UNIT 10 ISSUE MANAGEMENT

Objectives

The Objectives of this unit are to:

- discuss the process of fund raising through issue management ;
- explain the pre-issue and post- issue management activities; and
- discuss the legal environment for issue management.

Structure

10.1 INTRODUCTION

Existing as well as new companies raise funds through various sources for implementing their projects. One of the sources of raising funds is mobilising capital by issuing securities. This can be done in the following three ways:

- Public Issue
- Right Issue
- Private Placement

Public Issue: The most common method of raising funds from public at large is called public issue. Public issue is made by a company through prospectus for a fixed number of shares at: (i) a stated price which may be at par or premium, and (ii) a rate determined by the issuer on the basis of market demand (book building mechanism). The prospectus has to disclose all material and essential factors about the company to the intending purchasers of shares. Securities and Exchange Board of India has laid down guidelines for raising funds from the public. The guidelines relate to adequate disclosures in the prospectus so that the investors can take informed decision while making an investment in a company.

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Right Issue: Right issues are issues of new shares in which existing shareholders are given preemptive rights to subscribe to new issue of shares. Such additional shares are offered in proportion to the capital paid-up on the shares held by them at the date of such offer. The shareholders to whom the offer is made are not under any legal obligation to accept the offer. On the other hand, they have right to renounce the offer in favour of any person. Right shares are usually offered on terms advantageous to the shareholders. For example, shares of the face value of Rs. 10 may be offered at par value, while market price of the share at the time of offer may be Rs. 15 or more.

Private Placement: The direct sale of securities by a company to investors is called private placement. In private placement no prospectus is issued. Private placement covers shares, preference shares and debentures. It is assumed that the investors have sufficient knowledge and experience to be capable of evaluating the merits and risks of the investment. The financial intermediary, however, plays a vital role in preparing an offer memorandum, and negotiating with investors. The private placement has obvious advantages of speed and confidentiality. Private placement offers access to capital more quickly than public issue which may take six months to one year. However, it is possible to raise funds through private placement within 2 to 3 months. Access to primary market is quite costly on account of various mandatory and non-mandatory expenses. Some public companies are too small to afford a public issue, such companies choose to use private placement. Further the requirement of companies may be smaller than the minimum stipulated for public issue for listing at different stock exchanges. Finally private placement is not influenced like the primary market by the prevailing bull or bear phases in the stock market. The attitude of institutional investors towards the regular issue of securities in private placement market is more stable and continuous.

10.2 ISSUE MANAGEMENT

Issue management refers to managing issues of corporate securities like equity shares, preference shares and debentures or bonds. It involves marketing of capital issues, of existing companies including rights issues and dilution of shares by letter of offer. Management of issue also involves other issues. The decisions concerning size and timing of the public issue in the light of the market conditions are advised by the *merchant bankers*. In addition to these, the merchant bankers also assist the corporate units on the designing of a sound capital structure acceptable to the financial institutions and determining the quantum and terms of the public issues of different forms of securities. Further, they also advise the issuing company whether to go for a fresh issue, additional issue, bonus issue, right issue or combination of these. In brief, managing public issue is a complicated and technical job. It involves various strategic decisions and coordination of various agencies.

The public issues are managed by the involvement of various agencies i.e., under writers, brokers, bankers, advertising agencies, printers, auditors, legal advisers, registrar to the issue and merchant bankers providing specialized services to make the issue a success. However, merchant bank is the agency at the apex level, who plans, coordinates and controls the entire issue activity and directs different agencies to contribute to the successful marketing of securities.

Issue management has tremendous scope and potential in a growing economy where capital market functions as catalyst for the funding needs of the industry. Issue managers in capital market parlance are known as Merchant Bankers or *Lead Managers*. Although, the term Merchant Banking, in generic terms, covers a wide range of services such as project counseling, portfolio management, investment counseling, mergers and acquisitions, etc. yet, Issue Management constitutes perhaps

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the most important and sizeable function within it. So much so, that very often, the terms merchant banking and Issue Management are almost used synonymously.

The significance of Issue Management for a Merchant Banker is succinctly displayed in the definition of 'Merchant Banker' as -contained in the *Securities and Exchange Board of India (Merchant Banker) Rules & Regulations, 1992*, viz., "any person who is engaged in the business of issue management either by making arrangement regarding selling, buying or subscribing to securities as manager, consultant, advisor or rendering corporate advisory services in relation to such issue management".

10.3 ISSUE MANAGER AND SEBI

Issue Managers are required to be registered with SEBI to carry on their Issue Management activities, since setting up of SEBI. SEBI has formulated Rules and Regulations for merchant bankers which bring out the requirements for Registration of issue managers apart from prescribing the conduct rules for them. In terms of these regulations, issue managers are required to mainly comply with the following requirements for registration:

- Issue manager should be a corporate body, not being a Non Banking Financial Company (as per RBI).
- He should have necessary infrastructure like adequate office space, equipments and manpower to effectively discharge his activities.
- He should have minimum two persons who have the experience to conduct the business of Merchant Banking.
- He should fulfill capital adequacy requirements i.e. should have a minimum net worth of Rs.5 crores.
- He should have professional qualification from an institute recognized by government in Law, Finance or Business Management.

Under SEBI guidelines, a public/rights issue cannot be floated without the association of a Merchant Banker. Merchant banker, like pilots of air-crafts are repositories of special skills required to execute the management of issues. Thus, Issue manager is an indispensable pilot.

He is a financial architect as one of the important areas of Issue Management relates to capital structuring, capital gearing and financial planning for the company. While performing these activities, Merchant Bankers act as Financial Architects.

He is an Investors as well as an underwriter since Merchant Bankers also underwrite ***(Annexure 1)*** and invest in the Issues lead managed by them.

Companies consider the issue managers as their Co-traveller, as Merchant bankers also sometimes act as market makers in the Issues lead managed by them. They invest, continue to hold and offer, buy and sell quotes for the scrips of the company after listing. Thus, as market makers, their association is not merely restricted to management of issue but continues like co-traveller with the company.

Under SEBI guidelines, every Merchant Banker while managing a Capital Issue is expected to perform *Due Diligence (**Annexure 2**)* and furnish a *Due Diligence* Certificate to SEBI in a prescribed format. Association of Merchant Bankers of India (AMBI) has prescribed detailed due diligence guide to its members to facilitate their performance of due diligence. While managing issues they are required to interact and file offer documents with SEBI. They are also required to file a number of reports related to Issues being managed by them, with SEBI. In a nut shell, merchant banker necessarily revolves around SEBI while managing an Issue and thus can be called as a satellite of SEBI.

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It will not be out of context if we term issue manager as Zubin Mehta because while managing an Issue, a Merchant banker is required to co-ordinate with a large number of institutions and agencies. Merchant banker, like an able conductor of orchestra, has to ensure that all the players complete their jobs timely and with proper co-ordination, so as to produce the end result effectively.

Marketing of an Issue is an essential and perhaps the most important component of issue Management. Merchant banker makes number of promises and commitments to the prospective investors which puts him in the shoes of a dream merchant

Under SEBI Guidelines, each Public Issue and Rights Issue with size exceeding Rs. 50 lakhs is required to be managed by a Merchant Banker, registered with SEBI. Since setting up of SEBI, Issue Managers are required to be registered with SEBI. SEBI (Merchant Bankers) Regulations 1992 has laid down the rules, regulations and conduct rules for them. They are to be governed by the code of conduct laid down in the regulations. *SEBI Regulations* have laid down restrictions on the *number of Issue Managers* who can be associated with an Issue.

Size of the Issue	*Permissible No. of Lead Managers*
Less than Rs. 50 crores	2
Rs. 50 crores but less then Rs. 100 crores	3
Rs. 100 crores but less than Rs. 200 crores	4
Rs. 200 crores but less than Rs. 400 crores	5
Rs. 400 crores and above	5 or more

All lead managers, before taking up the assignment relating to an issue, shall enter into an agreement with the concerned company setting out their rights and obligations. In case more than one lead manager is associated, their demarcation of responsibilities is a must. A minimum underwriting agreement is to be made. A Lead manager cannot manage an issue of its associate company. No lead manager can exit during the issue period.

Activity 1

Give points of distinction between:

i) Private placement and Public Issue.

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ii) Right issue and Public Issue.

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10.4 SELECTING A PUBLIC ISSUE PROPOSAL

Before selecting a Public Issue proposal, the Merchant banker has to keep in mind the following aspects:

Background of the Promoters/Management: Success of a company is very much dependent on the background of the promoters and the management viz., their

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education, business/technical expertise, financial strength capability and reputation, etc. If a new company is launched from the platform of an already existing group, having successful track record, it is well received in the market. Performance of the group/associate concerns or the holding company, against the promises made by them at the time of their public issues is also looked into seriously by the prospective investors. If the group/associate concerns are financially strong enough, they can also lend support to the public offering. Another important aspect, which should be considered by the Merchant banker before picking a Public Issue proposal is to see whether there is any pending litigation, defaults and disputes of the promoters for the company with any person, bank or institution.

Company Profile: Merchant Banker also has to look at the track record of the company and the quality of its management, industry in which it operates, product mix of the Company and business prospects of the product proposed to manufacture. He also needs to decide the profitability of the product and sustain ability of the project. Financial health also has to be gauged by probing the existing capital structure, debt equity ratio, level of gearing, nature and extent of various resources/provisions etc.

Project Profile: It is also considered whether the project is appraised by a Financial Institution, whether there is participation of Institutions in the financing of project, if any, and the level of financial participation of the Institution. Appraisal and funding of project by an Institution also certifies the viability of the project to an extent.

Capital Market Position: If the group/associate concerns are already listed on stock exchanges, the pattern of their share price movement should be analysed. Trading behaviour of shares of leading companies in the similar field should be compared with the share quotations of the group concern companies to see the stability in share quotations.

Other Important Factors: Other important factors which influence selection of a project include outlook of the: investors generally towards other companies operating in similar industries which are already listed and towards the group in particular. Investor's response to previous Public Issues of similar companies will also have a bearing on the decisions to come out with a Public Issue. Dividend payment schedule of the Company and its associate concerns should also be considered. From the point of view of Merchant Banker, the cost benefit analysis is also important before accepting assignment of issue management

10.5 PUBLIC ISSUE MANAGEMENT

Issue managers play vital role in fund raising through public issue of securities. Whether through book building (discussed later) or otherwise, their role is catalytic for the making of the issue a success. They are involved from cradle to grave in the issue. Hence companies coming with new issue of capital decide about Issue managers after due diligence and carefully analysing the competence and capabilities of the merchant banker to handle the issue. They provide valuable service in preparation and drafting the prospectus, pricing the issue, marketing and underwriting the issue, coordinating the activities or different agencies/institutions involved in this context to carry out legalities involved in the process, deciding the basis of allotment, making the allotment, despatch of share certificates/refund orders as the case may be, and finally, in listing of shares on stock exchanges and sometimes as market-maker as well. SEBI has issued compendium of circulars to merchant bankers from time to time and broadly has divided these activities into two groups i.e., *Pre-issue activities* and *Post-issue activities*. Some important aspects about these activities are discussed here.

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A) Pre-Issue Activities

1) Memorandum of Understanding

In terms of Regulation 18(2), before taking any issue management, every merchant banker (lead manager) must invariably enter into a Memorandum of Understanding (MoU) with the company making the issue (issuer) clearly setting out their mutual rights, liabilities and obligations relating to the issue. A draft of the MoU is prescribed. The lead manager may adopt the draft and incorporate such clauses as may be considered necessary for defining his rights and obligations vis-à-vis the issuer. While doing so, it must be ensured that neither party should reserve for themselves any rights, which would have the effect of diminishing in any way their liabilities and obligations under the Companies Act, 1956 and SEBI (Merchant Bankers) Rules and Regulations, 1992. The lead manager who is responsible for drafting of the offer documents shall ensure that a copy of the MoU entered into with the issuer should also be submitted to SEBI along with the offer document.

2) Obtaining Appraisal Note

After the contract for issue management is awarded, an appraisal note is prepared either in-house or is obtained from outside appraising agencies viz., Financial Institutions/ Banks etc. The appraisal note thus prepared throws light on the proposed capital outlay on the project and the sources of funding it. Project may be funded either by borrowing money from outside agencies or by injecting capital. Optimum Capital Structure is determined considering the nature and size of the project. If the project is capital intensive, funding is generally biased in favour of equity funding. After the fund appraisal a meeting of Board of Directors of the Issuing Company is convened followed by an Extra Ordinary General Meeting (EGM) of its members wherein various aspects related to issue of securities are decided. If the issue of capital include issue of shares to NRls/OCBs or FIls, then an application to the Reserve Bank of India seeking its permission is made.

3) Appointment of Other Intermediaries

Lead manager should ensure that the requisite intermediaries, who are appointed, are registered with SEBI. Before advising the issuer on the appointment of other intermediaries, lead manager shall independently assess the capability and the capacity of the various intermediaries to handle the issue. Wherever required, the issuer shall be advised by the lead manager to enter into a Memorandum of Understanding with the Intermediary(ies) concerned. Lead manager should ensure that *bankers to the issue* are appointed in the mandatory collection centres. In case of public issues, there should be at least 30 mandatory *collection centres* which should invariably include the places where stock exchanges have been established. The issuers are also permitted to appoint authorised *collection agents* in consultation with the lead manager subject to necessary disclosures. While the modalities of selection and appointment of collection agents are left to the discretion of the lead manager, it should be ensured that the agents so selected are properly equipped for the purpose, both in terms of infrastructure and manpower requirements.

While appointing *Registrars to an Issue*, lead manager should note that in respect of an issue in which he is the sole/one of the lead managers, he cannot act as Registrar to the said issue. Similarly, where the issuer of capital is a registered *Registrar to an issue*, the issuer will have to appoint an outside Registrar to process its issue. SEBI may not object to a lead manager acting as Registrar to an Issue where the post-issue responsibilities rest with another lead manager, provided the lead manager is registered with SEBI for both function. Lead manager shall, ensure that the number of *co-managers* to an issue does not exceed the number of lead managers to the said issue and that the number of advisors to the issue is only one.

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4) **Inter-se Allocation of Responsibilities**

Where an issue is managed by more than one lead manager, the responsibility of each lead manager shall be clearly delineated, preferably as indicated in ***Annexure (3)***. In case of under-subscription in an issue, the lead manager responsible for tying up underwriting arrangements will be held responsible for invoking underwriting obligations and for ensuring that the underwriters pay the amount of development the Inter-se Allocation of responsibilities accompanying the Due Diligence Certificate must specifically indicate the name of the lead manager responsible for this.

5) **Preparing Prospectus**

Lead manager should ensure proper disclosures to the investors, keeping in mind their responsibilities as per Merchant Bankers Rules and Regulations. The lead manager should, therefore, not only furnish adequate disclosures but also ensure due compliance with the Guidelines for Disclosure and Investor Protection issued by SEBI which also specifies the contents of prospectus as well as application form. The application form should contain necessary details and instructions to applicants to mention the:

- number of application form on the reverse of the instruments to avoid misuse of instruments submitted along with the applications for share/debentures in public issues.
- particulars relating to savings bank/current account number and the name of the bank with whom such account is held, to enable the Registrars to print the said details in the refund orders after the names of the payees.

Suitable Instructions to investors in this behalf in the application form under the head “How to apply” should be incorporated.

6) **Submission of Draft Offer Documents**

The Lead Manager shall hand over not less than 25 copies of the draft offer document to SEBI and also to the Stock Exchange(s) where the issue is proposed to be listed. The Lead Manager shall submit to SEBI the Draft Prospectus in a computer floppy. Copies of the Draft Prospectus will be made available by the Lead Managers/Stock Exchange to prospective investors. After a period of 21 days from the date the draft prospectus was made public, the Lead Manager shall file with SEBI a statement giving a list of complaints received by it form SEBI and any amendment done in the document.

The Lead Manager responsible for drafting of the offer documents shall ensure that the terms of the issue and the offer documents, namely, prospectus or letter of offer are in conformity with the *SEBI Guidelines for Disclosure and Investor Protection.*

Due Diligence Certificate as specified by SEBI accompanies each draft offer document submitted to SEBI. It is to be ensured that the format of prospectus conforms to the format prescribed by the Department Company Affairs. A ‘letter of offer’ is also submitted. The format of letter of offer should conform to disclosures prescribed in the Memorandum 2A under section 56(3) of the Companies Act, 1956, and the Guidelines issued by the Stock Exchange Division of Ministry of Finance.

Every draft offer, document submitted to SEBI shall be accompanied by the following undertakings / certificates from company or it’s specific officials.

a) Undertakings are from:

- the Chief Executive Officer of the Company that the complaints received in respect of the issue would be attended to expeditiously and satisfactorily;

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- the Company Secretary that the Company will get the instruments of issue listed within the prescribed time period and would take necessary steps in time for the purpose;
- the Company Secretary that the company would apply in advance for listing of the shares which would be generated by the conversion of Debentures/Bonds;
- the issuer that the requisite funds for the purpose of despatching refund orders/allotment letters/certificates by registered post will be made available to the Registrar to the Issue.

b) In the case of public issue, an undertaking from the issuer that the promoter's contribution, including premium, in full will be brought in advance before the issue opens.

c) Certificate signed by the Company Secretary confirming the following:

- all refund orders against the previous issues have been despatched to the applicants;
- all shares/debenture certificates have been despatched to the allottees; and the instrument(s) has been listed on the Stock Exchanges mentioned in the concerned offer documents.

d) In the case of public issue, an undertaking from the Lead Manager to get the issue fully underwritten to the extent of offer to the public and to include details thereof in the final prospectus.

7) **Launching of a Public Issue**

Once the legal formalities and statutory permission for Issue of Capital are complete, the process of marketing the Issue starts. Lead Manager has to arrange for distribution of public issue stationery to various collecting banks, brokers, investors, etc. Public Issue is launched formally by conducting Press Conference, Brokers Meets, issuing advertisements in various newspapers and mobilising Brokers and Sub-Brokers. The announcement regarding opening of Issue in the newspapers is also required to be made by advertising ***(Annexure 4)*** in newspapers 10 days before the Issue opens. A certificate to the effect that the required contribution of the promoters has been raised before opening of the Issue obtained from a Chartered Accountant is also required to be filed with SEBI. During the currency of the Issue, collection figures are also obtained on daily basis from Bankers to the issue. Another announcement through the newspapers is also made regarding the closure of the Issue.

B) **Post-Issue Activities**

After the closure of the Issue, Lead Manager has to manage the Post-Issue activities pertaining to the Issue. He is to ensure the submission of the *post issue monitoring report* as desired by SEBI.

Finalisation of Basis of Allotment (BOA): In case of a public offering, besides post-issue lead-manager, registrar to the issue and regional stock-exchange officials, association of public representative is required to participate in the finalisation of Basis of Allotment ***(Annexure 5)***. Data of accepted applications is finalised and Regional Stock Exchanges are approached for finalisation of BOA.

Despatch of Share Certificates, etc.: Then follows despatch of share certificates to the successful allottees, demat credit, cancelled stock-invest and refund orders to unsuccessful applicants.

Issue of Advertisement in Newspapers: An announcement in the newspaper is also made regarding BOA, number of applications received and the date of despatch of share certificates and refund orders, etc.

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Post-issue Obligations

Lead manager responsible for post-issue activities shall maintain close coordination with the Registrars to the Issue, and arrange to depute its officers to the offices of various intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from collecting bank branches, processing of the applications including those accompanied by stockinvest and other matter till the basis of allotment is finalised, despatch completed and listing done. Any act of omission or commission on the part of any such intermediaries noticed during such visits should be duly reported to SEBI.

SEBI imposes considerable responsibility on merchant bankers for proper redressal of investor grievances. It is, therefore, necessary for the merchant bankers to actively associate themselves with the post-issue refund and allotment activities and regularly monitor investor grievances arising there from. To achieve this, the merchant bankers need to evolve effective inter-linkages with the Issuers and the Registrars to Issue. SEBI has launched an all out drive to bring down substantially the number of investor grievances. The merchant bankers are to assign high priority to the area of investor grievances and take all preventive steps to minimise the number of complaints. They are also to set up proper grievance monitoring and redressal system in coordination with the issuers and the registrars to Issue, and take all necessary measures to resolve the grievances quickly to avoid penal action.

In case of delay in refund, lead manager shall ensure that the issuer pays interest for the delayed period as per provisions of the Companies Act, 1956.

The lead manager shall be responsible for ensuring despatch of refund orders/ allotment letters/certificates by registered post only.

Post-issue Monitoring Reports

SEBI prescribed certain post-issue reports which are required to be submitted by the lead managers. Two post-issue reports each for public issue are to be sent by lead managers to SEBI i.e., (a) 3-day post-issue monitoring report and (b) 78-day post-issue monitoring report.

The merchant bankers are expected to keep SEBI informed on important developments about the particular issues being lead managed by them during the intervening period of the reports.

General

With a view to ensuing that all Rules, Regulations, Guidelines, Notifications, etc. issued by SEBI, the Government of India, and other regulatory organisations are complied with, the merchant bankers shall designate a senior officer as Compliance Officer, who shall co-ordinate with regulatory authorities in various matters and provide necessary guidance and also ensure compliance internally. The Compliance Officer shall also ensure that observations made/deficiencies pointed out by SEBI do not recur.

Necessary Code of Conduct for the officers and employees of the merchant bankers should be framed to prevent insider trading, in the light of SEBI Insider Trading Regulations, 1992. Lead manager should bring to the specific notice of ROCs instances of non-compliance with the Companies Act requirements with regard to appointment of whole-time qualified company secretaries. In view of this, lead managers may like to ensure necessary compliance in this regard before filling of documents with ROC.

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Activity 2

Mention atleast 3/4 points that the lead manager should ensure before giving the pre-Issue advertisement.

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10.6 MARKETING THE ISSUE

Necessity for Aggressive Sales Campaign

It is not enough if the Company takes all steps to comply with the statutory regulations. In the growing competitive market, aggressive sales campaign is also called for. Now a days, the investors are bombarded with advertisements through all sorts of media such as T.V., Radio, Newspapers, Brochures, Direct Mailing etc. It is, therefore, essential to plan a marketing strategy to reach and convince the prospective investors.

Packaging and Marketing the Issue

For smooth marketing of the Issue, Lead Manager has to first identify the target market segments for the offering, whether it be retail investors, wholesale investors or institutional investors. This should be followed by targeting the regions where the management can expect maximum number of subscriptions. If a Company is operating in a particular region, it is better to concentrate on that region only, where its name is popularly known. Mood, of the market should also be gauged before launching an Issue. If the market is going downwards, even offering from a good company may not attract good response. Pricing of instruments should be done after assessing expectations of investors from the Issue. Pricing of the Issue also influences design of capital structure. Final instrument should be made attractive by offering some unique features. There are many ways of doing it. Some of these are offering safety net, making terms of payment attractive, offering multiple options for conversion, attaching warrants, etc.

Underwriters, Brokers/Sub-Brokers, Fund arrangers should be mobilised with great efforts to make the offering a success. At the same time, offer document for issue should be educative and purposive for the retail investors and should contain relevant information which will be statutorily and otherwise required for providing maximum information. Institutional investors and high net worth investors should also be provided with detailed research on the project specifying its uniqueness and the advantage which it scores over other existing or upcoming projects in the similar field.

Launching Marketing Campaign

A high volt advertising campaign is launched to push the public issue. Lead Manager should be very selective in ‘choosing the advertising agency for this purpose. Only those agencies which specialize in launching capital” offerings should be entrusted with the job of advertising the Issue. Advertisement themes should be finalised keeping in view SEBI guidelines in this regard. A proper mix of media vehicles viz., Press, Radio, Television campaign and Hoarding, etc., should be used. Lead Manager should also arrange for press briefings, brokers, and investors’ conferences, etc. in targeted regions.

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Some Market Research Organisations specialise in carrying out opinion polls by contacting wide range of people in different areas. These can be engaged to collect data on investors' opinion and reactions relating to the public issue and the company's in particular. There is a vast potential of investors in semi-urban and rural areas who can be developed into a solid block of investors. These persons are not attuned to the investment culture. It is necessary to educate them about the various avenues available for investment.

Brokers' and Investors' Conferences

As part of the issue campaign, Brokers' and Investors' conferences at the Metropolitan cities and other important centres with sufficient investors population have to be arranged. Advance Planning is necessary to make such conference successful. Conference materials such as banners, brochures, application forms, posters, etc, should reach the venue of conference in time. Invitation to all the important people, underwriters, bankers at the respective places, investors' associations, should be sent.

Timing of the Issue

One of the most critical factors for the success of the issue is the timing of the issue. A bad market condition can result in under subscription of a public issue even from an excellent company with a track record and whose shares have been rightly priced. Too many issues hitting the market at the same time can also affect the success of the public issue. The merchant bankers as part of their marketing efforts have to decide the timing of the issue keeping in view the various factors.

10.7 PRICING OF ISSUES

The guidelines for capital issues issued by Securities Exchange Board of India in June 1992 have opened the capital market to free pricing of issues. Pricing of issues is done by companies themselves in consultation with the merchant bankers. If the premium is too low the issue gets oversubscribed and if the premium is too high it is bound to be undersubscribed and fail. The merchant banker while deciding the premium has to take the following two factors into account:

a) Qualitative factors

b) Quantitative factors

The Qualitative Factors Include: The prospects of the industry, track record of the promoters, the competitive advantage the company has in making best use of the business opportunities, and growth of the company as compared to the industry, etc.

The Quantitative Factors Include: The earnings per share, book value, the average market price for two or three years, dividend payment record, the profit margins, the composite industry price earnings ratio and future prospects of the company, etc.

Above all the lead manager and the company has to assess whether the market can absorb the premium on the issue. This will depend upon the stock market condition prevailing at the time of the issue. (See ***Annexure 6***)

Earlier, such premium was fixed as per the guidelines of Controller of Capital Issues. Since the adoption of free pricing and the abolition of the office of Controller of Capital Issues there have been spate of Issues at premium.

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10.8 BOOK BUILDING

Book building is a process used for marketing a public offer of equity shares of a company. Book building is called so because it refers to the collection of bids from investors, which is based on an indicative price range. The *issue price is fixed* after the bid closing date. The issuer company engages a lead merchant banker to act as a *book runner*, who prepares and obtains a green signal for the draft of offer document (without mentioning price) to SEBI. A *syndicate*, comprising of capital market intermediaries (eligible brokers, merchant bankers or even mutual funds) is appointed to underwrite issue who approaches investors and collects bids from them. They collect demand for securities at different price levels and consolidate information which is passed on to syndicate. It in turn, passes it on to the book runner. The book runner *builds an order book*, that is, collects the bids from various investors which shows the demand for the shares of the company at various prices there after price of issue is fixed.

Book Building Procedure

The Lead manager is responsible for coordination of all the activities amongst various intermediaries connected in the issue/system.

The names of brokers appointed by the issuer company along with names of the other intermediaries namely Lead managers to the issue and Registrars to the Issue shall be disclosed in the prospectus and application form.

The company shall make an issue advertisement wide circulation. The advertisement shall contain the salient features of the offer document.

During the period the issue is open to the public for subscription, the applicants may approach the brokers of the stock exchanges through which the securities are offered under on-line system, to place an order for subscribing to the securities. Every broker shall accept orders from all clients who place order through him directly and send the application form along with the cheque, demand draft for the sum payable towards application money to the Registrar to the Issue or place the order to subscribe through a stock broker under the on-line system.

The broker shall collect the client registration form duly filled up and signed from the applicants before placing an order in the system.

The broker shall, thereafter, enter the buy order in the system, on behalf of the clients and enter their details and give an order number/order confirmation slip to the applicant.

The applicant may withdraw application terms of the Companies Act, 1956.

The broker collects an amount to the extent of 100% of the application money as margin money from the clients before he places an order on their behalf.

The broker shall open a separate, bank account Escrow Account with the clearing house bank for primary market issues and the amount collected by the broker from his clients as margin money shall be deposited in this account.

The broker shall, at the end of each day while the issue is open for subscription, download/forward the order data to the Registrar to the Issue on a daily basis. This data shall contain only valid orders (including those that are cancelled). On the date of closure of the issue, the final status of orders received shall be sent to the Registrar to the issue/company.

On the closure of the issue the Regional Stock Exchange, along with the Lead merchant banker and Registrars to the Issue shall ensure that the basis of allocation is finalised in fair and proper manner on the lines of the norms with respect to basis of

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allotment as may be modified from time to time. After finalisation of basis of allocation, the Registrar to the Issue company shall send the computer file containing the allocation details i.e. the allocation numbers, allocated quantity, etc., of successful applicants to the Exchange. The Exchange shall process and generate the broker-wise funds pay-in obligation and shall send the file containing the allocation details to member brokers.

On receipt of the basis of allocation data, the brokers shall immediately intimate the fact of allocation to their client/ applicant, The broker shall refund the margin money collected earlier, within 3 days of receipt on basis of allocation, to the applicants who did not receive allocation. The brokers shall give details of the amount received from each client and the names of clients who have not paid the application money to the exchange. On the pay-in day, the broker should deposit the amount collected from the clients in the separate bank account opened for primary issues with the clearing house/bank. The clearing house shall debit the primary issue account of each broker and credit the amount so collected from each broker to the "Issue Account".

On payment and receipt of the sum payable on application for the amount towards minimum subscription, the company shall allot the shares to the applicants. Allotment of securities shall be made not later than 15 days from the closure of the issue failing which interest at the rate of 15% shall be paid to the investors.

In cases of applicants who have applied directly or by post to the Registrar to the issue, and have not received allocation, the Registrar to the issue shall arrange to refund the application money paid by them within the time prescribed. For more details see ***Annexure 7.***

10.9 SAFETY NET SCHEME OR BUY BACK ARRANGEMENT

Under this scheme, the merchant bankers provide a buy-back facility to the individual investor in case the price of the share goes below the issue price after listing. During the past we have seen several shares issued at a premium declining below the issue price on the market. In such circumstances if the investor is given a *buy back option* or a *safety net* by the merchant banker, he can exercise it to reduce his losses. Any safety net scheme or buy-back arrangements of the shares proposed in any public issue shall be finalised by issuer company with the lead merchant banker in advance and disclosed in the prospectus.

Such buy back or safety net arrangements shall be made available only to original resident individual allottees. Such buy back or safety net facility shall be limited up to a maximum of 1000 shares per allottee and the offer shall be valid at least for a period of 6 months from the last date of dispatch of securities. The financial capacity of the person making available buy back or safety net facility shall be disclosed in the draft prospectus.

For investor protection a safety net scheme has been floated by some companies making public issues at a premium. For the purpose of illustration, two instances of public issues with safety net are presented hereunder.

Godrej Soaps Ltd.: For the first time, a public issue was offered with a safety net to the investing public against possible loss from a decline in market prices of a share at premium. Godrej Soaps Ltd. made a public issue of Rs. 99.12 crores in April.. 1993 at a premium of Rs. 130 per Rs. 10 share. The offer was not open .to institutional investors. The Godrej Soaps issue was made to finance the company's working capital requirements and capital expenditure needs. The merchant bankers to the issue, Kotak Mahindra Finance Ltd., made an innovative offer to buy-back share from individual investors if they opt out of the issue after the allotment is made.

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The salient feature of the safety-net scheme were:

- The cap on total number of shares to be bought back was 10 lakh shares or around 15 per cent of the public issue.
- The buy back option was open for six months after the date of listing

Ballarpur Industries Ltd.: Another issue which came up in April, 1993 with a safety-net was from Ballarpur Industries Ltd. a company of the Thaper Group. The company came up with an issue of 61,50,000 equity shares of Rs. 10 each with a premium of Rs. 165 per share. One of the lead managers to the issue M/s. HB Portfolio Leasing Ltd. had offered a safety-net for the investors. The salient features of the safety-net scheme were:

- The scheme was open to all resident Indian individual original allottees.
- It was restricted to individual investors only, and institutional investors were excluded.
- Under this scheme, HB Portfolio Leasing Ltd. purchased from individual investors fully paid equity shares allotted at a price of Rs. 175 per share.

10.10 ISSUE OF DEBT INSTRUMENTS

A company can also raise funds through debt instruments making public issue or rights issue. Primarily the arrangements to be made and procedures involved are same as in case of issue of equity. Still some peculiar provisions are specified by SEBI (Disclosure and Investor Protection) Guidelines 2000. Some of its important provisions are mentioned here.

a) The offer document of such issue should contain:
   - The interest rate for debentures which can be freely determined by the issuer company,
   - Premium amount on conversion, time of conversion,
   - In case of PCDs/NCDs, redemption amount, period of maturity, yield on redemption of the PCDs/NCDs,
   - Full information relating to the terms of offer or purchase, including the name(s) of the party offering to purchase, the *khokhas* (non-convertible portion of PCDs),
   - The discount at which such an offer is made and the effective price for the investor as a result of such discount,
   - The existing and future equity and long-term debt ratio,
   - Servicing behaviour on existing debentures, payment of due interest on due dates on term loans and debentures.

b) Such public or rights issue of debt instruments (including convertible instruments) irrespective of their maturity or conversion period can be made only if the *credit rating* has been obtained and disclosed in the offer document. All issues of Rs 100 crore or more is to obtain ratings from two different credit rating agencies. All credit rating(s), whether accepted or not, should be disclosed in the offer document. Further, all the credit ratings obtained during the three years preceding the issue for any listed security of the issuer company should also be disclosed.

c) If issue is of debt with maturity of more than 18 months, the issuer has to appoint *debenture trustees* holders irrespective of whether or not the debentures/bonds are secured. Their names must be stated in the offer document. A trust deed has to be executed by the issuer company in favour of

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the debenture trustees within six months of the closure of the issue. The trustees should be vested with the requisite powers for protecting the interest of debenture holders. They also have a right to appoint a nominee director on the board of the company in consultation with the institutional debenture holders.

d) The offer document should state assets on which the security would be created and also their ranking of the charge(s). The security/asset cover to be maintained, the basis for its computation, the valuation methods and periodicity of such valuation should be disclosed. The security should be created within six moths from the date of issue of debentures. If the issuing company proposes to create a charge for debentures of maturity of less than 18 months, it should file with the ROCs the particulars of the charge under the Companies Act. Where no charge is to be created on such debentures, the issuer company should ensure compliance with the provisions of the Companies (Acceptance of Deposits) Rules, 1975, as unsecured debentures/bonds are treated as "deposits" for purposes of these rules.

e) While filing the draft offer document the merchant banker should file with SEBI certificates from their bankers that the assets on which security is to be created are free from any encumbrances and the necessary permissions to mortgage the assets have been obtained from the financial institutions or banks in cases such assets are encumbered.

f) A *letter of option* containing disclosures with regard to credit rating, debenture holders resolution, option for conversion, justification for conversion price and such other terms which SEBI may prescribe from time to time should be filed with SEBI through an eligible merchant banker, in the following cases:

In the case of a roll-over of non-convertible portions of partly convertible debentures (PCDs)/non-convertible debentures (NCDs), the non-convertible portions of PCDs/NCDs issued by a listed company, the value of which exceeds Rs 50 lakh, can be rolled over without change in the interest rate subject to the following conditions:

- An option is compulsorily given to the debenture holders to redeem the debentures as per the terms of the offer document;
- A roll-over is done only in cases where debenture holders have sent their positive consent and not on the basis of the non-receipt of their negative reply;
- Before a roll-over, a fresh credit rating is obtained within six months prior to the due date of redemption and communicated to debenture holders before the roll-over;
- A fresh trust deed is executed at the time of such a roll-over; and
- Fresh security is created in respect of such debentures to be rolled over. If, however, the existing trust deed or the security documents provide for continuance of the security till redemption of debentures, fresh security may not be created.

In the case of conversion of PCDs/FCDs into equity capital:

- If the convertible portion of any instrument such as PCDs, FCDs, etc. issued by a listed company, value of which exceeds Rs 50 lakh, and whose conversion price was not fixed at the time of issue, holders of such instruments should be given a compulsory option of not converting into equity capital;
- Conversion should be done only in cases where instrument holders have sent their positive consent and not on the basis of the non-receipt of their negative reply. Where issues are made and cap price with justification, thereon, is fixed beforehand in respect of any instruments by the issuer and disclosed to the investors before issue, It should not be necessary to give the option to the instrument holder for converting the instruments into equity capital within the cap price;

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1 In cases where an option is to be given to such instrument holders and if any instrument holder does not exercise the option to convert the debentures into equity at a price determined in the general meeting of the shareholders, the company should redeem that part of the debenture at a price not less than its face value, within one month from the last date by which the option is to be exercised; the provision of sub-clause (c) above would not apply if such redemption is to be made in accordance with the terms of the issue originally stated. 12.6 Rollover of debentures/bonds.

g) In case non-convertible portion of PCDs or Non-Convertible Bonds/Debentures are to be rolled over with or without change in the interest rate(s), an option shall be given to those debenture/bond holders, who desire to withdraw from the scheme. Roll over may be given only in cases, where debenture/bond holders have sent their positive consent and not on the basis of the non-receipt of their negative reply. Before roll over of any non-convertible bonds or debentures or nonconvertible portion of the PCDs, fresh credit rating shall be obtained within a period of six months prior to the due date for redemption and communicated to the bond/debenture holders before roll over. The letter of option regarding roll over shall be filed containing disclosure with regard to the credit rating, bond/debenture holder resolution, option for conversion and such other terms which the Board may stipulate from time to time.

h) No company should issue fully convertible debentures (FCDs) having a conversion period of more than 36 months, unless conversion is made optional with "put" and "call" option. If the conversion takes place at or after 18 months from the date of allotment, but before 36 months, any conversion, in part or whole, of the debenture should be optional at the hands of the debenture holder.

i) Issue of debentures cannot be made for acquisition of shares or providing loan to any group company. This requirement would not apply to the issue of fully convertible debentures providing conversion within a period of 18 months. The premium amount and time of conversion should be determined by the issuer company and disclosed. The interest rate for debentures can be freely determined by the issuer company.

10.11 IMPACT OF INFORMATION TECHNOLOGY

Revolution in the area of Information Technology has influenced Issue Management also to a great extent. It has added value in the system by increased accuracy, transparency, efficiency and promptness. It has proved to be more investor friendly. The quality to investors has improved many fold. Time gap between making application and getting allotment or refund has reduced substantially. Investors get full value of money they deploy in this activity. Even at pre issue stage a lot of time is saved. The SEBI requirement of submitting soft copy of draft prospectus enables it to put the *red herring prospectus* on the web site of SEBI. Investors find themselves more comfortable having access to detailed prospectus on site instead of waiting for long for response of lead manager.

e-IPO

The most significant development has been the emergence of Electronic Initial Public Issue *(e-IPO)*. A company proposing to issue capital to public now can provide an opportunity to investors to avail benefits of IT revolution. Through the on-line system of the stock exchange SEBI now permits companies to offer *e-IPO* for offer of securities. Such issuers shall comply with the following requirements of SEBI in this regards:

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The company shall enter into an agreement with the Stock Exchange(s) which have the requisite system of on-line offer of securities. Where the Regional Stock Exchange has the requisite system of online offer of securities, the company shall also, enter into an agreement with the regional stock exchange for offering securities to public through on-line system.

The agreement mentioned in the above clause shall specify *inter alia* the rights, duties, responsibilities and obligations of the company and stock exchange(s) *inter se*. The agreement may also provide for a dispute resolution mechanism between the company and the stock exchange. Subject to the requirement of listing on the Regional Stock Exchange, the company may apply for listing of its securities on an exchange other than the exchange through which it offers its securities to public through the on-line system.

The stock exchange, shall appoint *brokers* of the exchange, who are registered with SEBI, for the purpose of accepting applications and placing orders with the company. The brokers, so appointed accepting applications and application money, shall be considered as 'collection centres'. These brokers shall collect the money from his/ their client for every order placed by him/them and in case the client fails to pay for shares allocated as per the Guidelines, the broker shall pay such amount.

The company/lead manager shall ensure that the brokers having terminals are appointed in compliance with the requirement of mandatory collection centres. The company/lead manager shall ensure that the brokers so appointed are financially capable of honouring their commitments arising out of defaults of their clients. The company shall pay to the broker/s a commission/fee for the services rendered by him/ them.

The exchange shall ensure that the broker does not levy a service fee on his clients in lieu-of his services. The company shall also appoint a Registrar to the Issue having electronic connectivity with the Stock Exchange/s through which the securities are offered under the system.

10.12 REGULATORY ENVIRONMENT

In the present unit we have briefly discussed Issue Management in the context of SEBI Guidelines for Disclosure and Investors Protection and SEBI (Merchant bankers) Regulations 1992, but while raising funds through capital issues due regard is also to be given to the following:

1) Provisions of the Companies Act, 1956
   a) Prospectus (Sec. 55 to 68A and Schedule II)
   b) Share Allotment (Sec. 69 to 75)
   c) Commissions and discounts (Sec. 76 and 77)
   d) Issue of shares at premium and at discount (Sec. 78 and 79)
   e) Issue and redemption of preference shares (Sec. 80 and 80A)
   f) Further issues of capital (Sec. 81) .
   g) Nature, numbering and certificate of shares (Sec. 82 to 84)
   h) Kinds of share capital and prohibition on issue of any other kind of shares (Sec. 85 and 86)
2) The Securities Contracts (Regulations) Act, 1957 regarding transactions in securities.

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10.13 SUMMARY

From what we have been discussing in this unit, it is clear that prior to beginning with issue management, a merchant banker evaluates an investment project in terms of the financial, technical and economic viability. There can be various, means of financing a project. Due to changes in the economic policy, the decade of nineties has seen a tremendous rise in the number and type of issues in the primary market. The companies have sought to generate funds by issuing securities through public issues, right issues and private placements. This requires careful planning and well defined marketing strategy. Apart from a number of pre-issue and post –issue activities, there are certain activities relating to stock exchange, SEBI and other agencies like bankers, registers, etc., which have to be taken care of. Marketing an issue includes aggressive sales campaign, selecting an optimum media mix and arranging conferences. Moreover, it is extremely important for a merchant banker to decide upon the right time of launching the issue. Another important aspect of issue management is pricing of issues, where a merchant banker has to take into account both qualitative and quantitative factors while deciding upon the premium component of the issue. Investor protection should be the main concern of a merchant banker. He must try to ensure that an investor does not suffer unwarranted losses if the share price falls below the issue price after listing. Some merchant bankers have kept a provision for buy back of shares under the safety net scheme. Managing an issue also requires that the merchant banker operates within the legal and regulatory framework stipulated by the companies Act, 1956, the Securities Contract (Regulation) Act, 1957 and the SEBI guidelines. In the recent past Information Technology has also influenced issue management process and concept of e-IPO has emerged.

10.14 KEY WORDS

Escrow Account: Brokers account with the clearing house bank for primary market issues and the amount collected by the broker from his clients as margin money shall be deposited in this account.

Merchant Banker: Any person who is engaged in the business of issue management either by making arrangement regarding selling, buying or subscribing in securities as manager, consultant, advisor or rendering corporate advisory services in relation to such issue management.

Private Placement: Direct sale of securities by a company to investors.

Public Issue: A method of raising funds from public.

Rights Issue: Issues of new shares in which existing shareholders are given preemptive rights to subscribe to new issue of shares.

Safety net scheme: The merchant bankers provide a buy-back facility to the individual investor in case the price of the share goes below the issue price after listing.

10.15 SELF ASSESSMENT QUESTIONS

1) Discuss the various sources from which funds can be raised by both existing as well as new companies for implementing their projects.
2) What aspects need to be borne in mind before selecting a public issue proposal?
3) Describe in detail the important aspects of the pre-issue activities.

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4) In the growing competitive market simply complying with the statutory regulations is not enough, for any company, it needs to have an aggressive sales campaign also. Comment.

5) Explain in detail the process used for marketing a public offer of equity shares of a company.

10.16 FURTHER READINGS

Bansal, Lalit K., *Merchant Banking and Financial Services*, Unistar Publications, Chandigarh 1997.

Bharat's *Manual of SEBI*, Bharat Law House Private Limited New Delhi 2003.

Nair TNT, *Lead Managers Face a Crisis of Confidence*, Economic Times, December 3, 1996.

UNIDO (1980), *Manual for Evaluation of Industrial Projects*, New York.

V.I. Iyer (1996), *A Practical Handbook to Public Issue and Euro Issues*, Taxmann Allied Services Pvt. Ltd.

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Underwriting

In respect of every issue under his management, the lead manager shall accept a minimum underwriting obligation of 5% of the total underwriting commitment or Rs. 25 lacs whichever is less. The outstanding underwriting commitments of a merchant banker shall not exceed 5 times his net worth at any point of time. The lead manager shall ensure that the issue to the public is fully underwritten and details of underwriters included in the prospectus. He shall also satisfy himself about the worth of the underwriters to fulfill their respective underwriting commitments. The lead manager shall satisfy himself that the issue is fully subscribed before announcing closure of the issue. In case, there is no definite information about subscription figures, the issue should be kept open for the required number of days to take care of the underwriters interests and to avoid any dispute, at a later date, by the underwriters over their liability.

In case there is a devolvement on underwriters, the lead manager shall ensure that the underwriters give a letter of acceptance for the amount of devolvement within 60 days from the date of closure of the issue and pay the, amount of devolvement within 90 days from the date of closure of the issue. Any dispute relating to acceptance of underwriting commitment shall immediately be brought to the notice of SEBI. The lead manager shall exercise due caution while finalising the underwriting arrangement keeping in view the track record of underwriters in meeting their commitments in the devolved issues managed by them.

While selecting underwriters and finalising underwriting arrangements, lead managers may ensure that the underwriters do not overexpose themselves so that it may become difficult for them to fulfill underwriting commitments. In this context, the overall exposure of underwriter(s) belonging to the, same group or management in an issue may be viewed carefully. There were complaints that the OTC Dealers are not treated on par with brokers of other exchanges while finalising underwriting arrangements. SEBI desires that other things being equal, lead managers may not exclude OTC Dealers registered with SEBI under SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992 from underwriting.

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Annexure 2

Due Diligence Certificate

On the basis of such examination and the discussions with the company, its directors and other officers, other agencies, independent verification of the statements concerning the objects of the issue, projected profitability, price justification and the contents of the documents mentioned in the Annexure and other papers furnished by the company the lead managers issue a certificate stating that:

WE CONFIRM that: the draft prospectus/letter of offer forwarded to SEBI is in conformity with the documents, materials and papers relevant to the issue;

all the legal requirements connected with the said issue as also the guidelines, instructions, etc. issued by SEBI, the Government and any other competent authority in this behalf have been duly complied with; and

the disclosures made in the draft prospectus/letter of offer are true, fair and adequate to enable the investors to make a well informed decision as to the investment in the proposed issue.

We confirm that besides ourselves, all the intermediaries named in the prospectus/ letter of offer are registered with SEBI and that till date such registration is valid.

We have satisfied ourselves about the worth of the underwriters to fulfill their underwriting commitments.

Annexure to the Due Diligence Certificate for the issue of by Limited

- Memorandum and Articles of Association of the Company.
- Letter of Intent/SIA Registration/Foreign Collaboration Approval/Approval for import of plant and machinery, if applicable.
- Necessary clearance from governmental, statutory, municipal authorities, etc. for implementation of the project, wherever applicable.
- Documents in support of the track record and experience of the promoters and their professional competence.
- Listing agreement of the company for existing securities on the Stock Exchanges.
- Consent letter from Company's auditors, Bankers to issue, bankers to the Company, Lead Managers, Brokers and where applicable, Proposed Trustees.
- Applications made by the company to the financial institutions/banks for financial assistance as per object of the Issue and copies of relative sanction letters.
- Underwriting letters from the proposed underwriters to the issue.
- Audited Balance Sheets of the Company/Promoter companies for relevant periods.
- Auditors certificate regarding tax-benefits available to the Company, Shareholders and Debenture holders.
- Certificate from Architects or any other competent authority on project implementation schedule furnished by the company, if applicable.
- Reports from Government agencies/expert agencies/consultants/company regarding market demand and supply for the product, industry scenario, standing of the foreign collaborators, etc.
- Documents in support of the infrastructural facilities, raw material availability, etc.
- Auditor's Report indicating summary of audited accounts for the period including that of subsidiaries of the company.

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- Stock Exchange quotations of the last 3 years duly certified by regional stock exchange in case of an existing company.
- Applications to RBI and approval thereof for allotment of shares to non residents, if any, as also for collaboration terms and conditions.
- Minutes of Board and General Body of the company for matters which are in the prospectus.
- Declaration in Form 32 from Directors (for particulars of Directorship) or the Company Secretary's certificate in this regard.
- Revaluation certificate of company's assets given by Government Valuer or any other approved valuer.
- Environmental clearance as given by Pollution Control Board of the State Government or the Central Government as applicable.
- Certificates from company's solicitors in regard to compliance of legal provisions of the prospectus as also applicability of ERA/MRTP provisions to the company.
- Other documents, reports, etc. as are relevant, necessary fortune, fair are adequate disclosures in the draft prospectus/letter of offer (to give details).
- True copy of the Board resolution passed by the issuer authorising a representative of the Registrar to act on its behalf in relation to handling of Stock invests.

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Inter-se Allocation of Responsibilities

Inter se allocation of the activities/ sub-activities will be for the lead managers to make who must however ensure that activity wise allocation is properly delineated and that SEBI is advised the name of the lead manager responsible for each set of activities/ sub-activities, well before opening of issue. This advice must be signed by all lead managers to issue.

Where the circumstances warrant joint and several responsibility of lead managers for a particular activity, a coordinator designated from amongst the lead managers shall furnish to SEBI, when called for, with information, report, comments, etc. on matters relating to the activity (of joint and several responsibility).

The activity/sub-activities may be grouped on the following lines:

Capital structuring with the relative components and formalities such as composition of debt and equity, type of instruments. .

Drafting and Design of the offer document and of advertisement/publicity material including newspaper advertisements and brochure/memorandum containing salient features of the offer document. The designated lead manager shall ensure compliance with the Guidelines for Disclosure and Investor Protection and other stipulated requirements and completion of prescribed formalities with Stock Exchange Registrar of Companies and SEBI.

Marketing of the issue, which will cover, inter-alia, formulating marketing strategies, preparation of publicity budget, arrangements for selection of (i) ad-media, (ii) centres of holding conferences of brokers, investors, etc., (iii) bankers to issue, (iv) collection centres. (v) brokers to issue, and (vi) underwriters and the underwriting arrangement, distribution of publicity and issue material including application form, prospectus and brochure, and deciding on the quantum of issue material.

Selection of various agencies connected with issue, namely Registrars to issue, printers and advertising agencies.

Follow-up with bankers to the issue to get quick estimates of collection and advising the issuer about closure of the issue, based on the correct figures.

The post-issue activities will involve essential follow-up steps, which must include finalisation of basis of allotment/weeding out of multiple applications, listing of instruments and despatch of certificates and refunds, with the various agencies connected with the work such as registrars to the issue, bankers to the issue, and the bank handling refund business. Even if many of these activities would be handled by other intermediaries, the designated lead manager shall be responsible for ensuring that these agencies fulfill their functions and enable him to discharge this responsibility through suitable agreements with the issuer company.

Ordinarily, one lead manager will be responsible for post-issue activities".

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Advertisements

Pre-Issue Advertisements

Lead manager has to ensure that:

- No advertisement relating to the issue shall be released without giving "Risk Factors" in respect of the concerned issue.
- Advertisements shall not contain any matter or matters which is/are extraneous to the contents of the offer documents.
- In all issue advertisements, equal treatment in all respects shall be given to the risk factors and highlights.
- New issue slogans or brand names for the issue should not be coined except the normal commercial name of the company or commercial brand names of its products already in use.
- Making use of models/celebrities, etc. is prohibited.
- In case there is a reservation for the NRIs, the issue advertisement shall specify the same and indicate the source in India from where the individual NRI applicant can procure application forms.
- The lead manager shall ensure that in the case of rights issues, the issuers release an advertisement giving the date of completion of despatch of letters of offer, at least *7 days before the date of opening of the issue*, at least in two all India Newspapers.

Post Issue Advertisements

Post issue lead Merchant banker shall ensure that in all issues, advertisement giving details relating to oversubscription, basis of allotment, number, value arid percentage of applications received along with stock, invest, number, value and percentage of successful allottees who have applied through stock invest, date of completion of despatch of refund orders, date of despatch of certificates and date of filing of listing application is released within 10 days from the date of completion of the various activities at least in an English National daily with wide circulation, one Hindi National Paper and a Regional language daily circulated at the place where registered office of the issue company is situated.

Post issue Lead Merchant Banker shall ensure that issuer company/advisors brokers or any other agencies connected with the issue do not publish any advertisement stating that issue has been oversubscribed or indicating investors response to the issue during the period when the public issue is still open for subscription by the public. Advertisement stating that "the subscription to the issue has been closed" may be issued after the actual closure. of the issue.

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Basis of Allotment

In a public issue of securities, the executive Director/Managing Director of the Regional stock Exchange along-with the post issue Lead Merchant Banker and the Registrars to the issue shall be responsible to ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the laid down guidelines.

Proportionate Allotment Procedure

The allotment shall be subject to allotment in marketable lots, on a proportionate basis as explained below:

a) Applicants shall be categorised according to the number of shares applied for

b) The total number of shares to be allotted to each category as a whole shall be arrived at on a proportionate basis i.e., the total number of shares applied for in that category (number of applicants in the category x number of shares applied for) multiplied by the inverse of the over subscription ratio as illustrated below :

Total number of applicants in category of 100s	1,500
Total numbers of shares applied for	1,50,000
Number of times allotment to category	3
Proportionate allotment to category	1,50,000 × 1/3 = 50,000

c) Number of shares to be allotted to the successful allottees shall be arrived at on a proportionate basis i.e., total number of shares applied for by each applicant in that category multiplied by the inverse of the over subscription ratio. Schedule XVIII of basis of allotment procedure may be referred to.

Number of shares applied for by each applicant	100
Number of times oversubscribed	3
Proportionate allotment to each successful applicant	100 × 1/3 = 33 (to be round off to 100)

All the applications where the proportionate allotment works out to less than 100 shares per applicant, the allotment shall be made as follows:

i) Each Successful applicant shall be allotted a minimum of 100 securities; and

ii) The successful applicants out of the total applicants for that category shall be determined by drawl of lots in such a manner that the total number of shares allotted in that category is equal to the number of shares worked out as per (c) above.

If the proportionate allotment to an applicant works out to a number that is more than 100 but is not a multiple of 100 (which is the marketable lot), the number in excess of the multiple of 100 shall be rounded off to the higher multiple of 100 if that number is 50 or higher. If such number is lower than 50, it shall be rounded off to the lower multiple of 100. As an illustration, if the proportionate allotment works out to 250, the applicant would be allotted 300 shares. If however the proportionate allotment works out to 240, the applicant shall be allotted 200 shares. All applicants in such categories shall be allotted shares arrived at after such rounding off.

If the shares allocated on a proportionate basis to any category is more than the shares allotted to the applicants in that category, the balance available shares for allotment shall be first adjusted against any other category, where the allocated shares are not sufficient for proportionate to the successful applicants in that category.

The balance shares if any, remaining after such adjustment shall be added to the category comprising applicants applying for minimum number of shares.

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As the process of rounding off to the nearer multiple of 100 may result in the actual allocation being higher than the shares offered, it may be necessary to allow a 10% margin. The final allotment may be higher by 10% of the net offer to public.

Reservation for Small Individual Applicants

The above proportionate allotments of securities in an issue that is oversubscribed shall be subject to the reservation for small individual applicants as described below:

a) A minimum 50% of the net offer of securities to the public shall initially be made available for allotment to individual applicants who have applied for allotment equal to or less than 10 marketable lots of shares or debentures or the securities offered, as the case may be.

b) The balance net offer of securities to the public shall be made available for allotment to individual applicants who have applied for allotment of more than to marketable lots of shares or debentures or the securities offered; and other investors including Corporate bodies/institutions irrespective of the number of shares, debentures etc. applied for.

c) The unsubscribed portion of the net offer to anyone of the categories specified in (a) or (b) shall/may be made available for allotment to applicants in the other category, if so required.

The drawl of lots (where required) to finalise the basis of allotment, shall be done in the presence of a public representative on the Governing Board of the Regional Stock Exchange.

The basis of allotment shall be, signed as correct by the Executive Director/Managing Director of the stock exchange and the public nominee (where applicable) in addition to the lead merchant banker responsible for post issue activities and the Registrar to the Issue. The stock exchange shall invite the public representative on a rotation based from out of the various public representatives on its governing board.

The expression "reservation" shall mean reservation on Competitive Basis wherein allotment of shares is made in proportion to the shares applied for by the concern of reserved categories.

Reservation on competitive basis can be made in a public issue to the following categories:

Permanent employees (including working directors) of the company and in the case of a new company the permanent employees of the promoting companies.

Shareholders of the promoting companies in the case of a new company and shareholders of group companies in the case of an existing company.

Indian Mutual Funds

Foreign Institutional Investors (including non resident Indians and overseas, corporate bodies).

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Basis for Issue Price

1) Adjusted earning per share

a)	2001-02	Rs.	0.41
b)	2002-03	Rs.	8.39
c)	2003-04	Rs.	13.82
d)	Weighted average	Rs.	10.9

2) Price/Earning Ratio (P/E) in relation to issue price

a) Based on 2003-2004 EPS 37.63

b) Industry P/E

i)	Highest	61.2
ii)	Lowest	0.8
iii)	average	25.3

3) Returned on Net Worth

a)	2001-02	27.36 %
b)	2002-03	28.77%
c)	2003-04	33.45%
d)	Weighted average	30.88%

4) Minimum return on total network after issue needed to maintain EPS at Rs. 13.82 14.65%

5) Net asset value (NAV)

a)	As on 31-3-2004	Rs. 46.40
b)	After issue	Rs. 94.29
c)	Issue price	Rs. 520.00

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Book Building Guidelines
(Some important provisions)

There are two categories of provisions, one is for the issues where only 75% of the issue are book build and the other is when 100% of the issue is book build.

A) 75 % Book Building process:

In an issue of securities to the public through a prospectus, the option of 75 percent building is available to all body corporate which are otherwise eligible to make an issue of capital to the public.

The book building facility shall be available as an alternative to, and to the extent of the percentage of the issue which can be reserved for firm allotment. The issue of securities through book-building process shall be separately identified/ indicated as *'placement portion category'* in the issued prospectus. The draft prospectus containing all the information *except* the information regarding the price at which the securities are offered shall be filed with the Board. It shall, of course, indicate the *price band* within which the securities are being offered for subscription.

One of the lead merchant banker to the issue shall be nominated by the issuer company as a Book Runner and his name shall be mentioned in the prospectus. The copy of the draft prospectus filed with the Board may be circulated by the Book Runner to the institutional buyers who are eligible for firm allotment and to the intermediaries eligible to act as underwriters inviting offers for subscribing to the securities.

The securities available to the public shall be separately identified as *'net offer to the public* and the requirement of minimum 25% of the securities to be offered to the public shall also be applicable. In case the book-building option is availed of, underwriting shall be mandatory to the extent of the net offer to the public. The Book Runner on receipt of the offers shall maintain a record of the names and number of securities ordered and the price at which the institutional buyer or underwriter is willing to subscribe to securities under the placement portion The underwriter(s) shall maintain a record of the orders received by him for subscribing to the issue out of the placement portion. The underwriter(s) shall aggregate the offers so received for subscribing to the issue and intimate to the Book Runner the aggregate amount of the orders received by him.

The institutional investor shall also forward its orders, if any, to the book runner.

On receipt of the information, the Book Runner and the issuer company shall determine the price at which the securities shall be offered to the public. The issue price for the placement portion and offer to the public shall be the same. On determination of the price of the underwriter shall enter into an underwriting agreement with the issuer indicating the number of securities as well as the price at which the underwriter shall subscribe to the securities.

Book Runner can require the underwriters to the *net offer to the public* to pay in advance all money required to be paid in respect of their underwriting commitment. On determination of the issue price within two days, thereafter the prospectus shall be filed with the Registrar of Company. The issuer company shall open two different accounts for collection of application money, one for the private placement portion and the other for the public subscription.

One day prior to the opening of the issue to the public, Book Runner shall collect from the institutional buyers and the underwriters the application forms along with the application money to the extent or- the securities proposed to be allotted to them/

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subscribed by them. Allotments for the private placement portion shall be made on the second day from the closure of the issue.

It is to be ensured that the securities allotted under *placement portion* and , *public portion* are *pari passu* in all respects. The issuer company may have one date of allotment which shall be the deemed date of allotment- for the issue of securities through *book building process*. Allotment of securities under the public category shall be made as per SEBI guidelines and such securities shall be eligible to be listed.

B) 100% Book Building Process

An issuer company can make 100% issue of securities to the public through book building either as

a) 100% of the *net offer* to the public through book building process, or

b) 75% of the *net offer* to the public through book building process and 25% *at the price determined through book building*.

Book Building shall be for the portion other than the promoters contribution and the allocation is made to:

a) permanent employees of the issuer company and in the case of a new company the permanent employees of the promoting companies;

b) Shareholders of the promoting companies in the case of a new company and shareholders of group companies in the case of an existing company either on a competitive basis or on a firm allotment basis.

The primary responsibility of building the book shall be that of the Lead Book Runner. The Lead Merchant Banker shall act as the Lead Book Runner and the other eligible Merchant Banker(s) , so appointed by the issuer, shall be termed as Co-Book Runner(s). In case the issuer company appoints more than one book runner, the names of all such book runners who have submitted the due diligence certificate to SEBI, may be mentioned on the front cover page of the prospectus. A disclosure to the effect that the "investors may contact any of such book runners, for any complaint pertaining to the issues" shall be made in the prospectus, after the "risk factors". In case of appointment of more than one Lead Merchant Banker or Book Runner for book building, the rights, obligations and responsibilities of each should be delineated. The Book Runner(s) may appoint those intermediaries who are registered with the Board and who are permitted to carry on activity as an Underwriter as syndicate members.

The draft prospectus containing all the disclosures required except that of price and the number of securities to be offered to the public shall be filed by the Lead Merchant Banker with the Board but the total size of the issue shall be mentioned in the draft prospectus. Such prospectus is called *Red herring* prospectus. The red herring prospectus shall disclose, only the floor price of the security offered through it and shall not mention the maximum price or the indicative price band. The Board within 21 days of the receipt of the draft prospectus may suggest modifications to it. The Lead Merchant Banker shall be responsible, for ensuring that modifications/final observations made by the Board are incorporated in the prospectus. In case of an under subscription in an issue, the shortfall shall have to made good by the Book Runner(s) to the issue and the same shall incorporated in the *inter se* allocation of responsibility.

The issuer company shall after receiving the final observations if any on the offer document from the Board make an advertisement in an English National daily with wide circulation, one Hindi National newspaper and a Regional language newspaper with wide circulation at the place where the registered office of the Issuer company is situated. The advertisement so issued shall contain the salient features of the final

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offer document. The pre-issue obligations and disclosure requirements of SEBI Guidelines, shall also be applicable to issue of securities through book building.

The Book Runner(s) and the issuer company shall determine the issue price based on the bids received through the syndicate members. On determination of the price,. the number of securities to be offered shall be determined (issue size divided by the price which has been determined). All those bidders whose bids have been found to be successful (i.e., at and above the final price or cut-off price) shall become entitled for allotment of securities.

On determination of the entitlement under sub-clause (xvi), the information regarding the same (i.e. the number of securities which the investor becomes entitled) shall be intimated immediately to the investors.

The final prospectus containing all disclosures including the price and the number of securities proposed to be issued shall be filed with the Registrar of Companies.

Arrangement shall be made by the issuer for collection of the applications by appointing mandatory collection centres. The online real time graphical display of demand and bid prices at the bidding terminals, shall be made.

Additional Disclosures

Apart from meeting the already discussed disclosure requirements, the following disclosures shall also be suitably made:

(i) The particulars of syndicate members along with the details of registrars, bankers to the issue, etc.

ii) The following statement shall be given under the basis for issue price:

"The issue price has been determined by the Issuer in consultation with the Book Runner(s), on the basis of assessment of market demand for the offered securities by way of Book-building".

The following accounting ratios shall be given under the basis for issue price for each of the accounting periods to which the financial information is given:

1) EPS, pre-issue, for the last three years (as adjusted for changes in capital).
2) P/E. pre-issue and comparison thereof with industry P/E where available (giving the source from which industry P/E has been taken).
3) Average return on net-worth in the last three years.
4) Net-Asset value per share based on last balance sheet.
5) The accounting ratios disclosed in the offer document shall be calculated after giving effect to the consequent increase of capital on account of compulsory conversions outstanding, as well as on the assumption that the options outstanding, if any, to subscribe for additional capital shall be exercised.

Underwriting

In case the issuer company is making an issue of securities (100% of the net offer to them public or the book built portion - 75% of the net offer to the public) it shall be compulsorily underwritten by the syndicate members/book runner(s)and this shall apply to 60% of the net offer to the public, mandatorily to be allotted to the Qualified Institutional Buyers. The syndicate members shall enter into an underwriting agreement.

Procedure for bidding

An advertisement to the fact that 100% book building issue is to be made which shall contain the following:

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a) the date of opening and closing of the bidding (not less than 5 days);

b) the names and addresses of the syndicate, members as well as the bidding terminals for accepting the bids;

c) the method and process of bidding.

Bidding shall be permitted only if an electronically linked transparent facility is used. The syndicate members shall be present at the bidding centres so that at least one electronically linked computer terminal at all the bidding centres is available for the purpose of bidding. The number of bidding centres, in case 75% of the *net offer* to the public is offered through the book building process shall not be less than the number of mandatory collection centres as specified in these regulations. In case 100% of the *net offer* to the public is made through book building process, the bidding centres shall be at all the places, where the recognised stock exchanges are situated. Individual as well as qualified institutional buyers shall place their bids only through the syndicate members who shall have the right to vet the bids. The investors shall have the right to revise their bids.

Bidding Form

a) Shall be a standard bidding form to ensure uniformity in bidding and accuracy.

b) Shall contain information about the investor, the price and the number of securities that the investor wishes to bid.

c) Before being issued to the bidder shall be serially numbered at the bidding centres and date and time stamped.

d) Shall be issued in duplicate signed by the investor and countersigned by thesyndicate member, with one form for the investor and the other for the syndicate member(s)/Book Runner(s).

At the end of each day of the bidding period the demand shall be shown graphically on the terminals for information of the syndicate members as well as the investors.

Allocational Allotment Procedure

I) In case an Issuer company makes an issue *of* 100% *of* the net offer to public through100% book building process:

   a) not less than 25% of the net offer to the public shall be available for allocation to retail individual investors i.e. investors applying for up to 1000 securities;

   b) not less than 15% of the net offer to the public shall be available for allocation to non-institutional investors i.e. investors applying for more than 1000 securities;

   c) not more than 60% of the net offer to the public shall be available for allocation to Qualified Institutional Buyers.

II) In case an issuer company makes an issue *of* 75% *of* the net offer to public through book building, process and 25% at the price determined through book building:

   a) in the book built portion, not less than 15% of the net *offer* to the public, shall be available for allocation to non-institutional investors.

   b) the balance 25% *of* the *net offer* to the public, offered at a price determined through book building, shall be available only to retail individual investors who have either not participated or have not received any allocation, in the book built portion. 60% of the issue size shall be allotted to the Qualified Institutional Buyers.

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Allotment to retail individual investors and non institutional investors, shall be made on the basis of the proportionate allotment system. The allocation to the Qualified Institutional Buyers, shall be determined by the Book Runner(s) based on prior commitment, investor quality, price aggression, earliness bids, etc. Allotment shall be made not later than 15 days from the closure of the issue failing which interest at the rate of 15% shall be paid to the investors. Model Time Frame for Book Building specified by SEBI shall be followed.

In case the issuer company has made an issue of 75% of the net offer to public through book building process and 25% at the price determined through book building

a) the offer of 25% of the *net offer to the public*, made at a price determined through book building, shall open within 15 days from the date of closure of bidding;

b) the offer for subscription to the public, shall remain open for a period of atleast 3 working days after completing all the requirements of advertisement and dispatch of issue material to all the stock exchanges,

c) during the time when the offer is open, the investors who have whether received or not an intimation of entitlement of securities shall submit the application forms alongwith the application money.

Model Timeframe

After, the final observation from SEBI has been received on the offer document, the minimum number of application forms accompanied with Form 2A and offer document containing the final price, shall be dispatched to the members of the Stock Exchange. However, the issue opening and closing date shall be mentioned in the application form. A minimum of 200 application forms per active member of the Stock Exchange where the, securities of the issuer company are proposed to be listed and 10,000 forms each to other Stock Exchanges shall be dispatched. Further, minimum 1,000 offer document, containing the final observation received from SEBI, to each Stock exchange where the securities of the issuer company are proposed to be listed and minimum 200 offer documents, containing the final observation received from SEBI each to other Stock Exchange would also have to be dispatched. These shall be dispatched subject to the condition that a minimum gap of 14 days is maintained between the receipt of these application and the issue opening date.

After, the price has been determined on the basis of bidding the statutory public advertisement containing, inter-alia, the price as well as a table showing the number of securities and the amount payable by an investor, based on the price determined, shall be issued. The statutory advertisement may be issued before the ROC filing. There shall be a minimum time gap of five (5) days between the statutory public advertisement and the issue opening date. The statutory public advertisement shall be issued for a continuous period of three days in an English National daily with wide circulation, one Hindi National paper and a Regional language newspaper with daily circulation at the place where the registered office of the issuer company is situated.

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