

B] REVIEW OF POLICIES AND PROGRAMMES

The following paragraphs analyse the major policy developments and programmes of SEBI during 1998-99.

i. Primary Securities Market

Revised eligibility norms for Initial Public Offer

To encourage initial public offers, eligibility norms were relaxed by the SEBI without diluting the disclosure standards. The revised eligibility norms are mentioned below:

New companies having distributable profits in terms of Section 205 of Companies Act for at least three out of immediately preceding five years and a pre-issue net worth of not less than Rs. one crore in three out of preceding five years were allowed to mobilise capital through IPOs. However, the minimum net worth requirement of Rs. one crore is to be met during the immediately preceding two years. This requirement is in lieu of the extant stipulation of three year track record of dividend payment.

Relaxation of norms for promoters contribution

In continuation of the SEBI's endeavor of gradual dilution of the norms for lock-in in respect of securities allotted to the promoters/promoter group, the lock-in condition has been restricted to only 20 per cent of the total capital of the company. This would include the capital brought in by way of preferential issue.

Relaxation for public issues by banks

The SEBI exempted public and private sector banks from fulfilling eligibility norms in order to come out with public issues. Further, banks have been permitted to come out with equity issues at a price as approved by the Reserve Bank of India. Thus, banks are no longer required to satisfy SEBI norms so as to freely price their issues.

Compulsory rating of debt instruments

To raise the standards of disclosures and to help investors make informed investment decisions, every public or rights issue of debt instruments is required to be compulsorily rated by the approved credit rating agency irrespective of their maturity/conversion period as against 18 months.

Relaxation of eligibility norms for infrastructure companies

In order to facilitate a greater flow of funds to the infrastructure sector, the SEBI has granted specific relaxations to infrastructure companies. These relaxations are available to them provided their projects are appraised by a Developmental Financial Institution (DFI) or The Infrastructure Development Finance Corporation (IDFC) or The Infrastructure Leasing & Financial Services Ltd. (ILFS) and there is a minimum financial participation of 5 per cent of the project cost (in debt or equity) by the said institutions. The financial participation by these institutions can be made jointly or severally, irrespective of whether they have appraised the project or not. The various relaxations granted to infrastructure companies are given in Box 1.2.

Box. 1.2: Relaxation to Public Issues by Infrastructure Companies

- Exemption from the requirement of making a minimum public offer of 25 percent of securities and also from the requirement stipulating 5 shareholders per Rs. 1 lakh of offer made.
- Exemption from the minimum subscription of 90 per cent provided disclosure is made about the alternate source of funding considered by the company, in the event of under-subscription in the public issue.
- Permission to freely price the offerings in the domestic market provided the promoter companies along with equipment suppliers and other strategic investors subscribe to 50 percent of the equity at the same price as the price offered to the public or at a price higher than that offered to the public. However, adequate disclosures on justification for the pricing need to be made in the offer documents.
- Permission to keep the issues open for 21 days to enable the companies to mobilise funds.
- Exemption from requirement to create and maintain a debenture redemption reserve (DRR) in case of debenture issues as provided in the SEBI Disclosure & investor Protection Guidelines

Revision in book-building guidelines

Earlier, the SEBI had framed guidelines for book-building which were applicable for 100 per cent of the issue size and for issues above Rs. 100 crore. To encourage the use of this facility the SEBI has reduced this limit to issues of Rs 25 crore.

Modification of requirement of mandatory collection centres

With a view to reduce the cost of the public issues, the SEBI modified the earlier requirement of 30 mandatory collection centres. The minimum number of collection centres for an issue of capital shall now be:

- a. the four metropolitan centres and
- b. such centres where the stock exchanges are located in the region in which the registered office of the company is situated.

Merchant Bankers are permitted to carry on activities of primary dealers

Certain merchant bankers have obtained "in-principle" approval from the Reserve Bank of India to function as primary dealers which require registration as non banking finance companies with the RBI. Under the present SEBI (Merchant Bankers) Regulations, merchant bankers are prohibited from undertaking any fund-based activities. The Board decided to grant an exemption from this prohibition under the SEBI (Merchant Bankers) Regulations to those Merchant Bankers who get registered with the RBI as NBFC for primary and satellite dealership of government securities.

Regulations for credit rating agencies (CRAs)

The credit rating agencies which rate the credit worthiness of the entities which mobilise resources from the market or borrow funds from FIs, were hitherto not subjected to any regulation. The SEBI Act was amended empowering the SEBI to register and regulate CRA. The SEBI constituted a Committee to recommend draft regulations for regulating the CRA. The Committee submitted its recommendations.

Box 1.3: Major Norms for Credit Rating Agencies

The main recommendations of the Committee are:-

1. The regulations should cover rating of securities only and will not cover rating of fixed deposits, LPG dealers, foreign exchange, country ratings and real estates etc.
2. The promoter of CRA should belong to one of the following categories:-
 - a. Public financial institutions;
 - b. Scheduled commercial banks;
 - c. Foreign banks operating in India;
 - d. Foreign Credit Rating Agencies recognized in the country of their incorporation, having atleast five years experience in rating;
 - e. Any other company or a body corporate having continuous networth of minimum Rs.100 Crore as per the audited annual accounts for the previous five years prior to filing the application with the Board.
3. Disclosure of unaccepted ratings to investors has been made compulsory. Further, an obligation has been cast on the issuer to disclose all the ratings it has got during the previous 3 years for any of its listed securities.
4. Uniform rating symbols for all CRAs should not be imposed.
5. Credit rating agencies would have to carry out periodic reviews of the ratings given during the lifetime of the rated instrument.
6. For ensuring that corporates provide correct/adequate information to Credit Rating Agencies:
 - a. A clause would be incorporated in the listing agreement of the Stock Exchanges requiring the companies to co-operate with the rating agencies in giving correct and adequate information.
 - b. Issuers coming out with a public/rights issue of debt securities would be required to incorporate an undertaking in the offer documents promising necessary co-operation with the rating agency in providing true and adequate information.
7. For all public and rights issues of debt securities of issue size greater than or equal to Rs.100 Crore, two credit ratings from different rating agencies would be made mandatory.

Buy-back policy

The SEBI in order to introduce liquidity in the shares of companies and to help the corporates in enhancing the shareholders' wealth, approved the Securities and Exchange Board of India (Buy Back of

Securities) Regulation 1998. The major features of the regulations are presented in Box 1.4.

Box 1.4: Salient Features of Buy-back

- a. The scope of the Regulations covers listed securities of the company only.
- b. The buy-back could be undertaken by making public offer, book-building (Dutch auction) or purchases through the stock exchange.
- c. The buy back has been permitted through the tender offer mode for buy back from the existing shareholders on proportionate basis as well as from odd lot share holders.
- d. In case the purchases are made through the stock exchange, the details of such purchases made under the buy back scheme of the company shall be made public through the stock exchange on daily basis. Promoters are not permitted to participate in the buy back through the stock exchange mode .
- e. The Regulations provide for extensive disclosures in the Explanatory Statement to be annexed to the notice for the general meeting and the Letter of Offer. Further, adequate care has also been taken to disclose the pre and post buy back holdings of the promoters.
- f. Buy back through negotiated deals, spot transactions or private arrangements is not permitted.
- g. In order to ensure strict compliance with the provisions of the Regulations, merchant banker will have to be associated with every offer for buy back wherein he would be required to give a 'due diligence' certificate.
- h. An offer for buy back shall not remain open for more than 30 days unless purchases are through stock exchanges. For example, except in the cases of purchases through stock exchanges, an offer for buy back shall not remain open for more than 30 days. The payment for accepted securities has to be made within 7 days of the completion of verification and the shares have to be extinguished and physically destroyed within 7 days of the date of payment. The extinguishment certificate is required to be filed within 7 days of the physical destruction of the certificates.
- i. To ensure security for performance of its obligation, the company making an offer for buy back shall have to open an escrow account on the same lines as provided in the Take Over Regulations.

Employee stock option/employee stock purchase

The SEBI constituted a committee under the Chairmanship of Prof J.R. Verma to formulate Guidelines for Employee Stock options as well as Employee Purchase Schemes. The Board has considered and accepted the recommendations of the Committee and the Guidelines are being issued.

Companies not complying with the Listing Requirements

The philosophy of SEBI has been to ensure adequate disclosures in the prospectus so that the investor can make a well-informed investment decision.

In the aftermath of the statement made by the then Finance Minister regarding companies which had raised money from the public and disappeared, even though this issue did not directly relate to SEBI, with a view to maintain the integrity of the issue process, SEBI on its own undertook a study on the compliance of listing requirement by the companies which had come out with initial public offerings.

On the basis of the information given by the stock exchanges, the study revealed that 80 companies were not complying with the listing requirements of their respective regional stock exchanges and were not traceable at their registered office address.

With a view to set up a Joint Mechanism to initiate action against such defaulting companies a meeting

was held on 12th March 1999, between the Chairman SEBI and the Secretary Department of Companies Affair alongwith other officials and a Coordination & Monitoring Committee has been formed to monitor the progress and take policy initiatives in this regard.

Also, seven task forces have been established for seven regions to take joint action against such defaulting companies. The locations and composition of the task forces is given as *Annexure 2*. The immediate focus of these task forces is to identify such delinquent companies and take action under the Companies Act and SEBI Act after necessary investigations. The task forces would meet atleast once a month.