changes brought about by the Amendment Act are as follows:

The State depositor protection act empowers district magistrates to take action against any entity collecting unauthorised deposits by way of searching its premises, attaching property — both personal and acquired through the collected sums — and even order arrest of the accused.

Besides the state depositor protection act, as directed by the Financial Sector Development Council (FSDC) (that is headed by the Union Finance Minister), State level co-ordination for exchange of information is to be set up. The new provisions of the amended SEBI Act made it mandatory for money pooling schemes collecting in excess of Rs.100 crore to register with SEBI unless already registered with another regulatory agency.

India, just like the USA and several other countries has been a victim to Ponzi schemes. The biggest one to come to light being the Saradha Scam that was actually a Ponzi Scheme under the name of a Chit Fund. Chit Funds are perfectly legal under the Chit Funds Act 1982, a central statute or various state-specific acts. A chit fund cannot declare in advance the return an individual is likely to make, given the way its structured. With Saradha chit fund and its promoter Sudipta Sen, that wasn't case. Returns were promised to prospective investors in advance.

India is one of the few countries in the world which allows and actively promotes NBFC's (Non Banking Financial Companies) to raise money from the public. While this does have some advantages it makes regulating money flow much harder. The RBI and SEBI have been blamed for their ineffectiveness when it comes to regulating the activities of the Non-banking Financial Companies (NBFCs) like Saradha. The RBI has come up with several regulations to tighten the grip on these NBFCs. It has introduced high entry capital barriers, provisioning on bad loans and mandatory capital reserve. But the real challenge here is to regulate unregistered chit funds and financial schemes which are operating across the country under different names and in different formats.

The only control mechanism for chit funds is State level supervision that often begins and ends on paper. According to a July 2014 report in Mint there are 30,000 chit funds alone in India which are registered with the State Registrars but more than often States do not have the necessary mechanism to control such chit funds. Panels and Commissions consisting of experts from the RBI, SEBI and financial analysts have been set up to deal with this matter from time to time. However there is no permanent advisory body looking at the progress and making the states accountable. Various methods have been discussed to stop unregistered funds from looting people. The committee constituted in 2011 suggested tightening of a regulatory overview by creation of a common registrar for all states and also making it mandatory for chit funds to be rated.

Last year a SEBI Bill was also moved in the Rajya Sabha to tackle Ponzi schemes. Some regulations stated were the illegal profits arising out of such schemes will be confiscated. But this aspect seems redundant since, it is difficult to trace the money in such schemes. India has a Securities and Appellate Tribunal (SAT) which is equipped to deal with cases relating to Ponzi schemes however there is only one Tribunal which is overburdened with cases and the lack of experts with a comprehensive understanding of the law is indeed troubling.

Even with the recent Amendment Act there has been no real change as of now. A special court is to be constituted in Mumbai especially for dealing with such cases. Red-tapism is very common in SEBI and so the Bill also sought to reduce the time taken for granting permission in the case of necessary preventive action. By undergoing departmental changes and also adopting a mechanism for quantitative assessment like the USA, India can regulate the Ponzi scheme market. The 'surprise tests' and third party reviews could also be adopted by India to check such suspicious schemes. No exemptions should be given to investment advisers and they should be registered with SEBI.

The results will show only if more Tribunals and Courts are set up, they get wider powers and most importantly technical training is given to employees, so that the internal body becomes more efficient. The perpetrators of these schemes are always thinking of new ways to dupe the people only if the regulatory bodies adapt accordingly can future scams like these be prevented.

GOLD MONETIZATION AND SOVEREIGN GOLD BONDS SCHEMES

By *Neethu Roy* and *Naveena Varghese*

The Union Finance Minister, Shri Arun Jaitley, in the Union Budget 2015-16, has initiated 2 schemes, namely Sovereign Gold Bonds Scheme and Gold Monetization Scheme. He stated that stocks of gold in India were estimated to be over 20,000 tonnes, but this gold is neither traded, nor monetized properly. There is no existing scheme whereby the gold that is stored unused in households can be mobilized; thereby remaining as a dead investment. The Gold Monetisation Policy is also an attempt to decrease the import of the yellow metal, which ranks second on the import expenditure bill after oil.

Gold Monetization Scheme

This scheme allows the depositors of gold to earn interest in their metal accounts, and help the jewelers to obtain loans in their metal account. Moreover, banks would also be able to monetize this gold. As of now, the scheme is to operate in selected cities due to infrastructural barriers.

When a customer brings in gold to the counter of a specified agency or bank, he may be asked to complete a KYC process. Then, the purity of gold is determined by Purity Testing Centers (Hallmarking Centers, certified by the Bureau of Indian Standards) in a very transparent test, which can be witnessed by the customer. After this, the bank will open a Gold Savings Account for the customer and credit the quantity of gold into this account. The Purity Verification Centre will also inform the bank about the deposit made. The bank will commit to paying an interest to the customer which will be payable after 30 or 60 days of opening of the Gold Savings Account. The deposited gold will be lent by banks to jewelers at an interest rate a little higher than that paid to customer.

Both principal and interest to be paid to the depositors will be valued in gold and the interest rate is to be decided by banks. The tenure of gold deposits is proposed to be for a minimum of one year. Further, a minimum quantity of 30 grams is fixed, and this can be in the form of bullion or jewelry, so as to encourage even small deposits. Customer will have the choice to take cash or gold on redemption. Tax exemptions may be provided to the customer after due examination. The banks may use this mobilized gold as a part of their CRR/SLR requirements with the RBI, may sell it to generate foreign currency, may convert this into coins so that these can be sold to customers, or be lent to jewelers.

Sovereign Gold Bonds Scheme

Sovereign Gold bonds can be used as collateral for loans and can be sold or traded on stock exchanges as they are available in demat form. These sovereign gold bonds are issued by the RBI and can be bought only by resident individuals or entities. The cap on bonds that may be bought by an entity would be at a suitable level, not more than 500 grams per person per year. The bonds will be issued in denominations of 2, 5, 10 grams of gold or other denominations. The rate of interest on these bonds will be decided based of the price of gold in the market.

The tenor of the bond could be for a minimum of five to seven years and will be available in both demat and paper form. These bonds can be used as collateral for loans. The Loan to Value ratio is to be set equal to ordinary gold loan mandated by the RBI from time to time. The benefit to the Government is in terms of reduction in the cost of borrowing, which will be transferred to the Gold Reserve Fund.

It is hoped that this Scheme will ultimately help in maintaining the country's Current Account Deficit within sustainable limits.

These bonds can be easily sold and traded at exchanges for investors who wish to leave the market soon. On maturity, the redemption of the gold bonds is possible only through rupee amount. The investor will receive the market value of the gold. Hence, the volatility risks will be borne by the investor. In order to ensure wide availability, the bond will be marketed through post offices/banks/NBFCs and by various brokers/agents (including NSC agents) who will be paid a commission. The government aims to issue bonds worth Rs. 13,500 crore or the equivalent of 50 tonnes of gold in the first year.

Conclusion

However, analysts are apprehensive of how the Indian public will welcome the gold monetization policies, given the sentimental value attached to the yellow metal. 1000 tonnes of gold imported annually are used as a hedge against price movements in other financial assets or consumed in jewelry form. It is expected that the policy with its potential to translate gold savings into economic investments will promote India's macro economy.

DEMUTUALISATION OF STOCK EXCHANGES- AN INDIAN PERSPECTIVE

By *K. Nidhi Mohan and Gagan Rajpurohit*

Demutualisation is the process by which a member owned organisation or association becomes a shareholder owned corporation. In the Indian context demutualisation is spoken of in relation to stock exchanges. A stock market is in the simplest of words a market through which stock buyers connect with stock sellers. The primary purpose of a stock exchange is to provide liquidity to the sellers of stocks by enabling trading of securities and derivatives. While there are numerous stock exchanges in India the majority market share is controlled primarily by the Bombay Stock Exchange and the National Stock Exchange. Stock Exchanges are nowadays an organized marketplace, either a corporation or a mutual organization, where members of the organization gather to trade company stocks or other securities but it was not always so.

Indian stock market is one of the oldest stock market in Asia. The origin of stock markets in India dates back to the 18th century when the East India Company used to transact loan securities. In 1956, the Government of India recognized the Bombay Stock Exchange as the first stock exchange in the country under the Securities Contracts (Regulation) Act 1956. In the year 1992 the Indian stock market was hit by the Harshad Mehta Scam (wherein there was deliberate manipulation of the market by a stock exchange member). This gave rise to demands that the BSE convert to an electronic automated system. Foot dragging by the BSE lead to the creation of the National Stock Exchange (NSE), which created an electronic marketplace. The NSE was established in 1992 but was registered as a tax paying company and only in the year 1993 was it recognised as a stock exchange under the Securities Contracts (Regulation) Act 1956. Subsequently it began trading in the year 1994. It soon became the largest stock exchange in India in terms of daily turnovers and number of trades. This provided the BSE incentive to hurriedly convert to an electronic automated form of trading.

The key difference between NSE and the BSE is that while the Bombay Stock Exchange is the oldest stock exchange in India it only became demutualised in 2007 whereas the National Stock Exchange has been a demutualised corporation since its inception. The origin of stock exchanges and the manner in which they have evolved has been the reason why they have traditionally been not for profit mutual associations owned by members. The concept of self-regulation under regulatory oversight emerged.

However this established order of things is under scrutiny and the demutualisation of stock exchanges and adoption of separate governance seems to be the way forward. A survey of exchanges conducted by the London based BTA Consulting, representing over half the trading liquidity of the world, revealed that 79% of the exchanges were considering demutualisation. Both demutualised and mutual exchanges shared the belief that their future success lies in demutualisation. In the light of this it is important to understand the key motives behind corporatisation and demutualisation.

Competition among the exchanges has increased, and not just at the national level, but at the regional and global levels as well. In the new environment, exchanges are no longer monopolies but must now be run as efficient business enterprises therefore strengthening the need to turn corporate and demutualise.

The system of trading members of a stock exchange being owners gives rise to a conflict of interest. There could arise situations where the decisions taken by a stock exchange could be detrimental to the trading interests of the members. This encourages flouting of regulations or even worse members entrusted with regulation attempting to derive gains from their position . A demutualised exchange is rightly seen as fairer and more effective in enforcement of regulation due to the separation of its management from the ownership. Traditional stock exchanges members resist the changes in the structuring and functioning of stock exchanges in response to advancements in technology. An example would be the resistance to electronic automated trading by the Chicago stock exchange members because they have paid a substantial fee to trade on the floor of the exchange and they fear for their survival with the advent of electronic trading. The more practical cost friendly and customer friendly alternative of electronic trading was turned down without sufficient cause. A demutualised stock exchange run by entrepreneurs for a profit motive ensures more professionalism and flexibility which is essential for survival in a dynamic world.

The adoption of a corporate and demutualised existence also places in the hands of the stock exchanges greater capital. Public listing of the shares of a stock exchange has however been criticised by many and has been likened to a snake swallowing its own tail. The authors of this article however find no faults with such an endeavour by stock exchanges.

The conversion of member-owned, non-profit organizations into profit-driven investor-owned corporations through demutualisation will give exchanges access to capital that can be used both for investment in new technology and for participation in the ongoing consolidation of the industry. In the process of providing the exchanges with capital, demutualisation is also expected to strengthen the corporate governance of the exchanges. It is in keeping with these aims that the Securities and Exchange Board of India (SEBI) made the demutualisation of stock exchanges in India mandatory. This was done subsequent to the recommendation by a committee headed by Justice Kania in 2003.

Pursuant to this strict action has been taken against stock exchanges that have failed to demutualise and turn corporate. The Hyderabad Stock exchange was derecognised in 2007 after it failed to dilute at least 51% of its equity share capital to the public other than shareholders with trading rights and SEBI withdrew the recognition granted to the Delhi Stock Exchange after several issues including false certification regarding demutualisation process came to light in November 2014. Demutualisation is the emerging trend amongst stock exchanges around the world with our neighbour Pakistan being the most recent entrant in late 2015 to early 2016..

It is the author's opinion that demutualisation is the way forward and is certainly a step in the right direction.