SECURITIES AND EXCHANGE BOARD OF INDIA

The Securities and Exchange Board of India Act, 1992 (the SEBI Act) was amended in the years 1995, 1999 and 2002 to meet the requirements of changing needs of the securities market and responding to the development in the securities market. Based on the Report of Joint Parliamentary Committee (JPC) dated December 02, 2002 , the SEBI Act was amended to address certain shortcomings in its provisions. The mission of SEBI is to make India as one of the best securities market of the world and SEBI as one of the most respected regulator in the world. SEBI also endeavors to achieve the standards of IOSCO/FSAP.

In this background , the internal group constituted by SEBI consisting of its senior officers had proposed certain amendments to the SEBI Act. The SEBI Board had constituted an Expert Group under the Chairmanship of Mr Justice M. H .Kania (Former Chief Justice of India) to consider the proposals.

The report of the Expert Group is placed for eliciting public comments on the recommendations. It may be noted that the Report does not necessarily reflect the views of SEBI on the various proposals and recommendations. SEBI would consider the comments received from various sources before taking any final view on the recommendations.

Public comments on the report may be sent to Division of Regulatory Assistance – I , Legal Affairs Department, Securities and Exchange Board of India, Mittal Court, 'B' Wing, 224, Nariman Point , Mumbai – 400021 or fax to 022- 22845470 or E mail to santoshs@sebi.gov.in or vijayakrishnang@sebi.gov.in so as to reach SEBI on or before July 26, 2005.

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REPORT

EXPERT GROUP HEADED BY MR. JUSTICE M. H. KANIA (FORMER CHIEF JUSTICE OF INDIA) FOR SUGGESTING AMENDMENTS TO SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

REPORT OF THE EXPERT GROUP HEADED BY MR. JUSTICE M. H. KANIA (FORMER CHIEF JUSTICE OF INDIA) FOR SUGGESTING AMENDMENTS TO SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

Background

The Securities and Exchange Board of India Act, 1992 (the SEBI Act) has been enacted for the establishment of the Board with the object of protecting the interests of investors in securities and to promote the development and to regulate the securities market and for matters connected therewith or incidental thereto.

Securities market is very dynamic and the laws governing it have to be responsive to the market needs. The SEBI Act was amended in the years 1995, 1999 and 2002 to meet the requirements of changing needs of the securities market and responding to the development in the securities market.

The World Bank and the International Monetary Fund (IMF) have introduced a benchmark i.e., Financial Services Assessment Programme (FSAP) to strengthen the monitoring of financial systems in the context of the IMF's bilateral surveillance and the World Bank's financial sector development work. The FSAP is designed to help countries enhance their resilience to crisis and cross-border contagion, and to foster growth by promoting financial system soundness and financial sector diversity. The mission of SEBI is to make India as one of the best securities market of the world and SEBI as one of the most respected regulator in the world. SEBI endeavors to achieve the standards of IOSCO/FSAP. Amendments will be required to be made in the Securities Laws especially the SEBI Act, which will facilitate India and SEBI to achieve above objective.

The Report of Joint Parliamentary Committee (JPC) dated December 02, 2002 on stock market scam also made several recommendations in respect of the securities market. These recommendations include provisions for compensation to aggrieved investors, the concept of Ombudsman in the capital market, establishment of special courts for financial crimes, regulation of listed companies by SEBI, shifting of Investor Education and Protection Fund established under section 205C of

the companies Act to SEBI, etc. Many of the above recommendations would require changes in the SEBI Act.

The amendments effected in 2002 have sought to address certain shortcomings in the provisions of the SEBI Act, 1992, particularly with respect to matters relating to inspection, investigation and enhancement of penalties to serve as effective deterrants. However, it was felt that some of the amendments effected in 2002 may also require amendments to remove ambiguities, if any.

Constitution of the Group

It is in this background, the SEBI Board had decided to constitute an Expert Group to identify the deficiencies / inconsistencies in the existing provisions of the SEBI Act and also to suggest new provisions that can be incorporated in the SEBI Act to make it more effective and investor friendly, taking into account recommendations of the JPC as also recommendations of other expert groups constituted by SEBI from time to time in this regard.

The SEBI Board in its meeting held on August 05, 2004 constituted the Expert Group with the following members.

Sr.No.	Name of the Member
1	Mr. Justice M. H. Kania, (Former Chief Justice of India) Chairman
2	Mr. Justice A. N. Mody (Retd.)
3	Mr. Justice S. M. Jhunjhunwala (Retd.)
4	Ms. P. M. Umerji, Principal Secretary (Retd.) (Legislation), Govt. of Maharashtra
5	Shri. Jitesh Khosla*, Joint Secretary – Representative of the Department of Company Affairs (Govt. of India)
6	Shri. Prashant Saran , Chief General Manager, Representative of the Reserve Bank of India
7	Ms Parimala Rao, Principal, Govt. Law College, Mumbai
8	Shri. PGR Prasad, Managing Director, SBI Funds ManagementPvt. Ltd., Representative of the Association of Mutual Funds India(AMFI)
9	Shri. N. K. Jain**, Secretary and Chief Executive Officer, the Institute of Company Secretaries of India

	(ICSI), Representative of ICSI
10	Shri. Sushil Jiwrajka, Chairman, Western Regional Council , Federation of Indian Chambers and Commerce of Industry(FICCI) Representative of FICCI
11	Shri. K.R. Chandratre, Practicing Company Secretary & Ex-President Institute of Company Secretaries of India
12	Anil Singhvi, Director, Gujarat Ambuja Cements Ltd.
13	Shri. Pratip Kar, Executive Director , SEBI
14	Shri. R. S. Loona, (Member Secretary), Executive Director, SEBI

* Shri. R. Vasudevan, Director (Inspection and Investigation) attended the meetings of the Group in the absence of Shri. Jitesh Khosla as a representative of the Department of Company Affairs.

** Nominated in place of Shri. Mahesh Anant Athawale, who was initially nominated by ICSI as their representative.

Deliberation and Examination by the Expert Group

A paper containing few suggestions to amend the SEBI Act was prepared as a base material for discussion and deliberation by the Group. The said paper was sent to the representatives of all stakeholders and market participants inviting their comments thereon and further suggestions regarding amendments in the SEBI Act.

The names of the stakeholders from whom the comments were sought are given in the annexure **'A'** hereto. The Group received detailed comments to the proposals from certain stakeholders whose names are given in the annexure **'B'** hereto.

The Group deliberated on the proposals made regarding amendments to SEBI Act in the light of comments thereon received from the stakeholders in its various meetings held on October 27, 2004, December 20, 2004, February 04, 2005, March 10, 2005, April 11, 2005, May 03, 2005, June 14, 2005 and on June 15, 2005 . After deliberating on the said proposals and comments of stakeholders, the Group seeks to make recommendations in respect of the following proposals:-

I Proposed Amendments for incorporating new provisions in the SEBI Act.

II Proposed Amendments for changes in the existing provisions

III Consequential and related amendments in other Acts.

PART ONE

Proposed Amendments for incorporating new provisions in the SEBI Act.

1.1 Investor Protection Fund

SEBI has been created inter alia for the purpose of protecting the interests of investors in securities. The investor education is more relevant in the context of complexities involved in various options and instruments of investments available in the securities market. Retail investors are not in a position to identify and /or appreciate the risk factors associated with certain scrips or schemes. With the result they are not able to make informed investment decisions. Since development of securities market largely depends upon proper education of investors, SEBI is committed to spread awareness amongst them.

The Joint Parliamentary Report (JPC) on securities scam of 2001 had recommended that in order to enable SEBI to undertake investor education and awareness campaign effectively, the investor education and protection fund established under section 205C of the Companies Act and investor education resources of RBI should be shifted to SEBI and a joint campaign for investor education and awareness under the leadership of SEBI must be undertaken.

The Group noted that majority of the stakeholders have agreed for the setting up of a separate investor protection fund under the SEBI Act. It is also suggested by the stakeholders that the said fund should be utilized exclusively for the purpose of investor education, conducting awareness programme and for protecting the interest of investors.

The Group also noted that the proposed Investor Protection Fund is for the purpose of achieving the objective of Investor Education and awareness.

In terms of section 55A of the Companies Act, SEBI is required to administer the provisions of sections specified in section 55A in respect of issue of capital, transfer of securities and non payment of dividend in case of listed companies and the companies which intend to get their securities listed on the stock exchange. Further,

SEBI is required to protect the interest of investors and enforce redressal of grievances of investors by listed companies.

In the light of the above provisions, the Group also discussed the proposition regarding payment of compensation to investors for the purpose of investor protection. In this regard, the Group also deliberated on the suggestion for setting up of a Fund on the lines of Fair Fund established under the Sarbanes Oxley Act, 2002 of United States which is used for compensating the investors out of the penalties received. Another view was expressed during deliberations that the investors in the equity market invest in risk capital and no assured return or compensation for non fulfilment of every expectation may be provided in the statute. However, compensation in respect of fraud or misrepresentations or misstatements by companies or intermediaries may be considered.

Further the Group noted that the Pension Fund Regulatory and Development Authority, Ordinance, 2004 which mandated the Pension Fund Regulatory and Development Authority (PFRDA) to protect the interest of subscribers to the schemes of pension funds has permitted PFRDA to set up the Subscriber Education and Protection Fund. The said Ordinance also specifies the monies which should be credited to the said Subscriber Education and Protection Fund. The said Ordinance also provides that all sums realised by way of penalties by PFRDA under the Ordinance shall be credited to the Subscriber Education and Protection Fund.

The Group felt that to achieve the objective of investor protection by investor education and investor awareness, a separate fund under the SEBI Act on the lines of Subscriber Education and Protection Fund under PFRDA Ordinance 2004 to be administered by SEBI may be set up and administered by SEBI for investor education and awareness. Further, the compensation to small investors in respect of fraud or misrepresentations or misstatements by companies or intermediaries may be considered as a matter of investor protection out of the said Investor Protection Fund. In this regard it is felt desirable that SEBI may specify guidelines and parameters for administration of the Investor Protection Fund the for the purpose of Investor Education and Awareness and payment of compensation to small investors. In this regard, the guidelines issued by SEBI in respect of Investor Protection Fund of stock exchanges may be adopted with necessary changes.

As regards the monies to be credited to the said Investor Protection Fund, the Group took into consideration the representation of the National Stock Exchange that the big stock exchanges are utilising the monies for the purpose suitably. The Group also noted that the monies lying with the IPF of small stock exchanges are not being utilised to the full satisfaction. It is considered that the monies lying unutilized for substantial period in the Investor Protection Fund of the stock exchanges should be transferred to the proposed Investor Protection Fund.

The unclaimed dividend and interest lying with the mutual fund and Collective Investment Schemes or venture capital funds and the unclaimed monies or securities of the clients lying with the intermediaries for a period of 7 years should be used in a purposeful manner.

Further, all sums realised by way of penalties imposed by the Adjudicating Officer under Chapter VIA of the SEBI Act, should be credited to the proposed Investor Protection Fund.

1.2 Recommendation of the Group:-

The Group recommends that –

A separate Investor Protection Fund under the SEBI Act, on the lines of Subscriber Education and Protection Fund under PFRDA Ordinance 2004 may be established for the purpose of investor education and awareness and for compensation to the small investors in respect of fraud or misrepresentations or misstatements by companies or intermediaries.

The said fund be administered by SEBI to protect the investors and take measures for investor education and awareness and for compensation to the small investors in accordance with the established guidelines or parameters specified by SEBI on the lines of the guidelines in respect of stock exchanges.

There shall be credited to the said fund the following amounts, namely-

a) unclaimed dividend or interest under any mutual fund or Collective Investment Scheme (CIS) or venture capital fund scheme for more than 7 years;

b) any unclaimed money or securities of a client lying with an intermediary in securities market for more than 7 years;
c) monies lying unutilised in the Investor Protection Funds of the stock exchanges;
d) all sums realised by way of monetary penalty under Chapter VIA of SEBI Act.

1.3 Nomination Facility

The concept of nomination has been recognized under section 109 of the Companies Act, 1956, Section 45ZA of the Banking Regulation Act, 1949 and Section 39A of the UTI Act, 1963 (since repealed). Under the aforesaid provisions, nominee of a shareholder or debenture holder, depositor or unit holder is entitled to the rights in securities or money held by the deceased to the exclusion of all other persons, notwithstanding anything contained in any other law for the time being in force including the testamentary laws. However, SEBI Act does not contain any such provision of nomination facility for the unit holders of mutual funds and collective investment schemes.

The Group noted that SEBI (Mutual Funds) Regulations, 1996 provide for nomination facility to the unit holders. The Group felt that the provision for nomination facility is investor friendly but such provision should exist in the parent Act and not in the Regulations.

However, the Group is not in favour of giving any overriding effect as provided under section 109 of the Companies Act, 1956 wherein the nominee's rights can defeat the claim of a legal heir.

1.4 Recommendation of the Group

In view of the above, the Group recommends for a suitable amendment in the SEBI Act for the incorporation of a provision to provide nomination facility to the unit holders of Mutual Funds and Collective Investment Schemes.

1.5 Advance Ruling

The Group was informed that SEBI receives a number of requests from various market participants for advance guidance on the interpretation of the provisions of SEBI Act and Regulations. As SEBI Act does not contain specific provisions like section 245B

to section 245N of the Income Tax Act, 1961 authorising SEBI to give advance ruling, SEBI has evolved a system of giving interpretive letters/no action letters under the provisions of SEBI (Informal Guidance) Scheme, 2003. However, the guidance given under the scheme does not equate with the advance ruling under the Income Tax Act as it is not binding on SEBI Board.

The advance ruling system for the securities market would have the advantage of a market participant being able to obtain a binding ruling on the applicability of a particular provision of Securities Laws to a proposed transaction, before actually undertaking such transaction.

The Group felt that the system of advance ruling is certainly better than that of informal guidance given under the said scheme as the advance ruling given by SEBI would be binding on its Board. The binding effect provides, not only more comfort for the market participants, it also provides better legal status to the whole mechanism.

However, in view of the smooth and satisfactory functioning of the Informal Guidance Scheme in vogue, the Group felt that SEBI should analyse the option very carefully as the move of shifting from the scheme to advance ruling would require setting up of a separate department and infrastructure on the lines of Income Tax Act.

1.6 Recommendations of the Group:

The Group recommends that as legally the advance ruling is preferable the adoption of the same may be considered and the Informal Guidance Scheme may also continue.

1.7 Self Regulatory Organisation (SRO)

The Group noted that section 11(2) (d) of the SEBI Act provides for promoting and regulating SRO. SEBI Act, however does not have specific provision for empowering SRO to make bye-laws having statutory force for admission of members. Further, SEBI Act does not have provisions relating to supersession of governing boards of SROs by SEBI or restricting the voting right of members of SROs, notwithstanding anything contained in the Companies Act, 1956. Proposed amendments seek to confer such powers on SEBI.

The Group noted that SEBI has already framed regulations, namely, SEBI (Self Regulatory Organisations) Regulations, 2004 under section 30 read with section 11(2)(d) of the SEBI Act for regulating the SROs, which require inter alia SROs to seek recognition from SEBI. The Regulations also empower the SRO's to make rules and bye laws with the approval of SEBI. Regulation 23 of the Regulation governing SRO's, provides for the power of SEBI to withdraw the recognition. In view of the said power, the Group felt that SEBI is already having the requisite power to require the SROs to regulate their activities in accordance with the Regulations. Consequently, there may not be any need for the amendment of the SEBI Act.

1.8 Recommendation of the Group

The Group recommends that there is no necessity of amending the SEBI Act as proposed. The Regulations framed by SEBI should suffice to address the concern of SEBI, as a regulator of SROs.

1.9 Rectification of errors in orders-

The Group noted that there is no provision in the SEBI Act, which empowers SEBI to rectify the clerical or typographical errors apparent in its own orders. A view was also expressed that SEBI does not have powers to review its own orders even in cases when orders are passed ex parte.

The Group observed that "Review of orders" appears to give substantive powers which are usually not available with Authorities having original jurisdiction. However, the Group felt that enabling SEBI to rectify clerical or typographical errors apparent on the face of its order on the lines of section 26 (2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is desirable.

1.10 Recommendation of the Group

An amendment should be made in the SEBI Act to enable SEBI to rectify clerical or typographical errors apparent on the face of its order, on the lines of section 26 (2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

1.11 Retrospective effect

The Group noted that the existing provisions of SEBI Act do not empower SEBI to frame the regulations with retrospective effect even for the limited purpose of giving relief to the market participants.

The Group felt that SEBI may be empowered to make regulations with retrospective effect in respect of matters relating to charging of fees or procedural matters on the lines of the Income Tax Act for the limited purpose of giving relief and not for imposing new liabilities and obligations. According to the Group such a benevolent provision may remove undue hardship to market participants in certain cases and hence should be viewed with favour.

1.12 Recommendation of the Group

The Group recommends that the SEBI Act may be amended on the lines of section 295(4) of the Income Tax Act, 1961 to empower SEBI to make regulations with retrospective effect in respect of matters relating to charging of fees or procedural matters for the limited purpose of giving relief and benefit and not for imposing new liabilities and obligations.

1.13 Overriding Effect

The Group discussed the suggestion to amend SEBI Act in order to provide overriding effect to SEBI Act over other laws in the matter of securities. In order to assess the need for such an amendment, the Group tried to identify those substantive provisions of the SEBI Act that deserve to be given an overriding effect. After due consideration, the Group felt that SEBI Act does not contain any such substantive provisions which deserve to be given an overriding effect. It also noted that where ever the substantive provisions deserved to be given an overriding effect, the SEBI Act has already done by non obstante clause.

1.14 Recommendation of the Group

The Group recommends that SEBI Act may not be amended for giving an overriding effect to the SEBI Act over other laws.

1.15 Power to issue circulars

The Group examined the proposal to amend the provisions of SEBI Act for giving statutory power to SEBI to issue circulars and guidelines.

The Group noted that SEBI has been issuing circulars and guidelines under section 11 of the SEBI Act. The Group felt that there is no legal infirmity in issuing circulars or guidelines under the existing provisions of section 11 which is the source of inherent powers of SEBI.

1.16 Recommendation of the Group

The Group recommends that SEBI Act may not be amended for inserting a specific provision for the issuance of circular and guidelines as SEBI has inherent powers to do so under Section 11 of the SEBI Act.

1.17 Transaction / Issue of securities to be treated void in certain circumstances

The Group was informed that in cases of fraudulent issue of securities, excess dematerialisation of securities etc. SEBI should be empowered to declare such transactions as void. For this purpose suitable provisions in the SEBI Act on the lines of section 9(3) & section 14 of the SCRA may be made to provide that such transaction, if they are in violation of any specified regulation, shall be void.

The Group felt that such power should be performed by an independent body, preferably by the civil courts. Administrative bodies may not be conferred with such jurisdiction.

1.18 Recommendation of the Group

SEBI Act should not be amended as proposed. Such power should preferably be left to be exercised by a civil court.

1.19 Winding up of intermediaries

The Group was informed that one of the principles of Securities Regulations as specified by IOSCO/FSAP is that there should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk. The Group noted that there is no specific power

conferred upon SEBI under SEBI Act for taking steps for winding up of an intermediary in case such intermediary goes bankrupt or the continuance of such intermediary is considered to be detrimental to the interest of investors or clients of such intermediary.

The Group noted that Reserve Bank of India (RBI) has power to file winding up petitions against a Non Banking Finance Company under section 45 MC of RBI Act. The Group felt that SEBI should have similar power to file winding up petition under SEBI Act.

The Group further observed that in case of winding up of such intermediary company, the claim of the clients of such intermediary should have priority over other claims or debts i.e. even over secured creditors and sovereigns authorities such as Income Tax. The Group in this regard noted that under Section 43A of Banking Regulation Act, 1949 there is a provision for the preferential payment to depositors in priority to all other debts from out of assets of the Banking Company. The Group felt that similar provisions should also be made in respect of claims of clients of intermediary companies while empowering SEBI to file a winding up petition against an intermediary in case such intermediary goes bankrupt or the continuance of such intermediary is considered to be detrimental to the interest of investors or clients of such intermediary.

1.20 Recommendation of the Group

The Group recommends that suitable provision in the SEBI Act may be made to enable SEBI to file winding up petition in respect of the intermediary companies on the lines of section 45MC of the Reserve Bank of India Act and section 43A of Banking Regulation Act.

1.21 Non attachment of assets of clients with intermediaries

The Group noted that one of the IOSCO principles for securities market regulations is that the regulatory system should enable the pool of investors' funds to be distinguished and segregated from the assets of other entities. Further, the investors should be protected from misleading, manipulative or fraudulent practices, including insider trading, front running or trading ahead of customers and the misuse of client assets.

It was brought to the notice of the Group that by the Securities Laws (Amendment) Bill, 2003, a section 27B was proposed to be inserted in the Securities Contracts (Regulation) Act, to provide that an investor may entrust his money or securities to any intermediary who shall hold such money or securities in trust and shall deal with them as directed by the investors. Such monies and securities shall not be part of the assets of the intermediaries and no authority shall attach or seize such assets of investors. However, in the Securities Laws (Amendment) Act, 2005 this provision was omitted.

The Group observed that the money or securities entrusted by an investor to an intermediary should be held by such intermediary in trust of such investors. Such money or securities of investors should not form part of asset of intermediary and no authority shall attach or seize such assets of investors which are in custody or possession of such intermediary.

1.22 Recommendation of the Group

The Group recommends that there should be a specific provision in the SEBI Act to the effect that the monies or securities of the clients should be held in the form of a trust by intermediaries and no authority shall attach or seize such assets of investors which are in possession of the intermediary. For this purpose the provisions as proposed in the Securities Laws (Amendment) Bill, 2003 may be made.

PART –TWO
Proposed amendments in the existing provisions of the SEBI Act

2.0 Registration and Regulation of Asset Management Company, Research Analyst, Clearing Corporation, STP Provider etc.

The Group noted that at present certain important market intermediaries such as Asset Management Company, Research Analyst, Clearing Corporation, clearing bank, stock lender, STP Service Provider are not expressly included in Section 12 of SEBI Act although they operate in the market as intermediaries. The Group further noted that although such entities may be covered in the expression "persons associated with the securities market" so as to bring them in the ambit of sections 11 (2) (i), 11 (4), 11B, 11C, 11D etc. they are not expressely covered for the purpose of registration and regulation under section 12. Therefore, the Group felt that such other intermediaries may also be included in section 12.

It was noted by the Group that by amendment to Securities Contracts (Regulations) Act, 1956 the stock exchanges are enabled to transfer the activities of the clearing house to a clearing corporation which is required to seek recognition from SEBI and make its rules, bye laws, etc. with prior approval of SEBI. SEBI may also supersede the governing Board of such clearing corporation. All incidences of regulating the activities of a clearing corporation have now been provided in the Securities Contracts (Regulations) Act, 1956. Therefore, any further amendments to SEBI Act may not be required to include clearing house and clearing corporation in section 12. However, the Asset Management Company, Stock Lender and STP Service Provider may be included in section 12 as they perform the functions of intermediaries and deal with clients in securities.

As regards the Research Analysts, the Group felt that it may not be practicable to regulate them as an intermediary in view of the nature of their activity. The major challenge would be to lay down the criteria that would require a person/entity to be registered as intermediary with SEBI. In this regard, the Group has also deliberated on the difficulty involved in classifying certain activities such as opinions expressed by experts through electronic media or press as that of Research Analysts.

2.1 Recommendation of the Group

The Group recommends that the SEBI Act may be amended to include Asset Management Company, stock lender and STP Service Provider in section 12 of SEBI Act.

2.2 With regards to Powers to call for information

The view was expressed that expression "persons associated with the securities market" used in section 11 (2) (i) may not cover professionals such as auditors of a listed company / intermediary, who are only concerned with the auditing of the accounts of the listed company or intermediary. However, for the purpose of investigation into alleged violations, it may at times become essential to seek relevant information from them. Therefore, the Group considered the necessity of amending section 11 (2) (i) to empower SEBI to call information from 'persons associated with securities market and the professionals engaged by them.

In this connection, the Group deliberated upon the right of certain professionals, particularly, advocates for not parting with the privileged information in their possession. Recognizing the professional ethics and right to withhold privileged information, the Group observed that SEBI should respect such rights of the professionals and not compel furnishing / production of information / documents when a right to privileged information is claimed by any professional. In other words, SEBI's right to call for information from professionals shall be subject to the professional's right to withhold the privileged information.

2.3 Recommendation of the Group

The Group recommends for an amendment in the SEBI Act to empower SEBI to call for information from professionals, subject to the professional's right as stated above. The Group also suggests that if any professional while rendering his services indulges in malpractices such as certifying false information etc., suitable restrictions like debarring him from appearing before SEBI may be considered

2.4 Monetary Penalty for false information.

The Group noted that as per the provisions of Chapter VIA of SEBI Act, SEBI can impose monetary penalty for the failure to furnish information or delay in furnishing information. However,

there is no provision for monetary penalty for giving false information.

The Group felt that during the course of investigation under the provision of SEBI Act, SEBI may come across situations, where intermediaries / persons associated with securities markets furnish false information. In order to tackle the said situation, SEBI should have specific power under the SEBI Act, which would empower SEBI to initiate adjudication proceedings for furnishing false information.

2.5 Recommendation of the Group

The Group recommends that SEBI Act, may be amended so as to empower SEBI to initiate adjudication proceedings for furnishing false information knowingly.

2.6 Power to share information with overseas regulators

The Group observed that section 11 (2) (la) of the SEBI Act empowers SEBI to call from or furnish to any agency as may be specified by the Board such information as may be considered necessary by it for the efficient discharge of its functions. It, however, does not specifically empower SEBI to provide for regulatory cooperation / sharing information among the overseas and domestic regulators. The Group was informed that in the era of liberlisation and globalisation the SEBI is required to share information and cooperate with the overseas regulators in the course of investigations conducted by the other regulators. For this purpose SEBI has entered into Memorandum of Understanding and other cooperation arrangements with 6 overseas regulators to deal with the cross border misconduct as the same is not forbidden by law and is required for the purpose of regulatory cooperation as the matter of IOSCO principles for securities market regulators. The Group felt that it may be desirable to have specific provision in the SEBI Act authorising SEBI to assist the foreign regulators, seek information from them and furnish such information from them which SEBI is not prevented from disclosing to them by law or Government in the matter of dealing with the subject of cross border transactions and misconduct.

The Group also noted that sections 169 and 354 of the Financial Services and Markets Act, 2000, empowers FSA to share information with overseas regulators.

2.7 Recommendation of the Group

The Group recommends for section 11(2) (la) may be amended to authorise SEBI to share information on reciprocal basis with overseas regulators on the lines of sections 169 and 354 of the Financial Services and Markets Act, 2000 of UK.

2.8 Power to prohibit other entities from issuing any offer document.

The Group noted that under section 11A (b) (i), the power of SEBI to prohibit issuance of offer document is limited to a company. It was proposed that in section 11A (b) (i) the words 'any company' be substituted by the words 'any person'.

The Group observed that even the mutual funds who are established in the form of trust also issue offer documents. Further, in case of an offer for sale in terms of section 64 of the Companies Act or under the SEBI (DIP) Guidelines, the offer document is issued by or on behalf of the persons making offer for sale of securities to public. Further, even the public sector bank or scheduled bank or a financial institution which may not be a company within the meaning of the term in the Companies Act may also issue prospectus or shelf prospectus inviting public to subscribe to their shares. All these entities have to comply with the disclosures requirements specified by SEBI.

2.9 Recommendation of the Group

The Group recommends to replace the words 'any company' used in the section 11A (b) (i) by the words 'any person'.

For the purpose of regulating or prohibiting prospectus, etc., SEBI may consider framing specific Guidelines even though section 11A (b) (i) lays down the guiding principle namely, protection of investors.

2.10 Amendment to section 11AA

The Group noted that section 11AA (3) clause (viii) provides that any scheme under which contributions made are in the nature of subscription to a mutual fund shall not be a collective investment scheme. However, in terms of section 12 (1B) no person shall carry on an activity of collective investment scheme including mutual funds. From section 12 (1B) it appears that the mutual fund is one of the forms of a collective investment scheme. In light of the same it was proposed to omit Clause (viii) of section 11AA (3) which provides that any scheme under which contributions made are in the nature of subscription to a mutual fund shall not be collective investment scheme.

The Group felt that in section 11AA any scheme or arrangement in the form of a Collective Investment Scheme (CIS) has to be promoted by a company. Since the mutual funds are not established in the form of a company, any scheme promoted by them shall not fall within the ambit of Section ibid. Hence, Section 11AA (3) (viii) rightly provides that the scheme of a mutual fund shall not be a CIS. The Group also did not find any inconsistency between Section 11 AA (3) (viii) and Section 12(1B) as both the Sections operate in different fields.

2.11 Recommendation of the Group

The Group recommends that no amendment is required in Section 11AA for the reasons stated above.

2.12 With regard to inspection and investigation

The Group noted that section 12A of the SEBI Act provides for prohibition in respect of manipulative or deceptive devices, insider trading, and acquisition of control of a listed company. However, in terms of section 11(2A) the Board may undertake the inspection of books and documents of the listed company or the company which intends to get its securities listed only if such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market. This Section does not refer to acquisition of control of a listed company.

Further, section 11C (9) empowers the Judicial Magistrate of the First Class to authorize the Investigating Authority appointed by the Board to enter and search the place and to seize the books, registers etc. of a listed company in case such company indulges in insider trading or market manipulation.

Under section 11D the Board may order a listed company to cease and desist from committing or causing violation by indulging in insider trading or market manipulation. Section 11C (9) pertaining to SEBI's power of Search and Seizure and section 11D for cease and desist order do not extend to substantial acquisition of shares and takeovers.

The Group felt that above mentioned sections may be amended so as to empower the Board to undertake inspection of any book, register or document if the Board has reasonable apprehension that such company has violated section 12A of the SEBI Act.

The Group felt the necessity that the said sections may be amended to bring the provisions thereof in harmony with the provisions of section 12A. However, the Group felt that the words 'reasonable ground to believe' have been used in several legislations by administrative bodies as a matter of control on exercise of discretionary powers and SEBI Act should not deviate from them.

2.13 Recommendation of the Group

The Group recommends to amend sections 11 (2A), 11C (9) and 11D so as to bring them in harmony with Section 12A of the SEBI Act.

2.14 Attachment of bank accounts of intermediaries

The Group noted that as per section 11 (4) of SEBI Act, SEBI Board may attach one or more bank accounts of the intermediary or the person associated with the securities market, pursuant to an order by the Judicial Magistrate of the First Class. However, it is noted that the Board does not have power to directly attach the bank account, without the order of Judicial Magistrate of the First Class and that only such bank account / accounts can be attached which relates to proceeds actually involved in the violation. The Group also noted that the said bank account can be attached only for a period not exceeding one month and that the attachment and impounding ,etc. in respect of the listed companies or the companies which intend to get their securities listed can be done

only in cases of indulging of such companies in insider trading and fraudulent and unfair trade practices.

In view of the above, the Group considered the following propositions , namely -

(i) whether the power of attachment should be subjected to an order of a Judicial Magistrate.
(ii) whether the period of attachment should be extended from one month (as stipulated now) to six months.
(iii) whether the bank account or accounts may be attached only so far as it relate to the proceeds actually involved in the alleged violations or its ambit be enhanced so as to enable investigating authority to attach any bank account provided he records reasons in writing and also reasonably believes that the account relates to proceeds of violation.
(iv) whether the power of attachment and impounding should be extended to cases of acquisition of control of a listed company in view of section 12A of the SEBI Act.

The Group felt that empowering an administrative body like SEBI to directly attach the bank accounts may not be a legally desirable proposition and it is felt that such power has to be exercised through the intervention of a Judicial Magistrate. Further, the power of attachment and impounding may not be extended to cases of substantial acquisition of shares control of a listed company as it may deter the takeovers of companies as a corporate action which is regulated by the regulations keeping in view the interest of the investors.

2.15 Recommendation of the Group

The Group recommends that Section 11(4) of SEBI Act may be amended so as to increase the period of attachment from one month to three months subject to further extension by another three months upon the order of a Judicial Magistrate of First Class in writing.

2.16 Regarding power of search and seizure

The Group noted that in terms of section 11C (8) and (9) of SEBI Act –

i) Search and seizure can be undertaken only after obtaining an order from a Judicial Magistrate of the first class,

ii) Search and seizure is restricted to only the books, registers and other documents and records,
iii) Search and seizure in respect of listed companies can be made only if such companies indulge in insider trading and market manipulations.

The Group noted that under section 133 of Income Tax Act 1961, the competent authority can issue the search-warrant directly without waiting for an order from the Judicial Magistrate of First Class.
The Group felt that the role of SEBI is different from the role of Income Tax Authorities under the Income Tax Act, 1961. The Group is of the view that the said power of search and seizure is desirable to be exercised with the approval of Judicial Magistrate.

2.17 Recommendation of the Group

The Group recommends that no amendment is required in section 11C (8) and (9) of SEBI Act.

2.18 Dispensing with factors such as loss to investors etc. under section 15J - For monetary penalty

The Group noted that, section 15I (2) of the SEBI Act empowers the Adjudicating Officer to impose such penalty as he thinks fit in accordance with the relevant provisions of the SEBI Act under which he is adjudicating. The Group further observed that the Adjudicating Officer while deciding the quantum of penalty under Section 15 I, is under an obligation to have due regard to the following factors –

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default,
(b) the amount of loss caused to the investors as a result of a default,
(c) the repetitive nature of the default.

The Group, however, noted that , in certain cases it may not be possible for the Adjudicating Officer to consider all the aforesaid 3 factors e.g. in the cases of insider trading violations there may not be any victim so as to ascertain the amount of loss caused to him as a result of said violation.

The Group also noted that in some cases offences may not be directed against any specific investors. In cases such as failure to disclose timely information, it may not be possible to ascertain loss caused to the investors or gain made by the defaulter. The Group noted that, it is in these circumstances, the proposed amendments are being made.

In view of the above, the Group felt the necessity of incorporating additional factors such as –
(a). conduct of the persons during the inspection or investigation;
(b). seriousness of the violation; and
(c). effect of violations on securities market, etc. in Section 15J

The Group noted that the above additional factors are in-built in existing section 15J. Further, the powers of the Adjudicating Officers under section 15J are not limited by the factors specified under section 15J. Section 15J only requires the Adjudication Officer to have due regard to the factors specified therein. The Group noted that words 'due regard' existing in section 15J do not in any way restrict or fetter the power of the Adjudicating Officer to give due consideration to other factors also, as suggested above.

2.19 Recommendation of the Group

In view of the above the Group felt that no amendment is required as suggested as the said factors are already inherent in section 15J.

2.20 Maximum Penalty

The Group noted that sections under Chapter VIA as they existed before the amendment made in the year 2002 provided for the maximum penalty which could be imposed by the Adjudicating Officer. The words "not exceeding" appearing under each sections suggested that the Adjudicating Officer could impose any amount of penalty upto the amount prescribed under the relevant sections. In other words, no limit on minimum penalty was specified. However, in the amended sections, the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" have been used.

The Group, however felt that an argument can be taken that after the amendment in the said sections, the Adjudicating Officer is

bound to impose the penalty of one lakh rupees per day till default continues or one crore rupees, whichever is less. In other words, the Adjudicating Officer cannot impose penalty less than Rupees One Lakh per day.

In view of the above, the Group considered the proposal to replace the words "one lac rupees for each day during which such failure continues or one crore rupees, whichever is less" by the words "not exceeding one lac rupees for each day during which such failure continues subject to a maximum of one crore rupees" in the relevant sections of Chapter VIA.

The interpretation that Adjudicating Officer cannot impose penalty less than Rupees One Lakh per day may however not hold good when the said penal provisions are read with Section 15J, which would compel an adjudicating officer to look into various factors while deciding the contempt of penalty.

2.21 Recommendation of the Group

The Group recommends that in sections 15A to 15H of SEBI Act, the words "one lac rupees for each day during which such failure continues or one crore rupees, whichever is less" may be replaced by the words "not exceeding one lac rupees for each day during which such failure continues subject to a maximum of one crore rupees", for the sake of clarity.

2.22 Failure to comply with the order of SEBI

The Group noted that section 15HB provides for penalty for violation of any provisions of the SEBI Act, Rules or Regulations made thereunder or directions issued by the Board for which no separate penalty has been provided. The Group also noted that under sections 24 of the SEBI Act, prosecution proceedings can be initiated against a person for contravention of any of the provisions of the SEBI Act, the Rules or Regulations made thereunder.

The Group noted that under sub-section (2) of Section 24 of the SEBI Act, prosecution proceedings can be initiated against any person who fails to pay the penalty imposed by the Adjudicating Officer or fails to comply with any of his directions or orders.

The Group felt that though it is possible to construe violation of SEBI orders as violation of the SEBI Act, the Rules and Regulations made thereunder, yet for the sake of clarity, the said sections may be amended in order to make the failure on the part of a person to comply with an order of SEBI an offence.

2.23 Recommendation of the Group

The Group recommends that section 15HB of SEBI Act, may be amended to provide for monetary penalty for the failure to comply with the orders of SEBI and to amend section 24 (2) to make non-compliance of SEBI order an offence under the provisions of the said section.

2.24 Monetary Penalty to be transferred to Investor Protection Fund

The Group noted that section 15JA of SEBI Act, provides that all sums realized by way of penalties under the respective Acts shall be credited to the Consolidated Fund of India.

It was noted that the SEBI Act is for the purpose of protection of interests of investors. Therefore, the sums realized by way of penalties under Chapter VIA of the SEBI Act, should be used for the said objectives through the creation of Investor Protection Fund as recommended in para. 1.2. The Group was also informed that the Pension Fund Regulatory and Development Authority, Ordinance, 2004 has permitted the Pension Fund Regulatory and Development Authority (PFRDA) to set up the Subscriber Education and Protection Fund. Further, all the sums realized by way of penalty imposed by the PFRDA under the Ordinance shall be credited to the Subscriber Education and Protection Fund.

The Group felt the necessity of amending the SEBI Act, on the lines of PFRDA Ordinance and suitable amendments in section 15JA of the SEBI Act, should also be made.

2.25 Recommendation of the Group

The Group recommends that the SEBI Act, may be amended on the lines of PFRDA Ordinance so that all the penalty amounts realised under Chapter VIA SEBI Act, are utilized for investors protection and education. Suitable amendments in section 15JA of the SEBI Act should also be made.

2.26 Composition of Securities Appellate Tribunal

The Group noted that section 15L of the SEBI Act gives the impression that all the matters could be heard only by all the three members present and otherwise the proceeding will not be valid.

The Group noted that under the provisions of Income Tax Act and Railways Act, the Presiding Officer can constitute benches consisting of one member or two members for hearing any appeal or interim application.

The Group felt that SEBI Act may be amended so as to empower the Presiding Officer to constitute any bench consisting of one member or two members for hearing an appeal or interim application. However, as the appeal against the order of the SAT lies before the Hon'ble Supreme Court of India, the Group is of the view that atleast one member of the bench should be a judicial member i.e. a retired judge of a High Court.

2.27 Recommendation of the Group

The Group recommends for an amendment in the SEBI Act, so as to empower the Presiding Officer to constitute benches consisting of one member or two members for hearing any appeal or interim application. Provided that atleast one of the member of such bench shall be a judicial member.

2.28 Tenure of the Member of SAT to be increased

The Group noted that as per section 15N the tenure of members of SAT is up to 62 years and the same appears to be very short and would require appointment of new members frequently. Therefore, the tenure of a member is required to be enhanced to avoid frequent reconstitution of SAT.

The Group supports the proposal to amend section 15N of the SEBI Act so as to increase the tenure of the member of SAT from 62 years to 65 years.

2.29 Recommendation of the Group

The Group recommends for an amendment in section 15N to increase the tenure of a member to 65 years in order to avoid frequent reconstitution of SAT.

2.30 Restriction on SEBI official to hold office in SAT be removed

The Group noted that as per proviso to section 15M (2), a member of the Board or any person holding a post equivalent to Executive Director shall not be appointed as a presiding officer or a member of SAT during his service or tenure as such with the Board or within 2 years from the date on which he ceases to hold office as such in the Board. It was observed that a member with knowledge of securities market may be in a better position to appreciate the complexities of securities market.

However, the Group noted that the said restriction is considered to be necessary in order to avoid the conflict of interest. However, the Group felt that the restriction of 2 years may be reduced to 1 year.

2.31 Recommendation of the Group

The Group recommends that the proviso to section 15M (2) of the Act may be amended and the period of two years may be reduced to 1 year.

2.32 Compounding of Offences

The Group noted that as per section 24A of the SEBI Act, any offence punishable under the said Acts, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may be compounded. In terms of sections 11C (6) and 24 of the SEBI Act the offences under the said Acts are punishable with imprisonment or with fine or with both. There is no identification as to which offences will be punishable with imprisonment only or with both.

The Group noted that all offences under SEBI Act have to be compounded under section 24A. However, the provisions of compounding do not cover other violations for which civil action by way of enquiry or adjudication proceedings has been initiated. The Group also noted that, at present, composition of offences can be made only by Securities Appellate Tribunal or a court and

not by SEBI as is done by the Central Government in respect of certain offences under section 621A of the Companies Act, 1956.

The Group felt that the Securities Appellate Tribunal being the Appellate Authority may not be conferred with the power of compounding (original jurisdiction) and that the compounding has to be done by the Court having jurisdiction and not by an appellate body.

2.33 Recommendation of the Group

The Group recommends that, SEBI Act may be amended adopting the provisions on the lines of Section 15 of Foreign Exchange Management Act in terms of which any contravention may be compounded within one hundred and eighty days from the date of receipt of an application made by the person committing such contravention. The Group further recommends that the said section may be amended to provide for compounding of all violations and not only offences, on the lines of provisions contained in Section 279 (2) of Income Tax Act 1961.

2.34 Filing of complaint by SEBI – Deemed Public Prosecutor for prosecution

The Group noted that in terms of section 26 of SEBI Act no Court inferior to that of a Court of Sessions shall try any offence under the said Acts. In terms of section 225 of Cr.P.C, in every trial before a court of sessions, prosecution shall be conducted by a Public Prosecutor. The Group observed that it would be in the interest of justice that the counsels who are appointed by SEBI should appear before the Court of Session.

The Group noted as per section 5(3) of the Prevention of Corruption Act, 1988 the person conducting a prosecution before a special judge shall be deemed to be a public prosecutor, for the purpose of said prosecution.

2.35 Recommendation of the Group

The Group recommends that suitable amendment in section 26 of the SEBI Act, may be made to provide that the person conducting prosecution on behalf of SEBI, under SEBI Act before the Sessions Court shall be deemed to be a public prosecutor.

2.36 Presence of SEBI Official to be dispensed with

The Group was informed that as per the existing provisions, SEBI's officials are required to be personally present on each date of hearing of complaint filed by them before the judicial magistrate / session judge. It is observed that in order to avoid dismissal of such cases on technical ground of non-attendance of the complainant, it is desirable that SEBI officials are given exemption from attendance in complaint cases on the lines of section 621(1A) of the Companies Act, 1956 whereby personal attendance of the officials of the Central Govemment or RoC has been dispensed with.

2.37 Recommendation of the Group

The Group recommends for an amendment in section 26 of SEBI Act in order to dispense with the compulsory presence of SEBI officials at every stage of hearing during the prosecutions filed by SEBI, on the lines of section 621(1A) of the Companies Act.

2.38 Office of Single Enquiry and Adjudicating Authority

It was noted that the SEBI Act provides inter alia penalties viz., (a) suspension or cancellation of certificates of registration and (b) monetary penalty. These two types of penalties are mutually exclusive. Under the enquiry proceedings, Board does not have power to impose monetary penalty and under the adjudication proceedings, the adjudicating officer does not have power to suspend or cancel a certificate of registration.

The Group noted that prevalent practice is very rigid in nature as the proposed penalty by way of disciplinary action or monetary penalty is decided on commencement of enquiry proceedings or adjudication proceedings, as the case may be. In order to impart flexibility in this regard, it is desirable that an officer may be appointed as an Enquiry & Adjudicating Officer and he may after conducting the proceedings decide on the nature of penalty i.e. whether by way of disciplinary action or monetary penalty.

2.39 Recommendation of the Group

The Group recommends that SEBI Act may be amended to provide that an Enquiry and Adjudicating Officer appointed by the Chairman / Whole-time Member may decide the matter of imposition of any type of penalty namely, suspension or cancellation of certificates of registration to be imposed by SEBI or monetary penalty under SEBI Act and Rules/Regulations made thereunder.

The Group further recommends for the amendment of SEBI Act to provide for constitution of a three member standing committee to review all the orders passed by the Enquiry and Adjudicating Officers. This will enable SEBI to consider granting inhouse relief to the parties affected by the Enquiry & Adjudicating Officers. Appeal to SAT will lie from the orders passed by such a Review commission

2.40 Administrative actions in case of technical violations

The Group noted that in terms of section 12(3) of the SEBI Act the Board may by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations. Under Section 24 of the SEBI Act, prosecution can also be filed for any violation of the provisions of the SEBI Act or of any rules or regulations made there under or failure to pay the penalty imposed by the Adjudicating Officer or failure to comply with any of his directions or orders. The Group felt that warning can be issued pursuant to the powers vested in SEBI under Section 4(3) read with Section 11(1) of the SEBI Act.

2.41 Recommendation of the Group

The Group recommends that the SEBI Act does not require any amendment for the purpose of empowering SEBI to issue warning etc. in respect of minor or technical violations.

2.42 Composition of the Board

The Group considered the proposal to amend section 4 of the SEBI Act to empower Government to appoint all members of the Board including Chairman and Wholetime Members best without any specific reservation in favour of any official of Government or RBI. The proposed amendment will not take away or dilute any right of the Government and the Government will continue to have a right to appoint any of its own officials or of RBI, if its so

desires, but the amendment will give wider option to the Government, in choosing members of the Board from different streams and fields relevant to the securities market.

The Group also noted that the proposal is in alignment with the current approach of the Indian Parliament as reflected from the recent legislations pertaining to other regulators, namely, Telecom Regulatory Authority of India Act, 1997, Insurance Regulatory and Development Authority Act, 1999 and Pension Fund Regulatory and Development Authority Ordinance, 2004. In all the above legislations, though the Government has been empowered to appoint all members of the said regulatory bodies, no specific reservation in favour of the officials of the Central Government or any other authority has been made.

2.43 Recommendation of the Group

This proposal was received at a very late stage and could be discussed only at a meeting where only some of the members of the Group were present. Majority of the members present felt that the proposal deserves acceptance but it would be proper that the views of the other members should also be ascertained before making any final recommendation. Views of the other members of the Group have been ascertained and the majority of them have agreed that section 4 of the SEBI Act be amended to give effect to the proposal.

2.44 Amendment of section 19

The Group noted that under section 19 of the SEBI Act, SEBI can delegate its powers and functions under the SEBI Act except the powers under section 29 to any of its officers, members etc. The Group observed that section 29 provides for power of the Central Government to make rules to carry out the purposes of the SEBI Act. As this power cannot be exercised by SEBI Board, the question of its delegation does not arise. It was observed that reference to section 29 in section 19 of the SEBI Act seems to have been made wrongly. The reference to section 29 should be replaced by section 30 which empowers SEBI Board to frame regulations to carry out the purposes of the Act.

2.45 Recommendation of the Group

The Group recommends that section 19 of the SEBI Act may be amended to replace the references to section 29, by section 30.

PART- THREE

3.0 Amendments to Companies Act

3.1 Jurisdiction of SEBI over listed companies and Investor Education and Protection Fund.

The Group noted that the suggestions regarding conferring comprehensive jurisdiction to SEBI over listed companies and administration of the Investors' Education and Protection Fund set up under section 205C of the Companies Act may be administered by SEBI are as per recommendations of the JPC, and as such this Committee would like to leave the matter to the Central Government for taking a policy decision in this regard.

3.2 Recommendation of the Group

The Group does not wish to make any recommendations in view of the above position and feels that the Central Government may consider taking further necessary steps and avoid duplicity of jurisdiction.

3.3 Power to amend schedule II of the Companies Act

The Group considered the suggestion that SEBI should be authorised to amend Schedule II of the Companies Act specifying the disclosures to be made by the companies in the offer documents. The Group noted that Schedule II of the Companies Act provides for matters to be disclosed by the companies in the prospectus issued by them. The power to alter the Schedules of the Companies Act is vested in the Central Government under section 641 of the Companies Act.

The Group noted that under section 11A of the SEBI Act, without prejudice to the provisions of the Companies Act, SEBI may by regulations specify the disclosures to be made by the companies in their offer documents. Under this provision SEBI may specify additional disclosures.

3.4 Recommendation of the Group

The Group recommends that SEBI may in exercise of its powers under section 11A of the SEBI Act, specify additional disclosures to be made by the companies and the power to amend Schedule II of the Companies Act may remain with the Central Government.

3.5 Amendment in SC (R)A and Depositories Act, 1996–

3.6 SEBI to be sole authority to administer the provisions of the SC(R)A

The Group considered the suggestion for making SEBI the sole authority to administer the provisions of SC(R)A. In this connection, the Group also noted the comments of RBI that by amendment in section 29A of the SC(R)A read with the notification dated March 1, 2000 issued by the Central Government, the powers to regulate transactions in money market securities including repos in government and debt securities, Government securities market, and gold related securities etc have been delegated to RBI. It was brought to the notice of the Group that in terms of section 29A of the SC (R) A, the Central Government may delegate its powers to SEBI and in certain matters to RBI.

3.7 Recommendation of the Group

The Group feels that this is a policy matter and the Central Government may decide as to whether to confer sole jurisdiction on SEBI under the SC (R) A.

3.8 Delegation of powers under the SC(R)A and the Depositories Act

The Group considered the suggestions to amend SC(R)A and the Depositories Act empowering the SEBI Board to delegate its powers and functions under those Acts to its officers, members or other persons specified by an order on the lines of section 19 of the SEBI Act.

The Group examined the provisions of the SC(R) A and the SEBI Act and the Depositories Act and noted that under the SC(R)A, the Central Government has delegated certain powers upon SEBI. Further, SEBI has certain substantive and direct powers under the SC(R) A and the Depositories Act. Under the SC(R) A and the Depositories Act there are no provisions on the lines of the section 19 of the SEBI Act, authorizing the Board to delegate its functions to its officers, members, etc.

The Group also noted that in terms of section 11(2) (j) of the SEBI Act, the Board can perform such other functions as may be delegated to it by Central Government under the SC(R)A. Such

functions being functions under the SEBI Act, it may be possible to delegate such functions under section 19 of the SEBI Act. However, the substantive and direct functions and powers of the Board under the SC(R)A and the Depositories Act may not be delegated under section 19 of the SEBI Act as such powers and functions are not powers and functions under the SEBI Act as contemplated by section 19 of the SEBI Act. However, this power may be conferred upon the Board by amending section 19 of the SEBI Act by including delegation of powers under SC(R)A and Depositories Act.

3.9 Recommendation of the Group

The Group recommends that section 19 of the SEBI Act may be amended to include delegation of powers under the SC(R)A and the Depositories Act.

3.10 Consolidation of securities laws

The Group considered the proposal for consolidation of securities laws governing primary issues, secondary market, Collective Investment Schemes and listed companies into one enactment on the lines of Financial Services and Market Act, 2000 of U.K.

3.11 Recommendation of the Group

The Group feels that though it is desirable to have consolidated legislation as proposed, the Group would not like to make any recommendation in this regard as the issue involves a policy matter on which only the Central Government can take a view.

ANNEXURE 'A'

Names of the stakeholders from whom the comments were sought

Sr. No.	Names
1	Reserve Bank of India
2	Department of Company Affairs
3	Department of Economic Affairs

4	Institute of Company Secretaries of India
5	National Stock Exchange of India Ltd.
6	The Stock Exchange, Mumbai
7	Central Depository Services (India) Ltd
8	National Securities Depository Ltd
9	Consumer Education & Research Society
10	Rajkot Sahar / Jilla Grahak Suraksha Mandal
11	Consumer Unity & Trust Society
12	Tamilnadu Investors Association
13	Gujarat Investors & Shareholders Association
14	Ghatkopar Investors Welfare Association
15	Investors Grievancies Forum
16	Kolhapur Investors Association
17	Midas Touch Investors Association
18	Bombay Chamber of Commerce & Industry
19	The Institute of Chartered Accountants of India
20	Federation of Indian Chambers of Commerce & Industry
21	Indian Merchant's Chambers
22	Association of Merchant Bankers in India
23	Association of Mutual Funds in India
24	Bombay Incorporated Law Society

ANNEXURE 'B

Names of the stakeholders from whom the comments were received

Sr. No	Names
1	Reserve Bank of India
2	Ministry of Company Affairs
3	Institute of Company Secretaries of India
4	National Stock Exchange
5	Bombay Stock Exchange
6	Central Depository Services (India) Ltd.
7	National Securities Depository Ltd.
8	Consumer Education & Research Society
9	Rajkot Sahar / Jilla Grahak Suraksha Mandal
10	Tamilnadu Investors Association
11	Consumer Unity & Trust Society (CUTS)
12	Gujarat Investors & Shareholders Association
13	Kolhapur Investors Association
14	Bombay Chamber of Commerce & Industry
15	The Institute of Chartered Accountants of India
16	Federation of Indian Chambers of Commerce & Industry
17	Indian Merchant's Chambers
18	Association of Mutual Funds in India
19	Bombay Incorporated Law Society

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The Group would also like to acknowledge the in-depth analysis done in papers prepared by Officers of Legal Affairs Department of SEBI .The Group records its deep appreciation of the valuable insights and inputs provided by Shri Santosh Kumar Shukla, Deputy Legal Advisor, SEBI. The Group also specially acknowledges the painstaking work put in by Shri R.Vasudevan, Director (Inspection and Investigation), Department of Company Affairs.

The Group records its high appreciation of the hard work put in by the officials of SEBI who laboured ceaselessly to enable timely and smooth holding of meetings, making material available, collating and compiling comments from all stakeholders.

Specific mention is to be made of the work put in by Shri Vijayakrishnan G., Assistant Legal Adviser, SEBI in assisting the Group. The Group also expresses its thanks to Mrs. Sandhya Santhosh Kumar and Mrs. Shwetha Shetty for providing necessary secretarial assistance.

Mr. Justice M . H . Kania (Retd.)
(Chairman)

Mr. Justice A. N . Mody
(Retd.)

Mr. Justice S.M. Jhunjhunwala
(Retd.)

Mr. Jitesh Khosla

Mr. P G R Prasad

Mr. Sushil Jiwrajka

Mr. Prashant Saran

Ms. P. M . Umerji

Mr. N . K. Jain

Mr. K . R . Chandratre

Mr. Anil Singhvi

Ms. Parimala Rao

Mr. Pratip Kar

Mr. R. S. Loona
(Member Secretary)