



ECONOMIC CRIMES IN SECURITIES MARKET

National Judicial Academy – Bhopal

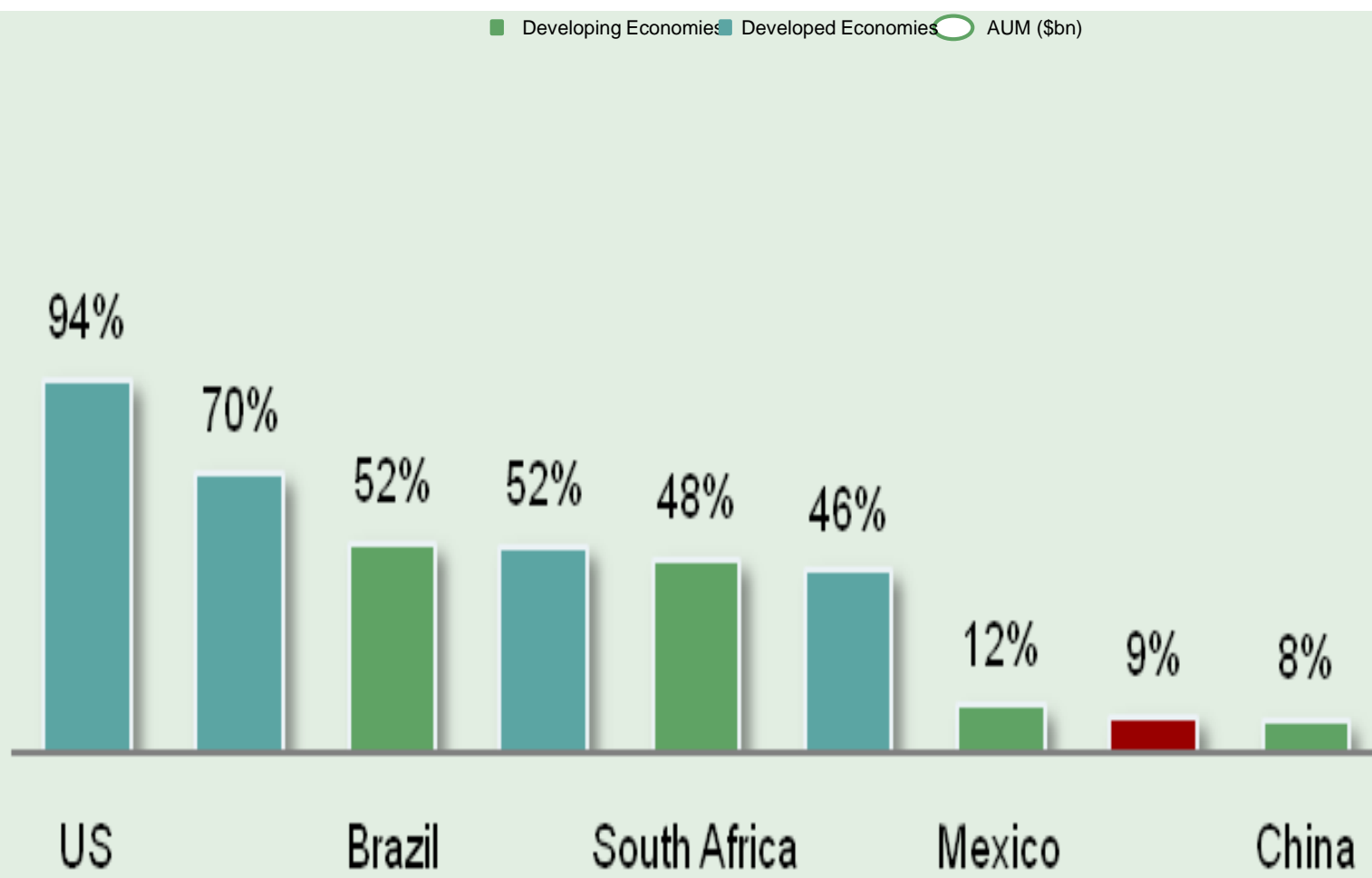
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3rd September, 2016

INCREASING EQUITY CULTURE IN INDIA

Investment fund penetration by country (2015)

■ Developing Economies ■ Developed Economies ○ AUM (\$bn)



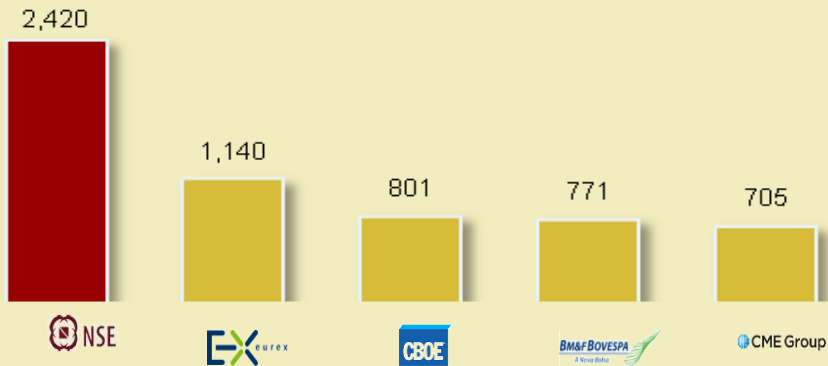
Comments

■ India's AUM of investment funds at 9% of GDP is among the lowest in the world

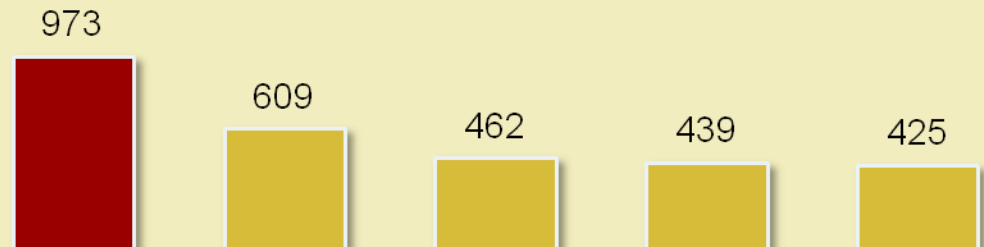
-JP Morgan

GLOBAL DERIVATIVES COMPARISON

Largest equity derivatives exchange

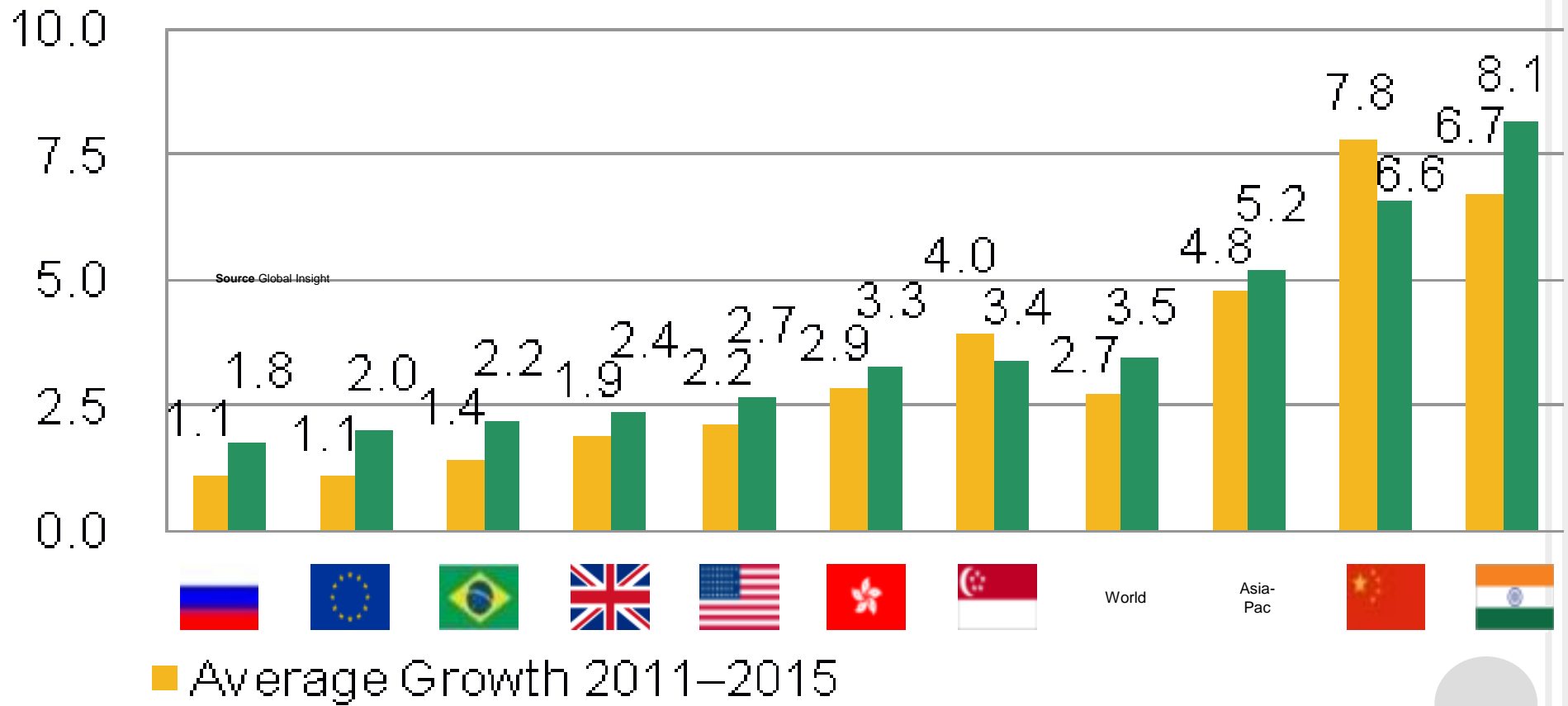


Most traded equity index futures and options contract



✓ Ranked 1st globally in the equity derivatives space due to its deep liquidity in F&O segment

INDIA – GLOBALLY FASTEST GROWING MARKET



LEGAL FRAMEWORK FOR SECURITIES MARKET

○ Legal Framework

- Securities Contracts (Regulation) Act, 1956 & Rules- 32 section
- Depositories Act, 1996 & Regulations- 30 sections
- Companies Act, 1956 (S.55A)
- Powers related to
 - Issue and transfer of securities
 - Non payment of dividend

■ Companies Act, 2013

- Jurisdiction of SEBI – remains the same under section 24
- New powers – SEBI to exercise powers under sections 11, 11A, 11B and 11D of the SEBI Act in respect of,-
 - matters delegated to it, as well as regarding enforcement of provisions on forward dealing(S.194) and insider trading(S.I95).

SEBI ACT, 1992

- **Regulatory Legacy** - Every 3-4 years there has been a crises
- Each Crises has led to amendment in SEBI Act empowering Sebi with respect to
 - Investigations
 - Enforcement
 - Penalty
 - Jurisdiction
- **SEBI Act - 35 sections.**
- **Legislative Powers**
 - Autonomy to frame Regulations
 - Only SEBI Board approval required-Process
- **Executive Powers**
 - Inspection
 - Investigation
 - Search and Seizure
 - Attachment



QUASI-JUDICIAL POWERS

- Power to issue directions Sec 11 : Disgorgement, Debarment, Administrative Order,
 - Remedial measures
 - Restrain/ Prohibit persons from accessing/ dealing in securities market
 - Suspend trading in securities on stock exchange
 - Cease and Desist Order
 - Post decisional hearing
- Adjudication proceedings
- Prosecution.
- Imprison

Supreme Court –Clariant International (2004)8SCC 524

No Separation of powers



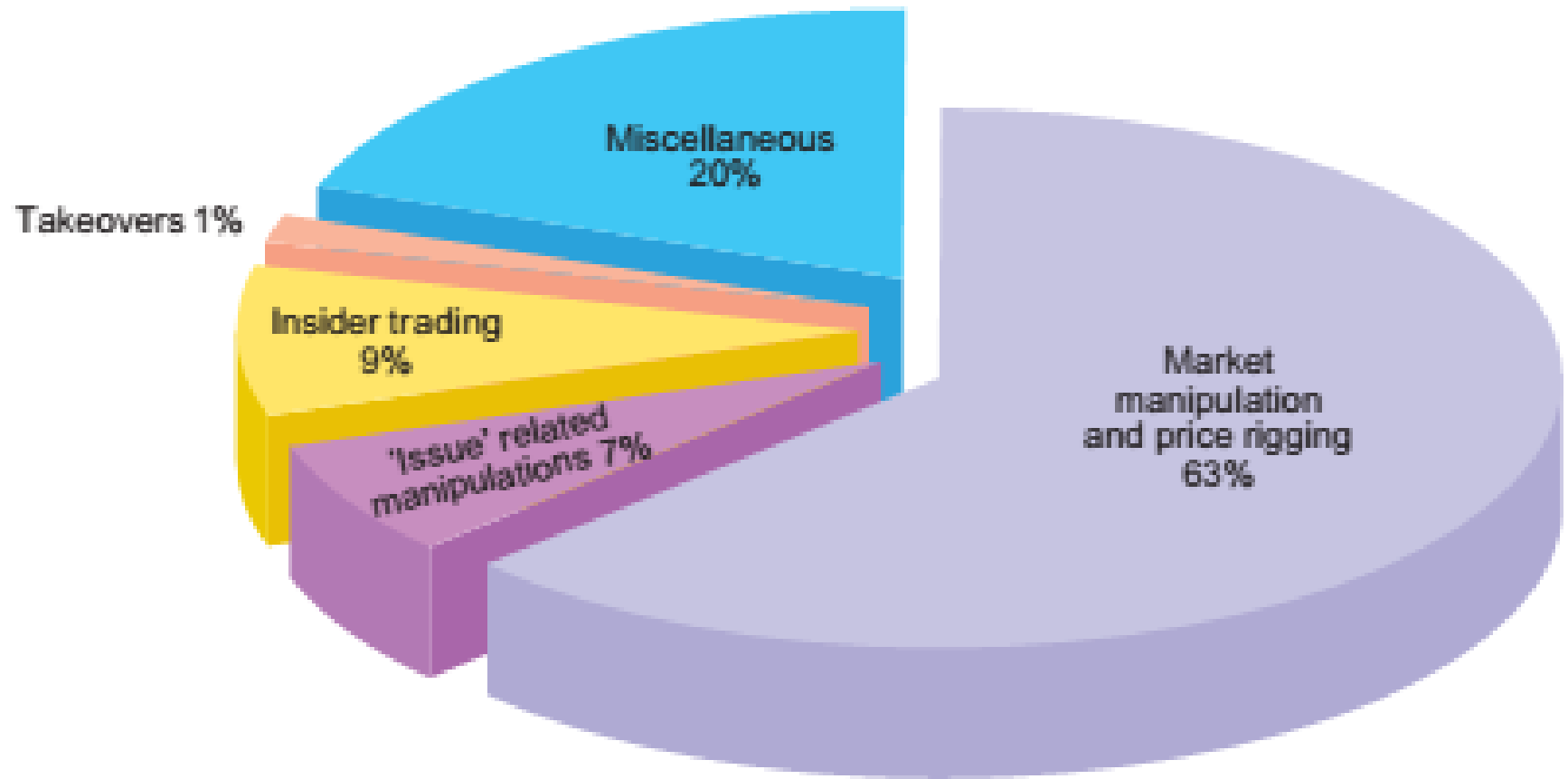
REGULATION OF VARIOUS MONEY COLLECTION SCHEMES

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	Price 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

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

ECONOMIC CRIMES – INVESTIGATION BY SEBI



FRAUDS - PRIMARY MARKET

- Issue Process
 - Prospectus
 - Sahara India Real Estate Corporation Ltd. Disclosure of financials
Financial disclosures
 - N.Narayan (2013) 12SCC152
Fraud in public issue
Ritesh Agarwal (2008) 8 SCC205
- Siphoning off Companies funds – vanishing co
- Cornering of shares in issues – Rupal Panchal
- Manipulation of pledge of promoter shares

COLLECTIVE INVESTMENT SCHEMES

- 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.

- Saradha

- PACL

- Civil Appeal No(s).13301/2015
Subrata Bhattacharya v/s SEBI



FRAUDS –SECONDARY MARKET

Trade Based Manipulation

- Synchronized Trading
- Circular Trading
- Price manipulation
- Self Trades
- Dabba Trading
- Financing
- Booking loses

Information Based Manipulation

False Corporate
announcements

Recommending to public
and taking reverse
positions

Front Running

Mis-selling

Insider trading

SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES) REGULATIONS, 2003

- Reg 2-4 defines and prohibits FUTP
- Reg 5-12 provides for investigation & enforcement

- Elements of FUTP
 - Dealing in securities in a fraudulent manner
 - Use/employment of manipulative or deceptive device in connection of issue/purchase/sale of any security
 - Fraud in connection with dealing in or issue of securities
 - Any act/practice/course of business which operates as fraud/deceit upon any person in connection with any dealing of securities
 - Deemed fraudulent or unfair trade practises –illustrative acts- Not exhaustive



SEBI (INSIDER TRADING) REGULATIONS, 1992

- Elements of Insider Trading
 - Insider
 - Unpublished price sensitive information
 - Trading/communication based on such information
- Case Study
 - Rakesh Agarwal vs. SEBI
 - The appellant being the Managing Director of ABS and having been involved in the negotiations had access to unpublished price sensitive information.
 - By dealing in the shares of ABS through his brother-in-law while the information regarding the acquisition of 51% stake by acquirer was not public, the appellant had acted in violation of Regulation 3 and 4 of the Insider Trading Regulations.



POWER TO ISSUE DIRECTIONS –REMEDIAL AND ENFORCEMENT ACTION

- Sec.11 –Regulate the market by such measures.....
- Issue Directions
- restrain persons or intermediaries from accessing or dealing in securities;
- suspend the trading of the security
- impound and retain the proceeds or securities
- suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
- not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction:
- direct the person concerned to dispose of any such securities acquired in contravention of the regulations

- Action can be taken pending investigation and inquiry

- Hearing – Pre or post
- Natural Justice – no prejudice caused 2014 (11) SCC 112

ADJUDICATION

- Power to levy fines and impose penalty minimum Rs.1 Lac
- FUTP Minimum of Rs10 lac fines upto 25 Crores or 3 times the gain - Mens Rea (2006)5 SCC 361

Particulars	Number of cases
Cases pending at the beginning of the period	1,381
Cases added during the period	249
Cases disposed of during the year	425#
Cases pending at the end of the period	1,205*
Break-up of pending cases at the end of the period	
Cases older than 2 years	691
Cases older than 1 but less than 2 years	298
Cases less than 1 year	216
TOTAL	1,205*

Note: *Involves 3,843 entities as compared to 3,579 entities last year.

Involves 893 entities as compared to 1,211 entities last

CRIMINAL PROSECUTION

- Any contravention of any provision, rule or regulation or non compliance of Summons is a criminal offence
- Offence is punishable with:
 - Imprisonment of upto ten years; or
 - Fine of upto Rs. 25 crores; or
 - Both
- Failure to comply with Adjudication Officer's orders attracts penalty of:
 - Imprisonment of at least one month, and upto ten years; or
 - Fine of upto another Rs. 25 crores; or both
 - Sessions Court alone may try offences
 - Designated Special Courts



DETAILS OF PROSECUTION

Year	No. of cases in which prosecution has been launched	No. of persons/ entities against whom prosecution has been launched
<i>1</i>	<i>2</i>	<i>3</i>
Up to 2003-04	891	4,332
2004-05	86	432
2005-06	30	101
2006-07	23	152
2007-08	40	185
2008-09	29	114
2009-10	30	109
2010-11	17	67
2011-12	29	60
2012-13	75	150
2013-14	269	652
2014-15	67	157
2015-16	46	268
Total	1,632	6,779

CONSENT AND COMPOUNDING

- ❑ Settlement by monetary payment including disgorgement
- Alleged offender neither denies nor admits commission of alleged offence
- Consent terms proposed are examined by a High Powered Advisory Committee comprising external experts and headed by retired Judge of High Court
- Recommended consent terms approved by panel of Whole Time Members of SEBI
- Order by SEBI / SAT/ Court



CONSENT AND COMPOUNDING DETAILS

Year	Pending at the beginning of the period	No. of consent applications received	No. of applications disposed of by passing order [^]	Consent charges (₹)*	No. of applications rejected	Pending at the end of the period
1	2	3	4	5	6	7
2014-15	112	108	41	3,57,95,389	59	120
2015-16	120	177	34	4,42,26,748	82	181

Notes: 1. *Amount received towards disgorgement, settlement and legal expenses.

2. ^ The number of applications may include the disposal of applications filed during previous financial years.

Year	No. of compounding applications filed	No. of applications compounded		Compounding charges received by SEBI (₹)*	No. of applications rejected
		Fully compounded	Partly compounded		
1	2	3	4	5	6
2014-15	11	1	Nil	Money has been recovered by recovery officers with interest and legal costs	14
2015-16	74	18	Nil	14,43,737	4

Note: * Amount received towards disgorgement, settlement and legal expenses.

CASES WHERE SEBI IS A PARTY

Subject	Filed during 2015-16	Disposed during 2015-16	Pending as on March 31, 2016
1	2	3	4
Supreme Court	19	14	47
High courts	246	164	597
Civil courts	32	13	83
Criminal courts	4	3	6
Consumer forums	26	6	164
Company Law Board	4	5	11
Central Information Commission	0	0	0
BIFR/AAIFR	26	7	87
Labour Commissioner/ Labour Court	0	0	4
Municipal/local bodies	0	0	0
Green Tribunal	0	1	0
Registrar of Companies	0	1	0
Mediation & Conciliation Centre	3	0	3
Total	360	214	1,002

Note: Statutory appeals filed before SAT, high courts and the Supreme Court are not included here.

REGULATORY ACTIONS INITIATED

Types of regulatory actions	Regulatory action against number of entities during 2015-16
Suspension	2
Warning issued	496
Prohibitive directions issued under section 11 of SEBI Act, 1992	1,726
Cancellation	8
Administrative warning/Warning Letter issued	454
Deficiency observations issued	9
Advice letter issued	32
Total	2,727

During 2015-16, proceedings under Section 11 of the SEBI Act, 1992 were initiated against 1,726 entities, adjudication proceedings were initiated against 1,257 entities and administrative warnings were given to 454 entities.

STATUS OF APPEALS BEFORE SAT

Status of Appeal	2014-15	2015-16
1	2	3
Appeals pending at the beginning of	66	381
Appeals filed during	520	591
Appeals dismissed	103	261
Appeals remanded	36	108
Appeals allowed	18	33
SEBI orders upheld with modifications	16	5
Appeals withdrawn	32	142
Appeals pending at the end of	381	423

Note: Appeals include statutory and non-statutory appeals.

DETAILS OF RECOVERY

S.No.	Description	Total (Cumulative)
1	Recovery Certificates/Notice of Demand drawn by SEBI	895
2	No. of Certificates Cancelled	38
3	Amount covered under certificates (₹ crore)	55,015.1
4	No. of attachment notices / orders issued	2,558
5	Amount Recovered (` crore)	251.6
6	Arrest and detention of defaulter	3
7	Cases where recovery is fully completed	207
8	No of Certificates pending at the year end	650

FEATURES OF STATE DEPOSITORS' PROTECTION ACTS

- 20 States/ UTs passed the Acts, another 6 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.

AREAS OF CONCERNS

- Civil Courts jurisdiction is barred yet orders by District Court
- Statutory Alternate Remedy of approaching the Securities Appellate Tribunal available yet stay orders by the High Courts
- Interim orders of Sebi set aside without prohibiting the applicant from raising further money
- Special Courts to be notified



THANK YOU