



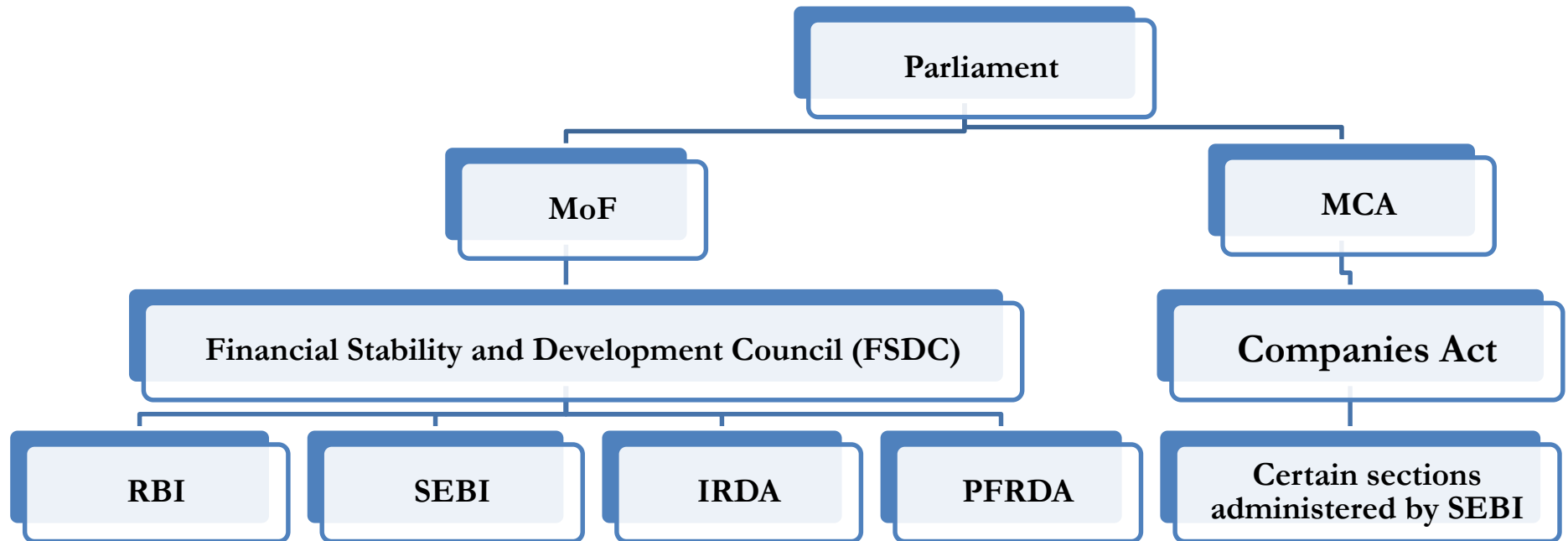
# *Indian Securities Market - Regulatory Landscape*

February 5, 2016



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

# Existing Regulatory Landscape – Who does What?



- Monetary policy
- Banking / Non-banking Regulations
- FOREX Market
- Public debt Management

- Securities Market
- Commodities Market  
*(w.e.f. Sept 28, 2015)*

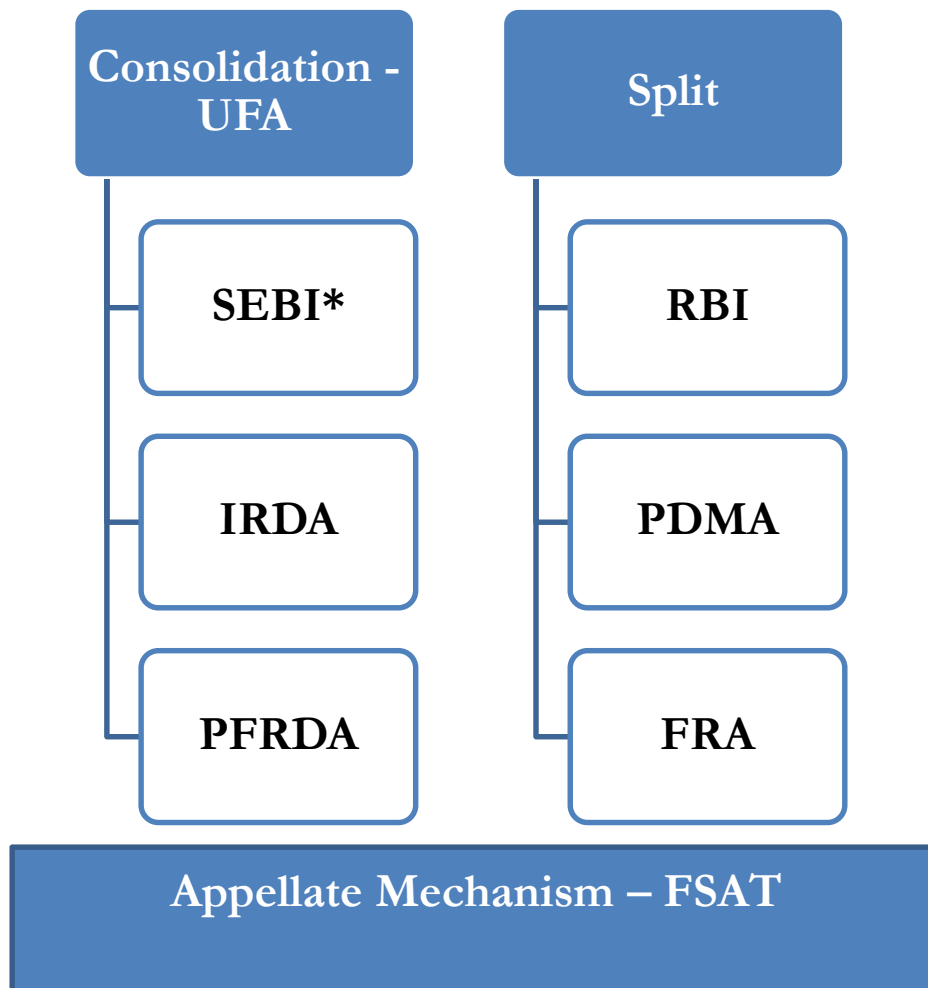
- Insurance Market

- Pension Funds

**Appellate Mechanism : Securities Appellate Tribunal**

# Regulatory Landscape – Proposed Architecture by FSLRC

Part Consolidation/ Part Split



\*FMC merged with SEBI

## Guiding Principles behind Securities Market Regulation

---

- i. Protect the interest of the investors
- ii. Develop the market
- iii. Build trust in the market through -
  - a) Uniform and transparent regulations / codes of conduct
  - b) Effective / fair / predictable enforcement actions

# Legal Framework for Securities Market

---

- Legal Framework
  - Capital Issues (Control) Act, 1947 (Repealed in 1992)
  - Securities Contracts (Regulation) Act, 1956 & Rules
  - Provisions of the Companies Act, 1956
  - SEBI Act, 1992 & Regulations
  - Depositories Act, 1996 & Regulations
  - Appellate Mechanism through SAT
  
- New Developments
  - Securities Law (Amendment) Act, 2014
  - New Companies Act, 2013
  - FSLRC Recommendations

- Capital Issues (Control) Act 1947
- Securities Contract (Regulation) Act 1956
- Formation of SEBI in 1988
- SEBI Act 1992
- Depositories Act 1997
- Multiple amendments to meet emerging challenges; mostly through Ordinances.

## ***1995 Amendment:***

- 11A: Regulation making power regarding disclosures in issue of capital etc.
- 11B: Power to issue directions
- Call for information from SEs / MFs etc., power of a civil court for summons, production of books, inspection of books, etc.
- Adjudicate, impose penalty
- Setting up Securities Appellate Tribunal (SAT)
- Bar of Civil Court on orders passed by SEBI
- Criminal prosecution
- Power to make regulation without previous approval of Government

## ***2002 Amendment:***

- Power to restrain from accessing market, suspend trading etc. even pending investigation
- Power to inspect records of any listed company / to be listed company on suspicions of insider trading / fraud
- Power to prohibit or issue of prospectus etc.
- Power of investigation, obligation of any manager of a listed company to produce documents
- Power to search & seize (with the approval of the Magistrate)
- Enhancement of penalties, e.g. for insider trading Rs.25 Crs or 3 times the amount of profit whichever is higher
- Multi-member SAT headed by a senior judge

## *2014 Amendment:*

- Special Courts
- Power to recover
- Disgorgement
- Presumption about CIS above Rs.100 Crs
- Power to call for information from “any person”
- Obligation of police officers to assist

## *2015 Amendment:*

- Merger of FMC with SEBI

## *SCRA Amendments:*

- 1999 - Derivatives Trading
- 2004 - Corporatization and Demutualization of Stock Exchanges



# Evolution of Securities Laws in the US

Trigger	Act/Law	Purpose
Stock Market Crash (1929), Great Depression and need for Securities Market Regulator	Securities Act of 1933 and Securities Exchange Act of 1934	Disclosures to investors, help curbing deceit and frauds, Regulations for financial markets; Establishment of SEC
Dwindling investors' confidence & safeguard public interest	Investment Company Act of 1940	Minimized conflict of interests, regular financial disclosures
Need for Investment Advisor Regulations	Investment Advisers Act of 1940	Mandatory registration of entities giving investment advice against compensation
Corporate and accounting scandals (Enron, Tyco International)	Sarbanes-Oxley Act of 2002	Multiple reforms; Creation of "Public Company Accounting Oversight Board (PCAOB)
Financial crisis of 2007–2010	Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010	Reshape U.S. regulatory system
Economic Slowdown	Jumpstart Our Business Startups Act of 2012	Encourage funding of small businesses by easing various securities regulations

## Uniqueness of SEBI Powers

---

- SEBI an exception to 'Separation of Powers' doctrine as it performs:
  - Legislative
  - Executive
  - Judicial
  
- The Supreme Court observed that “... *The Board exercises its legislative power by making regulations, executive power by administering the regulation framed by it and taking action against any entity violating these regulations and judicial power by adjudicating disputes in the implementation thereof.*” (*Clariant International v. SEBI*, AIR 2004 SC 4236)

## Quasi-Judicial Powers

---

- Power to issue Interim Orders
- Restrain/ Prohibit persons from accessing/ dealing in securities market
- Suspend trading in securities on stock exchange
- Power to issue direction: Disgorgement, Debarment, Administrative Order, etc.
- Cease and Desist Order
- Adjudication proceeding leading to imposition of penalty
- Prosecution

# Structure and Accountability of SEBI

## Structure

### **Board**

- Nine Members
- Chairman
- Three Whole Time Members
- One MoF Representative
- One MCA Representative
- One RBI Representative
- Two Part Time Members

### **Organization**

- Chairman and WTMs
- Executive Directors
- Department/ Divisions such as:
  - Integrated Surveillance Department
  - Investigation Department
  - Enforcement Department

## Accountability

SAT/SC Appeal

Parliamentary Questions

Standing Committee on Finance

RTI Act, 2005

CAG Audit

Returns and Reports to Central Govt.

Committee on Subordinate Legislation

International Assessments

Public Consultation

## Important SEBI Regulations

---

- Collective Investment Schemes (CIS) Regulations, 1999
- Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market (PFUTP) Regulations, 2003
- Prohibition of Insider Trading (PIT) Regulations, 2015
- Substantial Acquisition of Shares and Takeovers (SAST) Regulations, 2011
- Issue of Capital and Disclosure Requirements (ICDR) Regulations, 2009
- Delisting of Equity Shares Regulations, 2009
- Listing Regulations
- Stock Exchanges and Clearing Corporation Regulations
- Mutual Fund Regulations

# Investor Protection Areas

## Trade based Manipulation

- Synchronized/ Structured Trading
- Circular/Reversal/ Self Trades
- Cartelization
- Price Manipulation
- Order Book Manipulation
- Marking the close price

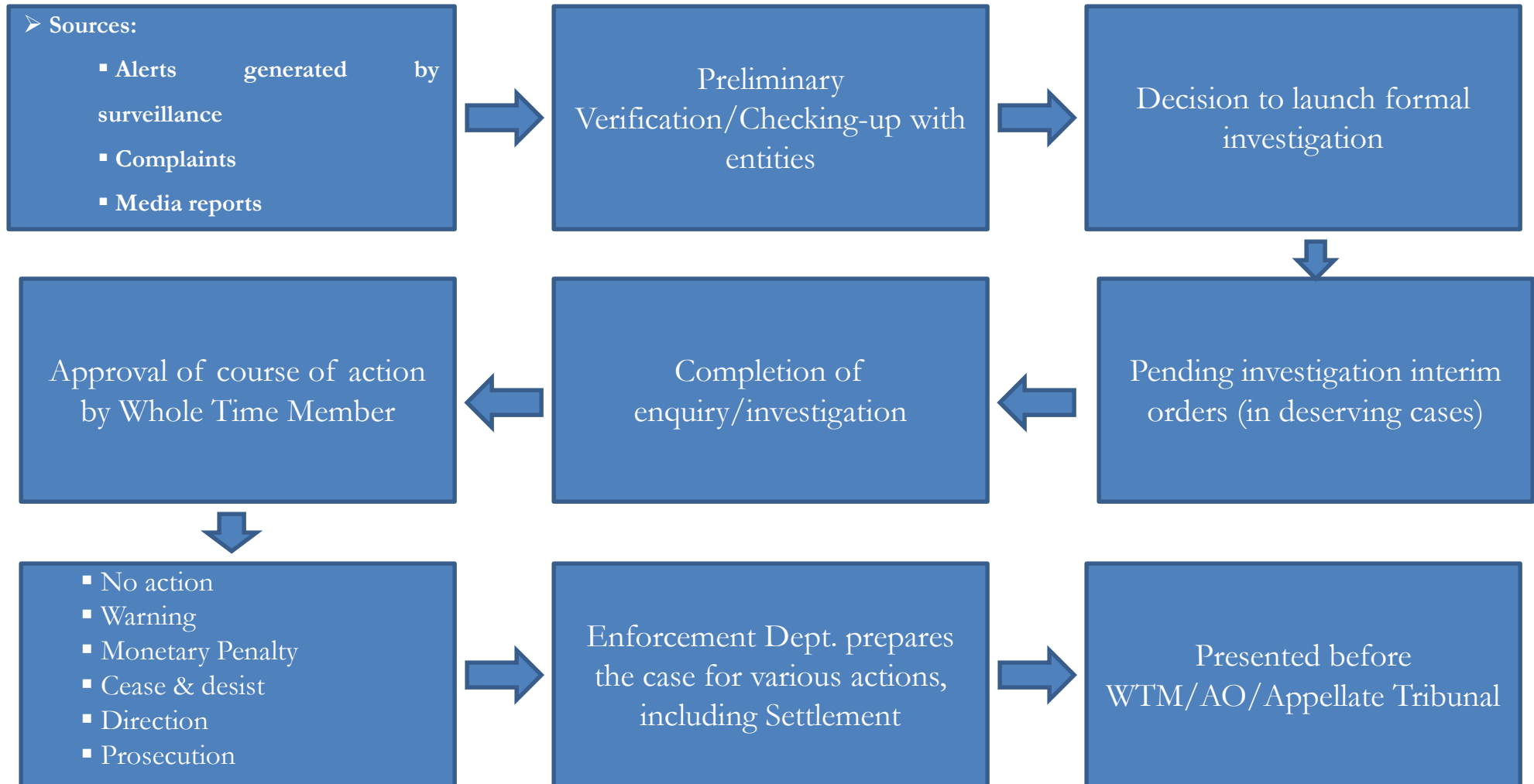
## Information based Manipulation

- False Corporate Announcements
- Recommending stock to public and taking reverse position
- Front Running
- Insider Trading
- Mis-selling

## Miscellaneous

- Cornering of shares in Issues/ commodities in physical market
- Manipulation through pledge of promoters shares
- Siphoning- off of Companies Funds
- CIS/ Ponzi Schemes
- Dabba Trading

# Enforcement - Process Flow



## Concerns on Enforcements (being updated)

---

- Sometimes people approach courts and not SAT against SEBI action
- Interim order of SEBI set aside without any prohibition on raising money
- Writ Petition where alternate remedy of appeal lies to SAT
- Injunction orders by District Courts where civil courts jurisdiction is barred
- Prosecutions pending with courts – 1,314
- Prosecutions - Special Courts and Deemed Public Prosecutors



---



Thank you!