



SECURITIES AND EXCHANGE BOARD OF INDIA भारतीय प्रतिभूति और विनिमय बोर्ड



A PRESENTATION ON UNAUTHORIZED MONEY COLLECTION ACTIVITIES

Presented By

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रातों

रात

लखपति

बन

जाओ.

ऐसा कभी होता है क्या?

कम समय में ज्यादा मतलब धोखा।



हर इन्वेस्टर की ताकत

AGENDA OF PRESENTATION



1. Introduction to SEBI

2. Various Money Collection Activities

3. Collective Investment Scheme – An Overview

4. Deemed Public Issue – An Overview

5. Case Studies

6. Powers of SEBI

7. Challenges and Road Ahead

FINANCIAL REGULATORS



Securities
Market



Banking



Insurance



Pension



Commodities
derivatives

FINANCIAL MARKET

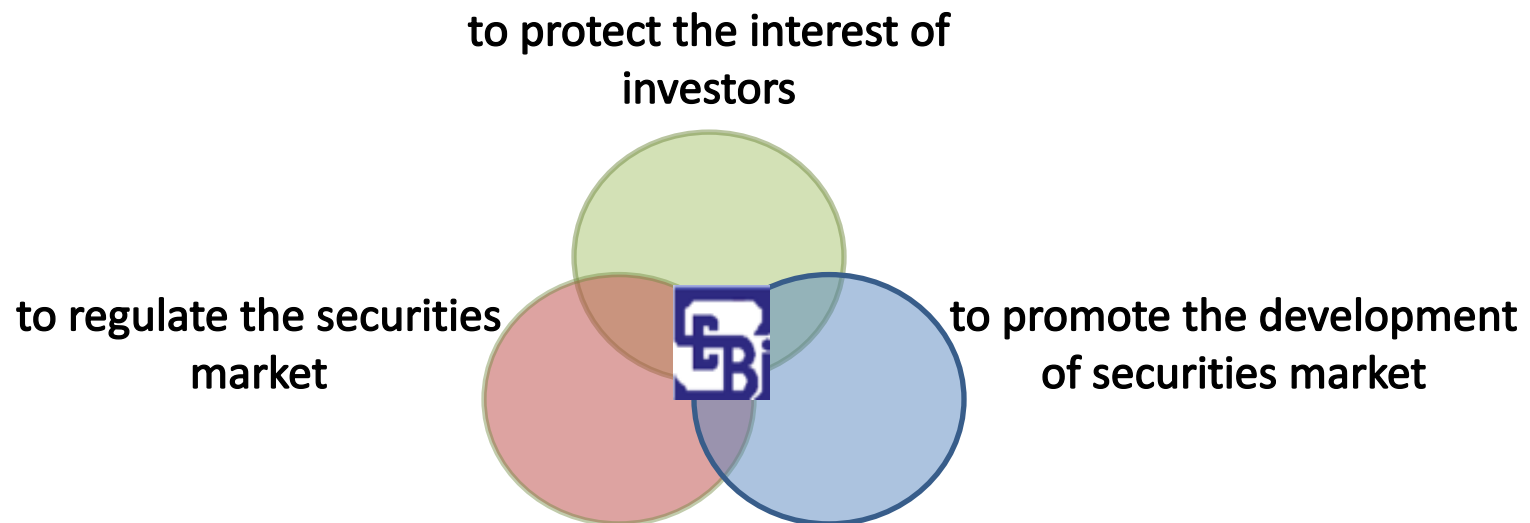


Securities and Exchange board of India (SEBI)

- Toll free no : 1800227575,18002667575
- Website : www.sebi.gov.in
- Complaint : www.score.sebi.gov.in
- Education : www.nism.ac.in
- Head office : Mumbai Maharashtra
- Head : Mr. Ajay Tayagi

Establishment

**Securities and Exchange Board of India
Act, 1992.**



SEBI

Investor Protection

1. Investor Awareness & Education (RP Mechanism)
2. Investor Grievances

Development

1. Making Regulations / Guidelines / Circulars
2. Registration of Intermediaries
3. Co-ordination among various agencies
4. Informal Guidance

Supervision

1. Market Surveillance
2. Investigation
3. Inspection
4. Enforcement

☐ Acts-

- The Securities and Exchange Board of India Act, 1992 (SEBI Act)
- The Companies Act, 1956/ 2013 (specified provisions only)
- The Securities Contract (Regulation) Act, 1956
- The Depositories Act, 1996

□ Regulations –

- SEBI (Collective Investment Scheme) Regulations, 1999.
- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
- SEBI (Issue and Listing of Debt Securities) Regulations, 2008
- SEBI (Non-Convertible Redeemable Shares) Regulations, 2013

Various Money Collection Activities



MLM

Chit
Funds

Deposits
by
Company

Money
Circulation
Schemes

Collective
Investment
Scheme

Credit /
Cooperative
Societies

Deemed
Public
Issues

Why Securities Market Frauds ?



Human Greed



Human ingenuity looking for loopholes in the system

Declining social & moral values



Money collection activities & respective administrator



Sl. No.	Category of activity (whether Registered/ Unregistered)	Concerned Regulator / Authority
1	Multi Level Marketing / Pyramid Marketing schemes/ Ponzy schemes	State Governments
2	Acceptance of deposits by fraudulent financial establishments	State Governments
3	Multi State Cooperative Society	Ministry of Agriculture
4	Mobilization of Deposits by Non Banking Finance Companies	Reserve Bank of India (RBI)
5	Nidhi or mutual benefit society	RBI & Ministry of Corporate Affairs (MCA) both
6	Gold saving schemes launched by jewellers	MCA / RBI
7	Deposits accepted by Companies under Section 73 of the Companies Act	MCA
8	Schemes offered by Cooperative Societies	State Government through Registrar of Cooperative Societies



Sl. No.	Category of activity (whether Registered/ Unregistered)	Concerned Regulator / Authority
9	Chit Fund Business	State Governments through Registrar of Chits
10	Contract of Insurance	Insurance Regulatory & Development Authority (IRDA)
11	Unit Linked Insurance Plan	IRDA
12	Pension Scheme or Insurance Scheme framed under EPF	IRDA and Pension Fund Regulatory Development Authority (PFRDA)
13	New Pension Scheme	PFRDA
14	Housing Finance Institutions	National Housing Bank
15	Collective Investment Schemes, Mutual Fund, Deemed public issue of Securities (Equity / Debt) and Commodity Market	SEBI



Collective Investment Schemes (CIS)

Securities and Exchange Board of India

a.org
n Form:
ult oriented &
Management
- 2010-2012)
of India

INVEST IN GOAT FARMING



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Bank guarantee

Assured returns upto **2%** + double your amount
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along with govt. insurance of goat

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0124 - 4018801/02 /03 /04 /05
india-goatfarming.com

ये इदं न मम ॥



GRADE V MEANS

1. High uncertainty regarding assured returns
2. Risk factors are extremely high
3. High expectation of default on obligation



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1995
लाइफ गार्ड फॉरेस्ट्स प्रा० लिमिटेड

(एक कृषि एवं वानिकी संस्था)

स. एवं प्रधान कार्यालय-प्लॉट नं. 70 ए, लेन नं. -3
221005

Collectives Investment Schemes Division

- NRO, December 2010

HAR INVESTOR KI TAAQAT

INVESTOR
AWARENESS **1**



**Chit
Fund
or
Cheat
Fund?**

AAPKA SAHI FAISLA, SURAKSHIT RAKHE AAPKA PAISA.

EVOLUTION OF REGULATORY FRAMEWORK FOR CIS



Need for Regulations

- ◆ Many Plantation/Agro based companies collected huge amounts of money from Indian Public
- ◆ 664 CIS entities - INR 3518 Cr

GOI Press Release

- ◆ GOI PR dated November 18, 1997 included CIS activities under SEBI purview
- ◆ Instruments issuing Agro Bonds, Plantation Bonds etc. to be treated as CIS

SEBI Press Release

- ◆ PR dated November 26, 1997 and December 18, 1997
- ◆ Existing schemes directed to file the details of their schemes with SEBI.

Notification of CIS Regulations

- ◆ Dr. S. A Dave Committee
- ◆ Notification of CIS Regulations on October 15, 1999

Timeline

- **Section 11AA of SEBI Act- defines CIS**

(1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or (2A) shall be a collective investment scheme.

“(2) Any scheme or arrangement made or offered by any person under which,---

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;- **(POOLING OF CONTRIBUTIONS)**

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement; - **(CONTRIBUTIONS WITH A VIEW TO RECEIVE PROFITS)**

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;-
(SCHEME PROPERTY IS MANAGED ON BEHALF OF INVESTORS)

(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement. **(INVESTOR HAS NO CONTROL OVER DAY -TO - DAY MANAGEMENT/OPERATIONS)**

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3) , involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.

Exemptions from CIS



Co-operative society

- **NBFC** as defined in clause (f) of S.45-I of the RBI Act,1934
- **Contract of insurance** to which the Insurance Act,1938 applies
- Scheme, **Pension Scheme** or Insurance Scheme under PFMA, 1952
- **Deposits** u/s 58A of the Companies Act, 1956
- **Chit business** as defined in clause (d) of S.2 of the Chit Fund Act, 1982
- **Nidhi or a mutual benefit society** u/s 620A Companies Act
- Mutual Fund
- Govt Notified schemes
- advance against goods & services
- [Banned activities that include Multi-level marketing](#), pyramid schemes fall under State Governments under Prize Chits & Money Circulation (Banning) Act, 1978.

- Plantation
- Real Estate
- Food Processing
- Dairy Farming & Livestock
- Art Funds
- Time Share
- Solar Products



- ❑ PGF Ltd. & PACL.
- ❑ Sai Prasad Foods Ltd & Sai Prasad Properties Ltd.
- ❑ Alchemist Infra Realty Ltd.
- ❑ HBN Dairies and Allied Ltd.
- ❑ Sumangal Industries Ltd.
- ❑ Rose Valley Hotels and Entertainment Ltd.
- ❑ Osian's Connoisseurs of Art Pvt. Ltd (Art Fund)

□ Sahara

- Sahara India Real Estate Corporation Limited (SIRECL) was incorporated in year 2005 and Sahara Housing Investment Corporation Limited was in year 2004.
- As per Balance Sheet of SIRECL (as on December 31, 2007) company has no fixed assets/investments but having cash & bank balance of Rs. 6.54 lacs and company has carried forward its losses (Rs. 3.28 lacs) to Balance Sheet.
- SIRECL in its AGM held on March 3, 2008 passed resolution u/s 81 (1A) of the Companies Act to raised funds through unsecured Optionally Fully Convertible Debentures (OFCDs) by way of private placement to friends/ associates/ employees and other entities associated or connected with Sahara group without giving any advertisement to general public.
- In RHP filed with ROC, it was stated that only those are eligible to subscribe to whom Information Memorandum (IM) was circulated.
- IM stated that “the company does not intend to get this OFCDs listed in any SE”.

➤ Nature of OFCDs issued by SIRECL

	Abode Bond	Real Estate Bond	Nirman Bond
Tenure (in months)	120	60	48
Face Value	Rs. 5,000	Rs. 12,000	Rs. 5,000
Redemption Value	Rs. 15,530	Rs. 15,254	Rs. 7,728

- Nirman Bonds and Real Estate Bonds provided with death risk cover.
- No restriction on transfer of OFCDs.
- Investor can avail loan facilities.
- SHICL in its AGM held on September 16, 2009 passed similar resolution to raised funds.
- SHICL issued Housing Bonds, Income Bonds, Multiple Bonds.
- Interest to be refunded to Bond Holders.
- Amount collected approx. Rs. 24,000 crores.
- Sahara Prime City Limited filed DRHP with SEBI for issuance of shares to public.
- SEBI received complaint against OFCDs issued.



➤ **SEBI Enquiry/Investigation:**

- ✓ Open ended Schemes
- ✓ Public issue
- ✓ Securities issued were liable to be listed at SE
- ✓ Non-compliance of SEBI (DIP) Guidelines, 2000 and/or SEBI (ICDR) Regulations, 2009.
- ✓ Violation of various provisions of the Companies Act.

➤ **Contention of Sahara**

- ✓ SEBI has no jurisdiction over SIRECL and SHICL as they were not listed nor intended to be listed.
- ✓ OFCDs are not falling within the definition of securities but hybrid class which are neither share nor debenture.
- ✓ OFCDs were issued by way of Private Placement to friends/ associates/ employees and other entities associated or connected with Sahara group.
- ✓ IM was circulated prior to opening of offer.
- ✓ RHP was filed with concerned ROC.

➤ **Contention of SEBI**

- ✓ Offer made to 50 or more persons, hence became public issue.
 - ✓ OFCDs are falling within the definition of securities.
 - ✓ Non-execution of Debenture Trust Deed
 - ✓ No disclosure in IM
 - ✓ No creation of Debenture Redemption Reserve.
 - ✓ SEBI has jurisdiction on public issue.
 - ✓ Non-cooperation with SEBI investigation.
-
- SEBI passed order on June 23, 2011 directing SIRECL and SHICL not to collect further money and refund the money to investors along with interest.
 - SEBI order was challenged before Securities Appellate Tribunal (SAT)
 - SAT vide order dated October 18, 2011 upheld SEBI order while observing –
 - ✓ IM was circulated through 10 lacs agents and at 2900 branch office
 - ✓ Requirement of introducer if offer were made to associates.

➤ Observation of Supreme Court of India

- ✓ OFCDs are falling under the definition of securities.
- ✓ Issuance of securities to more than 49 person falls under public issue
- ✓ Issuance of IM is for offer for public before filing RHP
- ✓ Sec. 55A of the companies Act, empowers SEBI to deal with all matters pertaining to public issue
- ✓ Sec. 32 of the SEBI Act, clearly states that SEBI Act shall be in addition to and not to derogation of provisions of any other law.
- ✓ It is not on wish on company whether it want to get securities (issued to public) listed or not but a legal obligation.
- ✓ SIRECL and SHICL failed to comply with various provisions of SEBI Act, Companies Act and thus, issuance of securities is in contravention of provisions and SEBI has jurisdiction in the matter.

➤ Order of SEBI to refund money was upheld.

What happens if the CIS entity does not comply with SEBI's directions?

- Debarment
- Criminal prosecution proceedings
- Reference to State Governments/ EOW for filing FIR.
- Reference to MCA for Winding up

Dabba Trading & It's Implications



WHAT IS DABBA TRADING?

It's an illegal trading in which prices of securities on recognized stock exchanges are used as benchmarks and the investor's trades do not get executed on the stock exchange system but in the dabba operator's books only.

A dabba operator acts as a principal to all the trades and not as an agent of the client. He is a counter party to the trades, whereas, he should be the Clearing Corporation who guarantees trades on the BOLT/NEAT system. This kind of operation, where trade is kept within the books of the operator is called "dabba"

A Dabba operator flouts rules and regulations relating to Client Protection, which includes registrations, margins, transaction, execution and settlements. Not only he evades the Income tax regulations, which prohibit dealing in cash, but also service tax rules and many other mandatory requirements. In fact, the dabba trader gets a small fee from both the buyer and the seller.

A dabba operator allows the client to carry forward the trade, be it in cash or in derivative segment for a period, not necessarily prescribed by the stock exchange. The cash trade is not settled on rolling basis and the derivative trade may not have a month-end settlement cycle. Unlike on exchanges, participants may not be asked to put up margin to trade and the contracts will be settled on a weekly basis.

Since the trade does not take place on a recognized stock exchange, The counter party risk is not mitigated.



Money that has escaped the tax net is used in illegal trading depriving the exchequer of revenues

Dabba Trading:

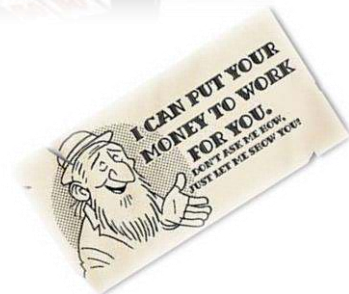
- An illegal trading activity (in terms of Sec. 13 of SCRA) in which exchanges prices of equity/commodity are used as benchmark.
- Trades are not executed at exchange platform but only in the books of traders
- Traders only act as counterparty to the trades as well as clearing corporation
- Traders get fee similar to commission from both buyer as well seller likewise broker
- Dabba Trading is being used only to escaped the Tax net / transaction charges

Other Types of Frauds

Corporate Misconduct
viz. Enron, Satyam.



Fake / forged /
duplicate share
certificates



Unauthorized fund
raising and Ponzi
schemes.



False market rumors.



Falsifying contract notes – Brokers
generating false contract notes for
trades which do not take place.

- To seek/ call information and records from any person including banks and any other authority established or constituted under any Central or State Act. [Sec 11 (2) (ia)]
- To attach bank accounts of any person after passing an order on an application approved by Judicial Magistrate [Sec. 11 (4) (e)]
- Order for search and seizure of books, registered and other record on an application approved by Magistrate or Judge of designated court [Sec. 11C (8)]
- To requisite the services of any police officer or any officer of the Central Government, or of both, for the above mentioned purpose [Sec. 11 C (8A)]
- To recover amount from any person failed to comply with SEBI directions or to refund the money to public [Sec. 28A]



Complaints & Grievance Handling at SEBI



Whom to approach and How to lodge an investor complaint?



**SEBI Toll-free helpline service
for investors**

**1 800 22 7575
1 800 266 7575**

**HAR INVESTOR
KI TAAQAT**



On June 8, 2011, Sebi had commenced a new web-based centralised grievance redress system called as SCORES



Types of Complaints Handled by SEBI

- Listed Companies
- Complaints against SEBI Registered entities
 - Stock Exchanges
 - Depositories
 - Stock Brokers/Sub-brokers
 - Depository Participants
 - Mutual Funds
 - Portfolio Managers
 - Other intermediaries

SCORES

Lodge
Complaints
Online

Track &
Monitor the
status of the
complaint

Receive final
outcome of
the
complaint
online

Investor Grievances and Redressal Mechanism of Regulators

- **Securities and Exchange Board of India :**
www.Score.sebi.gov.in
- **Insurance Regulating and Development Authority of India**
: www.igms.irda.gov.in
- **New Pension System (NPS)**
www.cgms.gov.in

RBI Sachet

<https://sachet.rbi.org.in/>

Challenges



Non availability of timely information regarding entities carrying on unauthorised activities



Legal Constrains

Road ahead

Awareness Campaign

Awareness through Print Media, Electronic Media, Workshop, Seminars etc.

Coordination

Coordination among various Regulators/
Government agencies through SLCC, REIC,
Sachet etc.

**Securities and Exchange
Board of India**

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Thank You !!

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