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MINISTRY OF FINANCE  
DEPARTMENT OF ECONOMIC AFFAIRS

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

ESTIMATES COMMITTEE  
1992-93

TWENTY-FIFTH REPORT

TENTH LOK SABHA



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SABHA SECRETARIAT  
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# TWENTY-FIFTH REPORT

## ESTIMATES COMMITTEE (1992-93)

(TENTH LOK SABHA)

MINISTRY OF FINANCE  
(DEPARTMENT OF ECONOMIC AFFAIRS)

### ROLE OF CONTROLLER OF CAPITAL ISSUES— DEVELOPMENT OF CAPITAL MARKET AND STATUS OF SMALL INVESTORS

Action Taken by Government on the recommendations contained in the  
Seventh Report of Estimates Committee



*Presented to Lok Sabha on 29th April, 1993*

LOK SABHA SECRETARIAT  
NEW DELHI

*April 29, 1993/Vaisakha 9, 1915(S)*

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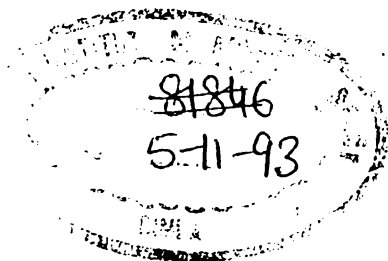
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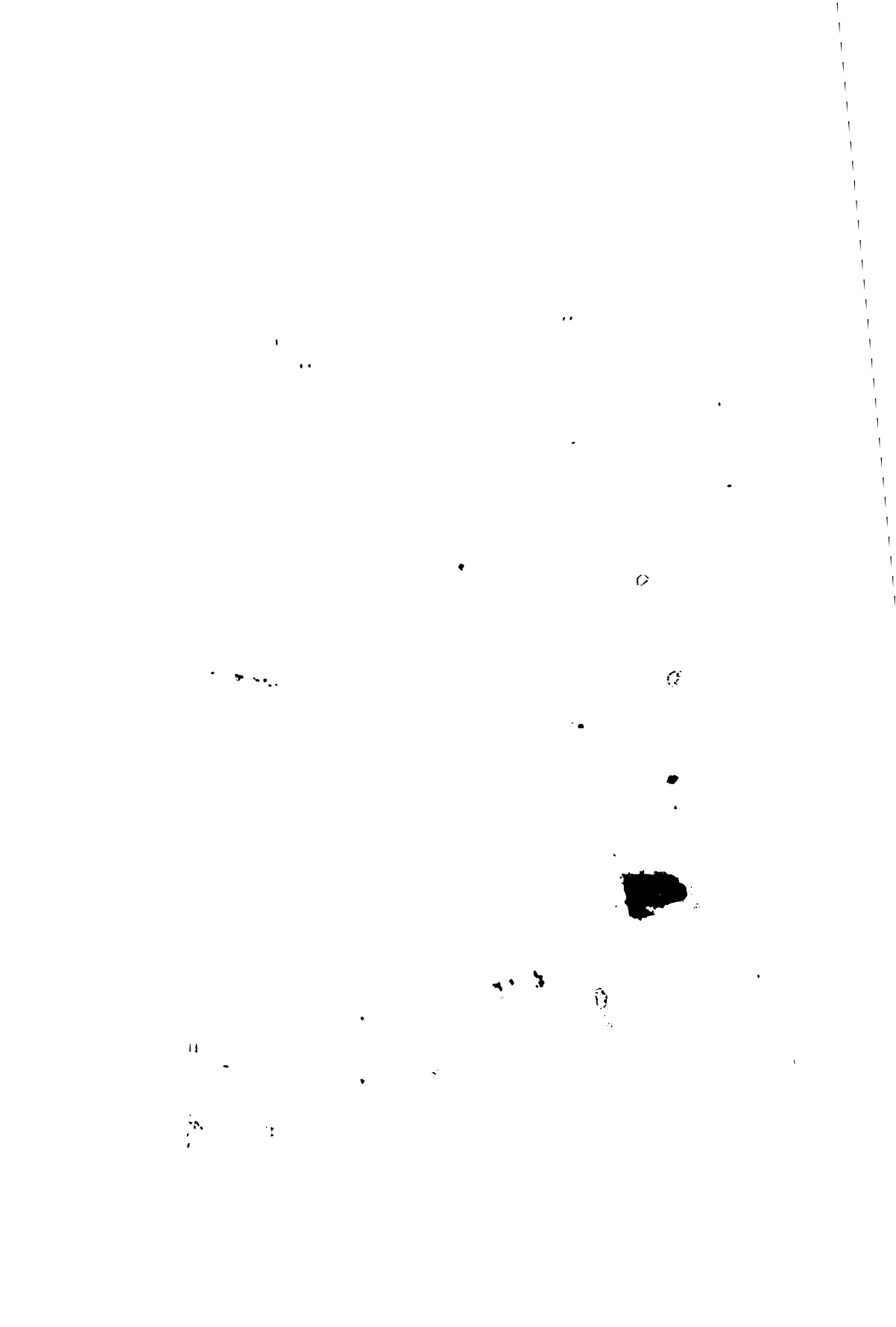
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CORRIGENDA TO THE 25TH REPORT  
OF ESTIMATES COMMITTEE(1992-93)

<u>Sl.No.</u>	<u>Page</u>	<u>Para No.</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
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COMPOSITION OF THE ESTIMATES COMMITTEE  
(1992-93)

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Shri Manoranjan Bhak~~ta~~ — Chairman

MEMBERS

2. Shri Abraham Charles
3. Shri Rajendra Agnihotri
4. Shri Mumtaz Ansari
5. Shri Ayub Khan
6. Shri Sartaj Singh Chhatwal
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COMPOSITION OF SUB-COMMITTEE ON ACTION TAKEN  
REPORTS OF ESTIMATES COMMITTEE (1992-93)

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3. Shri Sriballav Panigrahi
4. Shri Rupchand Pal
5. Smt. Girija Devi
6. Shri Ebrahim Sulaiman Sait
7. Shri Rajendra Agnihotri



## INTRODUCTION

I, the Chairman of the Estimates Committee having been authorised by the Committee to submit the Report on their behalf, present this 25th Report on action taken by Government on the recommendations contained in the 7th Report of the Estimates Committee (10th Lok Sabha) on the Ministry of Finance (Department of Economic Affairs) — Role of Controller of Capital Issues — Development of Capital Market and Status of Small Investors.

2. The 7th Report was presented to Lok Sabha on 27th April, 1992 and the Government furnished their replies indicating action taken on the recommendations contained in the Report on 30th December, 1992. The Draft Report was considered and adopted by the Committee on 31st March, 1993. The Minutes of the sitting form Part II of the Report.

3. The Report has been divided in the following Chapters:—

- I. Report
- II. Recommendations/Observations which have been accepted by Government
- III. Recommendations/Observations which the Committee do not desire to pursue in view of Government's replies
- IV. Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee.
- V. Recommendations/Observations in respect of which final replies of Government are still awaited.

4. An analysis of action taken by Government on the recommendations contained in the 7th Report of Estimates Committee (10th Lok Sabha) is given in Appendix. It would be observed that out of 50 recommendations made in the Report, 36 recommendations i.e. 72% have been accepted by the Government and the Committee do not desire to pursue 1 recommendation i.e. about 2% in view of Government's replies. Replies have not been accepted in respect of 9 recommendations i.e. about 18% and interim replies in respect of 4 recommendations i.e. 8% have been furnished by the Government.

NEW DELHI;  
*April 27, 1993*  

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*Vaisakha 7, 1915(S)*

MANORANJAN BHAKTA  
*Chairman,*  
*Estimates Committee*

## CHAPTER I

### REPORT

1.1. This Report of the Estimates Committee deals with Action Taken by Government on the recommendations contained in their 7th Report (Tenth Lok Sabha) Ministry of Finance (Deptt. of Economic Affairs) -Role of Controller of Capital Issues- Development of Capital Market and Status of Small Investors which was presented to Lok Sabha on 27th April, 1992.

1.2 Action Taken notes have been received in respect of all the 50 recommendations contained in the Report.

1.3 Action Taken notes on the recommendations of the Committee have been categorised as follows:—

- (i) Recommendations/Observations which have been accepted by Government:

Sl.Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22, 27, 28, 29, 30, 33, 34, 36, 38, 42, 43, 44, 45, 46, 47, 48 and 50

(Chapter II — Total 35)

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of Government's replies:

Sl. No. 32

(Chapter III — Total 1)

- (iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee:

Sl. Nos. 6, 16, 19, 23, 24, 25, 26, 37, 39 and 49)

(Chapter IV — Total 10)

- (iv) Recommendations/Observations in respect of which final replies are still awaited:

Sl. Nos. 31, 35, 40 and 41

(Chapter V — Total 4)

1.4 The Committee will now deal with action taken by Government on some of the recommendations.

#### **Recommendations (Sl. No. 6, Para 2.17)**

1.5 The Committee feel that cost considerations notwithstanding minor stock exchanges will certainly help in harnessing a large segment of untapped domestic savings for the development of economy and therefore.

recommend that Government should encourage financial institutions to diversify their operations into minor stock exchanges. The Financial Institutions must at the same time ensure broad basing the list of members through whom the operations are conducted.

1.6 In its action taken reply the Ministry of Finance stated:—

Unit Trust of India (UTI) has reported that, over the years, it has broadbased its secondary market operations covering more Stock Exchanges. As against 14 Stock Exchanges in 1989-90, operations have been extended covering 17 Stock Exchanges in 1991-92. UTI will continue to endeavour to broadbase its operations further.

1.7 SEBI has also expressed itself in agreement with the proposition that financial institutions must broadbase the list of members through which operations are conducted.

1.8 The concerned institutions have been requested to follow the advice.

**1.9 The Committee Government should encourage financial institutions to diversify their operations into minor stock exchanges. While the reply of the Ministry is about the stock exchanges in general it is silent on the question of 'minor stock exchanges'. The Committee on the other hand expected the Ministry to focus their action taken reply more on 'minor stock exchanges'. While reiterating their earlier recommendation the Committee would like to be apprised of the concrete action taken to encourage financial institutions for diversifying their operations into 'minor stock exchanges'.**

**1.10 The Committee further note that financial institutions have been advised to broad base the list of members through which the operations are conducted. The Committee would like to be informed within a period of six months whether its recommendation has been implemented in letter and spirit.**

#### **Recommendation (Sl. No. 10, Para 2.38)**

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

1.12 In their Action Taken reply the Ministry of Finance stated that as regards encouraging the small investor to invest more in various UTI schemes, incentives are provided under Section 88 of the Income-tax Act. Under the existing provisions of Section 88, investment upto Rs. 60,000 qualifies for tax rebate. An investor may invest upto Rs. 50,000 in ULIP and upto Rs. 10,000 in specified units of UTI. Thus, adequate benefit is available to a small investor. While mobilisation of funds by UTI and other Mutual Funds is being encouraged, the genuine requirements of funds by banks and companies also need to be recognised. In any case, the end-use

of funds in the hands of banks and companies is different as compared to that of UTI and Mutual Funds. As regards over subscription after the repeal of the Capital Issue Control Act and the consequent freedom to companies to price their issues according to market norms, the scope for over subscription of public issues has been substantially minimised.

**1.13 The Committee appreciate the steps that have been taken by the Ministry to enhance the benefits available to small investors under Mutual Funds. They, however, stress the need for more incentives to small investors so that they invest more in UTI Schemes.**

**1.14 It has been stated that after the repeal of the Capital Issues Control Act and the consequent freedom to Companies to price their issues according to market norms, the scope for over subscription of public issues have been substantially minimised but more transparency is desired. The Committee would desire the Government to report the actual position, during the last six months regarding free pricing of issues vis-a-vis over subscription of public issues.**

**Recommendation (Sl. No. 16, Para 2.86)**

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

1.16 In its Action Taken reply the Ministry of Finance stated that apart from the Stock Holding Corporation of India Ltd (SHCIL) there is already another similar Corporation functioning in the Country which has been set up jointly by the Bombay Stock Exchange and the Bank of India. SHCIL has several branches in places such as Delhi, Calcutta and Madras. As desired by Ministry of Finance, SHCIL and SEBI had scheduled a national seminar for discussing, *inter-alia*, the nature of agencies required for providing depository and share transfer certificates. Due to disruptions, the seminar has been postponed from mid-December by about a month.

**1.17 While reiterating their earlier recommendation the Committee desire the Ministry to clearly specify whether bodies like SHCIL are being encouraged in the private sector and would like to be informed of the steps taken in that direction within a period of 3 months.**

**Recommendation (Sl. No. 19, Para 2.107)**

1.18 The credit rating of issue of shares as well as debentures of different kinds should be made compulsory in respect of existing as well as new issues.

1.19 The companies whose shares are already listed on the stock exchange must be persuaded to seek credit rating on an annual basis.

1.20 The SEBI, stock exchange and the financial institutions should take

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\* At the time of factual verification, the Ministry stated: "The National Seminar was since held and it was proposed to implement a National Depository arrangement quickly alongwith the arrangements for commissioning the National Stock Exchange."

all necessary steps to popularise credit rating amongst the investors as also in the corporate world.

1.21 The Ministry in their reply stated that Credit Rating has been made compulsory for all debt instruments with maturity period proceeding 18 months. SEBI has reported that Credit Rating of issue of shares is not done anywhere in the world, as equity is primarily risk capital.

**1.22 The Committee were of the opinion that a totally free capital market cannot be conceived without reliable and universal credit rating of issues. In this context, they had recommended that the credit rating of issue of shares as well as debentures of different kinds should be made compulsory in respect of existing as well as new issues and the companies whose shares are already listed on the stock exchange must be persuaded to seek credit rating on an annual basis. They had further recommended that SEBI, stock exchanges and the financial institutions should take all necessary steps to popularise credit rating amongst the investors as also in the corporate world. The Committee are distressed to note that the Ministry has very casually reported what has been conveyed to it by SEBI. In doing so, it has, however, ignored an important aspect that a lot of capital can be raised, as has been done in recent months, through convertible/partially convertible debentures on the basis of credit rating by agencies like CRISIL. Even though the argument that investment in shares is inherently risk oriented is valid, the Committee feel that in taking such risks the investors, particularly the small investors need not risk blindly. Therefore, they are of the view that credit rating of companies for the purpose of share issues ought to be encouraged rating as already recommended by the Committee.**

**Recommendation (Sl. No. 23, Para 3.17)**

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

**Recommendation (Sl. No. 24, Para 3.18)**

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

**Recommendation (Sl. No. 25, Para 3.19)**

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

1.26 The Ministry in its action taken reply stated that SEBI guidelines emphasise the fact that the issue price should be fixed by the company in consultation with the lead managers after taking into account the relevant parameters. The guidelines require the issuer to indicate clearly in offer

documents the parameters/factors taken into account for fixing the price. On the basis of disclosure made in the offer documents, the investors are expected to take an informed decision. SEBI will intervene if false statements are made in the prospectus and subsequently brought to the notice of SEBI.

**Recommendation (Sl. No. 26, Para 3.20)**

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

1.28 In their Action Taken reply the Ministry of Finance stated that SEBI guidelines recognises the general thrust of the recommendation and provide for the following: a) A new company set up by entrepreneurs without a track record will be permitted to issue capital to public only at par. b) A new company being set up by existing companies with a five year track record of consistent profitability, will be free to price its issue provided the participation of the promoting company is not less than 50% of the equity of the new company and the issue price is made applicable to all new investors uniformly. c) Existing listed companies with a three year track record of consistent profitability shall be permitted to freely price the issue subject to specific disclosure requirements as per SEBI guidelines. d) Existing listed companies will be allowed to raise fresh capital by freely pricing their further issues in consultation with the lead manager (s) to the issue with justification for the price of the issue.

**1.29 The Committee find the reply of Ministry unsatisfactory as they have not been informed of the precise action taken by them. In their reply the Ministry have stated nothing about ensuring that the guidelines issued by SEBI are strictly adhered to. To ensure investors protection SEBI ought to have a machinery to see that the guidelines are strictly adhered to. In fact SEBI should not expect and wait for information about false statement in the prospectus from an investors. The Committee therefore, reiterate its recommendation and expect the Ministry to ensure that the premium over shares determined by Companies and Merchant bankers is in accordance with the guidelines announced by SEBI. The Committee would like to be apprised of steps taken and progress made in this regard.**

**Recommendation (Sl. No. 33, Para 3.73)**

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

1.31 The Ministry of Finance in their Action Taken reply stated that the matter has been examined in consultation with Department of Company Affairs. The status is as follows:

Procedure for issue of duplicate share certificates has been prescribed under Rule 4(2)/(3) of the Companies (issue of share certificates) Rules, 1960 read with Section 84 of the Companies Act, 1956. As per paragraph 3(e) of the listing agreement, applicable to companies whose shares/debentures are listed on a recognised Stock Exchange, the companies are required to issue new certificates in replacement of those which are lost, within 6 weeks of the notification of loss. The procedure and time-frame for issue of duplicate share certificates in respect of listed companies appears to be reasonable.

**1.32. While welcoming the reply of the Ministry, the Committee would like to stress the need for implementing in practice, the procedure and for adhering to the time-frame for issue of duplicate share certificates in respect of listed companies. The Committee would like to be apprised of the concrete steps taken by the Government in this regard.**

**Recommendation (Sl. No. 37, Para 3.100)**

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

1.34 The Ministry in its reply stated that at present, takeovers are governed by clause 40A & B of the listing agreement between the stock exchanges and the listed companies. While this clause has helped in bringing about a degree of transparency in the takeover transactions and afforded some degree of protection to the share holders of companies taken over, there was no separate regulation to govern takeovers and substantial acquisition of shares. SEBI had expressed the need for a separate regulation to govern all take over transactions in the corporate sector, which could harmonise the needs of investors with corporate equity. Accordingly, SEBI had formulated a comprehensive consultative paper titled "Draft Regulation for Substantial Acquisition of shares in listed companies" and widely circulated it among the corporate Sector, market intermediaries, stock exchanges, financial institutions and the press to elicit their views. SEBI also held Panel Discussions with eminent panellists drawn from the financial institutions, merchant bankers, stock exchanges and the Chambers of Commerce to discuss the issues examined in the paper.

1.35 The Consultative paper was based on the precept that a regulatory mechanism must ensure that the process of substantial acquisition of shares is fair, transparent and equitable to all parties concerned in the process and above all the rights of share holders are protected through full, fair and timely disclosure of takeover bids. SEBI also examines and clears offer documents for negotiated takeovers.

1.36 One of the functions of SEBI under the SEBI Act, 1992 is regulating substantial acquisition of shares and take over of companies. When\* regulations in this regard are notified, substantial acquisition of shares and take over of companies would be more effectively regulated.

**1.37 The Committee desire to be apprised of the contents of the comprehensive consultative paper formulated by SEBI and titled Draft Regulation for Substantial Acquisition of shares in Listed companies' as also the result of the Panel Discussions with eminent panellists drawn from different segments of financial sector. The Committee also desire an early notification of relevant regulation for acquisition of shares and take over of companies.**

**Recommendation (Sl. No. 39, Para 3.108)**

1.38 The Committee desire that in order to discourage the promoters from manipulating the share prices of their companies, particularly, when such shares are being quoted at par or below par, the bank and financial institutions should take custody of the shares of promoters who have availed of project finance from such financial institutions / banks or atleast conduct a periodic physical verification of such shares. The Committee feel that this step is essential to ensure that promoters fulfill usual undertaking given to the financial institutions / banks not to off load statutory promoters quota of shares during the period loans from financial institutions / banks are outstanding.

1.39 In its reply the Ministry stated that Recognising the need to plug the possible malpractices in pricing and sale of promoters quota sales, SEBI has issued / imposed a number of restrictions. As per SEBI guidelines, a specified minimum percentage of contributions from the promoters seeking to raise capital from the market is essential. A lock-in-period of 5 years for the promoters contribution and a stipulation that promoters contribution shall not be raised by way of Private placement from unrelated investors through market intermediaries are the main features of the guidelines. With the free pricing of issues the scope and incentive for such practices is minimised.

**1.40 The Committee are not convinced by the reply of the Ministry as it does not indicate the precise position in this regard. The Ministry has also not referred to the recommendation of the Committee to ensure that promoters fulfill usual undertaking given to the financial institutions / banks not to off load statutory promoters quota of shares during the period loans from financial institutions / banks are outstanding. The Ministry have merely suggested a lock-in-period of 5 years for the promoters contribution and a stipulation that promoter's contribution shall not be raised by way of private placement from unrealated investors through market intermediaries. It has not been indicated how this is likely to meet the requirements of the**

\* At the time of verification, the Ministry stated:

"The Regulations in this regard have since been notified by the Government."



recommendation made by them. The Committee desire the Ministry to implement their recommendation without further delay.

#### Implementation of Recommendations

1.41 The Committee would like to emphasise that they attach the greatest importance to the implementation of recommendations accepted by Government. They, therefore, urge that Government should take steps in this regard. In cases where it is not possible to implement the recommendations in letter and spirit for any reason, the matter should be reported to the Committee in time with reasons for non-implementation.

1.42 The Committee desire that reply in respect of the recommendations contained in Chapter V of the Report may be finalised and final reply of the Government furnished to Committee expeditiously.

## CHAPTER II

### RECOMMENDATIONS / OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

#### Recommendation (Sl. No. 1, Para 1.38)

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

#### Reply of the Government

The Capital Issue Control Act, 1947 was repealed by an ordinance dated 29.5.92. SEBI has already issued guidelines for investor protection on June 11, 1992.

#### Recommendation (Sl. No. 2, Para 1.39)

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

#### Reply of the Government

Consequent to repeal of Capital Issue Control Act, 1947 the Office of Controller of Capital Issues has been abolished. SEBI has been created with a number of functions including limited or narrow function (such as regulation of primary market) of CCI as continue to be relevant.

#### Recommendation (Sl. No. 3, Para 1.40)

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

#### Reply of the Government

The guidelines issued by SEBI for disclosures and investor protection do not make a distinction between public and private sector. Government have made a beginning recently to encourage listing of shares of a number of companies in public sector on Stock Exchanges through a scheme of disinvestment of shares. Further, such undertakings are also approaching market directly for raising capital. The recent public issue by Indian Petrochemicals Limited (IPCL) is worth mentioning as an example of movement in this direction

**Recommendation (Sl. No. 4, Para 1.41)**

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

**Reply of the Government**

Guidelines and Regulations issued by SEBI provide sufficient legal and administrative safeguards to protect investors particularly small or individual investors against exploitation. When Capital Issue Control Act was repealed, the SEBI has taken over the limited functions of the CCI which continue to be relevant. As regards consents to capital issues given by CCI before the repeal of the Act, the issuers have the option to operate entirely under the approvals already granted or under current regulatory frame work of SEBI.

**Recommendation (Sl. No. 5, Para 2.15)**

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

**Reply of the Government**

Already there are 22 recognised Stock Exchanges in the Country which is the highest in the world. Besides, a company to sponsor National Stock Exchange of India has been incorporated in Bombay on 27th November, 1992. This would act as a Model Exchange with nation wide membership and coverage of operations as also ensure full transparency through computer based automated system of transactions

**Recommendation (Sl. No. 7, Para 2.21)**

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

**Reply of the Government**

To promote public awareness about the capital market, SEBI has been participating regularly in discussions, seminars and conferences organised

by various market intermediaries, such as Merchant Bankers, Stock Exchanges and Investor Associations. The outcome of these discussions are widely publicised by the media, projecting SEBI's views and approach. SEBI has also been issuing Investor Guidance Series and Press Releases on various matters related to the Capital Market for public awareness. It has also published a booklet on "Investor Grievances—Rights and Remedies" for the benefit of the common investors.

**Recommendation (Sl. No. 8, Para 2.22)**

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

**Reply of the Government**

The Ministry has amended Clause 41 of the Listing Agreement between Stock Exchanges and Companies relating to publication of unaudited financial results on a half yearly basis. Under this amendment, the previous Clause 41 has been substituted by a new Clause 41 which provides greater financial information regarding the listed companies to the investing public with a view to protect their interests.

**Recommendation (Sl. No. 9, Para 2.36)**

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

**Reply of the Government**

Section 80M of Income-Tax Act provides for deduction in respect of certain intercorporate dividends. Prior to 1.4.1991, where the gross total income of a domestic company included any income by way of dividend from another domestic company, a deduction equivalent to 60% of dividend income was allowed. By an amendment made with effect from 1.4.1991, the deduction in case of such companies is restricted to the extent the dividend is distributed on or before the due date. The condition of distribution is not applicable in case of scheduled banks or public financial institutions or State Financial Corporation or a State Industrial Investment Corporation or a company registered under Section 25 of the Companies Act, 1956. In case of such institutions / companies, the deduction is still allowable at 60% of the income derived by way of dividend.

Under Section 80L of Income-tax Act, benefit of deduction is available to individuals or Hindu Undivided Family or Association of Persons to the extent of dividend income received from domestic companies besides other income specified in the aforesaid section. The limit under Section 80L has been reduced from Rs. 13,000 to Rs. 7,000 by Finance Act, 1992

as a part of package which includes reduction of tax rate and increase in exemption limit.

**Recommendation (Sl. No. 10, Para 2.38)**

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

**Reply of the Government**

As regards encouraging the small investor to invest more in various UTI schemes, incentives are provided under Section 88 of the Income-tax Act. Under the existing provisions of Section 88, investment upto Rs. 60,000 qualifies for tax rebate. An investor may invest upto Rs. 50,000 in ULIP and upto Rs. 10,000 in specified units of UTI. Thus, adequate benefit is available to a small investor. While mobilisation of funds by UTI and other Mutual Funds is being encouraged, the genuine requirements of funds by banks and companies also need to be recognised. In any case, the end-use of funds in the hands of banks and companies is different as compared to that of UTI and Mutual Funds. As regards over subscription after the repeal of the Capital Issue Control Act and the consequent freedom to companies to price their issues according to market norms, the scope for over subscription of public issues has been substantially minimised.

**Recommendation (Sl. No. 11, Para 2.39)**

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

**Reply of the Government**

The rate of commission payable to agents by the UTI from business mobilised from companies and corporate bodies was reduced from 0.5% to 0.25% from 1st July, 1990. With effect from 1st July, 1991 no commission is being offered to agents to procure business from corporate investors.

**Recommendation (Sl. No. 12, Para 2.66)**

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

### **Reply of the Government**

Under the Guidelines for Mutual Funds by the Ministry of Finance of 14.2.1992, all the Mutual Funds are required to register themselves with SEBI. Under section 11(2) (c) of the SEBI Act, SEBI is empowered to register and regulate the working of collective schemes including Mutual Funds. SEBI has framed draft Regulations for Mutual Funds. There are sufficient safeguards in the draft Regulations aimed at protecting the interest of investors. These include prior approval of SEBI before launching any scheme, adequate disclosure to investors, issue of advertisements only after they are approved by SEBI etc. After the notification of these Regulations, SEBI will have the power to initiate legal proceedings against a person attempting to contravene or abetting the contravention of these provisions of the Mutual Funds Regulation. Under section 24 of the SEBI Act, contravention of Regulations is punishable with imprisonment for a term which may extend to one year or with fine or with both. These Regulations are expected to be notified shortly.

#### **Recommendation (Sl. No. 13, Para 2.68)**

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

### **Reply of the Government**

To ensure compliance with guidelines and regulations, SEBI has both general powers of superintendence through registration, inspection etc. and specific powers of punitive nature. Under provisions of Section 18 of SEBI Act, annual report on functioning of SEBI has to be laid before the Parliament. SEBI has now been specifically requested to ensure incorporation of impact of guidelines/regulations and nature of violations in its annual report.

#### **Recommendation (Sl. No. 14, Para 2.70)**

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

#### **Recommendation (Sl. No. 15, Para 2.70)**

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

### **Reply of the Government**

At present, the Mutual Funds are subject to the guidelines issued by the Ministry of Finance on 14-2-1992. Based on these Guidelines, SEBI has framed draft Regulations for Mutual Funds keeping in view the possible entry of the private sector. Under the proposed Regulations, Mutual Funds can only be sponsored by any body corporate with sound track record and experience in the field of financial services for a minimum period of five years. There are adequate safeguards in the draft Regulations to bar the entry of unscrupulous fund managers into the Mutual Fund sector. After the notification of the Regulations under the SEBI Act, SEBI is expected to give its authorisation to the private sector Mutual Funds. A number of restrictions have been imposed on the operations and investment by the Mutual Funds to ensure that they operate in a professional and orderly manner and do not degenerate into chit fund operators.

#### **Recommendation (Sl. No. 17, Para 2.68)**

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

### **Reply of the Government**

SHCIL has reported that it has brought down the average turn-around time for transfer deeds from 38 days in 1991-92 to 20 days in 1992-93 till date. This reduction in processing time has been achieved through various steps taken such as provision of larger manpower resources, restructuring of the organisation in August 1992 and creation of an exclusive section to monitor the lodgement of shares and development of software for tracking script from order to lodgement. The SHCIL has assured that it will be making constant efforts to reduce the processing time and to improve efficiency. As regards the schedule of rates of SHCIL, the Tariff Advisory Committee, which was appointed by the Board of SHCIL and which consists of representatives of the users viz., the UTI, LIC, IDBI and GIC have reviewed the tariff structure in January, 1992. On the basis of the recommendations of the committee, the SHCIL has offered rebates in the service charges ranging between 5% to 10% with retrospective effect from 1st July, 1991. SHCIL has informed that its tariff structure is the lowest in the market compared to the Tariff of the other custodians. The service charges of SHCIL would be reviewed by the users committee during this year also.

#### **Recommendation (Sl. No. 18, Para 2.105)**

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

### Reply of the Government

Apart from CRISIL there is another Credit Rating Agency in India which has been set up by the Industrial Finance Corporation of India jointly with other Financial Institutions. This agency is known as Investment Information and Credit Rating Agency (India) Ltd. The Government's policy of encouraging credit rating as an activity and credit rating agencies take into account some specific features such as (i) the sophisticated, technical and sensitive nature of work which needs a high level of expertise; (ii) the maintenance of high standards and objectivity in credit rating which is important for investor protection; and (iii) there are a few rather than large number of credit rating agencies in a Country to effectively serve the purpose. Credit Rating has been made compulsory for all debt instruments with maturity period exceeding 18 months.

#### Recommendation (Sl. No. 20, Para 2.114)

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

### Reply of the Government

With the registration of merchant bankers mutual funds etc. in private sector also with SEBI, the OTC market will have players and investment drawn both from public and private sector in fulfilling its objectives as noted by the Committee in its conclusion preceding the recommendation (*i.e.* para 2.113)

#### Recommendation (Sl. No. 21, Para 3.10)

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

### Reply of the Government

Guidelines for disclosure and investor protection issued by SEBI under SEBI Act empower SEBI to punish violation by prosecution. These guidelines are statutory in views of the provisions under Section 11(i) of the SEBI Act. They offer document involving issue of shares to public and also by way of rights exceeding Rs.50 lacs are looked into by SEBI for adequacy of disclosure to investors before they are filed with the Registrars of the Companies or Stock Exchanges. SEBI has also advised the merchant bankers for regulating the issue of advertisement pertaining the issues of capital.



**Recommendation (Sl. No. 22, Para 3.16)**

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

**Reply of the Government**

SEBI has reported to the Government that recommendation is noted for implementation by SEBI.

**Recommendation (Sl. No. 27, Para 3.21)**

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

**Reply of the Government**

SEBI guidelines recognises the general thrust of the recommendation and provide for the following; a) A new company set up by entrepreneurs without a track record will be permitted to issue capital to public only at par; b) A new company being set up by existing companies with a five year track record of consistent profitability, will be free to price its issue provided the participation of the promoting company is not less than 50% of the equity of the new company and the issue price is made applicable to all new investors uniformly; c) Existing listed companies with a three year track record of consistent profitability shall be permitted to freely price the issue subject to specific disclosure requirements as per SEBI guidelines; d) Existing listed companies will be allowed to raise fresh capital by freely pricing their further issues in consultation with the lead manager (s) to the issue with justification for the price of the issue.

**Recommendation (Sl. No. 28, Para 3.22)**

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

**Reply of the Government**

**Recent efforts of the Government for developing capital market include:**

- (a) Computer network for the proposed National Stock Exchange;
- (b) Proposal to establish a Central Depository System being evolved by SHCIL; and
- (c) Proposal to establish a National Clearing and Settlement System.

**Recommendation (Sl. No. 29, Para 3.39)**

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

**Reply of the Government**

SEBI had given considerable attention to find out ways and means of alleviating the problems faced by investors on account of delay in refunds of excess application monies by companies. As a result of the efforts initiated by SEBI, a "Stockinvest" scheme has been introduced by the SBI and some other banks. According to the Press Release dated 2.1.1992 issued by the SEBI, the "Stockinvest" scheme envisages that an investors' account gets debited, only upon the finalisation of the basis of allotment and in case of unsuccessful applicants, the accounts are not debited at all. The investors therefore, has to part with his funds only in case he is eligible to receive complete or partial allotment. He would also earn interest on his funds from the banks until the "Stockinvest" instrument is debited from his account on allotment of securities.

SEBI had also asked the Stock Exchanges to collect from companies making public issues a deposit of one per cent of the issue amount which would be forfeited in case of non-compliance with the provisions of the Listing Agreement and non-despatch of refund orders/share certificate by registered post within the prescribed time. According to the Annual Report 1991-92 of SEBI, the Stock Exchanges have started implementing this scheme.

The removal of Government control on pricing of captial issues has given freedom to companies to price the issue according to market norms. As a consequence, the extent of over subscription of issues has considerably reduced. The problem of refund of excess applications has also become significantly less.

**Recommendation (Sl. No. 30, Para 3.47)**

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

**Reply of the Government**

SEBI guidelines disallow retention of over subscription. As regards share in odd lots arising out of bonus/rights issue and conversion of debentures, SEBI has since issued clarifications for information of the issuers that as far as possible share certificates should be issued in marketable lots and in respect of the balance, the certificates may be issued in denomination of 1.5, 10 and 50 shares.

**Recommendation (Sl. No. 33, Para 3.73)**

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

**Reply of the Government**

The matter has been examined in consultation with Department of Company Affairs. The status is as follows:

Procedure for issue of duplicate share certificates has been prescribed under Rule 4(2)/(3) of the Companies (Issue of share certificates) Rules, 1960 read with Section 84 of the Companies Act, 1956. As per paragraph 3(e) of the listing agreement applicable to companies whose shares/debentures are listed on a recognised Stock Exchange, the companies are required to issue new certificate in replacement of those which are lost, within 6 weeks of the notification of loss. The procedure and time-frame for issue of duplicate share certificates in respect of listed companies appears to be reasonable.

**Recommendation (Sl. No. 34, Para 3.79)**

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

**Reply of the Government**

The issue was examined in consultation with Department of Company Affairs and status is follows:

Under the extant provisions of Section 219 of the Companies Act, 1956 as amended by the Companies (Amendment) Act, 1988, even in case of a listed company, full balance sheet is required to be furnished to a shareholder, free of cost, on demand and failure to do so by the company is a punishable offence under Section 219(3) of the Act. A right to the information is available to shareholder under the law and hence the purpose is served.

The existing provision of Section 217 of the Act relating to Directors' report are considered adequate to indicate to the shareholders the state of affairs of a company, nature of its business and that of its subsidiary for the following reasons:

(a) The directors are required to state material changes and commitments, if any, affecting the financial position of the company; (b) It may, however, neither be possible nor desirable to call upon the director to indicate all major policy decision and justification thereof; (c) Disclosure of such decisions, in the nature of trade secrets, may sometimes be harmful to the business of the company; (d) Further, the Shareholders have the right to elicit any reasonable information from the company about its affairs, in

terms of section 237(b)(iii) of the Act; and (e) They are also entitled to ask questions about the policies and Programmes of the company in the general meeting.

**Recommendation (Sl. No. 36, Para 3.89)**

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

**Reply of the Government**

Ministry of Finance has advised the Stock Exchanges to set up a Grievance Cell in the Exchanges under the charge of a senior officer for expeditious settlement of investor grievances. These cells are to be maintained at the cost of the Stock Exchanges. The Grievances Cells are required to furnish a monthly progress report on action taken on complaints from investors to the governing body of the Exchange for their consideration. SEBI, during the periodical inspection of Stock Exchanges, has been advising the Stock Exchanges to set up a separate Grievance Cell to handle investors grievances wherever such Cells have not been established and also to take followup action. Since the complaints received from investors are generally against the member brokers of the Exchange and companies it is felt necessary for such grievance cells to keep close contact with their counterparts in other Stock Exchanges for prompt action on complaints particularly in case of complaints against companies as desired by the Committee.

**Recommendation (Sl. No. 38, Para 3.104)**

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

**Reply of the Government**

The allotment of shares in the case of over subscription of public issues is decided under the guidelines issued by the Stock Exchange Division of Ministry of Finance, by the Companies in consultation with concerned regional Stock Exchanges under the listing agreement. Such instructions would continue to be effective as they were issued under the powers other than those of CCI. As per the existing instructions, basis of allotment are to be decided in a manner that interests of the genuine small investors are

protected and widest possible dispersal of share-holding takes place. The usual extra weightage is granted to the applicants in lower categories while deciding basis of allotment. The basis of allotment is, therefore, considered generally fair and transparent.

**Recommendation (Sl. No. 42, Para 4.34)**

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

**Reply of the Government**

Apart from authorising and registering bankers to an issue and other parties who are involved in the management and marketing of an issue, as mentioned in para 4.33 of the report, the legal frame work of SEBI provides for regulation of the activities of a number of market intermediaries besides bankers to an issue such as merchant bankers, portfolio managers, underwriters, Registrar to an issue, share transfer agent, etc. After the repeal of the Capital Issue (Control) Act, the companies issuing capital are required to adhere to investor protection and disclosure Guidelines issued by SEBI, to ensure proper disclosure by companies and investor protection.

**Recommendation (Sl. No. 43, Para 4.36)**

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

**Reply of the Government**

At, present, all these circulars and Guidelines concerning the primary market are widely circulated by SEBI, through press releases and individual letters to lead managers. This practice is proposed to be continued in respect of all the intermediaries after they are registered with SEBI.

The Rules and Regulations framed under the SEBI Act are being notified in the Official Gazette.

SEBI proposes to bring out a compendium of various Rules and Regulations under the SEBI Act and make it available at "no profit no loss" basis.

**Recommendation (Sl. No. 44, Para 4.38)**

The Committee desire that the Government should keep the developments in capital market under constant watch and effect necessary changes

in the law as soon as experience gained in regard to various matters mentioned above necessitates.

Under Section 18 of the SEBI Act, SEBI is required to furnish from time to time such returns and statements as are prescribed by the Central Government. For the purpose, the Government is finalising the reporting system in consultation with SEBI. The Government will thus be in constant touch with SEBI on the developments in the capital market and this will enable the Government to consider necessary changes in the regulatory framework in consultation with SEBI.

**Recommendation (Sl. No. 45, Para 4.40)**

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

**Reply of the Government**

Recognising that both the segments of the securities market are interlinked, SEBI has now been entrusted with regulating both the markets.

**Recommendation (Sl. No. 46, Para 4.41)**

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

**Reply of the Government**

The limited regulatory work on capital issues is now with the SEBI.

**Recommendation (Sl. No. 47, Para 4.43)**

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

**Reply of the Government**

Section 4(5) of the SEBI Act stipulates that 2 other Members of the Board shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy administration or in any other discipline. These requirements, as laid down in the Act, will be taken into account while finalising the nominations of 2 other Members on the SEBI Board. Qualifications have thus been defined and are consistent with the spirit of recommendation.

**Recommendation (Sl. No. 48, Para 4.45)**

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

**Reply of the Government**

SEBI has assured that it would ensure that there will be neither a provision for unwarranted interference in the working of the stock-brokers nor undue bureaucratization.

**Recommendation (Sl. No. 50, Para 4.48)**

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

**Reply of the Government**

Under section 17(1)(c) of the SEBI Act, the Central Government is empowered to supersede the Board if it is satisfied that the circumstances exist which render it necessary in the public interest to do so. This does not permit the Government to supersede the Board in the normal circumstances. As the experience of the Government relating to the working of SEBI is gained, it may be possible to visualise all the situations on the basis of which supersession of the powers can be contemplated. At this stage, therefore having noted the recommendation it can be said that, this section as would all other provisions of the Act be kept under constant review with a view to improving them as experience is gained.

**CHAPTER III**  
**RECOMMENDATIONS/OBSERVATIONS WHICH THE**  
**COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF**  
**GOVERNMENT REPLIES**

**Recommendation (Sl. No. 32, Para 3.61)**

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

**Reply of Government**

The recommendation for evenly spreading the issue may be difficult to implement in view of the freedom given to the issuers for raising funds during any part of the year. The introduction of new instrument called "Stock Invest" by SEBI in consultation with RBI for making application would prevent locking in of the investors' funds for a long period as under the scheme, the investor will require to pay the amount only if they are allotted shares.



**CHAPTER IV**  
**RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF**  
**WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN**  
**ACCEPTED BY THE COMMITTEE**

**Recommendation (Sl. No. 6, Para No. 2.17)**

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

**Reply of the Government**

Unit Trust of India (UTI) has reported that, over the years, it has broadbanded its secondary market operations covering more Stock Exchanges. As against 14 Stock Exchanges in 1989-90, operations have been extended covering 17 Stock Exchanges in 1991-92. UTI will continue to endeavour to broadenbase its operations further.

SEBI has also expressed itself in agreement with the proposition that financial institutions must broadenbase the list of members through which operations are conducted.

The concerned institutions have been requested to follow the advice.

**Recommendation (Sl. No. 16, Para No. 2.86)**

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

**Reply of Government**

Apart from the Stock Holding Corporation of India Ltd. (SHCIL) there is already another similar Corporation functioning in the Country which has been set up jointly by the Bombay Stock Exchange and the Bank of India. SHCIL has several branches in places such as Delhi, Calcutta and Madras. As desired by Ministry of Finance, SHCIL and SEBI had scheduled a national seminar for discussing, *inter alia*, the nature of agencies required for providing depository and share transfer certificates. Due to disruptions, the seminar has been postponed from mid-December by about a month.\*

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\* The time of factual verification the Ministry stated:

“The National Seminar was since held and it is proposed to implement a National Depository arrangement quickly along with the arrangements for Commissioning the National Stock Exchange”

**Recommendation (Sl. No. 19. Para 2.107)**

(a) The credit rating of issue of shares as well as debentures of different kinds should be made compulsory in respect of existing as well as new issues.

(b) The companies whose shares are already listed on the stock exchange must be persuaded to seek credit rating on an annual basis.

(c) The SEBI, stock exchange and the financial institutions should take all necessary steps to popularise credit rating amongst the investors as also in the corporate world.

**Reply of the Government**

(a), (b) & (c) Credit rating has been made compulsory for all debt instruments with maturity period exceeding 18 months. SEBI has reported that Credit Rating of issue of shares is not done anywhere in the world, as equity is primarily a risk capital.

**Recommendation (Sl. No. 23, 24 and 25, Para 3.17,                      d 3.19  
respectively)**

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

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

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

**Reply of the Government**

SEBI guidelines emphasize the fact that the issue price should be fixed by the company in consultation with the lead managers after taking into account the relevant parameters. The guidelines require the issuer to indicate clearly in offer documents the parameters/factors taken into account for fixing the price. On the basis of disclosure made in the offer documents, the investors are expected to take an informed decision. SEBI will intervene if false statements are made in the prospectus and subsequently brought to the notice of SEBI.

**Recommendation (Sl. No. 26, Para 3.20)**

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

**Reply of the Government**

SEBI guidelines recognises the general thrust of the recommendation and provide for the following: a) A new company set up by entrepreneurs without a track record will be permitted to issue capital to public only at par. b) A new company being set up by existing companies with a five year track record of consistent profitability, will be free to price its issue provided the participation of the promoting company is not less than 50% of the equity of the new company and the issue price is made applicable to all new investors uniformly. c) Existing listed companies with a three year track record of consistent profitability shall be permitted to freely price the issue subject to specific disclosure requirements as per SEBI guidelines. d) Existing listed companies will be allowed to raise fresh capital by freely pricing their further issues in consultation with the lead manager(s) to the issue with justification for the price of the issue.

**Recommendation (Sl. No. 37, Para 3.100)**

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

**Reply of the Government**

At present, takeovers are governed by clauses 40 A&B of the listing agreement between the stock exchanges and the listed companies. While this clause has helped in bringing about a degree of transparency in the takeover transactions and afforded some degree of protection to the share holders of companies taken over, there was no separate regulation to govern takeovers and substantial acquisition of shares. SEBI had expressed the need for a separate regulation to govern all takeover transactions in the corporate sector, which could harmonise the needs of investors with corporate equity. Accordingly, SEBI had formulated a comprehensive consultative paper titled "Draft Regulation for Substantial Acquisition of shares in listed companies" and widely circulated it among the corporate sector, market intermediaries, stock exchanges, financial institutions and the press to elicit their views. SEBI also held Panel Discussions with eminent panelists drawn from the financial institutions, merchant bankers, stock exchanges and the Chambers of Commerce

The Consultative Paper was based on the precept that a regulatory mechanism must ensure that the process of substantial acquisition of shares is fair, transparent and equitable to all parties concerned in the process and above all the rights of share holders are protected through full, fair and timely disclosure of takeover bids. SEBI also examines and clears offer documents for negotiated takeovers.

One of the functions of SEBI under the SEBI Act 1992 is regulating substantial acquisition of shares and takeover of companies. When regulations in this regard are notified, substantial acquisition of shares and takeover companies would be more effectively regulated.\*

#### **Recommendation (Sl. No. 39, Para 3.108)**

The Committee desire that in order to discourage the promoters from manipulating the share prices of their companies, particularly, when such shares are being quoted at par or below par, the banks and financial institutions should take custody of the shares of promoters who have availed of project finance from such financial institutions/banks or atleast conduct a periodic physical verification of such shares. The Committee feel that this step is essential to ensure that promoters fulfill usual undertaking given to the financial institutions/banks not to off load statutory promoters quota of shares during the period loans from financial institutions/banks are outstanding.

#### **Reply of the Government**

Recognising the need to plug the possible malpractices in pricing and sale of promoters quota sales, SEBI has issued/imposed a number of restrictions. As per SEBI guidelines, a specified minimum percentage of contribution from the promoters seeking to raise capital from the market is essential. A lock-in-period of 5 years for the promoters contribution and a stipulation that promoters contribution shall not be raised by way of private placement from unrelated investors through market intermediaries are the main features of the guidelines. With the free pricing of issues the scope and incentive for such practices is minimised.

#### **Recommendation (Sl. No. 49, Para 4.47)**

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

#### **Reply of the Government**

Under section 17 of the SEBI Act, the Central Government is empowered to supersede the Board only when the Board is unable to discharge the functions or when the board has persistently made default on complying with any directions issued by the Central Government or in the public interest.

Thus, under the Act, the Board can be superseded only under exceptional circumstances, which ensures that SEBI remains an independent institution in the service of investing public.

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\* "The Regulations in this regard have since been notified by the Government."

## CHAPTER V

### RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH FINAL REPLIES OF THE GOVERNMENT ARE AWAITED

#### **Recommendation (Sl. No. 31, Para 3.51)**

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

#### **Reply of the Government**

In view of the problems in regulating insider trading within the existing institutional framework pointed out by the Committee in Para 3.50, the SEBI regulations prohibiting insider trading have since been issued.

#### **Recommendation (Sl. No. 35, Para 3.86)**

The Committee desire that punitive action against defaulting companies whose aim is to merely take investors for granted should be made deterrent.

#### **Reply of the Government**

The Department of Company Affairs is considering amendment of the Act to make penal provisions relating to investor' protection more stringent.

In the Department of Company Affairs, at the Headquarters and in the field offices, Investors' Protection Cells have been set up to redress the grievances of investors against companies Act, where warranted.

#### **Recommendation (Sl. Nos. 40, 41, Para 3.109 & Para 3.110 respectively)**

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

The Committee understand that a practice has developed under which

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

SEBI has been requested to investigate such allegations and report to Government to enable further necessary action including notifying financial institutions and banks.

## APPENDIX

(Vide Introduction of the Report)

### *Analysis of Action Taken by Government on the 7th Report of Estimates Committee (10th Lok Sabha).*

I. Total number of Recommendations	50
II. Recommendations/Observations which have been accepted by Government (Sl. Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22, 27, 28, 29, 30, 33, 34, 36, 38, 42, 43, 44, 45, 46, 47, 48, 49 and 50). Total	36
Percentage	72%
III. Recommendations/Observations which the Committee do not desire to pursue in view of Government replies (Sl. No. 32). Total	1
Percentage	2%
IV. Recommendations/Observations in respect which Government's replies have not been accepted by the Committee (Sl. Nos. 6, 16, 19, 23, 24, 25, 26, 37 and 39). Total	9
Percentage	18%
V. Recommendations/Observations in respect of which final replies of Government are still awaited (Sl. Nos. 31, 35, 40 and 41). Total	4
Percentage	8%

ESTIMATES COMMITTEE  
(1992-93)

MINUTES

29th Sitting (31.3.1993)

The Committee sat from 15.15 hours to 15.45 hours.

PRESENT

Shri Manoranjan Bhakta — *Chairman*

MEMBERS -

2. Shri A. Charles
3. Shri Rajendra Agnihotri
4. Shri Ayub Khan
5. Shri Santosh Kumar Gangwar
6. Shri R. Jeevarathinam
7. Shri Manjay Lal
8. Shri Rupchand Pal
9. Shri Sriballav Panigrahi
10. Shri Harish Narayan Prabhu Zantye
11. Shri Amar Roy Pradhan
12. Shri Ebrahim Sulaiman Sait
13. Shri Braja Kishore Tripathy

SECRETARIAT

1. Shri K.L. Anand — *Under Secretary*
2. Shri R.C. Gupta — *Assistant Director*

The Committee considered and adopted the 25th draft Report on Role of Controller of Capital Issues — Development of Capital Market and Status of Small Investors with the following additions and amendments:—

<i>Para</i>	<i>Line</i>	<i>Addition/Amendment</i>
1.14	5	after the word 'minimised add' but more transparency is desired'.
1.29	3	for 'Ministry' substitute 'them'.

The Committee authorised the Chairman to finalise the Draft Report mentioned above in the light of factual verification received from the





Ministry and also to make verbal and consequential changes therein and present it to Lok Sabha.

*The Committee then adjourned.*

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**LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA  
SECRETARIAT PUBLICATION**

Sl. No.	Name of Agent	Sl. No.	Name of Agent
<b>ANDHRA PRADESH</b>		<b>UTTAR PRADESH</b>	
1.	M/s. Vijay Book Agency, 11-1-477. Mvlargadda, Secunderabad-500 306.	12.	Law Publishers, Sardar Patel Marg, P.B. No. 77, Allahabad, U.P.
<b>BIHAR</b>		<b>WEST BENGAL</b>	
2.	M/s. Crown Book Depot. Uppar Bazar, Ranchi (Bihar).	13.	M/s. Madimala, Buys & Sells, 123, Bow bazar Street, Calcutta-1.
<b>GUJARAT</b>		<b>DELHI</b>	
3.	The New Order Book Company, Ellis Bridge, Ahmedabad-380 006. (T.No. 79065)	14.	M/s. Jain Book Agency. C-9, Connaught Place, New Delhi, (T.No. 351663 & 350806).
<b>MADHYA PRADESH</b>		15.	M/s. J.M. Jaina & Brothers, P. Box 1020, Mori Gate, Delhi-110006. (T. No. 2915064 & 230936).
4.	Modern Book House, Shiv Vilas place, Indore City. (T.No. 35289)	16.	M/s. Oxford Book & Stationry Co., Scindia House, Connaught Place, New Delhi-110001. (T.No. 3315308 & 45896).
<b>MAHARASHTRA</b>		17.	M/s. Bookwell, 2/72. Sant Nirankari Colony, Kingsway Camp, Delhi-110009. (T.No. 7112309).
5.	M/s. Sunderdas Gian Chand, 601, Girgaum Road, Near Princes Street, Bombay-400 002.	18.	M/s. Rajendra Book Agency, IV-DR59, Lajpat Nagar, Old, Double Storey, New Delhi-110 024. (T.No. 6412362 & 6412131).
6.	The International Book Service, Deccan Gymkhana, Poona-4.	19.	M/s. Ashok Book Agency. BH-82, Poorvi Shalimar Bagh, Delhi-110 033.
7.	The Current Book House, Maruti lane, Raghunath Dadaji Street, bombay-400 001.	20.	M/s. Venus Enterprises, B-2/85, Phase-II, Ashok Vihar, Delhi.
8.	M/s. Usha Book Depot, 'Law Book Seller and Publishers' Agents Govt. Publications, 585, Chira Bazar, Khan House, Bombay-400 002.	21.	M/s. Central News Agency Pvt. Ltd., 23/90, Connaught Circus, New Delhi-110 001. (T.No. 344448 322705, 344478 & 344508)
9.	M & J Services, Publishers, Rep- resentative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor, 68, Jyotiba Fuele Road Nalgaum, Dadar, Bombay-400 014	22.	 <b>Library</b> IAS, Shimla
10.	Subscribers Subscription Service India, 21, Raghunath Dadaji Street, 2nd Floor, Bombay-400 001.	23.	 <b>00081846</b>
<b>TAMIL NADU</b>		(T. No. 269631 & 714465).	
11.	M/s. M.M. Subscription Agencies, 14th Murali Street, (1st Floor), Mahalingapuram, Nungambakkam, Madras-600 034. (T.No. 476558)	24.	M/s. Sangam Book Depot, 4378/4B, Murari Lal Street, Ansari Road, Darya Ganj, New Delhi-110 002.