



## Important Focus Areas in Recent Years

February 5, 2016



**Seminar on Role of Courts and Regulator**  
**National Judicial Academy**

- SEBI-FMC Merger
- Corporate Governance Norms (ranked 8<sup>th</sup> in 2015 in a World Bank report)
- Stringent Enforcement
  - Proactive action against unregistered Collective Investment Schemes
  - Strengthening Insider Trading Law
  - Rationalization of Consent Mechanism
- Revised Merger and Amalgamation Process
- Steps to improve Disclosures on Pricing of Public Issues
- Listing Regulations
- Reclassification of Promoters as Public

- Exit Policy for Stock Exchanges
- Listing of Stock Exchanges
- Alternate Platforms / Frameworks
  - ✓ SME platform
  - ✓ Platform for Start-ups
  - ✓ REITs & InvITs
  - ✓ Municipal Bonds.
- Use of Technology for Investment Processes e.g. e-IPO, e-KYC, e-Voting, etc.
- Opening up of Local Offices by SEBI

# SEBI-FMC Merger

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- Announced in Union Budget 2015-16
- FCRA, 1952 Repealed and FMC merged with SEBI w.e.f. September 28, 2015
- SEBI issued regulatory framework by amending;
  - ✓ SC(R)(SECC) Regulations, 2012
  - ✓ SEBI (Regulatory Fee on Stock Exchanges) Regulations, 2006
  - ✓ SEBI (Stock Broker and Sub-Broker) Regulations, 1992
- Prescribed risk management framework national and regional commodity derivatives exchanges
- Task Ahead:
  - ✓ Final Settlement Price – Price Polling
  - ✓ Review of Risk Management Framework
  - ✓ New Participants and Products
  - ✓ Permitting brokers/ exchanges across equity and commodity derivatives

## Corporate Governance

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- Strict Alignment with Companies Act, 2013
- Independent Directors – tenure, terms and limit on no. of directorships
- Exclusion of Nominee Directors from the definition of Independent Directors (IDs)
- Prohibition of Stock Options to IDs and exclusion of liability of IDs
- Separate meeting of IDs-at least once a year
- Comprehensive disclosure of Remuneration Policy & RPT Policy
- Expanded role of Audit Committee
- Pre-approval of RPTs by Audit Committee
- Approval of shareholders through special resolutions for divesting material subsidiaries
- World Bank ranking of India w.r.t. shareholders protection- 49 (2012), 34 (2013), 8 (2014, 2015)

# Insider Trading Regulations

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- Regulations with respect to insider trading since 1992, new regulations w.e.f. May 15, 2015
- Comprehensive review and strengthening based on recent global and domestic developments
- Main Thrust
  - ✓ Align Indian regime with international practices
  - ✓ Provide clarity with respect to definitions and concepts
  - ✓ Facilitate legitimate business transactions
- Major Changes
  - ✓ Definition of 'insider' made wider
  - ✓ Definition of UPSI strengthened
  - ✓ Companies entitled to require 'third-party connected persons' to disclose trading and holdings
  - ✓ Directors, key managerial personnel prohibited from trading in derivatives on company securities
  - ✓ Provision of trading plans introduced for 'insiders' with necessary safeguards
  - ✓ System of pre-clearance of trades, recording of reasons for decisions and handling of UPSI on a 'need to know' basis
  - ✓ Code of conduct to regulate, monitor and report trading by employees/ connected persons
  - ✓ Principle based Code of Fair Disclosure and Code of Conduct prescribed.

# Regulation of Various Money Collection Schemes

(1/2)

Sl. No.	Activity	Act	Regulator	Redressal Authority
1.	Chit funds	Chit Funds Act, 1982	State Govt.	Registrar of Chits
2.	Schemes by Co-operative Societies – State / Multi State	Multistate Cooperative Societies Act, 2002- and Cooperative Societies Acts (State)	State Govt./ Central Govt.	Registrar of Co-op. Societies of State Govt. / Central Registrar of Co-op. Societies
3.	Money circulation schemes like MLM	Prize Chits and Money Circulation Schemes (Banning) Act, 1978	State Govt.	State Police
4.	Deposits as defined in various State Laws - Protection of Interest of Depositors (in financial establishment) Acts	Protection of Interest of Depositors (in financial establishment) Acts	State Govt.	District Collector Deputy Collector
5.	Nidhi Companies	s.620A - Companies Act, 1956 (now s. 406)	MCA	Registrar of Companies (RoC)
6.	Deposits accepted by Companies	section 58A Companies Act, 1956(now sections 73 to 76)	MCA	RoC

## Regulation of Various Money Collection Schemes

(2/2)

Sl. No.	Activity	Act	Regulator	Redressal Authority
7.	Deposits by NBFCs	Chapter IIIB of RBI Act, 1934	Reserve Bank of India	RBI
8.	Gold saving schemes by jewellers	Companies Act, 2013/ RBI Act, 1934	MCA / RBI	RoC / RBI
9.	Contract of Insurance, ULIP	IRDA Act, 1999	IRDA	IRDA
10.	Pension Scheme/ Insurance Scheme framed under EPF	PFRDA Act, 2013/ EPF and Misc. Provisions Act, 1952	IRDA or PFRDA or PF Commissioner	IRDA / PFRDA
11.	New Pension Scheme	PFRDA Act, 2013	PFRDA	PFRDA
12.	Housing Finance Institutions	NHB Act, 1987	National Housing Bank	NHB
13.	MF, VCF, AIF, CIS	SEBI Act, 1992	SEBI	SEBI



# Collective Investment Schemes

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- Sec 11AA of SEBI Act, 1992
- 4 components of CIS:
  - Pooling
  - Profit motive
  - No control over funds/ assets
  - Management in the hands of CIS provider
- Exemptions- Chit Funds, Nidhi Companies, NBFC, Corporates, Cooperative Societies, MF, Insurance, Pension, etc.
- Legal Presumption of CIS, if amount mobilised > Rs. 100 Cr. (2014 amendment of SEBI Act)
- SLCC under Chief Secretaries (More active now)

## Features of State Depositors' Protection Acts

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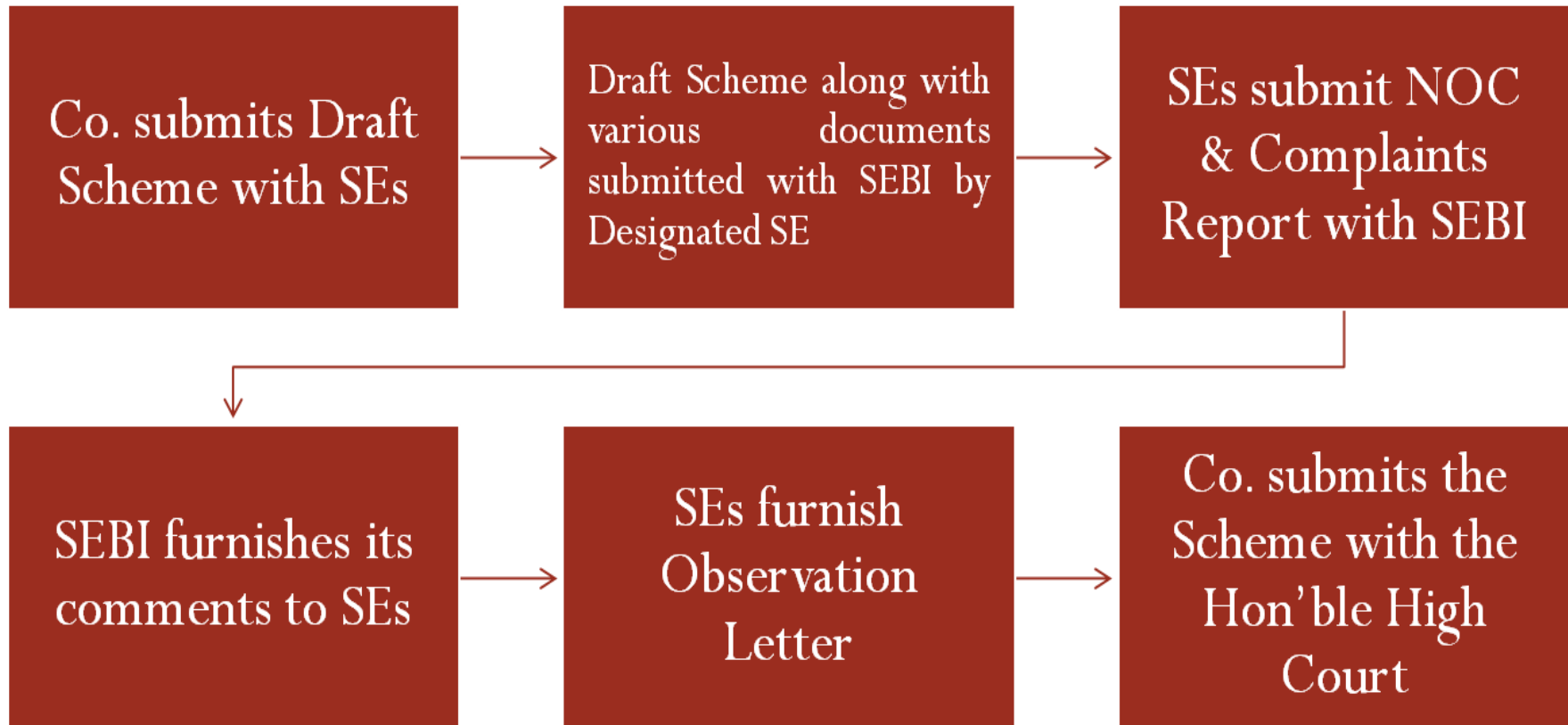
- 21 States/ UTs passed the Acts, another 4 awaiting Presidential Assent
- Constitutional validity upheld by Supreme Court
- Failure of Financial Establishment to refund deposits/ interest can lead to:
  - Attachment of property
  - Attachment of any other properties of promoters/ directors, etc.
  - Arrest of the accused
  - Distribution of proceeds to depositors
  - Attachment of properties of mala fide transferees
- District Collectors empowered to receive complaints/ initiate action
- Deputy Collector (Competent Authority) to exercise control over money/ properties attached
- Designated Court to hear claims, etc.

## Merger and Amalgamations –Earlier Process

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- Schemes submitted to SEBI after approval of HC
- Attempts to bypass SEBI SAST and ICDR Regulations
- Demerger of divisions, where in core business transferred to subsidiary
- Related Party Transactions
- Increase in promoter shareholding
- Achieving Listing benefits through backdoor - in circumvention of SCRR, ICDR
- Substantial acquisition and change in control with no exit opportunity-in circumvention of SAST Regulations

## Merger and Amalgamations – Revised Process



## Merger and Amalgamations –Advantages in Revised Process

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- SEBI can seek clarifications and suggest further disclosure / modification
- Improved quality of disclosures
- Disclosure of Related Party Transactions
- Shareholders can take well-informed decisions
- Disclosure of information on websites
- Timely clearance after Scheme approved by Hon'ble High Court
- Saving time and resources on litigation

# Indian Securities Market – Global Standing

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- Among the top 10 countries in terms of market capitalisation
- No. of Equity Trades: NSE-Rank 4 and BSE-Rank 11
- NSE Ranks 1 or 2 in equity derivatives/ currency futures trades
- India, a favoured destination for FIIs
- SEBI, a Board member of International Organization of Securities Commission (IOSCO) and Member of Financial Stability Board (FSB)
- SEBI actively engaged in global standard setting through representations in important IOSCO policy committees
- Global standards guide SEBI regulation
- FSAP 2012 by WB-IMF: Fully/ Broadly compliant in 22 of 28 principles
- IOSCO-BIS Level1 Assessment of Implementation of FMI Principles : India 1 out of 6 jurisdictions globally with highest ratings on all eight parameters

## Major Challenges Ahead

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- Further upgrading the surveillance systems and capabilities.
- Risk Management in the context of Evolving Technology – HFT, Algo & Co-location.
- Managing external shocks - Volatility due to huge Capital Inflows/Outflows.
- Enhancing financial literacy and investor awareness.
- Enhancing mobilization of Household Savings through Securities Market
- Increasing Retail Participation & Wider Penetration of Mutual Funds
- Disgorgement and Investor compensation
- Enforcement of Criminal Offences in Securities Market
- Independence of Auditors
- Insolvency laws

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Thank you!